

ANNEX 28

UN Diplomatic Conference, Working Paper, 17 October 1974

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/L. 8/Rev.1

Statement of activities of the Conference during its first and second sessions

Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume III (Documents of the Conference, First and Second Sessions)

(b) Disputes concerning sea boundary delimitations between States;

(c) Disputes involving historic bays or limits of territorial sea;

(d) Disputes concerning vessels and aircraft entitled to sovereign immunity under international law, and similar cases in which sovereign immunity applies under international law;

(e) Disputes concerning military activities [, unless the State conducting such activities gives its express consent];

(f) . . . ;

(g) . . .

2. If one of the Contracting Parties has made such a declaration, any other Contracting Party may enforce the same exception in regard to the Party which made the declaration.

Alternative C.2

1. In ratifying this Convention, acceding to it, or accepting it, a State may declare that it does not accept the jurisdiction of the dispute settlement machinery with respect to one or more of the following categories of disputes:

(a) Disputes arising out of the normal exercise of discretion by a coastal State pursuant to its regulatory and enforcement jurisdiction under this Convention, except in cases involving an abuse of power;*

(b) Disputes concerning sea boundary delimitations between adjacent and opposite States, including those involving historic bays and the delimitation of the adjacent territorial sea;

(c) Disputes concerning vessels and aircraft entitled to sovereign immunity under international law, and similar cases in which sovereign immunity applies under international law;

(d) Disputes concerning military activities [, unless the State conducting such activities gives its express consent.]

(e) . . . ;

(f) . . .

2. If one of the Contracting Parties has made such a declaration, any other Contracting Party may enforce the same exception in regard to the Party which made the declaration.

*The precise drafting and implications of this reservation will require further examination in the light of the substantive provisions of this Convention.

Note: Relevant provisions of international instruments

Geneva General Act for the Pacific Settlement of International Disputes of 1928 and Revised General Act of 1949, article 59:

"1. . . . [A] Party, in acceding to the present General Act, may make his acceptance conditional upon the reservations exhaustively enumerated in the following paragraph. These reservations must be indicated at the time of accession.

"2. These reservations may be such as to exclude from the procedure described in the present Act:

"(a) Disputes arising out of facts prior to the accession either of the Party making the reservation or of any other Party with whom the said Party may have a dispute;

"(b) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States,

"(c) Disputes concerning particular cases or clearly specified subject matters, such as territorial status, or disputes falling within clearly defined categories.

"3. If one of the parties to a dispute has made a reservation, the other parties may enforce the same reservation in regard to that party.

"4. In the case of Parties who have acceded to the provisions of the present General Act relating to judicial settlement or to arbitration, such reservations as they may have made shall, unless otherwise expressly stated, be deemed not to apply to the procedure of conciliation."

Convention for the Prevention of Pollution from Ships, 1973, article 3 (3):

"The present Convention shall not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service. However, each Party shall ensure by the adoption of appropriate measures not impairing the operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with the present Convention."

DOCUMENT A/CONF.62/L.8/REV.1

Statement of activities of the Conference during its first and second sessions prepared by the Rapporteur-general: Mr. Kenneth O. RATTRAY (Jamaica)

[Original: English]
[17 October 1974]

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I. Historical background

1. The item concerning the peaceful uses of the sea-bed beyond national jurisdiction was first included in the agenda of the General Assembly in 1967. The General Assembly examined this item at its twenty-second session and adopted resolution 2340 (XXII) establishing the *Ad Hoc* Committee, composed of 35 States, to study the peaceful uses of the sea-bed and the ocean floor beyond the limits of national jurisdiction.

2. Consequent upon the report of the *Ad Hoc* Committee, the General Assembly, at its twenty-third session on 21 December 1968, adopted resolution 2467 (XXIII), establishing the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. This Committee, originally composed of 42 Member States, was subsequently enlarged successively by 44 and 5 members respectively, thus making a total membership of 91.

3. On 17 December 1970, the General Assembly adopted resolution 2750 (XXV), under part C of which it decided to convene a new Conference on the Law of the Sea in 1973 and to instruct the enlarged Committee to undertake the preparatory work for the Conference. The Conference would deal with the establishment of an equitable international régime—including an international machinery—for the area and the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, a precise definition of the area, and a broad range of related issues including those concerning the régimes of the high seas, the continental shelf, the territorial sea (including the question of its breadth and the question of international straits) and contiguous zone, fishing and conservation of the living resources of the high seas (including the question of the preferential rights of coastal States), the preservation of the marine environment (including, *inter alia*, the prevention of pollution) and scientific research.

4. The Committee held a series of meetings in New York and Geneva extending from 1969 to 1973 and, in accordance with paragraph 2 of General Assembly resolution 3029 A (XXVII), of 18 December 1972, submitted a final report¹⁷⁵ on its deliberations containing a comprehensive review and documentation of its work.

5. Under its resolution 3067 (XXVIII) of 16 November 1973, the General Assembly decided to convene the first session of the Third United Nations Conference on the Law of the Sea in New York, from 3 to 14 December 1973 inclusive, to deal with matters relating to the organization of the Conference, the establishment of subsidiary organs and the allocation of work to these organs and any other purpose within the scope of paragraph 3 of the resolution.

6. Under that paragraph, the Assembly decided that the mandate of the Conference "shall be to adopt a convention dealing with all matters relating to the law of the sea, taking into account the subject-matter listed in paragraph 2 of General Assembly resolution 2750 C (XXV) and the list of subjects and issues relating to the law of the sea formally approved on 18 August 1972 by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole".

¹⁷⁵ Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 21 and corrigenda 1 and 3.

7. The General Assembly further decided to convene the second session of the Conference, for the purpose of dealing with the substantive work, for a period of 10 weeks from 20 June to 29 August 1974 at Caracas and, if necessary, to convene not later than 1975 any subsequent session or sessions as might be decided upon by the Conference and approved by the General Assembly, bearing in mind that the Government of Austria had offered Vienna as the site for the Conference in 1975.

8. The General Assembly resolution also invited the Conference to make such arrangements as it might deem necessary to facilitate its work and referred to it the reports of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction on its work and all other relevant documentation of the General Assembly and the Committee.

9. Having regard to the desirability of achieving universality of participation in the Conference, the General Assembly decided to request the Secretary-General to invite, in full compliance with General Assembly resolution 2758 (XXVI) of 25 October 1971, States Members of the United Nations or members of specialized agencies or the International Atomic Energy Agency and States parties to the Statute of the International Court of Justice as well as the following States to participate in the Conference: Republic of Guinea-Bissau and Democratic Republic of Viet-Nam.¹⁷⁶

10. It also requested the Secretary-General:

(a) To invite to the Conference intergovernmental and non-governmental organizations in accordance with paragraphs 8 and 9 of resolution 3029 A (XXVII);

(b) To invite the United Nations Council for Namibia to participate in the Conference;

(c) To provide summary records in accordance with paragraph 10 of resolution 3029 A (XXVII).

11. The General Assembly further decided that the Secretary-General of the United Nations would be the Secretary-General of the Conference and authorized him to appoint a special representative to act on his behalf and to make such arrangements—including recruitment of necessary staff, taking into account the principle of equitable geographical representation—and to provide such facilities as might be necessary for the efficient and continuous servicing of the Conference, utilizing to the fullest extent possible the resources at his disposal.

12. The General Assembly requested the Secretary-General to prepare draft rules of procedure for the Conference, taking into account the views expressed in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and in the General Assembly, and to circulate the draft rules of procedure in time for consideration and approval at the organizational session of the Conference.

¹⁷⁶ In a cable dated 22 November 1973, addressed to the Secretary-General of the United Nations, the Minister for Foreign Affairs of the Democratic Republic of Viet-Nam stated that in view of the fact that the Provisional Revolutionary Government of the Republic of South Viet-Nam had not been invited, the Government of the Democratic Republic of Viet-Nam considered itself unable to participate in the Conference. (For text of cable see document A/9350.)

13. Pursuant to General Assembly resolution 3067 (XXVIII), the Third United Nations Conference on the Law of the Sea held its first session from 3 to 15 December 1973 in New York and its second session from 20 June to 29 August 1974 at Caracas.

II. First session

OPENING OF THE SESSION

14. The Conference was opened by the Secretary-General of the United Nations, Mr. Kurt Waldheim, on 3 December 1973.

ELECTION OF THE PRESIDENT

15. At the opening meeting, Mr. H. S. Amerasinghe (Sri Lanka) was unanimously elected President of the Conference.

ADOPTION OF THE AGENDA

16. At the same meeting, the agenda of the first session (A/CONF.62/1) was adopted.

ELECTION OF OFFICERS

17. The Conference considered the election of its officers from the 2nd to the 9th meetings between 7 and 13 December.

18. At its 2nd meeting, the Conference decided that (1) the Vice-Presidents of the Conference, the Vice-Chairmen of the Main Committees and the members of the Drafting Committee would be elected by country; (2) the Chairmen and the Rapporteurs of the Main Committees, the Chairman of the Drafting Committee and the Rapporteur-General would be elected individually; (3) in the event of an individually elected member having to be replaced, the regional group to which the post had been allocated would elect a candidate to replace him.

19. At its 3rd meeting, on 10 December, the Conference adopted the following understanding that had been reached by the regional groups:

(1) There would be a General Committee consisting of 48 members: the President, 31 Vice-Presidents, 15 officers of the three Main Committees and the Rapporteur-General. The posts would be distributed as follows: 12 African States, 12 Asian States, 9 Latin American States, 9 Western European and Other States and 6 Eastern European States.

(2) Each Main Committee would have a Chairman, three Vice-Chairmen and a Rapporteur.

(3) The number of Vice-Presidents would be: 9 African, 8 Asian, 5 Latin American, 6 Western European and Other States and 3 Eastern European.

(4) The post of Rapporteur-General, whose incumbent would also be a member of the General Committee, would be allocated to the Latin American States.

(5) The Drafting Committee would consist of 23 members, distributed as follows: 6 African, 6 Asian, 4 Latin American, 5 Western European and Other States and 2 Eastern European. It was the understanding of four regional groups, the African, Asian, Latin American and Eastern European, that any candidacy of the United States would be accommodated within the quota of Western European and Other States. It was further understood that the Chairman of the Drafting Committee would have the right to participate in meetings of the General Committee without the right to vote, if that was applicable, and that the Rapporteur-General would have the right to participate in meetings of the Drafting Committee without the right to vote if that was applicable.

20. At its 5th meeting, on 11 December, the Conference decided that the rules of procedure of the General Assembly should be applied in so far as they were applicable to the elections of the various officers of the Conference and that those elections should take place at the next meeting.

21. At its 6th meeting, on 12 December, the Conference adopted the following formula which was read out by the President: "No State shall as a right be represented on more than one main organ of the Conference."

22. At its 7th meeting, on 12 December, the Conference adopted the following order for the elections of the officers of the Conference: (1) the Chairmen of the three Main Committees and the Chairman of the Drafting Committee; (2) the Rapporteur-General; (3) the Vice-Chairmen and the Rapporteurs of the three Main Committees; (4) the 31 Vice-Presidents of the Conference; (5) the 22 other members of the Drafting Committee.

23. The results of the elections were as follows:

(1) *Chairmen of the First, Second and Third Committees:*

Mr. Paul Bamele Engo (United Republic of Cameroon) was elected Chairman of the First Committee by acclamation.

Mr. Andrés Aguilar (Venezuela) was elected Chairman of the Second Committee by acclamation.

Mr. Alexander Yankov (Bulgaria) was elected Chairman of the Third Committee by acclamation.

Mr. J. A. Beesley was elected Chairman of the Drafting Committee by secret ballot. He received 81 votes.

(2) *Mr. Kenneth Rattray (Jamaica) was elected Rapporteur-General by acclamation.*

(3) *Vice-Chairmen and Rapporteurs of the First, Second and Third Committees:*

First Committee:

Brazil, the German Democratic Republic and Japan were elected Vice-Chairmen by acclamation.

Mr. H. C. Mott (Australia) was elected Rapporteur by acclamation.

Second Committee:

Czechoslovakia, Kenya and Turkey were elected Vice-Chairmen by acclamation.

Mr. S. N. Nandan (Fiji) was elected Rapporteur by acclamation.

Third Committee:

Colombia, Cyprus and Germany (Federal Republic of) were elected Vice-Chairmen by acclamation.

Mr. A. M. A. Hassan (Sudan) was elected Rapporteur by acclamation.

(4) *Election of Vice-Presidents*

African States: Algeria, Egypt, Liberia, Madagascar, Nigeria, Tunisia, Uganda, Zaire and Zambia were elected by acclamation.

Asian States: China, Indonesia, Iran, Iraq, Kuwait, Nepal, Pakistan and Singapore were elected by acclamation.

Eastern European States: Poland, Union of Soviet Socialist Republics and Yugoslavia were elected by acclamation.

Latin American States: Bolivia, Chile, the Dominican Republic, Peru and Trinidad and Tobago were elected by acclamation.

Western European and Other States: The following were elected by secret ballot: France (109 votes), United States of America (107 votes), Norway (104 votes), Belgium (100 votes), United Kingdom of Great Britain and Northern Ireland (99 votes), Iceland (96 votes).

(5) *Appointment of the Drafting Committee*

African States: Ghana, Lesotho, Mauritius, Mauritania, Sierra Leone and United Republic of Tanzania were appointed members of the Committee.

Asian States: Afghanistan, Bangladesh, India, Malaysia, Philippines and Syria were appointed members of the

Committee. Thailand withdrew its candidature in favour of Bangladesh for 1974, on the understanding that Thailand would replace Bangladesh for 1975.

Eastern European States: Romania and Union of Soviet Socialist Republics were appointed members of the Committee.

Latin American States: Argentina, Ecuador, El Salvador and Mexico were appointed members of the Committee.

Western European and Other States: Italy, Netherlands, Spain and United States of America were appointed members of the Committee.

The Netherlands indicated to the Conference that it would withdraw in favour of Austria at the meeting of the Conference which might take place in Vienna in 1975.

APPOINTMENT OF MEMBERS OF THE CREDENTIALS COMMITTEE

24. At its 9th meeting, on 13 December, the Conference decided that the Credentials Committee should consist of the following 9 members: Austria, Chad, China, Costa Rica, Hungary, Ireland, Ivory Coast, Japan and Uruguay.

25. It was also decided that the rules of procedure of the General Assembly regarding the Credentials Committee would be applied at the first session of the Conference.

26. The Credentials Committee met on 14 December. It elected Mr. Heinrich Gleissner (Austria) as Chairman. The Committee had before it a memorandum by the Secretary-General on the status of credentials (see A/CONF.62/15). The Committee considered, subject to the observations made by various delegations, that the delegations present at the first session of the Conference should be seated.

27. The Conference adopted the report of the Credentials Committee (*ibid.*) at its 12th meeting, on 15 December.

DRAFT RULES OF PROCEDURE

28. At its 6th meeting, on 12 December, the Conference decided to discuss first the rules of procedure connected with the decision-making process.

29. The Conference considered its draft rules of procedure from the 8th to the 11th and 13th meetings, between 13 and 15 December. It had before it draft rules of procedure prepared by the Secretary-General (A/CONF.62/2 and Add.1-3) at the request of the General Assembly in its resolution 3067 (XXVIII) together with amendments thereto submitted by various delegations (A/CONF.62/4-14).

30. At its 13th meeting, on the proposal of the President, the Conference agreed that the rules of procedure of the Conference would be adopted at its second session not later than 27 June 1974, that the sponsors of amendments would hold informal consultations from 25 February to 1 March 1974 and that 31 January 1974 be set as the time-limit for submission of any further amendments to the rules. On the proposal of the representative of Argentina, the Conference decided that the rules of procedure of the General Assembly would be applied to the adoption of the rules of procedure of the Conference.

31. Informal consultations on the rules of procedure were held in New York from 25 February to 1 March and from 10 to 12 June 1974. During those consultations the amendments were revised and new amendments were submitted (A/CONF.62/7/Rev.1, 10/Add.1, 16 and 18-21). Two other documents concerning the rules of procedure were submitted (A/CONF.62/17 and 22).

III. Second Session

OPENING OF THE SESSION

32. At the 14th, opening, meeting on 20 June 1974, the Conference was addressed by the President of Venezuela, the

President of the Conference and by the Secretary-General of the United Nations. Representatives of 138 States participated in the session.

AGENDA OF THE SECOND SESSION

33. The agenda of the second session was contained in document A/CONF.62/24.

RULES OF PROCEDURE

34. The Conference considered its rules of procedure at its 15th to 20th meetings, held between 21 and 27 June, and adopted them at its 19th and 20th meetings on 27 June (A/CONF.62/30).

35. At the 38th meeting, on 11 July, the representative of Senegal moved that the Conference invite the national liberation movements recognized by the Organization of African Unity and by the League of Arab States to participate in its proceedings as observers. The representative of Israel raised the question of the competence of the Conference, under rule 34, to extend such an invitation. The President ruled that the vote on the question of competence would be taken by a simple majority of those present and voting. The Conference decided by a roll-call vote of 88 in favour to 2 against, with 35 abstentions, that it was competent to consider the motion of Senegal.

36. At its 40th meeting, on 12 July, the Conference considered a report of the General Committee (A/CONF.62/31), whereby the Committee decided to recommend to the Plenary the adoption of two new rules in the rules of procedure: (1) to insert a new paragraph under rule 40 defining the meaning of the term "State participating" and (2) to insert a new rule 63 concerning observers for national liberation movements.

37. The Conference decided to insert the new rule regarding "Meaning of the term 'State participating'" as paragraph 2 of rule 40 and to amend the heading to read "Meaning of the phrase 'representatives present and voting' and of the term 'State participating'". The Conference also decided to insert a new rule 63 regarding "Observers for national liberation movements" (see A/CONF.62/30/Rev.1).

NATIONAL LIBERATION MOVEMENTS

38. The following national liberation movements recognized by the Organization of African Unity and by the League of Arab States were invited to participate in the proceedings as observers:

For Angola, the People's Movement for the Liberation of Angola (MPLA) and the National Liberation Front of Angola (FNLA);

For Mozambique, the Liberation Front of Mozambique (FRELIMO);

For Namibia, the South West African People's Organization (SWAPO);

For Rhodesia-Zimbabwe, the Zimbabwe African National Union (ZANU) and the Zimbabwe African People's Union (ZAPU);

For South Africa, the African National Congress (ANC) and the Panaficanist Congress (PAC);

For the Comoro Islands, the National Movement for the Liberation of the Comoro Islands (MOLINACO);

For the Seychelles Islands, the Seychelles People's United Party (SPUP), and the Seychelles Democratic Party;

For the Somali Coast, the National Front for the Liberation of the Somali Coast (FLCS);

For Palestine, the Palestine Liberation Organization (PLO).

FIRST REPORT OF THE GENERAL COMMITTEE

39. At its 15th meeting, on 21 June, the Conference considered the first report of the General Committee (A/CONF.62/

28) and decided, *inter alia*, to request the Secretary-General to extend invitations to the non-governmental organizations listed in document A/CONF.62/L.2 in accordance with paragraph 9 of resolution 3029 A (XXVII) and resolution 3067 (XXVIII), to participate in the Conference as observers. In this regard at its 43rd meeting, on 22 July, the Conference requested the Secretary-General to invite also the additional non-governmental organizations listed in document A/CONF.62/L.2/Add.1.

ALLOCATION OF WORK TO MAIN COMMITTEES

40. At the same meeting, the Conference, on the recommendation of the General Committee, decided to allocate the subjects and issues which had been prepared in accordance with General Assembly resolution 2750 C (XXV) to the Plenary and to the Main Committees as follows:

THE PLENARY

Items to be considered directly by the Plenary

- Item 22. *Peaceful uses of the ocean space; zones of peace and security*
- Item 25. *Enhancing the universal participation of States in multilateral conventions relating to the law of the sea*

ALL MAIN COMMITTEES

Items to be dealt with by each Main Committee in so far as they are relevant to their mandates

- Item 15. *Regional arrangements*
- Item 20. *Responsibility and liability for damage resulting from the use of the marine environment*
- Item 21. *Settlement of disputes*
- Item 22. *Peaceful uses of the ocean space; zones of peace and security*

FIRST COMMITTEE

Items to be considered by the First Committee

- Item 1. *International régime for the sea-bed and ocean floor beyond national jurisdiction*
 - 1.1 Nature and characteristics
 - 1.2 International machinery: structure, functions, powers
 - 1.3 Economic implications
 - 1.4 Equitable sharing of benefits, bearing in mind the special interests and needs of the developing countries, whether coastal or land-locked
 - 1.5 Definition and limits of the area
 - 1.6 Use exclusively for peaceful purposes
- Item 23. *Archaeological and historical treasures on the sea-bed and ocean floor beyond the limits of national jurisdiction*

SECOND COMMITTEE

Items to be considered by the Second Committee

- Item 2. *Territorial sea*
 - 2.1 Nature and characteristics, including the question of the unity or plurality of régimes in the territorial sea
 - 2.2 Historic waters
 - 2.3 Limits
 - 2.3.1 Question of the delimitation of the territorial sea; various aspects involved
 - 2.3.2 Breadth of the territorial sea. Global or regional criteria. Open seas and oceans, semi-enclosed seas and enclosed seas
 - 2.4 Innocent passage in the territorial sea
 - 2.5 Freedom of navigation and overflight resulting from the question of plurality of régimes in the territorial sea
- Item 3. *Contiguous zone*
 - 3.1 Nature and characteristics
 - 3.2 Limits
 - 3.3 Rights of coastal States with regard to national security, customs and fiscal control, sanitation and immigration regulations

Item 4. *Straits used for international navigation*

- 4.1 Innocent passage
- 4.2 Other related matters, including the question of the right of transit

Item 5. *Continental shelf*

- 5.1 Nature and scope of the sovereign rights of coastal States over the continental shelf. Duties of States
- 5.2 Outer limit of the continental shelf: applicable criteria
- 5.3 Question of the delimitation between States; various aspects involved
- 5.4 Natural resources of the continental shelf
- 5.5 Régime for waters superjacent to the continental shelf
- 5.6 Scientific research

Item 6. *Exclusive economic zone beyond the territorial sea*

- 6.1 Nature and characteristics, including rights and jurisdiction of coastal States in relation to resources, pollution control and scientific research in the zone. Duties of States
- 6.2 Resources of the zone
- 6.3 Freedom of navigation and overflight
- 6.4 Regional arrangements
- 6.5 Limits: applicable criteria
- 6.6 Fisheries
 - 6.6.1 Exclusive fishery zone
 - 6.6.2 Preferential rights of coastal States
 - 6.6.3 Management and conservation
 - 6.6.4 Protection of coastal States' fisheries in enclosed and semi-enclosed seas
 - 6.6.5 Régime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction
- 6.7 Sea-bed within national jurisdiction
 - 6.7.1 Nature and characteristics
 - 6.7.2 Delineation between adjacent and opposite States
 - 6.7.3 Sovereign rights over natural resources
 - 6.7.4 Limits: applicable criteria
- 6.8 Prevention and control of pollution and other hazards to the marine environment
 - 6.8.1 Rights and responsibilities of coastal States
- 6.9 Scientific research

Item 7. *Coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea*

- 7.1 Nature, scope and characteristics
- 7.2 Sea-bed resources
- 7.3 Fisheries
- 7.4 Prevention and control of pollution and other hazards to the marine environment
- 7.5 International co-operation in the study and rational exploitation of marine resources
- 7.6 Settlement of disputes
- 7.7 Other rights and obligations

Item 8. *High seas*

- 8.1 Nature and characteristics
- 8.2 Rights and duties of States
- 8.3 Question of the freedoms of the high seas and their regulation
- 8.4 Management and conservation of living resources
- 8.5 Slavery, piracy and drugs
- 8.6 Hot pursuit

Item 9. *Land-locked countries*

- 9.1 General principles of the law of the sea concerning the land-locked countries
- 9.2 Rights and interests of land-locked countries
 - 9.2.1 Free access to and from the sea: freedom of transit, means and facilities for transport and communications
 - 9.2.2 Equality of treatment in the ports of transit States
 - 9.2.3 Free access to the international sea-bed area beyond national jurisdiction
 - 9.2.4 Participation in the international régime, including the machinery and the equitable sharing in the benefits of the area

- 9.3 Particular interests and needs of developing land-locked countries in the international régime
- 9.4 Rights and interests of land-locked countries in regard to living resources of the sea
- Item 10. *Rights and interests of shelf-locked States and States with narrow shelves or short coastlines*
 - 10.1 International régime
 - 10.2 Fisheries
 - 10.3 Special interests and needs of developing shelf-locked States and States with narrow shelves or short coastlines
 - 10.4 Free access to and from the high seas
- Item 11. *Rights and interests of States with broad shelves*
- Item 16. *Archipelagos*
- Item 17. *Enclosed and semi-enclosed seas*
- Item 18. *Artificial islands and installations*
- Item 19. *Régime of islands:*
 - (a) Islands under colonial dependence or foreign domination or control;
 - (b) Other related matters
- Item 24. *Transmission from the high seas*

THIRD COMMITTEE

Items to be considered by the Third Committee

- Item 12. *Preservation of the marine environment*
 - 12.1 Sources of pollution and other hazards and measures to combat them
 - 12.2 Measures to preserve the ecological balance of the marine environment
 - 12.3 Responsibility and liability for damage to the marine environment and to the coastal State
 - 12.4 Rights and duties of coastal States
 - 12.5 International co-operation
 - Item 13. *Scientific research*
 - 13.1 Nature, characteristics and objectives of scientific research of the oceans
 - 13.2 Access to scientific information
 - 13.3 International co-operation
 - Item 14. *Development and transfer of technology*
 - 14.1 Development of technological capabilities of developing countries
 - 14.1.1 Sharing of knowledge and technology between developed and developing countries
 - 14.1.2 Training of personnel from developing countries
 - 14.1.3 Transfer of technology to developing countries
- This decision carried a note to the following effect:

Note. The agreement reached in the sea-bed Committee on 27 August 1971¹⁷⁷ on the organization of its work read as follows:

"While each sub-committee will have the right to discuss and record its conclusions on the question of limits so far as it is relevant to the subjects allocated to it, the main Committee will not reach a decision on the final recommendation with regard to limits until the recommendations of Sub-Committee II on the precise definition of the area have been received, which should constitute basic proposals for the consideration of the main Committee."

It is therefore recommended that the same understanding should be carried forward in respect of the Main Committees of the Conference, preliminary to the adoption of the pertinent final provisions by the Conference.

¹⁷⁷ Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21, para. 22.

GENERAL STATEMENTS

41. At its 21st to 23rd meetings, held from 28 June to 1 July, at its 25th to 42nd meetings, between 2 and 15 July, and at its 46th and 48th meetings, on 29 July and 7 August respectively, the Conference heard general statements by 115 delegations and by representatives of the following intergovernmental organizations: the International Hydrographic Organization (22nd meeting), the Organization of African Unity (26th meeting), the League of Arab States (30th meeting), the Permanent Commission of the South Pacific and the Organization of American States (48th meeting). It also heard the representative of the Palestine Liberation Organization (43rd meeting), and representatives of the following specialized agencies: the Inter-Governmental Maritime Consultative Organization (22nd meeting), the United Nations Educational, Scientific and Cultural Organization (41st meeting), the Food and Agriculture Organization of the United Nations (46th meeting) and the International Atomic Energy Agency (48th meeting), as well as representatives of the United Nations Environment Programme (31st meeting) and the United Nations Conference on Trade and Development (42nd meeting) and of the non-governmental organizations (36th meeting).

TRIBUTE TO THE LATE PRESIDENT OF ARGENTINA, JUAN DOMINGO PERÓN

42. On 1 July, the Conference held a special Plenary meeting to pay tribute to the memory of the late President of Argentina, Juan Domingo Perón (24th meeting).

TRIBUTE TO SIMÓN BOLÍVAR THE LIBERATOR

43. At its 43rd meeting, on 22 July, the Conference considered and adopted the 121-Power draft resolution (A/CONF.62/L.3 and Add.1-4) entitled "Tribute to Simón Bolívar the Liberator".

44. The Conference held a special Plenary meeting on 24 July, as an act of homage to the memory of Simón Bolívar on the occasion of the 191st anniversary of his birth.

ADDRESS BY MR. LUÍS ECHEVERRÍA ALVAREZ, PRESIDENT OF MEXICO

45. At its 45th meeting, on 26 July, the President of Mexico addressed the Conference.

MAIN COMMITTEES

46. At its 46th and 48th meetings, held on 29 July and 7 August respectively, the Conference heard progress reports by the Chairmen of the Main Committees. At the 46th meeting, the President made a statement on the organization of work for the remainder of the session. Statements on the activities of the Main Committees are annexed hereto.

CREDENTIALS COMMITTEE

47. The Credentials Committee met on 21 August. It elected Mr. Franz Weidinger (Austria) as Chairman to replace Mr. Heinrich Gleissner (Austria) who had served as Chairman during the first session of the Conference. The Committee had before it a memorandum by the Executive Secretary on the status of credentials (see A/CONF.62/34). Subject to the views expressed by various delegations, the Committee considered that the delegations present at the second session of the Conference should be seated.

48. The Conference adopted the report of the Credentials Committee (*ibid.*) at its 50th meeting, on 28 August.

DRAFTING COMMITTEE

49. The Drafting Committee held an organizational meeting on 22 August.

CONCLUDING STATEMENTS AND DOCUMENTS OF THE SESSION

50. At its 49th meeting, on 27 August, on the recommendation of the General Committee at its 6th meeting on 26 August, the Conference decided to prepare the following concluding statements and documents of the session: (1) a concise, factual, informative and non-controversial statement of the work of each of the Main Committees (see annexes I, II and III); (2) oral statements of the Chairmen of the Main Committees summing up the progress of work to date; (3) statement by the Rapporteur-General covering the work of the Plenary meetings to date; (4) final oral statement by the President summing up the results of the work of the Conference to date; (5) letter from the President of the Conference to the President of the General Assembly transmitting a request for a further session or sessions of the Conference; and informing the General Assembly of the action taken by the Conference to invite national liberation movements and any recommendations that the Conference wished to make.

51. After discussion, the Conference decided that the communication to the President of the General Assembly should contain an appropriate formula to cover proposals that Papua New Guinea, the Cook Islands, Surinam and the Netherlands Antilles, since they were in a position to accede to independence either immediately or in the near future, be enabled to take part in the work of the Conference as observers until their formal accession to full independence, and thereafter as participating States.

RECOMMENDATIONS TO THE GENERAL ASSEMBLY CONCERNING THE NEXT SESSION AND FINAL ACTIONS OF THE CONFERENCE

52. At the 49th meeting, also on the recommendation of the General Committee at its 6th meeting, the Conference decided to request the General Assembly to schedule a session at Geneva from 17 March to 3 or 10 May 1975, the latter date depending upon certain practical arrangements to be made with the World Health Organization, whose Assembly was scheduled to open on 6 May at Geneva.

53. The Conference also agreed to recommend that the formal final session of the Conference should be held at Caracas for the purpose of signature of the final act and other instruments of the Conference.

ARRANGEMENTS FOR THE CLOSURE OF THE SECOND SESSION

54. At the same meeting, the Conference approved recommendations by the General Committee concerning arrangements for the closing of the second session.

FORMULA FOR INCLUSION IN THE COMMUNICATION FROM THE PRESIDENT OF THE CONFERENCE ADDRESSED TO THE PRESIDENT OF THE GENERAL ASSEMBLY, TRANSMITTING THE DECISIONS OF THE CONFERENCE

55. At its 51st meeting, on 29 August, the Conference agreed upon the following formula to be contained in the communication sent by the President of the Conference to the President of the General Assembly, namely, that the Conference decided to recommend to the General Assembly that:

(a) Papua New Guinea, which was already conducting its own relations as an independent nation, be invited, if independent, to attend any future session of the Conference as a participating State or, if not yet independent, to attend as an observer;

(b) The Cook Islands, Surinam, the Netherlands Antilles and the West Indies Associated States be invited to attend any future session of the Conference as observers or, should they by that time be independent, to attend as participating States.

EXPRESSION OF GRATITUDE TO THE GOVERNMENT OF VENEZUELA

56. At the same meeting, the Conference adopted by acclamation the draft resolution submitted by Colombia, Czechoslovakia, Egypt, El Salvador, France, Senegal and Thailand, contained in document A/CONF.62/L.9, and decided: (1) to express to His Excellency the President of the Republic of Venezuela, the President and members of the Organizing Committee of the Conference and the Government and people of Venezuela its deepest gratitude for the unforgettable hospitality which they had offered it; (2) to give voice to its hope that the ideals of social justice, equality among nations and solidarity among peoples advocated by the Liberator Simón Bolívar would serve to guide the future work of the Conference.

DOCUMENTS OF THE CONFERENCE

57. In addition to the documents mentioned in the above text, the following documents were submitted to the plenary of the Conference:

[See the list of documents at the beginning of the present volume.]

APPENDIX

Index to the summary records of the meetings of the second session of the Conference

MEETINGS HELD FROM 20 JUNE TO 29 AUGUST 1974

14th meeting—20 June 1974

Opening of the second session

Minute of silence for prayer or meditation

Statement by the President of the Conference

Address by Mr. Carlos Andrés Pérez, President of Venezuela

Address by the Secretary-General of the United Nations

Statements made on behalf of the regional groups

15th meeting—21 June 1974

Report of the General Committee:

Statements by the President and by the representatives of India, Nigeria and Spain

Approval of the list of interested non-governmental organizations:

Statement by the President

Adoption of the rules of procedure:

Statements by the President and by the representatives of Chile, Canada, Peru, Kenya, Turkey and Japan

16th meeting—25 June 1974

Adoption of the rules of procedure (continued):

Statements by the President and by the representatives of Nigeria, United Republic of Tanzania, Israel, India, Guyana, Chile, Kenya, United Republic of Cameroon, United Kingdom, Japan, United States of America, Colombia, Ecuador, Brazil and Senegal (on behalf of the group of African States)

17th meeting—26 June 1974

Adoption of the rules of procedure (continued):

Statements by the President and by the representatives of El Salvador, Mexico, Pakistan, Spain, United Republic of Tanzania, Bulgaria, Madagascar, Nigeria, Liberia, Ghana, Ivory Coast, Sierra Leone, Tonga, Czechoslovakia, Japan and Barbados

18th meeting—26 June 1974

Tribute to the memory of four members of the United Nations Disengagement Observer Force:

Statements by the President and by the representative of Austria

Adoption of the rules of procedure (continued):

Statements by the representatives of German Democratic Republic, Brazil, Jamaica, United Republic of Cameroon, by the President and by the representatives of the Union of Soviet Socialist Republics, Mongolia, Greece, Ukrainian Soviet Socialist Republic, Bangladesh, Nepal, Guatemala, Guyana, Austria, Zambia,

Trinidad and Tobago, Afghanistan, Australia, Guinea, United States and Singapore

19th meeting—27 June 1974

Adoption of the rules of procedure (*continued*):

Statements by the President and by the representatives of Zambia, United Republic of Tanzania, Bulgaria, Israel, Nigeria, Canada, Turkey, Ecuador and Egypt

20th meeting—27 June 1974

Adoption of the rules of procedure (*continued*):

Statements by the President and by the representatives of Peru, Canada, India, Mexico, Spain, Nigeria, Ecuador, Norway, Egypt, Lesotho, Special Representative of the Secretary-General, and by the representatives of China, United States of America, United Republic of Cameroon, Guyana, Australia, Iraq, Albania, Congo, Japan, Algeria, Guinea, Cuba, Ghana, Madagascar, United Kingdom of Great Britain and Northern Ireland, Senegal, Romania, Panama, Pakistan, Morocco, Union of Soviet Socialist Republics and Venezuela

21st meeting—28 June 1974

General statements:

Costa Rica, Brazil, El Salvador, Barbados and Guinea

22nd meeting—28 June 1974

General statements (*continued*):

Republic of Viet-Nam, Secretary-General of the Inter-Governmental Maritime Consultative Organization, Democratic People's Republic of Korea, Union of Soviet Socialist Republics, Pakistan and Director of the International Hydrographic Organization.

[Exercise of the right of reply: Khmer Republic and Japan]

23rd meeting—1 July 1974

General statements (*continued*):

Trinidad and Tobago, Iran, Argentina, Egypt and Sweden

24th meeting—1 July 1974

Tribute to the memory of General Perón, President of the Argentine Republic:

Statements by the President, by the representatives of El Salvador (on behalf of the Latin American countries), Finland (on behalf of the group of Western European and Other States), Sri Lanka (on behalf of the group of Asian States), Bulgaria (on behalf of the group of Eastern European States), Senegal (on behalf of the group of African States), Egypt (on behalf of the Arab countries), Venezuela (as the representative of the host country) and by Chile, Lebanon, Uruguay, United States of America, Spain and Argentina

25th meeting—2 July 1974

General statements (*continued*):

German Democratic Republic, China, Honduras, Kenya, Western Samoa, Norway, Ghana and Australia.

[Exercise of the right of reply: Union of Soviet Socialist Republics]

26th meeting—2 July 1974

General statements (*continued*):

United Republic of Cameroon, Republic of Korea, Mongolia, Yugoslavia, United Republic of Tanzania, Mauritania, Organization of African Unity.

[Exercise of the right of reply: Republic of Viet-Nam, Khmer Republic and Democratic People's Republic of Korea]

27th meeting—3 July 1974

Statement by the President

General statements (*continued*):

India, Canada, Jamaica, Albania, Bangladesh.

[Point of order: Union of Soviet Socialist Republics; exercise of the right of reply: Albania]

28th meeting—3 July 1974

General statements (*continued*):

Sri Lanka, Colombia, Bolivia, Madagascar, Congo, Mauritius and Tonga.

[Exercise of the right of reply: China]

29th meeting—4 July 1974

General statements (*continued*):

Nicaragua, United Kingdom of Great Britain and Northern Ireland, Fiji, Czechoslovakia and Cuba

30th meeting—4 July 1974

General statements (*continued*):

Yemen, Chile, Poland, Uruguay and League of Arab States

31st meeting—8 July 1974

General statements (*continued*):

Executive Director of the United Nations Environment Programme, Ecuador, Iceland, Philippines, Democratic Yemen.

[Exercise of the right of reply: Uruguay, Ecuador, El Salvador, Brazil, Peru, Argentina and Kenya]

32nd meeting—8 July 1974

General statements (*continued*):

Laos, Romania, Greece, Finland, Zambia, Bahamas and Libyan Arab Republic

33rd meeting—9 July 1974

General statements (*continued*):

Afghanistan, Singapore, Lebanon, Denmark, Zaire, Liberia and Federal Republic of Germany

34th meeting—9 July 1974

General statements (*continued*):

Nigeria, Netherlands and United Arab Emirates.

[Exercise of the right of reply: Iran]

35th meeting—10 July 1974

General statements (*continued*):

Hungary, Switzerland, Saudi Arabia, Malaysia, Panama, Equatorial Guinea, Pakistan and Thailand

36th meeting—10 July 1974

General statements (*continued*):

Iraq, Bulgaria, Israel, Oman and a representative of the non-governmental organizations attending the Conference

37th meeting—11 July 1974

General statements (*continued*):

Tunisia, France, Kuwait, Peru and Malta

38th meeting—11 July 1974

General statements (*continued*):

Gambia, Ireland, United States of America, Paraguay, Khmer Republic, Austria, Mali and Senegal

Invitation to the national liberation movements recognized by the League of Arab States and the Organization of African Unity to participate in the Conference as observers:

Statements by the representative of Senegal, by the President and by the representative of Israel.

[Explanation of vote: United States of America]

39th meeting—12 July 1974

General statements (*continued*):

Belgium, Algeria, Uganda, Turkey and Nepal.

[Exercise of the right of reply: Greece]

Invitation to national liberation movements recognized by the Organization of African Unity and by the League of Arab States to participate in the Conference as observers:

Statement by the representative of Panama

40th meeting—12 July 1974

General statements (*continued*):

Spain, Holy See, Guinea-Bissau, Bahrain, Cyprus and Sierra Leone

Invitation to national liberation movements recognized by the Organization of African Unity and by the League of Arab States to participate in the Conference as observers:

Statements by the Rapporteur, the President, Israel, Senegal, Paraguay, Tunisia, United States, South Africa, France, Malta, Portugal, Cuba and Bangladesh.

[Point of order: Yemen, Egypt, Morocco and Tunisia]

41st meeting—15 July 1974

Tribute to Simón Bolívar the Liberator:

Statements by the representative of El Salvador and by the President

General statements (*continued*):

Morocco, Italy, Dominican Republic, UNESCO and Japan

*42nd meeting—15 July 1974*General statements (*continued*):

United Nations Conference on Trade and Development, Bhutan, Lesotho, Upper Volta, Somalia, Indonesia and Venezuela

43rd meeting—22 July 1974

Progress of work:

Statements by the Chairmen of the Main Committees

Tribute to Simón Bolívar the Liberator:

Statements by the President, by the representatives of Finland (on behalf of the group of Western European and Other States), German Democratic Republic (on behalf of the group of Eastern European States), Senegal (on behalf of the group of African States), Sri Lanka (on behalf of the group of Asian States and Egypt (on behalf of the Arab States)

Statement by the representative of the Palestine Liberation Organization

Additions to the list of non-governmental organizations:

Statement by the President

44th meeting—24 July 1974

Tribute to Simón Bolívar the Liberator:

Statements by the President, the representatives of Sri Lanka (on behalf of the group of Asian States), German Democratic Republic (on behalf of the group of Eastern European States), Egypt (on behalf of the Arab States), Philippines (on behalf of the Association of South East Asian Nations (ASEAN)), France, Senegal (on behalf of the group of African States), Peru, Spain, United States, Israel, Romania, Yugoslavia, Dominican Republic, India, Union of Soviet Socialist Republics, Jamaica (on behalf of the Caribbean countries of the Latin American region), Bangladesh, Panama and Venezuela

45th meeting—26 July 1974

Address by Mr. Luís Echeverría Álvarez, President of the United Mexican States

46th meeting—29 July 1974

Progress of work:

Statements by the Chairmen of the Main Committees and Statement by the President

General statements (*continued*):

New Zealand and the Assistant-Director General (Fisheries) of FAO

Introduction of working paper A/CONF.62/L.4:

Statements by the representative of Turkey, the President, the representatives of Peru, Canada and Federal Republic of Germany President's ruling. Tunisia appealed against the President's ruling. Tunisia's appeal against the President's ruling was put to a vote and was rejected by 50 votes to 38 with 39 abstentions

Canada introduced document A/CONF.62/L.4. Statements by the representatives of Chile, United Republic of Cameroon, by the President, and by the representative of Bulgaria

Invitation to national liberation movements recognized by the Organization of African Unity and by the League of Arab States to participate in the Conference as observers (*concluded*):

Statements by the representative of Senegal and by the President

47th meeting—1 August 1974

Expression of sympathy in connexion with the recent floods in Bangladesh:

Statements by the President and the representative of Bangladesh

48th meeting—7 August 1974

Progress of work:

Statements by the Chairmen of the Main Committees

General statements (*concluded*):

Statements by the representative of the Permanent Commission of the South Pacific, the representative of the Inter-American Juridical Committee of the Organization of American States and by the representative of the International Atomic Energy Agency

49th meeting—27 August 1974

Report of the General Committee:

Statements by the President, by the Rapporteur-General and by the representatives of Australia, New Zealand, Netherlands, United States, Israel, the Special Representative of the Secretary-General, and by the representatives of Union of Soviet Socialist Republics, France, Federal Republic of Germany and Colombia

50th meeting—28 August 1974

Report of the Credentials Committee:

Statements by the President, and by the representatives of Romania, Cuba, Yugoslavia, Union of Soviet Socialist Republics, Algeria, Egypt, Albania and Khmer Republic.

[Exercise of right of reply: Republic of Viet-Nam]

Question of the communication to the President of the General

Assembly:

Statements by the President and by the representative of the United Republic of Tanzania

Tribute to the memory of the members of the United Nations Peace-keeping Force in Cyprus who had lost their lives in the performance of their duties

Tribute to the memory of the late Mr. Alcivar, Ambassador of Ecuador, and Mr. Khanachei, Ambassador of Kuwait:

Statements by the President and by the representatives of Ecuador and Kuwait

51st meeting—29 August 1974

Question of the communication to the President of the General

Assembly (*concluded*):

Statements by the President and by the representatives of New Zealand, United Kingdom of Great Britain and Northern Ireland, Jamaica (on behalf of the Bahamas, Barbados, Guyana, Jamaica, and Trinidad and Tobago) and Bulgaria

Presentation of document A/CONF.62/L.7 on the settlement of disputes

Adoption of draft resolution A/CONF.62/L.9

Statement by the Rapporteur-General on the activities of the Conference

Statements by the Chairmen of the Main Committees

Statements by the Chairmen of the regional groups

Statement by the Minister for Foreign Affairs of Venezuela

Closing statement by the President

Minute of silence for prayer or meditation

Closing of the session

ANNEXES

ANNEX I

Statement of activities of the First Committee

Prepared by the Rapporteur of the Committee

Note: The following text, with its appendices, gives an account of the activities of the First Committee. The objective is to provide a doc-

ument of record and reference which will enable the Committee to continue without delay consideration of the subject-matter before it at the next session of the Conference.

This statement of activities incorporates certain amendments made as a result of consideration of the original text (A/CONF.62/C.1/L.10) and discussions at the 17th meeting of the Committee on 27 August 1974, at which the Committee took note of it.

I. ESTABLISHMENT OF THE COMMITTEE

1. The First Committee was one of the three committees of the whole established at the first session of the Conference to deal with the subjects covered by the three sub-committees of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction.

The officers of the Committee are:

Chairman: Mr. P. B. Engo (United Republic of Cameroon)
Vice-Chairmen: Brazil, Mr. S. M. Thompson-Flores; German Democratic Republic, Mr. H. Wuensche; Japan, Mr. T. Iguchi
Rapporteur: Mr. H. C. Mott (Australia)

II. MANDATE OF THE COMMITTEE

2. By decision of the Conference at its 15th meeting on 21 June 1974, upon the recommendation of the General Committee, the First Committee has the task of considering the following items from the list of subjects and issues:

Item 1. *International régime for the sea-bed and ocean floor beyond national jurisdiction*

- 1.1 Nature and characteristics
- 1.2 International machinery: structure, functions, powers
- 1.3 Economic implications
- 1.4 Equitable sharing of benefits, bearing in mind the special interests and needs of the developing countries, whether coastal or land-locked
- 1.5 Definition and limits of the area
- 1.6 Use exclusively for peaceful purposes

Item 23. *Archaeological and historical treasures on the sea-bed and ocean floor beyond the limits of national jurisdiction*

3. The Conference also agreed that the following understanding reached in the sea-bed Committee on 27 August 1971 should be carried forward in respect of the committees of the Conference:

"While each sub-committee will have the right to discuss and record its conclusions on the question of limits so far as it is relevant to the subjects allocated to it, the main Committee will not reach a decision on the final recommendation with regard to limits until the recommendations of Sub-Committee II on the precise definition of the area have been received, which should constitute basic proposals for the consideration of the main Committee."

III. DOCUMENTATION

4. By paragraph 6 of resolution 3067 (XXVIII), the General Assembly referred to the Conference the reports of the sea-bed Committee and all other relevant documentation of the General Assembly and the Committee. The First Committee thus has before it all the documentation from Sub-Committee I of the sea-bed Committee, including in particular the texts illustrating the areas of agreement and disagreement on items 1 and 2 of the Sub-Committee's programme of work.

5. Documents presented in the Committee during the second session of the Conference are listed at the beginning of the present volume.

IV. WORK OF THE COMMITTEE

6. During the second session of the Conference, held at Caracas from 20 June to 29 August, the First Committee worked through formal and informal meetings. It held 17 formal meetings and 23 informal meetings.

7. At its first meeting on 10 July, the Committee accepted a proposal by the Chairman that it should start work with a brief general discussion to enable representatives to comment on issues of fundamental importance, so as to facilitate efforts to reach agreement on the major issues over which wide differences of view existed. The Chairman proposed that at the end of this discussion the formal committee should be converted into an informal body of the whole, to examine the preparatory material sent forward from the sea-bed Committee with a view to eliminating brackets and alternatives and thus to build up areas of agreement. The Committee agreed to the Chairman's proposal that Mr. C. W. Pinto (Sri Lanka) should be Chairman of its informal meetings.

8. Sixty-six delegations spoke during the general discussion from 11 to 17 July. An index of the summary records of the Committee,

including the list of those who spoke in the discussion, is contained in appendix II.

9. Subsequently, at a further series of meetings, the Committee discussed the question of the economic implications of mining in the deep sea-bed. As a basis for this discussion, a representative of the United Nations Conference on Trade and Development (UNCTAD) and the Special Representative of the Secretary-General presented reports to the Committee on the subject; as a further aid to discussion the Chairman of the Committee issued a note (A/CONF.62/C.1/L.2) listing these reports and incorporating summaries and conclusions of them. During the discussion of this question 38 delegations made statements and raised questions which were answered by representatives of the Secretariat of the United Nations and the secretariat of UNCTAD. The statements of those representatives who took part in the discussion are also listed in appendix II. Two working papers were tabled on the subject of the economic effects of deep sea-bed exploitation (A/CONF.62/C.1/L.5 and 11).

10. As an aid to understanding of the subject of economic implications, the Chairman of the Committee arranged an informal seminar on 31 July and 1 August 1974. For the information of the Committee the Chairman summarized the discussions in the seminar at the 13th meeting of the Committee. In addition, at the Committee's 14th meeting the Chairman summarized further discussion which had taken place in the Committee. His summaries contained personal views and were not binding on any delegation.

11. Following a reference to General Assembly resolution 2750 A (XXV) and a request by one delegation, the Secretariat informed the Committee that in accordance with that resolution it would prepare a brief and concise follow-up study to the previous report (A/CONF.62/25) on the economic implications of sea-bed mineral development taking into account the discussions that had taken place during the second session of the Conference, for presentation at the next session.

12. Four documents were tabled and introduced on the subject of Conditions of exploration and exploitation (A/CONF.62/C.1/L.6-9).

13. At its 14th meeting, on 19 August, the First Committee established a working group to pursue negotiations on articles 1-21 relating to principles of the régime, as contained in document A/CONF.62/C.1/L.3, and particularly on article 9 thereof, and on the subject of conditions of exploration and exploitation. The Committee agreed that the working group should be limited in number but open-ended, so that any State could participate in its activities, and entrusted the Chairman of the Committee with the duty of conducting consultations to establish the membership of the group. The Committee also agreed that Mr. C. W. Pinto (Sri Lanka) should be Chairman of the working group and that he should report as appropriate to the Committee.

14. As a result of his consultations, the Chairman of the Committee said at its 16th meeting on 21 August that general agreement had been reached that the working group should consist of 50 States, made up of nine representatives of each of the five geographical groups plus five representatives of sponsors of individual proposals before the Committee. He announced the composition of the working group as follows:

(a) Group of African States: Algeria, Egypt, Ghana, Lesotho, Mali, Morocco, Nigeria, United Republic of Tanzania and Zaire.

(b) Group of Asian States: Afghanistan (alternating with Nepal), China, India, Iran, Kuwait, Pakistan, Philippines (alternating with Indonesia), Singapore and Yugoslavia.

(c) Group of Eastern European States: Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, Ukrainian Soviet Socialist Republic and Union of Soviet Socialist Republics.

(d) Latin American States: Bolivia, Brazil, Chile, Honduras, Jamaica, Mexico, Peru, Trinidad and Tobago and Venezuela.

(e) Group of Western European and Other States: Austria, Canada, Germany (Federal Republic of), Italy, Netherlands, Norway, Sweden, Switzerland and United Kingdom of Great Britain and Northern Ireland.

(f) Sponsors of proposals before the Committee: Australia, Colombia, France, Japan and United States of America.

15. A number of delegations stated views in regard to the establishment and functioning of the working group. The Chairman made a number of comments in response to these remarks. The statements of the delegations concerned and the comments of the Chairman are contained in the summary records of the 14th, 15th and 16th meetings of the Committee.

V. WORK OF THE INFORMAL COMMITTEE AT INFORMAL MEETINGS

16. During the session the Chairman of the informal meetings reported to the Committee on progress made. By decisions of the Committee his statements appear *in extenso* in the records of the 9th, 11th and 14th meetings. His reports contained personal views and were not binding on any delegation.

17. The informal meetings reviewed draft articles 1-21 relating to principles of the régime, as set forth by the sea-bed Committee and contained in its report. The results of its work on those articles are before the Committee in document A/CONF.62/C.1/L.3. During consideration of the draft articles, it was agreed that there should be an article on definitions and that the terms to be dealt with and their interpretation would be decided at a later stage.

18. Upon completion of consideration of the draft articles, the Chairman suggested three issues which should be the subject of detailed study:

- (a) The system of exploration and exploitation: who may explore and exploit the area?
- (b) The conditions of exploration and exploitation;
- (c) The economic implications of sea-bed mineral development.

19. It was agreed that, although the issues would be considered in that order, representatives could make relevant reference to other issues.

20. Discussion of the system of exploration and exploitation proceeded on the basis of the four alternative texts of draft article 9 prepared by the Working Group of Sub-Committee I of the sea-bed Committee. During the discussion, several new proposals were made. A new text was introduced at the 11th meeting of the Committee by the Chairman of the Group of 77 on behalf of that Group to replace alternative B of article 9; this new text is alternative B in document A/CONF.62/C.1/L.3. The statement of the Chairman of the Group of 77 appears *in extenso* in the records of the 11th meeting. Another new proposal was introduced to replace the former alternative C. Alternatives A and D of the original text remained unchanged. In addition, one delegation proposed a new text of two articles. The first of those was later considered to have been absorbed into the revised alternative B mentioned above; the second is reproduced at the end of document A/CONF.62/C.1/L.3.

21. During its consideration of the conditions of exploration and exploitation, the informal meetings received three working papers which were subsequently tabled in the Committee as documents A/CONF.62/C.1/L.6, 7 and 8.

22. The informal meetings did not discuss the economic implications of sea-bed mineral development because this subject was taken up at the level of the Committee (see paras. 9-11 above).

VI. WORK OF THE WORKING GROUP

23. At the 17th meeting of the Committee, the Chairman of the working group gave a preliminary report to the Committee on the work done relating to its mandate. By decision of the Committee his statement appears *in extenso* in the record of the meeting. This report contained personal views and was not binding on any delegation. A delegation commented on the statement of the Chairman of the working group and his remarks are summarized in the records of the 17th meeting.

VII. FUTURE WORK

24. The First Committee made useful progress at this session of the Conference towards completion of the mandate assigned to it by the Conference. The opportunity should be provided for it to continue this work at a further session, with a view to completing the drafting of articles dealing with the international régime and machinery for exploration of the sea-bed beyond the limits of national jurisdiction and the exploitation of its resources.

25. When it resumes work the Committee will have before it, in accordance with General Assembly resolution 3067 (XXVIII), all reports of the sea-bed Committee and all other relevant documentation of the General Assembly and the Committee, and all of the documents presented at the second session.

APPENDIX I

Documents of the First Committee

[See the list of documents at the beginning of the present volume.]

APPENDIX II

Index to the summary records of the meetings of the First Committee

MEETINGS HELD FROM 10 JULY TO 27 AUGUST 1974

1st meeting—10 July 1974

Organization of work.

Statements were made by the Chairman and by the representatives of El Salvador, Chile, United Republic of Tanzania, Finland, Kenya, Colombia, Peru, Sri Lanka, France, Bolivia and Tunisia and by the Secretary of the Committee.

2nd meeting—11 July 1974

International régime and machinery:

Statements were made by the representatives of the German Democratic Republic, Sri Lanka, Australia, Peru, Canada and Chile.

3rd meeting—12 July 1974

International régime and machinery (continued):

Statements were made by the representatives of Brazil, Venezuela, Trinidad and Tobago and by the Chairman of the Planning Council of the International Ocean Institute.

4th meeting—15 July 1974

International régime and machinery (continued):

Statements were made by the representatives of Japan, Cuba, Nigeria, Federal Republic of Germany, Uruguay, United Kingdom of Great Britain and Northern Ireland and Jamaica.

5th meeting—16 July 1974

International régime and machinery (continued):

Statements were made by the representatives of Austria, Poland, Romania, Colombia, Kenya, Madagascar, Switzerland, Sweden, Liberia, Thailand and Bangladesh.

6th meeting—16 July 1974

International régime and machinery (continued):

The United States of America made a statement on a point of clarification. Statements were made by the representatives of Nepal, Denmark, France, Philippines, Israel, Burma, Iceland, and the World Federation of United Nations Associations.

The representative of UNCTAD presented reports prepared by that organization and statements were made by the representatives of the United States of America, Chile, Peru, Brazil, India and Algeria.

7th meeting—17 July 1974

International régime and machinery (continued):

Statements were made by the representatives of Afghanistan, Portugal, Mexico, United States of America, Ethiopia, Ireland, Kuwait, United Republic of Tanzania, Fiji, Republic of Korea, Pakistan, Yugoslavia, Congo and Ecuador.

The representatives of Mexico, Colombia and Venezuela made statements in exercise of the right of reply.

8th meeting—17 July 1974

International régime and machinery (concluded):

Statements were made by the representatives of Tunisia, China, Iraq, Albania, Bhutan, Republic of Viet-Nam, Union of Soviet Socialist Republics, Greece, Mongolia, Spain, Ukrainian Soviet Socialist Republic, Algeria, Finland, Bolivia, United States of America, Libyan Arab Republic, Ghana, United Republic of Tanzania and by the Chairman.

9th meeting—30 July 1974

Informal meetings:

The Chairman of the informal meetings made a statement.

Economic implications of sea-bed mineral development:

The Chairman made a statement and the Special Representative of the Secretary-General introduced a document (A/CONF.62/25); questions were raised by the representatives of Chile, Zaire, Ven-

ezuela, Uruguay, Jamaica, Yemen, Singapore, Ghana and the United States of America, to which a representative of the Secretariat answered.

10th meeting—30 July 1974

Economic implications of sea-bed mineral development (continued):

Questions were raised by the representatives of Cuba, Israel, Peru, India, Netherlands, Federal Republic of Germany, United Kingdom of Great Britain and Northern Ireland, Nigeria, Zambia, Mexico, Sri Lanka, France and United Republic of Tanzania, to which a representative of the Secretariat answered.

11th meeting—6 August 1974

Informal meetings:

The Chairman of the informal meetings made a statement introducing document A/CONF.62/C.1/L.3. Statements were made by the representatives of Colombia, Venezuela, Bulgaria, Jamaica, Zaire, France, Peru, Chile, Nicaragua, Madagascar and Yugoslavia.

Organization of work:

Statements were made by the Chairman and by the representatives of France, Peru, Madagascar, Chile, Brazil, Netherlands, Union of Soviet Socialist Republics, United States of America, United Kingdom of Great Britain and Northern Ireland, and Kuwait.

12th meeting—7 August 1974

Economic implications of sea-bed mineral development (continued):

Statements were made by the representatives of Sweden, Ghana, Trinidad and Tobago, France, Peru, Chile, South Africa, Australia and the International Ocean Institute.

The Union of Soviet Socialist Republics raised a point of order to which the Chairman replied.

13th meeting—8 August 1974

Economic implications of sea-bed mineral development (continued):

Statements were made by the representatives of Japan, United States of America, Zaire (on behalf of the group of African States), United Kingdom of Great Britain and Northern Ireland, Argentina, Cuba, Israel, Morocco and Greece.

Seminar on the implications of sea-bed mineral development:

Statements were made by the Chairman and by the representatives of the United States of America, Guinea, Zaire, the Ukrainian Soviet Socialist Republic, Liberia and Chile.

14th meeting—19 August 1974

Economic implications of sea-bed mineral development (continued):

The Chairman summarized the discussions.

Informal meetings:

The Chairman of the informal meetings made a statement.

Conditions of exploitation of the area:

Statements were made by the representative of Colombia introducing document A/CONF.62/C.1/L.7, the representative of the United States of America introducing document A/CONF.62/C.1/L.6 and the representative of France introducing document A/CONF.62/C.1/L.8

Working group:

A statement was made by the representative of Brazil proposing the establishment of a negotiating group under the chairmanship of Mr. Pinto (Sri Lanka). A statement was made by the representative of the United Republic of Tanzania. The Committee established a working group.

A point of order was raised by the representative of Peru. Statements were made by the representatives of Algeria, Pakistan, Guinea and the representative of the United States of America.

The Rapporteur made a statement.

15th meeting—20 August 1974

Conditions of exploitation of the area:

Japan introduced document A/CONF.62/C.1/L.9. Statements were made by the representatives of Zaire, German Democratic Republic, Israel, United Kingdom of Great Britain and Northern Ireland, Ghana and the Federal Republic of Germany.

The representative of Peru made a statement in connexion with the point of order he had raised at the previous meeting.

Working group:

Statements were made by the Chairman and by the representatives of Barbados, Mali, Uruguay, Colombia, United Republic of Tan-

zania, Mauritania, Guinea, Zaire, Ghana, Nigeria, Chile and Republic of Korea.

Points of order were raised by the representatives of Algeria and the United States of America.

16th meeting—21 August 1974

Working group:

Statements were made by the Chairman and by the representatives of France, Madagascar, Thailand, El Salvador, Barbados, Brazil, United States of America, Spain, Peru, Morocco, Uganda, Liberia and Turkey. The representative of Brazil made a proposal regarding the work of the working group. Statements were made by the representatives of United States of America, Barbados, Peru, Ghana, Uganda and China.

The Chairman announced the composition of the working group.

The representative of Chile made a statement in connexion with General Assembly resolution 2750 (XXV) requesting a further study by the Secretariat. Statements were made by the United States of America, Kuwait and France.

17th meeting—27 August 1974

The Secretary of the Committee made a statement concerning the further study requested by the representative of Chile.

Working group:

Statements were made by the Chairman of the working group and by the representatives of India and Bolivia.

Statement of activities of the Committee:

Statements were made by the Rapporteur and by the representatives of United Republic of Tanzania, Chile, Thailand, Ghana, Peru and United States of America.

The representative of China made a statement concerning document A/CONF.62/C.1/L.11 to which the representative of Chile replied.

General statements were made by the representatives of Egypt, Guinea, Madagascar, France, Thailand, Czechoslovakia, Colombia and United States of America.

ANNEX II

Statement of activities of the Second Committee

Prepared by the Rapporteur of the Committee

I. INTRODUCTION

1. At its 2nd meeting on 7 December 1973, the Conference decided to establish the Second Committee as one of its three Main Committees.

2. In accordance with the decision of the Conference at its 7th meeting on 12 December 1973, the officers of the Committee were as follows:

Chairman: Mr. Andrés Aguilar (Venezuela)

Vice-Chairmen: Czechoslovakia, Mr. Z. Pisk; Kenya, Mr. F. X. Njenga; Turkey, Mr. N. Tuncel

Rapporteur: Mr. S. N. Nandan (Fiji)

II. MANDATE OF THE COMMITTEE

3. At its 15th meeting on 21 June 1974, the Conference allocated the following items to the Second Committee, bearing in mind the introductory note¹⁷⁸ to the list of subjects and issues:

¹⁷⁸ The text of the introductory note is as follows:

"The present list of subjects and issues relating to the law of the sea has been prepared in accordance with General Assembly resolution 2750 C (XXV).

"The list is not necessarily complete nor does it establish the order of priority for consideration of the various subjects and issues.

"Since the list has been prepared following a comprehensive approach and attempts to embrace a wide range of possibilities, sponsorship or acceptance of the list does not prejudice the position of any State or commit any State with respect to the items on it or to the order, form or classification according to which they are presented.

"Consequently the list should serve as a framework for discussion and drafting of necessary articles." (*Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 and corrigendum, para. 23*).

- Item 2. *Territorial sea*
- 2.1 Nature and characteristics, including the question of the unity or plurality of régimes in the territorial sea
 - 2.2 Historic waters
 - 2.3 Limits
 - 2.3.1 Questions of the delimitation of the territorial sea; various aspects involved
 - 2.3.2 Breadth of the territorial sea. Global or regional criteria. Open seas and oceans, semi-enclosed seas and enclosed seas
 - 2.4 Innocent passage in the territorial sea
 - 2.5 Freedom of navigation and overflight resulting from the question of plurality of régimes in the territorial sea
- Item 3. *Contiguous zone*
- 3.1 Nature and characteristics
 - 3.2 Limits
 - 3.3 Rights of coastal States with regard to national security, customs and fiscal control, sanitation and immigration regulations
- Item 4. *Straits used for international navigation*
- 4.1 Innocent passage
 - 4.2 Other related matters including the question of the right of transit
- Item 5. *Continental shelf*
- 5.1 Nature and scope of the sovereign rights of coastal States over the continental shelf. Duties of States
 - 5.2 Outer limit of the continental shelf: applicable criteria
 - 5.3 Question of the delimitation between States; various aspects involved
 - 5.4 Natural resources of the continental shelf
 - 5.5 Régime for waters superjacent to the continental shelf
 - 5.6 Scientific research
- Item 6. *Exclusive economic zone beyond the territorial sea*
- 6.1 Nature and characteristics, including rights and jurisdiction of coastal States in relation to resources, pollution control and scientific research in the zone. Duties of States
 - 6.2 Resources of the zone
 - 6.3 Freedom of navigation and overflight
 - 6.4 Regional arrangements
 - 6.5 Limits: applicable criteria
 - 6.6 Fisheries
 - 6.6.1 Exclusive fishery zone
 - 6.6.2 Preferential rights of coastal States
 - 6.6.3 Management and conservation
 - 6.6.4 Protection of coastal States' fisheries in enclosed and semi-enclosed seas
 - 6.6.5 Régime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction
 - 6.7 Sea-bed within national jurisdiction
 - 6.7.1 Nature and characteristics
 - 6.7.2 Delineation between adjacent and opposite States
 - 6.7.3 Sovereign rights over natural resources
 - 6.7.4 Limits: applicable criteria
 - 6.8 Prevention and control of pollution and other hazards to the marine environment
 - 6.8.1 Rights and responsibilities of coastal States
 - 6.9 Scientific research
- Item 7. *Coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea*
- 7.1 Nature, scope and characteristics
 - 7.2 Sea-bed resources
 - 7.3 Fisheries
 - 7.4 Prevention and control of pollution and other hazards to the marine environment
 - 7.5 International co-operation in the study and rational exploitation of marine resources
 - 7.6 Settlement of disputes
 - 7.7 Other rights and obligations
- Item 8. *High seas*
- 8.1 Nature and characteristics
 - 8.2 Rights and duties of States
 - 8.3 Question of the freedoms of the high seas and their regulation
 - 8.4 Management and conservation of living resources
 - 8.5 Slavery, piracy and drugs
 - 8.6 Hot pursuit
- Item 9. *Land-locked countries*
- 9.1 General principles of the law of the sea concerning the land-locked countries
 - 9.2 Rights and interests of land-locked countries
 - 9.2.1 Free access to and from the sea: freedom of transit, means and facilities for transport and communications
 - 9.2.2 Equality of treatment in the ports of transit States
 - 9.2.3 Free access to the International Sea-Bed Area beyond national jurisdiction
 - 9.2.4 Participation in the international régime, including the machinery and the equitable sharing in the benefits of the Area
 - 9.3 Particular interests and needs of developing land-locked countries in the international régime
 - 9.4 Rights and interests of land-locked countries in regard to living resources of the sea
- Item 10. *Rights and interests of shelf-locked States and States with narrow shelves or short coastlines*
- 10.1 International régime
 - 10.2 Fisheries
 - 10.3 Special interests and needs of developing shelf-locked States and States with narrow shelves or short coastlines
 - 10.4 Free access to and from the high seas
- Item 11. *Rights and interests of States with broad shelves*
- Item 16. *Archipelagos*
- Item 17. *Enclosed and semi-enclosed seas*
- Item 18. *Artificial islands and installations*
- Item 19. *Régime of islands*
- (a) Islands under colonial dependence or foreign domination or control;
 - (b) Other related matters
- Item 24. *Transmission from the high seas*
4. The Conference also allocated to the Second Committee the following items in so far as they are relevant to its mandate:
- Item 15. *Regional arrangements*
- Item 20. *Responsibility and liability for damage resulting from the use of the marine environment*
- Item 21. *Settlement of disputes*
- Item 22. *Peaceful uses of the ocean space; zones of peace and security*
5. The Conference recommended that the following agreement, reached in the sea-bed Committee on 27 August 1971, should be carried forward in respect of the Main Committees of the Conference:
- "While each sub-committee will have the right to discuss and record its conclusions on the question of limits so far as it is relevant to the subjects allocated to it, the main Committee will not reach a decision on the final recommendation with regard to limits until the recommendations of Sub-Committee II on the precise definition of the area have been received, which should constitute basic proposals for the consideration of the main Committee."
- ### III. ORGANIZATION OF WORK
6. At its 1st meeting on 3 July 1974, the Committee agreed on the organization of a first stage of its work, on the basis of the following proposals made by the Chairman (A/CONF.62/C.2/L.2):
- "The items allocated to the Committee should be taken up in official and non-official meetings, as considered convenient, with the Committee Chairman presiding. Working groups should not be established, at least at the initial stage, on the understanding that, if necessary, one or more informal *ad hoc* groups may be established;
- "The items allocated to the Committee should be considered one by one in the order in which they appear in the relevant list. The idea is to consider each of these items and questions and then to identify the main trends and to express these trends in generally acceptable formulae, in other words, to 'put the item on ice', without taking

decisions, and to pass on to the following item. It is clearly understood that, during the discussion of each item, delegations may refer to related items. No decision will be taken until all the closely interconnected items have been fully considered:

"At present, it does not seem possible to draw up a time-table of work. At most, such a time-table could be prepared only tentatively and the officers are currently working on this. The officers of the Committee could be given the responsibility of periodically reviewing the progress of the work in the light of the time available. Depending on the progress of the work and having regard to the time factor, special measures could be taken to expedite the work when it is thought that the Committee is falling behind;

"The Committee should not take a formal decision on the documentation which will serve as a basis for its work. All the available documents—the documents of the Sea-Bed Committee and any others that may have been submitted officially or informally or which may be submitted during this session—may be used."

7. The Committee, upon nearing the completion of the first stage of its work, approved, at its 9th informal meeting on 15 August 1974, a proposal submitted by the Chairman on the organization of a second stage of its work. The proposal, as adopted, was contained in the following statement made by the Chairman at the 43rd meeting of the Committee on 23 August 1974:

"1. Priority will be given to the completion of the first stage of the Committee's work, namely the consideration of the informal working papers which still have to be discussed and their possible revision.

"2. Simultaneously, whenever time was available, the Committee will undertake a second reading of the items allocated to it, which will be regrouped as follows:

"GROUP I: item 2 (Territorial sea); item 4 (Straits used for international navigation); item 16 (Archipelagos); and item 3 (Contiguous zone). Item 17 (Enclosed and semi-enclosed seas), item 18 (Artificial islands and installations), and item 19 (Régime of islands) can also be discussed in so far as they relate to the other items included in this group.

"GROUP II: item 5 (Continental shelf); item 6 (Exclusive economic zone); item 7 (Coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea); item 10 (Rights and interests of shelf-locked States and States with narrow shelves or short coastlines); and item 11 (Rights and interests of States with broad shelves). Item 9 (Land-locked countries), item 17 (Enclosed and semi-enclosed seas), item 18 (Artificial islands and installations), and item 19 (Régime of islands) can also be discussed in so far as they relate to the other items included in this group.

"GROUP III: item 8 (High seas) and item 24 (Transmission from the high seas). Item 18 (Artificial islands and installations) and item 19 (Régime of islands) can also be discussed in so far as they relate to the other items included in this group.

"3. The aim of this second reading is to reduce, as far as possible, the number of alternative formulations in the working papers. Consequently, discussions should be focused on differences of substance, not on questions of drafting, except where new wording can help to combine alternative formulations.

"4. There will be an opportunity for delegations to introduce proposals in formal meetings of the Committee. It is to be hoped that these new proposals will be primarily designed to consolidate texts and thus reduce the number of variants. However, most of the work in the second stage will be carried out at informal meetings."

IV. WORK OF THE COMMITTEE

8. The Committee did not convene during the organizational session of the Conference held in New York from 3 to 15 December 1974.

9. During the second session of the Conference, the Second Committee held 46 formal meetings and 23 informal meetings.

10. In accordance with the agreement on the organization of its work, the Committee proceeded at its 2nd to 40th meetings to consider one by one the items allocated to it. At its 6th meeting on 17 July 1974, the Committee decided to limit participation in the debate to members of the Committee who had not been members of the sea-bed Committee and to members making new proposals or whose position with regard to particular issues had changed. The Committee further agreed that the members of the Committee could make statements relating to the new proposals submitted. At its 14th meeting on 23 July, the

Committee decided to limit the time allowed to each speaker to 15 minutes.

11. The Committee considered the following items: item 2—Territorial sea; item 3—Contiguous zone; item 4—Straits used for international navigation; item 5—Continental shelf; item 6—Exclusive economic zone beyond the territorial sea; item 7—Coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea; item 8—High seas; item 9—Land-locked countries; item 10—Rights and interests of shelf-locked States and States with narrow shelves or short coastlines; item 11—Rights and interests of States with broad shelves; item 16—Archipelagos; item 17—Enclosed and semi-enclosed seas; item 18—Artificial islands and installations; item 19—Régime of islands; and item 24—Transmission from the high seas.

12. An index to the summary records of the Second Committee is contained in appendix II.

13. In furtherance of the decision of the Committee on the organization of the first stage of its work, the officers prepared a series of 13 informal working papers in order to reflect in generally acceptable formulations the main trends which had emerged, with relation to the items allocated to the Committee, from the proposals submitted to the sea-bed Committee or to the Conference itself.

14. In a statement made at the 46th meeting of the Committee on 28 August 1974 (A/CONF.62/C.2/L.86), the Chairman recalled the procedure followed in the preparation and consideration of the informal working papers. As noted in that statement, the Committee considered these informal working papers at its informal meetings. Taking into account the observations and comments made by members of the Committee on both the substance and form of the informal working papers, the officers prepared two revisions of each paper.¹⁷⁹

15. In accordance with its decision on the organization of the second stage of its work, the Committee completed a second reading, provision by provision, of the informal working paper on item 2—Territorial sea.

16. At its 46th meeting, the Committee decided to consolidate the 13 informal working papers into a single working document, which would form a basis for its future work. This working document has been issued as a separate document, under the symbol A/CONF.62/C.2/WP.1, which constitutes appendix I hereto.

V. DOCUMENTS BEFORE THE COMMITTEE

17. By paragraph 6 of resolution 3067 (XXVIII), the General Assembly referred to the Conference the reports of the sea-bed Committee and all other relevant documentation of the General Assembly and the Committee. The Second Committee thus had before it all the documentation from Sub-Committee II of the sea-bed Committee, and the documents submitted to the Conference which were relevant to the mandate of the Committee.

18. A list of the documents submitted to the Second Committee since the Committee was established and up to 28 August 1974 appears at the beginning of the present volume.

VI. FUTURE WORK OF THE COMMITTEE

19. In systematically considering the items allocated to it and preparing a series of informal working papers reflecting in generally acceptable formulations the main trends on each item, the Committee completed an essential phase of its work. The completion of this phase represents significant progress in the work of the Committee, bearing in mind the incomplete nature of the preparatory work on the items before the Committee.

VII. PRESENTATION OF THE STATEMENT ON THE WORK OF THE SECOND COMMITTEE

20. The Rapporteur, at the 46th meeting of the Committee, presented this statement to the Committee. At that meeting, the Committee took note of the statement.

¹⁷⁹ At its 4th informal meeting on 25 July 1974, the Committee decided to prepare no more than two revisions of any one informal working paper.

APPENDIX I

Working paper of the Second Committee: main trends

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INTRODUCTION

The sole purpose of this working paper is to reflect in generally acceptable formulations the main trends which have emerged from the proposals submitted either to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction or to the Third United Nations Conference on the Law of the Sea.

The inclusion of these formulations does not imply any opinion on the degree of support they have commanded either in the preparatory stage or in the proceedings of the Caracas session of the Conference. Moreover, it does not imply that all the proposals from which these formulations have been taken have been discussed in the Second Committee. The inclusion of a provision in this paper, whether or not only one formula appears, does not necessarily imply that there are no other opinions concerning these questions or that all or most delegations agree on the necessity for such a provision.

All the proposals submitted to the sea-bed Committee and to the Conference remain before the Second Committee and may be considered by it at any time. Thus, the preparation of this document and its acceptance by the Committee as a working paper in no way signifies that these proposals have been withdrawn.

Since the purpose of this paper is to focus the discussion of each of the items allocated to the Second Committee on the fundamental issues, leaving until later the consideration of supplementary rules and drafting points, the paper does not include all the proposals contained in the reports of the sea-bed Committee or submitted to the Conference.

It should be noted that with respect both to scientific research and to the prevention and control of pollution and other hazards to the marine environment, other proposals are under consideration in the Third Committee.

The question of the settlement of disputes will be examined under item 21 (settlement of disputes). The Committee will then consider, *inter alia*, whether to place all the provisions in a separate chapter or to include them in the relevant chapters.

PART I. TERRITORIAL SEA (item 2)*

1. Nature and characteristics, including the question of the unity or plurality of régimes in the territorial sea

Provision 1

Formula A

1. The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea.

*For purely methodological reasons, the position of those delegations who make their acceptance of the territorial sea régime condi-

2. The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil.

3. This sovereignty is exercised subject to the provisions of these articles and to other rules of international law.

Formula B

1. The sovereignty of a coastal State extends beyond its coast and internal or archipelagic waters to an adjacent zone described as the territorial sea.

2. ... (same as in formula A).

3. This sovereignty is exercised in accordance with the provisions of these articles and allows a plurality of régimes in the cases and for the purposes indicated hereinafter.

Formula C

1. The sovereignty of a coastal State extends beyond its land territory and internal waters, and in the case of archipelagic States, their archipelagic waters, over an adjacent belt of sea defined as the territorial sea.

2. ... (same as in formula A).

3. ... (same as in formula A).

2. Historic waters

Provision 2

The territorial sea may include waters pertaining to a State by reason of an historic right or title and actually held by it as its territorial sea.

Provision 3

No claim to historic waters shall include land territory or waters under the established sovereignty, sovereign rights or jurisdiction of another State.

3. Limits

3.1 Question of the delimitation of the territorial sea; various aspects involved

(a) NORMAL BASELINES

Provision 4

Formula A

Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

tional upon the creation of an exclusive economic zone is not reflected as a trend in this paper.

Formula B

A coastal State may adopt its own method of drawing the baseline according to the topographical features of its coast.

In localities where the coastline is regular or the coast is low and flat, the method of natural baseline, i.e. taking the low-tide lines as the baselines, may be employed for measuring the breadth of the territorial sea.

*(b) STRAIGHT BASELINES**Provision 5**Formula A*

In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

Formula B

1. In localities where the coastline is indented or there are islands along the coast, the method of a series of straight baselines, i.e. taking the lines connecting the basepoints on the coast and the outermost islands as the baselines, may be employed for measuring the breadth of the territorial sea.

2. A coastal State with coasts of great lengths and complicated topography may employ the method of mixed baselines, i.e. drawing the baseline in turn by the methods provided for in article . . . and in this article to suit different conditions.

Provision 6

The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters.

*Provision 7**Formula A*

Baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them.

Formula B

. . . (same as formula A) . . . or except where States have historically and consistently applied low-tide elevation for the purpose of drawing straight baselines.

Provision 8

Where the method of straight baselines is applicable under the provisions of paragraph . . . , account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

Provision 9

In localities where no stable low-water line exists along the coast due to continual process of alluvion and sedimentation and where the seas adjacent to the coast are so shallow as to be non-navigable by other than small boats and pertain to the character of inland waters, baselines shall be drawn linking appropriate points on the sea adjacent to the coast not exceeding the 10-fathom line.

Provision 10

The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State.

Provision 11

The coastal State must clearly indicate straight baselines on charts, to which due publicity must be given.

Provision 12

1. Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.

2. Where the establishment of a straight baseline in accordance with article . . . has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of

the high seas, a right of innocent passage, as provided in articles . . . shall exist in those waters.

*(c) RIVERS**Provision 13*

If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks.

*(d) BAYS, THE COASTS OF WHICH BELONG TO A SINGLE STATE**Provision 14*

1. This article (provisions 14 to 17) relates only to bays the coasts of which belong to a single State.

2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.

*Provision 15**Formula A*

If the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

Formula B

If the distance between the low-water marks of the natural entrance points of a bay does not exceed . . . miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

*Provision 16**Formula A*

Where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 miles, a straight baseline of 24 miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

Formula B

Where the distance between the low-water marks of the natural entrance points of a bay exceeds . . . miles, a straight baseline of . . . miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

*(e) HISTORIC BAYS OR OTHER HISTORIC WATERS**Provision 17**Formula A*

The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article . . . is applied.

Formula B

In the absence of other applicable rules the baselines of the territorial sea are measured from the outer limits of historic bays or other historic waters.

*(f) PERMANENT HARBOUR WORKS**Provision 18**Formula A*

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

Formula B

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form part of the harbour system and which are above water at high tide shall be regarded as forming part of the coast.

*(g) ROADSTEADS**Provision 19*

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. The coastal State must clearly demarcate such roadsteads and indicate them on charts together with their boundaries, to which due publicity must be given.

*(h) LOW-TIDE ELEVATIONS**Provision 20*

1. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

*(i) DELIMITATION BETWEEN STATES WITH OPPOSITE OR ADJACENT COASTS**Provision 21**Formula A*

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

The line of delimitation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal States.

Formula B

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line, every point of which is equidistant from the nearest points on the baselines . . . from which the breadth of the territorial seas of each of the two States is measured.

Formula C

1. Where the coasts of two or more States are adjacent and/or opposite, the delimitation of the boundary lines of the respective territorial seas shall be determined by agreement among them in accordance with equitable principles.

2. In the course of negotiations, the States may apply any one or a combination of delimitation methods appropriate for arriving at an equitable agreement, taking into account special circumstances . . .

3. The States shall make use of the methods envisaged in Article 33 of the United Nations Charter or other peaceful means and methods open to them, in order to resolve differences which may arise in the course of negotiations.

Formula D

Coastal States adjacent or opposite to each other shall define the boundaries between their territorial seas on the principles of mutual respect for sovereignty and territorial integrity, equality and reciprocity.

*3.2 Breadth of the territorial sea. Global or regional criteria. Open seas and oceans, semi-enclosed and enclosed seas**(a) BREADTH OF THE TERRITORIAL SEA**Provision 22**Formula A*

Each State shall have the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines drawn in accordance with articles . . . of this Convention.

Formula B

Each State has the right to establish the breadth of its territorial sea up to a distance not exceeding 200 nautical miles, measured from the applicable baselines.

Formula C

The maximum limit provided in this article shall not apply to historic waters held by any State as its territorial sea.

Any State which, prior to the approval of this Convention, shall have already established a territorial sea with a breadth more than the maximum provided in this article shall not be subject to the limit provided herein.

*(b) GLOBAL OR REGIONAL CRITERIA, OPEN SEAS AND OCEANS, SEMI-ENCLOSED AND ENCLOSED SEAS**Provision 23**Formula A*

Global criterion.

Formula B

1. Each coastal State shall have the right to establish the limits of the adjacent sea subject to its sovereignty and jurisdiction, within the maximum distance referred to in paragraph 2 of this article, having regard to reasonable criteria which take into account the relevant geographical, geological, ecological, economic and social factors and interests relating to the preservation of the marine environment and national sovereignty.

2. In seas where the zone of sovereignty and jurisdiction of a coastal State can extend to a distance of 200 nautical miles, measured from the applicable baselines, without interfering with the zone of sovereignty and jurisdiction of another coastal State, that distance shall be recognized as the maximum outer limit applicable to the respective zones of sovereignty and jurisdiction.

Formula C

1. A coastal State shall have the right to determine the breadth of its territorial sea within a maximum limit of . . . nautical miles measured from applicable baselines drawn in accordance with the relevant articles of this Convention.

2. The right referred to in paragraph 1 shall not be exercised in such a manner as to cut off the territorial sea of another State or any part thereof from the high seas.

3. In areas of semi-enclosed seas, having special geographical characteristics, the breadth of the territorial seas shall be determined jointly by the States of that area.

*4. Innocent passage in the territorial sea**(a) RULES APPLICABLE TO ALL SHIPS**Provision 24**Formula A*

Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

Formula B

In territorial seas whose breadth exceeds 12 nautical miles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage in the form prescribed in article . . . within a limit of . . . nautical miles measured from the applicable baselines.

Beyond this internal limit, ships shall enjoy freedom of passage subject to the provisions of provision 47.

Provision 25

Formula A

Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters.

Formula B

1. Innocent passage means navigation through the territorial sea for the purpose either of traversing that sea without entering any port or internal waters, or of proceeding to or from any port or internal waters.

2. For the purposes of these articles the term "port" includes any harbour or roadstead normally used for the loading, unloading or anchoring of ships.

Provision 26

Innocent passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or by distress.

Provision 27

Formula A

Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.

Formula B

1. ... (Same as formula A).

2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State, if in the territorial sea it engages in any threat or use of force in violation of the Charter of the United Nations against the territorial integrity or political independence of the coastal State or of any other State, or if it engages in any of the following activities:

- (i) Any other warlike act against the coastal or any other State;
- (ii) Any exercise or practice with weapons of any kind;
- (iii) The launching or taking on board of any aircraft;
- (iv) The launching, landing or taking on board of any military device;
- (v) The embarking or disembarking of any person or cargo;
- (vi) Any act of espionage affecting the defence or security of the coastal State;
- (vii) Any act of propaganda affecting the security of the coastal State;
- (viii) Any act of interference with any systems of communication of the coastal or any other State;
- (ix) Any act of interference with any other facility or installation of the coastal State;
- (x) Any other activity not having a direct bearing on passage.

3. Passage shall not be considered prejudicial to the peace, good order or security of the coastal State if any such activity is carried out with the prior authorization of the coastal State or as rendered necessary by *force majeure* or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress, or as may be prudent for safe navigation.

Formula C

1. ... (Same as formula A).

2. Passage of a foreign ship shall not be considered prejudicial to the peace, good order or security of the coastal State unless, in the territorial sea, it engages in any threat or use of force in violation of the Charter of the United Nations against the territorial integrity or political independence of the coastal State, or without authorization from the coastal State or justification under international law in any of the following activities:

- (a) Any exercise or practice with weapons of any kind;
- (b) The launching or taking on board of any aircraft;
- (c) The launching, landing or taking on board of any military device;
- (d) The embarking or disembarking of any person or cargo contrary to the customs, fiscal, immigration or sanitary laws or regulations of the coastal State;

(e) Any act aimed at interfering with any system of communication of the coastal State;

(f) Any act aimed at interfering with any other facilities or installations of the coastal State.

3. ... (Same as formula B, para. 3).

Provision 28

Passage shall be continuous and expeditious. Passing ships shall refrain from manoeuvring unnecessarily, hovering or engaging in any activity other than mere passage.

Provision 29

Formula A

1. Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation.

2. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea.

Formula B

1. The coastal State may make laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, which laws and regulations may be in respect of all or any of the following:

(a) The safety of navigation and the regulation of marine traffic, including the designation of sea lanes and the establishment of traffic separation schemes;

(b) The protection of navigational aids and facilities and other facilities or installations including those for exploration and exploitation of the marine resources of the territorial sea and the sea-bed and subsoil thereof.

(c) The protection of submarine or aerial cables and pipelines;

(d) The conservation of the living resources of the sea;

(e) The preservation of the environment of the coastal State, including the territorial sea, and the prevention of pollution thereto;

(f) Research of the marine environment and hydrographic surveys;

(g) The prevention of infringement of the customs, fiscal, immigration, quarantine or sanitary or phytosanitary regulations of the coastal State;

(h) The prevention of infringement of the fisheries regulations of the coastal State, including *inter alia* those relating to the stowage of gear.

2. Such laws and regulations shall not

(a) Apply to or affect the design, construction, manning or equipment of foreign ships or matters regulated by generally accepted international rules unless specifically authorized by such rules; or

(b) Impose requirements on foreign ships which have the practical effect of denying or prejudicing the right of innocent passage in accordance with this Convention.

3. The coastal State shall give due publicity to all laws and regulations made by it under the provisions of this article.

4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations of the coastal State.

5. During their passage through the territorial sea, foreign ships, including marine research and hydrographic survey ships, may not carry out any research or survey activities without the prior authorization of the coastal State.

6. A coastal State may, where it considers it necessary having regard to the density of traffic concentration, require foreign ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as may be designated or prescribed by the coastal State for the regulation of the passage of ships.

7. A coastal State may from time to time, after giving due publicity thereto, substitute other sea lanes for any sea lanes previously designated by it under the provisions of this article.

8. In the designation of sea lanes and the prescription of traffic separation schemes under the provisions of this article a coastal State shall take into account:

(a) The recommendations of competent international organizations;

(b) Any channels customarily used for international navigation;

(c) The special characteristics of particular channels; and

(d) The special characteristics of particular ships.

9. The coastal State shall clearly demarcate all sea lanes designated by it under the provisions of this article and indicate them on charts to which due publicity shall be given.

10. Foreign ships exercising the right of innocent passage through the territorial sea shall at all times, and particularly when using sea lanes and traffic separation schemes, designated or prescribed by the coastal State under the provisions of this article, comply with all generally accepted international regulations relating to the prevention of collisions at sea.

11. If in the application of its laws and regulations, a coastal State acts in a manner contrary to the provisions of these articles and loss or damage results to any foreign ship exercising the right of innocent passage through the territorial sea, the coastal State shall compensate the owners of such ship for that loss or damage.

Formula C

1. The coastal State may enact regulations relating to navigation in its territorial sea. Such regulations may relate, *inter alia*, to the following:

(a) Maritime safety and traffic and, in particular, the establishment of sea lanes and traffic separation schemes;

(b) Installation and utilization of facilities and systems of aids to navigation and the protection thereof;

(c) Installation and utilization of facilities to explore and exploit marine resources and the protection thereof;

(d) Maritime transport;

(e) Passage of ships with special characteristics;

(f) Preservation of marine and coastal environment and prevention of all forms of pollution;

(g) Research of the marine environment.

2. ... (Same as formula B, para. 4).

Provision 30

Formula A

Submarines and other underwater vehicles are required to navigate on the surface and to show their flag.

Formula B

Submarines and other underwater vehicles in innocent passage may be required to navigate on the surface and to show their flag.

Formula C

Submarines are required to navigate on the surface and to show their flag.

Provision 31

The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea and, in particular, it shall not, in the application of these articles or of any laws or regulations made under the provisions of these articles, discriminate in form or in fact against the ships of any particular State or against ships carrying cargoes to, from or on behalf of any particular State.

Provision 32

The coastal State is required to give appropriate publicity to any dangers to navigation, of which it has knowledge, within its territorial sea.

Provision 33

The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

Provision 34

Formula A

In the case of ships proceeding to internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to those waters is subject.

Formula B

In the case of ships proceeding to any port or internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to those waters is subject.

Provision 35

The coastal State may, without discrimination amongst foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

(b) RULES APPLICABLE TO SHIPS WITH SPECIAL CHARACTERISTICS

Provision 36

Formula A

1. Tankers and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to give prior notification of their passage to the coastal State and to confine their passage to such sea lanes as may be designated for that purpose by the coastal State.

2. For the purposes of this article, the term "tanker" includes any ship used for the carriage in bulk in a liquid state of petroleum, natural gas or any other highly inflammable, explosive or pollutive substance.

3. In order to expedite the passage of ships through the territorial sea the coastal State shall ensure that the procedures for notification under the provisions of this article shall be such as not to cause any undue delay.

1. The coastal State may regulate the passage through its territorial sea of the following:

(a) Nuclear-powered ships or ships carrying nuclear weapons;

(b) Marine research and hydrographic survey ships;

(c) Oil tankers and chemical tankers carrying harmful or noxious liquid substances in bulk;

(d) Ships carrying nuclear substances or materials.

2. The coastal State may require prior notification to or authorization by its competent authorities for the passage through its territorial sea of foreign ships mentioned in subparagraph (a) of paragraph 1.

3. The coastal State may require prior notification to its competent authorities for the passage through its territorial sea, except along designated sea lanes, of foreign ships mentioned in subparagraph (b) of paragraph 1.

4. The coastal State may require the passage through its territorial sea along designated sea lanes of foreign ships mentioned in subparagraphs (c) and (d) of paragraph 1, in conformity with article ... (sea lanes and traffic separation schemes).

Provision 37

Foreign nuclear-powered ships and ships carrying nuclear substances shall, during passage through territorial waters, observe special precautionary measures and carry papers established for such ships by international agreements.

(c) RULES APPLICABLE TO MERCHANT SHIPS

Provision 38

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

Provision 39

Formula A

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed on board the ship during its passage, save only in the following cases:

(a) If the consequences of the crime extend to the coastal State; or

(b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or

(c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or

(d) If it is necessary for the suppression of illicit traffic in narcotic drugs.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2 of this article, the coastal State shall, if the captain so requests, advise the consular authority of the flag State before taking any steps, and shall facilitate contact between such authority and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.

5. The coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

Formula B

(a) (Same as formula A, except for para. 1 (d)):

"(d) If it is necessary for the suppression of illicit traffic in narcotic and psychotropic drugs."

Provision 40

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

(d) RULES APPLICABLE TO GOVERNMENT SHIPS

(i) GOVERNMENT SHIPS OTHER THAN WARSHIPS

Provision 41

Formula A

The rules contained in . . . (provisions under subsections 4 (a) Rules applicable to all ships and 4 (c) Rules applicable to merchant ships) shall apply to government ships operated for commercial purposes.

Formula B

Government ships operated for commercial purposes in foreign territorial waters shall enjoy immunity, and therefore the measures referred to in this provision may be applied to them only with the consent of the State whose flag the ship flies.

Provision 42

1. The rules contained in . . . (provisions under subsection 4 (a) Rules applicable to all ships) and in article . . . (provision 38) shall apply to government ships operated for non-commercial purposes.

2. With such exceptions as are contained in the provisions referred to in the preceding paragraph, nothing in these articles affects the immunities which such ships enjoy under these articles or other rules of international law.

(ii) WARSHIPS

Provision 43

1. For the purpose of this article, the term "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an

officer duly commissioned by the Government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew who are under regular armed forces discipline.

2. The rules contained in . . . (provisions under subsection 4 (a) Rules applicable to all ships) shall apply to warships.

Provision 44

Formula A

If any warship does not comply with the regulations for the coastal State concerning passage through the territorial sea and disregards any request for compliance which is made to it, the coastal State may require the warship to leave the territorial sea.

Formula B

1. Foreign warships exercising the right of innocent passage shall not, in the territorial sea, carry out any manoeuvres other than those having direct bearing on passage.

2. If any warship does not comply with the laws and regulations of the coastal State relating to passage through the territorial sea or fails to comply with the requirements of paragraph 1, and disregards any request for compliance which is made to it, the coastal State may suspend the right of passage of such warship and may require it to leave the territorial sea by such safe and expeditious route as may be directed by the coastal State.

Formula C

1. The coastal State may require prior notification to or authorization by its competent authorities for the passage of foreign warships through its territorial sea, in conformity with regulations in force in such a State.

2. Foreign warships exercising the right of innocent passage shall not perform any activity which does not have a direct bearing on the passage, such as:

- (a) Carrying out any exercise or practice with weapons of any kind;
- (b) Assumption of combat position by the crew;
- (c) Flying their aircraft;
- (d) Intimidation or display of force;
- (e) Carrying out research operations of any kind.

3. . . . (Same as formula A).

Provision 45

Subject to articles . . . (provisions 43, 44 and 46), nothing in these provisions affects the immunities which warships enjoy under these provisions or other rules of international law.

(iii) STATE RESPONSIBILITY FOR GOVERNMENT SHIPS

Provision 46

If, as a result of any non-compliance by any warship or other government ship operated for non-commercial purposes with any of the laws or regulations of the coastal State relating to passage through the territorial sea or with any of the provisions of these articles or other rules of international law, any damage is caused to the coastal State (including its environment and any of its facilities, installations or other property, or to any ships flying its flag), international responsibility shall be borne by the flag State of the ship causing the damage.

5. Freedom of navigation and overflight resulting from the question of plurality of régimes in the territorial sea

Provision 47

1. In territorial seas whose breadth exceeds 12 nautical miles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage in the form prescribed in article . . . within a limit of . . . nautical miles measured from the applicable baselines.

2. Beyond this internal limit, ships shall enjoy freedom of passage subject to the duties of peaceful coexistence and good neighbourliness and also the provisions adopted by the coastal State with regard to the exploration, conservation and exploitation of resources, the preservation of the marine environment, scientific research, the emplacement of installations and the security of navigation and maritime transport.

3. In accordance with the duties referred to in paragraph 2 of this article, ships in transit shall abstain from any activities that may be prejudicial to the coastal State, such as an exercise or practice with

weapons or explosives, the launching or taking on board of military devices, the embarking or disembarking of persons or cargo contrary to the customs, fiscal, immigration or sanitary provisions of the coastal State, any act of propaganda, espionage or interference with systems of communication, and other activities not having a direct bearing on passage.

4. Where appropriate, the provisions of paragraphs 2 and 3 of this article shall also apply to the passage of aircraft.

5. The provisions of the coastal State for the purposes referred to in paragraph 2 of this article shall not affect the legitimate and normal exercise of the rights enjoyed by other States with regard to navigation, overflight and other means of international communication in accordance with the provisions of this Convention.

PART II. CONTIGUOUS ZONE (item 3)*

1. Nature and characteristics

2. Limits

Provision 48

Formula A

The contiguous zone may not extend beyond 12 miles from the baseline from which the breadth of the territorial sea is measured.

Formula B

The coastal State may establish a contiguous zone extending beyond its territorial sea of 12 miles to a distance of . . . nautical miles measured from the applicable baseline.

Provision 49

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line, every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured.

3. Rights of coastal States with regard to national security, customs and fiscal control, sanitation and immigration regulations

Provision 50

Formula A

In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:

- (a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;
- (b) Punish infringement of the above regulations committed within its territory or territorial sea.

Formula B

In an area within the economic zone, the outer limits of which do not exceed . . . nautical miles beyond the territorial sea, the coastal State may exercise the control necessary to:

- (a) . . . (Same as in formula A);
- (b) . . . (Same as in formula A).

PART III. STRAITS USED FOR INTERNATIONAL NAVIGATION (item 4)†

Provision 51

Formula A

1. This article applies to any strait or other stretch of water, whatever its geographical name, which:

*For some delegations the establishment of an exclusive economic zone and for others the establishment of a 12-mile territorial sea would render the concept of a contiguous zone unnecessary; for some delegations the area contiguous to the territorial sea up to 200 miles is not a zone of the high seas. For purely methodological reasons these trends are not reflected in part II.

†For some delegations, straits used for international navigation which are part of the territorial sea of one or more States, fall, except

- (a) Is used for international navigation;
- (b) Connects two parts of the high seas.

2. "Straits State" means any State bordering a strait to which these provisions apply.

Formula B

This article applies to any strait or other stretch of water, whatever its geographical name, which:

- (a) Is used for international navigation;
- (b) Connects:
 - (i) Two parts of the high seas; or
 - (ii) The high seas with the territorial sea of one or more foreign States.

Formula C

These articles apply to any strait which is used for international navigation and forms part of the territorial sea of one or more States.

Formula D

An international strait is a natural passage between land formations which:

- (a) (i) Lies within the territorial sea of one or more States at any point in its length and
- (ii) Joins . . .
- (b) Has traditionally been used for international navigation.

1. Innocent passage

Provision 52

Formula A

Subject to the provisions of article . . . (provision 54), the passage of foreign ships through straits shall be governed by the rules contained in part . . . (Right of innocent passage through the territorial sea).

Formula B

1. The provisions . . . (Right of innocent passage through the territorial sea) apply to straits used for international navigation not wider than six miles between the baselines.

2. There shall be no suspension of innocent passage of foreign ships through such straits.

Formula C

In the case of straits leading from the high seas to the territorial sea of one or more foreign States and used for international navigation, the principle of innocent passage for all ships shall apply and this passage shall not be suspended.

Formula D

A strait lying within the territorial sea, whether or not it is frequently used for international navigation, forms an inseparable part of the territorial sea of the coastal State.

Formula E

1. In straits used for international navigation between one part of the high seas and another part of the high seas or between one part of the high seas and the territorial sea of a foreign State, other than those straits in which the régime of transit passage applies in accordance with article . . . (provision 57, formula B), the régime of innocent passage in accordance with the provisions . . . (Right of innocent passage through the territorial sea) shall apply, subject to the provisions of this article.

2. There shall be no suspension of the innocent passage of foreign ships through such straits.

3. The provision of article . . . (Sea lanes) shall apply in such straits.

Provision 53

Nothing in this chapter shall affect any areas of high seas within a strait.

For some specific rules contained in provision 53, under the same legal régime as that of any other portion of the territorial sea. As a result, the position of these delegations is reflected in the provisions on innocent passage in the territorial sea appearing in part I, especially in provisions 25 to 29 and provision 44, formula C.

For certain delegations the question of passage of military aircraft in transit over straits should not be included in this paper or in a convention on the law of the sea.

Provision 54

1. Passage of foreign merchant ships through straits shall be presumed to be innocent.
2. There shall be no suspension of innocent passage of foreign ships through such straits.
3. The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea in straits and shall make every effort to ensure speedy and expeditious passage; in particular it shall not discriminate, in form or in fact, against the ships of any particular State or against ships carrying cargoes or passengers to, from and on behalf of any particular State.
4. The coastal State shall not place in navigational channels in a strait facilities, structures or devices of any kind which could hamper or obstruct the passage of ships through such strait. The coastal State is required to give appropriate publicity to any obstacle or danger to navigation, of which it has knowledge, within the strait.

Provision 55

(Part I, provision 36, formula B)

Provision 56

(Part I, provisions 44 and 45)

2. Other related matters including the question of the right of transit

*Provision 57**Formula A*

1. In straits used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State, all ships and aircraft in transit, shall enjoy the same freedom of navigation and overflight, for the purpose of transit through and over such straits, as they have on the high seas. Coastal States may designate corridors suitable for transit by all ships and aircraft through and over such straits. In the case of straits where particular channels of navigation are customarily employed by ships in transit, the corridors, so far as ships are concerned, shall include such channels.
2. The provisions of this article shall not affect Conventions or other international agreements already in force specifically relating to particular straits.

Formula B

1. In straits to which this article applies, all ships and aircraft enjoy the right of transit passage, which shall not be impeded.
2. Transit passage is the exercise in accordance with the provisions of this chapter of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas and another part of the high seas or a State bordering the strait.
3. (Provision 51, formula A, paragraph 1).
4. Transit passage shall apply in a strait only to the extent that:
 - (a) An equally suitable high seas route does not exist through the strait; or
 - (b) If the strait is formed by an island of the coastal State, an equally suitable high seas passage does not exist seaward of the island.

Formula C

1. In straits used for international navigation between one part of the high seas and another part of the high seas, all ships in transit shall enjoy equally the freedom of navigation for the purpose of transit passage through such straits.
2. In the case of straits over which the air space is traditionally used for transit flights by foreign aircraft between one part of the high seas and another part of the high seas, all aircraft shall enjoy equally freedom of transit overflight over such straits.

Formula D

1. ... (Same as formula B, para. 1).
2. ... (Same as formula B, para. 2).
3. This article applies to any strait or other stretch of water which is more than six miles wide between the baselines, whatever its geographical name, which:

- (a) Is used for international navigation;
- (b) Connects two parts of the high seas.
4. ... (Same as formula B, para. 4).

*Provision 58**Formula A*

1. Ships and aircraft, while exercising the right of transit passage shall:
 - (a) Proceed without delay through the strait and shall not engage in any activities other than those incident to their normal modes of transit;
 - (b) Refrain from any threat or use of force in violation of the Charter of the United Nations against the territorial integrity or political independence of an adjacent straits State.
2. Ships in transit shall:
 - (a) Comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea of 1972;
 - (b) Comply with generally accepted international regulations, procedures and practices for the prevention and control of pollution from ships.
3. Aircraft in transit shall:
 - (a) Observe rules of the air established by the International Civil Aviation Organization under the Chicago Convention as they apply to civil aircraft; State aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation;
 - (b) At all times monitor the radio frequency assigned by the appropriate internationally designated air traffic control authority or the appropriate international distress radio frequency.

Formula B

1. The freedom of navigation provided for in this article for the purpose of transit passage through straits shall be exercised in accordance with the following rules:
 - (a) Ships in transit through the straits shall not cause any threat to the security of the coastal States of the straits, or to their territorial inviolability or political independence. Warships in transit through such straits shall not in the area of the straits engage in any exercises or gunfire, use weapons of any kind, launch or land their aircraft, undertake hydrographical work or engage in other similar acts unrelated to the transit. In the event of any accidents, unforeseen stops in the straits or any acts rendered necessary by *force majeure*, all ships shall inform the coastal States of the straits;
 - (b) Ships in transit through the straits shall strictly comply with the international rules concerning the prevention of collisions between ships or other accidents;
 - (c) Ships in transit through the straits shall take all precautionary measures to avoid causing pollution of the waters and coasts of the straits, or any other kind of damage to the coastal States of the straits. Super-tankers in transit through the straits shall take special precautionary measures to ensure the safety of navigation and to avoid causing pollution.
2. The freedom of transit overflight by aircraft over the straits as provided for in this chapter shall be exercised in accordance with the following rules:
 - (a) Overflying aircraft shall take the necessary steps to keep within the boundaries of the corridors and at the altitude designated by the coastal State for flights over the straits, and to avoid overflying the land territory of a coastal State unless such overflight is provided for by the delimitation of the corridor designated by the coastal State;
 - (b) Overflying aircraft shall not cause any threat to the security of the coastal States, their territorial inviolability or political independence; in particular military aircraft shall not in the area of the straits engage in any exercises or gunfire, use weapons of any kind, take aerial photographs, circle or dive down towards ships, take on fuel or engage in other similar acts unrelated to overflight.

*Provision 59**Formula A*

1. In conformity with this chapter, a straits State may designate sea lanes and prescribe traffic separation schemes for navigation in the straits where necessary to promote the safe passage of ships.

2. A straits State may, when circumstances require and after giving due publicity to its decision, substitute other sea lanes or traffic separation schemes for any previously designated or prescribed by it.

3. Before designating sea lanes or prescribing traffic separation schemes, a straits State shall refer proposals to the competent international organization and shall designate such sea lanes or prescribe such separation schemes only as approved by that organization.

4. The straits State shall clearly indicate all sea lanes and separation schemes designated or prescribed by it on charts to which due publicity shall be given.

5. Ships in transit shall respect applicable sea lanes and separation schemes established in accordance with this article.

Formula B

1. In the case of narrow straits or straits where such provision is necessary to ensure the safety of navigation, coastal States may designate corridors suitable for transit by all ships through such straits. In the case of straits where particular channels of navigation are customarily employed by ships in transit, the corridors shall include such channels. In the case of any change of such corridors, the coastal State shall give notification of this to all other States in advance.

2. In all straits where there is heavy traffic, the coastal State may, on the basis of recommendations by the Inter-Governmental Maritime Consultative Organization, designate a two-way traffic separation governing passage, with a clearly indicated dividing line. All ships shall observe the established order of traffic and the dividing line. They shall also avoid making unnecessary manoeuvres.

3. Coastal States may designate special air corridors suitable for overflight by aircraft, and special altitudes for aircraft flying in different directions, and may establish particulars for radio communication with them.

Provision 60

Formula A

A straits State shall not hamper transit passage and shall give appropriate publicity to any danger to navigation or overflight within or over the strait of which it has knowledge. There shall be no suspension of transit passage.

Formula B

1. No State shall be entitled to interrupt or suspend the transit of ships through the straits or engage therein in any acts which interfere with the transit of ships, or require ships in transit to stop or communicate information of any kind.

2. The coastal State shall not place in the straits any installations which could interfere with or hinder the transit of ships.

3. No State shall be entitled to interrupt or suspend the transit overflight of aircraft, in accordance with this article, in the air space over the straits.

Provision 61

The provisions of this chapter shall not affect the sovereign rights of the coastal States with respect to the surface, the sea-bed and the living and mineral resources of the straits.

Provision 62

1. Subject to the provisions of this article, a straits State may make laws and regulations:

(a) In conformity with the provisions of article . . . (provision 59, formula A);

(b) Giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the straits.

2. Such laws and regulations shall not discriminate in form or in fact among foreign ships.

3. The straits State shall give due publicity to all such laws and regulations.

4. Foreign ships exercising the right of transit passage shall comply with such laws and regulations of the straits State.

5. If a ship entitled to sovereign immunity does not comply with any such laws or regulations and damage to the straits State results, the flag State shall in accordance with article . . . (provision 63, formula A and provision 64) be responsible for any such damage caused to the straits State.

Provision 63

Formula A

Responsibility for any damage caused to a straits State resulting from acts in contravention of this chapter by any ship or aircraft entitled to sovereign immunity shall be borne by the flag State.

Formula B

Liability for any damage which may be caused to the coastal States of the straits, their citizens or juridical persons by the ship in transit, shall rest with the owner of the ship or other person liable for the damage, and in the event that such compensation is not paid by them for such damage, with the flag State of the ship.

Provision 64

If a straits State acts in a manner contrary to the provisions of this chapter and loss or damage to a foreign ship or aircraft results, the straits State shall compensate the owners of the vessel or aircraft for that loss or damage.

Provision 65

Liability for any damage which may be caused to the coastal States of the straits or their citizens or juridical persons by the aircraft overflying the straits shall rest with the owner of the aircraft or other person liable for the damage and in the event that compensation is not paid by them for such damage, with the State in which the aircraft is registered.

Provision 66

Formula A

The provisions of this chapter shall not affect the legal régimes of straits through and over which transit and overflight are regulated by international agreements, specifically relating to such straits.

Formula B

The provisions of this chapter shall not affect obligations under the Charter of the United Nations or under conventions or other international agreements already in force relating to a particular strait.

Provision 67

User States and straits States should by agreement co-operate in the establishment and maintenance in a strait of necessary navigation and safety aids or other improvements in aid of international navigation or for the prevention and control of pollution from ships.

PART IV. CONTINENTAL SHELF (item 5)*

Provision 68

Formula A

The term "continental shelf" means the sea-bed and subsoil of submarine areas adjacent to the coast but outside the area of the territorial sea, to the outer limits of the continental rise bordering on the ocean basin or abyssal floor.

Formula B

The continental shelf of a coastal State extends beyond its territorial sea to a distance of 200 miles from the applicable baselines and throughout the natural prolongation of its land territory where such natural prolongation extends beyond 200 miles.

Formula C

. . . (Same as formula B) . . . to the outer limit of its continental margin, as precisely defined and delimited in accordance with article . . .

Formula D

The continental shelf comprises the sea-bed and subsoil of the submarine areas adjacent to the territory of the State but outside the area of the territorial sea, up to the outer lower edge of the continental

*For purely methodological reasons the position of delegations for whom the acceptance of an economic zone would entail the elimination of the legal concept of the continental shelf is not reflected as a trend in part IV. For those delegations the concept of the continental shelf will be subsumed under the concept of the economic zone and any portion of the continental shelf which extends beyond the economic zone shall fall under the international area.

margin which adjoins the abyssal plains area and, when that edge is at a distance of less than 200 miles from the coast, up to this last distance.

1. Nature and scope of the sovereign rights of coastal States over the continental shelf. Duties of States

Provision 69

Formula A

The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

Formula B

The sovereignty of a coastal State extends to its continental shelf.

Provision 70

The rights referred to in paragraph . . . (provision 69, formula A) are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.

Provision 71

The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

Provision 72

Formula A

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf.

Formula B

The delineation of the course for laying submarine cables and pipelines on the continental shelf by a foreign State is subject to the consent of the coastal State.

Formula C

Subject to its right to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention of pollution, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on its continental shelf.

Nothing in this article shall affect the jurisdiction of the coastal State over cables and pipelines constructed or used in connexion with the exploration or exploitation of its continental shelf or the operations of an installation under its jurisdiction, or its right to establish conditions for cables or pipelines entering its territory or territorial sea.

When laying submarine cables and pipelines due regard shall be paid to cables and pipelines already in position on the sea-bed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Provision 73

Formula A

The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

Formula B

The exercise of the coastal State's rights over the continental shelf shall not result in any unjustifiable interference with the freedom of navigation in the superjacent waters and of overflight in the superjacent air space, nor shall it impede the use of recognized lanes essential to international navigation.

Formula C

The coastal State shall exercise its rights and perform its duties without unjustifiable interference with navigation or other uses of the

sea, and ensure compliance with applicable international standards established by the appropriate international organizations for this purpose.

Provision 74

Formula A

The coastal State is entitled to construct, maintain or operate on or over the continental shelf installations and other devices necessary for the exercise of its rights over the same, to establish safety zones around such devices and installations, and to take in those zones measures necessary for their protection. Ships of all nationalities shall respect these safety zones, which may extend up to . . . around the installations or devices.

Formula B

The coastal State shall have the exclusive right to authorize and regulate on the continental shelf the construction, operation and use of artificial islands and installations for the purpose of exploration or exploitation of natural resources or for other economic purposes, and of any installations which may interfere with the exercise of the rights of the coastal State.

The coastal State may where necessary establish reasonable safety zones around such off-shore installations in which it may take appropriate measures to ensure the safety both of the installations and of navigation. Such safety zones shall be designed to ensure that they are reasonably related to the nature and function of the installation. Ships of all nationalities must respect these safety zones.

The breadth of the safety zones shall be determined by the coastal State and shall conform to applicable international standards in existence or to be established by the Inter-Governmental Maritime Consultative Organization regarding the establishment and breadth of safety zones. In the absence of such additional standards, safety zones around installations for the exploration and exploitation of non-renewable resources of the sea-bed and subsoil may extend to a distance of 500 metres around the installations, measured from each point of their outer edge.

States shall ensure compliance by vessels of their flag with applicable international standards regarding navigation outside the safety zones but in the vicinity of such off-shore installations.

Installations and safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

Provision 75

Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

Provision 76

Formula A

Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

Formula B

For the purpose of this section, the term "installations" refers to artificial off-shore islands, facilities, or similar devices, other than those which are mobile in their normal mode of operation at sea. Installations shall not afford a basis for a claim to a territorial sea or economic zone, and their presence does not affect the delimitation of the territorial sea or economic zone of the coastal State.

Provision 77

Formula A

The establishment of any other type of installation by third States or their nationals is subject to the permission of the coastal State.

Formula B

No State shall be entitled to construct, maintain, deploy or operate on the continental shelf of another State any military installations or devices or any other installations for whatever purposes without the consent of the coastal State.

Provision 78

Formula A

The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.

Formula B

In exercising its rights with respect to installations and sea-bed activities, the coastal State shall take all appropriate measures in the economic zone for the protection of the marine environment from pollution in connexion with such installations and activities, and ensure compliance with international minimum standards for this purpose established in accordance with the provisions of chapter ... (Pollution).

The coastal State shall have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes.

Provision 79

The provisions of these articles shall not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling irrespective of the depth of water above the subsoil.

Provision 80

Formula A

1. A coastal State shall make contributions to the International Authority out of the revenues derived from exploitation of the non-living resources of its ... zone in accordance with the following paragraph.

2. The rate of contribution shall be ... per cent of the revenues from exploitation carried out within 40 miles or the 200-metre isobath of the ... zone, whichever limit the coastal State may choose to adopt, and ... per cent of the revenues from exploitation carried out beyond 40 miles or the 200-metre isobath within the ... zone.

3. The International Authority shall distribute these contributions on the basis of equitable sharing criteria.

Formula B

The coastal State in the exercise of its rights with respect to the non-renewable natural resources of the continental shelf:

... shall pay, in respect of the exploitation of such non-renewable resources seaward of the territorial sea or the 200-metre isobath, whichever is further seaward (insert formula), to be used, as specified in article ... for international community purposes, particularly for the benefit of developing countries.

2. Outer limit of the continental shelf: applicable criteria

Provision 81

Formula A

(Provision 68, formula A)

Formula B

(Provision 68, formula B)

Formula C

(Provision 68, formula C)

Formula D

(Provision 68, formula D)

Formula E

[The outer limit of the continental shelf] may be established by the coastal State within the ... metre isobath; in areas where the ... metre isobath is situated at a distance less than ... nautical miles measured from the baselines from which the territorial sea is measured, the outer limit of the continental shelf may be established by the coastal State by a line every point of which is at a distance from the nearest point of the said baselines not exceeding ... nautical miles.

Formula F

By virtue of the principle that the continental shelf is the natural prolongation of the continental territory, a coastal State may reasonably define, according to its specific geographical conditions, the limits of the continental shelf under its exclusive jurisdiction beyond its territorial sea or economic zone. The maximum limits of such continental shelf may be determined among States through consultations.

Formula G

1. The outer limit of the continental shelf may be established by the coastal State within the 500-metre isobath.

2. In areas where the 500-metre isobath referred to in paragraph 1 hereof is situated at a distance less than 200 nautical miles measured from the baselines from which the territorial sea is measured, the outer limit of the continental shelf may be established by the coastal State by a line every point of which is at a distance from the nearest point of the said baselines not exceeding 200 nautical miles.

3. In areas where there is no continental shelf, the coastal State may have the same rights in respect of the sea-bed as in respect of the continental shelf, within the limits provided for in paragraph 2 hereof.

Formula H

The outer limit of the continental shelf shall not exceed a maximum distance of 200 nautical miles from the baseline for measuring the breadth of the territorial sea as set out in ...

3. Questions of the delimitation between States;
various aspects involved

Provision 82

Formula A

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this provision should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

Formula B

1. Where the coasts of two or more States are adjacent and/or opposite, the continental shelf areas appertaining to each State shall be determined by agreement among them, in accordance with equitable principles.

2. In the course of negotiations, the States shall take into account all the relevant factors ...

3. The States shall make use of any of the methods envisaged in Article 33 of the Charter of the United Nations, as well as those established under international agreements to which they are parties, or other peaceful means open to them, in case any of the parties refuses to enter into or continue negotiations or in order to resolve differences which may arise during such negotiations.

4. The States may decide to apply any one or a combination of methods and principles appropriate for arriving at an equitable delimitation based on agreement.

Formula C

1. Where the coasts of two or more States are adjacent or opposite to each other, the delimitation of the boundary of the continental shelf appertaining to such States shall be determined by agreement between them, taking into account the principle of equidistance.

2. Failing such agreement, no State is entitled to extend its sovereignty over the continental shelf beyond the median line every point of which is equidistant from the nearest points of the baselines, ... from which the breadth of the territorial sea of each of the two States is measured.

Formula D

1. The delimitation of the continental shelf or the exclusive economic zone between adjacent and/or opposite States must be done by agreement between them, in accordance with an equitable dividing

line, the median or equidistance line not being necessarily the only method of delimitation.

2. For this purpose, special account should be taken of geological and geomorphological criteria, as well as of all the special circumstances, including the existence of islands or islets in the area to be delimited.

Provision 83

Where there is an agreement between the States concerned, questions relating to the delimitation of their (economic zones—patrimonial seas) and their sea-bed areas shall be determined in accordance with the provisions of that agreement.

Provision 84

No State shall by reason of this Convention claim or exercise rights over the natural resources of any area of the sea-bed and subsoil over which another State had, under international law immediately before the coming into force of this Convention, sovereign rights for the purpose of exploring it or exploiting its natural resources.

4. Natural resources of the continental shelf

Provision 85

The natural resources referred to in these provisions consist of the mineral and other non-living resources of the sea-bed and subsoil, together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

5. Régime for waters superjacent to the continental shelf

Provision 86

Formula A

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the air space above those waters.

Formula B

The rights of the coastal State over the continental shelf do not affect the legal régime of the superjacent waters or air space.

The normal navigation and overflight on and in the air space above the superjacent waters of the continental shelf by ships and aircraft of all States shall not be prejudiced.

6. Scientific research

Provision 87

Formula A

The consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless, the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published.

Formula B

The coastal State may authorize scientific research activities on the continental shelf; it is entitled to participate in them and to receive the results thereof. In such regulations as the coastal State may issue on the matter, the desirability of promoting and facilitating such activities shall be taken especially into account.

PART V. EXCLUSIVE ECONOMIC ZONE BEYOND THE TERRITORIAL SEA (item 6)*

Provision 88

Coastal States have the right to establish beyond their territorial sea an exclusive economic zone . . .

*For purely methodological reasons, the position of those delegations for whom the concept of an exclusive economic zone would be subsumed in a territorial sea extending up to 200 miles, is not reflected as a trend in part V.

. . . for the benefit of their peoples and their respective economies . . .

Provision 89

Formula A

In respect of a territory whose people have not achieved full independence or some other self-governing status recognized by the United Nations, the rights to the resources of its exclusive economic zone belong to the people of that territory. These rights shall be exercised by such people for their benefits and in accordance with their needs and requirements. Such rights may not be assumed, exercised or benefited from or in any way be infringed upon by a foreign Power administering or occupying or purporting to administer or to occupy such territory.

Formula B

In respect of a territory whose people have attained neither full independence nor some other self-governing status following an act of self-determination under the auspices of the United Nations, the rights to the resources of the economic zone created in respect of that territory and to the resources of its continental shelf are vested in the inhabitants of that territory to be exercised by them for their benefit and in accordance with their needs and requirements. Such rights may not be assumed, exercised or profited from or in any way infringed by a metropolitan or foreign Power administering or occupying that territory.

1. Nature and characteristics, including rights and jurisdiction of coastal States in relation to resources, pollution control and scientific research in the zone. Duties of States

Provision 90

Formula A

The coastal State has sovereign rights over the renewable and non-renewable natural resources which are found in the waters, in the sea-bed and in the subsoil of an area adjacent to the territorial sea called the patrimonial sea.

The coastal State has the right to adopt the necessary measures to ensure its sovereignty over the resources and prevent marine pollution of its patrimonial sea.

The coastal State has the duty to promote and the right to regulate the conduct of scientific research within the patrimonial sea.

. . . The coastal State shall authorize and regulate the emplacement and use of artificial islands and any kind of facilities on the surface of the sea, in the water column and on the sea-bed and subsoil of the patrimonial sea.

Formula B

1. (a) In the exclusive economic zone a coastal State shall have sovereignty over the living and non-living resources. It shall have sovereign rights for the purpose of regulation, control, exploration, exploitation, protection and preservation of all living and non-living resources therein.

(b) The resources referred to in subparagraph (a) above shall encompass the living and non-living resources of the water column, the sea-bed and the subsoil.

(c) Subject to article . . . (provision 94, formula A), no other State has the right to explore and exploit the resources therein without the consent or agreement of the coastal State.

2. A coastal State shall also have exclusive jurisdiction within the exclusive economic zone, *inter alia*, for the purposes of:

(a) Control, regulation and preservation of the marine environment including pollution control and abatement;

(b) Control, authorization and regulation of scientific research;

(c) Control and regulation of customs and fiscal matters related to economic activities in the zone.

3. A coastal State shall have the exclusive right to make and enforce regulations relating to, *inter alia*, the following:

(a) The authorization and regulation of drilling for all purposes;

(b) The construction, emplacement, operation and use of artificial islands and other installations;

(c) Establishment and regulation of safety zones around such off-shore islands and installations;

(d) The licensing of fishing vessels and gear;

- (e) Closed fishing seasons;
- (f) Types, sizes and amount of gear; and numbers, sizes and types of fishing vessels;
- (g) Quota and sizes of fish that may be caught;
- (h) The conduct of research, disposition of samples and reporting of associated scientific data.

Formula C

1. A coastal State has the following rights and competences in its exclusive economic zone:

- (a) Exclusive right to explore and exploit the renewable living resources of the sea and the sea-bed;
- (b) Sovereign rights for the purpose of exploring and exploiting the non-renewable resources of the continental shelf, the sea-bed and the subsoil thereof;
- (c) Exclusive right for the management, protection and conservation of the living resources of the sea and sea-bed, taking into account the recommendations of the appropriate international or regional fisheries organizations; . . .
- (d) Exclusive jurisdiction for the purpose of protection, prevention and regulation of other matters ancillary to the rights and competences aforesaid and, in particular, the prevention and punishment of infringements of its customs, fiscal, immigration or sanitary regulations within its territorial sea and economic zone.

2. A coastal State shall have the exclusive right to authorize and regulate in the exclusive economic zone, the continental shelf, ocean bed and subsoil thereof, the construction, emplacement, operation and use of off-shore artificial islands and other installations for purposes of the exploration and exploitation of the non-renewable resources thereof.

3. A coastal State may establish a reasonable area of safety zones around its off-shore artificial islands and other installations in which it may take appropriate measures to ensure the safety both of its installations and of navigation. Such safety zones shall be designed to ensure that they are reasonably related to the nature and functions of the installations.

Formula D

1. The coastal State exercises in and throughout an area beyond and adjacent to its territorial sea, known as the exclusive economic zone: (a) sovereign rights for the purpose of exploring and exploiting the natural resources, whether renewable or non-renewable, of the sea-bed and subsoil and the superjacent waters; (b) the other rights and duties specified in these articles with regard to the protection and preservation of the marine environment and the conduct of scientific research. The exercise of these rights shall be without prejudice to article . . . (Continental shelf).

2. . . . The emplacement and use of artificial islands and other installations on the surface of the sea, in the waters and on the sea-bed and subsoil of the economic zone, shall be subject to the authorization and regulation of the coastal State.

Formula E

1. (a) The coastal State exercises in and throughout an area beyond and adjacent to its territorial sea, known as the economic zone, the jurisdiction and the sovereign and exclusive rights set forth in this chapter for the purpose of exploring and exploiting the natural resources, whether renewable or non-renewable, of the sea-bed and subsoil and the superjacent waters.

(b) The coastal State exercises in the economic zone the other rights and duties specified in this Convention, including those with regard to the protection and preservation of the marine environment and the conduct of scientific research.

(c) The exercise of these rights shall be in conformity with and subject to the provisions of this Convention, and shall be without prejudice to the provisions of part III of this chapter.

2. (a) The coastal State shall have the exclusive right to authorize and regulate in the economic zone, the construction, operation and use of artificial islands and installations for the purpose of exploration or exploitation of natural resources, or for other economic purposes, and of any installation which may interfere with the exercise of the rights of the coastal State in the economic zone.

(b) The coastal State may, where necessary, establish reasonable safety zones around such off-shore installations in which it may take appropriate measures to ensure the safety both of the installations and of navigation.

(c) The provisions of article . . . (Installations) shall apply *mutatis mutandis* to such artificial islands and installations.

3. The coastal State shall have the exclusive right to authorize and regulate drilling for all purposes in the economic zone.

4. With respect to activities subject to its sovereign or exclusive rights, the coastal State may take such measures in the economic zone as may be necessary to ensure compliance with its laws and regulations in conformity with the provisions of this Convention.

Provision 91

No State shall be entitled to construct, maintain, deploy or operate, in the exclusive economic zone of another State, any military installation or device or any other installation or device for whatever purposes without the consent of the coastal State.

Provision 92

Formula A

The coastal State shall exercise its rights and obligations in the economic zone in accordance with the provisions of this Convention, with due regard to other legitimate uses of the high seas and bearing in mind the need for a rational exploitation of the natural resources of the sea and the preservation of the sea environment.

Formula B

1. The coastal State shall exercise its rights and perform its duties in the economic zone without unjustifiable interference with navigation or other uses of the sea, and ensure compliance with applicable international standards established by the appropriate international organizations for this purpose.

2. In exercising their rights, States shall not unjustifiably interfere with the exercise of the rights or the performance of the duties of the coastal State in the economic zone.

Provision 93

A coastal State, in its exclusive economic zone, shall enforce applicable international standards regarding the safety of navigation.

Provision 94

Formula A

1. Developing land-locked and other geographically disadvantaged States have the right to exploit the living resources of the exclusive economic zones of neighbouring States and shall bear the corresponding obligations.

2. Nationals of land-locked and other geographically disadvantaged States shall enjoy the same rights and bear the same obligations as nationals of coastal States in the exploitation of the living resources of the exclusive economic zone.

3. Bilateral, subregional or regional arrangements shall be worked out for the purposes of ensuring the enjoyment of the rights and the carrying out of the obligations referred to in paragraphs 1 and 2 of this article in full respect of the sovereignty of the States concerned.

Formula B

1. The régime applicable to any economic zone or patrimonial sea provided for in article . . . of this Convention shall be subject to the rights of developing geographically disadvantaged States as contained in articles . . .

2. In any region where there are geographically disadvantaged States, the nationals of such States shall have the right to exploit the renewable resources within the economic zones or patrimonial seas of the region for the purpose of fostering the development of their fishing industry and satisfying the nutritional needs of such populations.

3. The States of the region shall co-operate to the fullest extent in order to secure the enjoyment of this right.

Formula C

Land-locked and geographically disadvantaged States shall have the right to explore and exploit the living resources of the exclusive economic zones of neighbouring coastal States, subject to appropriate bilateral or regional arrangements or agreements with such coastal States.

Formula D

1. Land-locked and other geographically disadvantaged States shall have the right to participate in the exploration and exploitation of the living resources of the . . . zone of neighbouring coastal States on

an equal and non-discriminatory basis. For the purpose of facilitating the orderly development and the rational exploitation of the living resources of the particular zones, the States concerned may decide upon appropriate arrangements to regulate the exploitation of the resources in those zones.

2. Land-locked and other geographically disadvantaged States shall have the right to participate in the exploration and exploitation of the non-living resources of the ... zone of neighbouring coastal States on an equal and non-discriminatory basis. Equitable arrangements for the exercise of this right shall be made by the States concerned.

3. The expression "neighbouring coastal States" not only refers to States adjacent to each other, but also includes States of a region situated within reasonable proximity to a land-locked or other geographically disadvantaged State.

Provision 95

Formula A

1. All States deriving revenues from the exploitation of the non-living resources of the ... zone shall make contributions to the International Authority at the rate of ... per cent of the net revenues.

2. The International Authority shall distribute these contributions on the same basis as the revenues derived from the exploitation of the international sea-bed area.

Formula B

The sovereign rights of the coastal State over its continental shelf are exclusive. The revenues derived from the exploitation of the natural resources of the continental shelf shall not be subject to any revenue sharing.

2. Resources of the zone

Provision 96

The natural resources of the (economic zone/patrimonial sea) comprise the renewable and non-renewable natural resources of the waters, the sea-bed and the subsoil thereof.

3. Freedom of navigation and overflight

Provision 97

Formula A

In the economic zone, ships and aircraft of all States, whether coastal or not, shall enjoy the right of freedom of navigation and overflight and the right to lay submarine cables and pipelines with no restrictions other than those resulting from the exercise by the coastal State of its rights within the area.

Formula B

A coastal State, in its exclusive economic zone, is under an international duty not to interfere without reasonable justification with:

- (a) The freedom of navigation and overflight, and
- (b) The freedom of laying of submarine cables and pipelines.

A coastal State shall not erect or establish artificial islands and other installations, including safety zones around them, in such a manner as to interfere with the use of all States of recognized sea lanes and traffic separation schemes essential to international navigation.

Formula C

The rights of the coastal State in the economic zone shall be exercised without prejudice to the rights of all other States, whether having access to the sea or land-locked, as recognized in the provisions of this Convention and in international law, including the right to freedom of navigation, freedom of overflight, and freedom to lay submarine cables and pipelines.

Formula D

1. In the exclusive economic zone all States shall enjoy the freedom of navigation, overflight and laying of submarine cables and pipelines.

2. In the exercise of freedoms referred to in paragraph 1 of this article, States shall ensure that their activities in the exclusive economic zone are carried out in such a manner as not to interfere with the rights and interests of the coastal State.

4. Regional arrangements

Provision 98

Formula A

Coastal States and land-locked and other geographically disadvantaged States within a region or subregion may enter into any arrange-

ment for the establishment of regional or subregional ... zones with a view to giving effect to the provisions of articles ... on a collective basis.

Formula B

Coastal States and neighbouring land-locked States shall have the right to establish jointly regional economic zones between the 12-mile territorial sea and up to a maximum distance of 200 nautical miles, measured from the applicable baselines of the territorial sea.

Formula C

States in a region may establish regional or subregional arrangements for the purposes of developing and managing the living resources, promoting scientific research, preventing and controlling pollution, and for the purpose of peaceful settlement of disputes.

5. Limits: applicable criteria

Provision 99

Formula A

The outer limit of the patrimonial sea shall not exceed 200 nautical miles from the applicable baselines for measuring the territorial sea.

Formula B

The limits of the economic zone shall be fixed in nautical miles in accordance with criteria in each region, which take into consideration the resources of the region and the rights and interests of developing land-locked, near land-locked, shelf-locked States and States with narrow shelves and without prejudice to limits adopted by any State within the region. The economic zone shall not in any case exceed 200 nautical miles, measured from the baselines for determining the territorial sea.

6. Fisheries

6.1 Exclusive fishery zone

Provision 100

Formula A

In the economic zone the coastal State shall exercise sovereign rights for the purpose of exploration, exploitation, conservation and management of the living resources including fisheries, in this zone, and shall adopt from time to time such measures as it may deem necessary and appropriate. The living resources may be plant or animal, and may be located on the water surface, within the water column, on the seabed or in the subsoil thereof.

Formula B

The coastal State exercises exclusive rights for the purpose of regulating fishing within the economic zone, subject to the provisions of these articles.

Provision 101

All fishing activities in the exclusive economic zone and the rest of the sea shall be conducted with due regard to the interests of the other States in the legitimate uses of the sea. In the exercise of their rights, the other States shall not interfere with fishing activities in the exclusive economic zone.

Provision 102

The coastal State shall co-operate with the appropriate regional and international organizations concerned with fishery matters when exercising its rights over living resources in the economic zone and, taking into account their recommendations, shall maintain the maximum allowable catch of fish and other living resources.

Provision 103

Formula A

The coastal State may allow nationals of other States to fish in its exclusive economic zone, subject to such terms, conditions and regulations as it may from time to time prescribe. These may, *inter alia*, relate to the following:

(a) Licensing of fishing vessels and equipment, including payment of fees and other forms of remuneration;

(b) Limiting the number of vessels and the number of gear that may be used;

- (c) Specifying the gear permitted to be used;
- (d) Fixing the periods during which the prescribed species may be caught;
- (e) Fixing the age and size of fish that may be caught;
- (f) Fixing the quota of catch, whether in relation to particular species of fish to catch per vessel over a period of time or to the total catch of nationals of one State during a prescribed period.

Formula B

1. Pursuant to its exclusive jurisdiction, it would be for the coastal State to determine the allowable catch of any particular species, and to allocate to itself that portion of the allowable catch, up to 100 per cent, that it can harvest.

2. Where the coastal State is unable to take 100 per cent of the allowable catch of a species as determined under the principles, it shall allow the entry of foreign fishing vessels with a view to maintaining the maximum possible food supply. Such access shall be granted up to the level of allowable catch on an equitable basis without the imposition of unreasonable conditions and in accordance with the provisions of these articles.

Formula C

1. The coastal State shall ensure the full utilization of renewable resources within the economic zone.

2. For this purpose, the coastal State shall permit nationals of other States to fish for that portion of the allowable catch of the renewable resources not fully utilized by its nationals, subject to the conservation measures adopted pursuant to articles . . . (provisions 99 and 107), and on the basis of the following priorities:

(a) States that have normally fished for a resource, subject to the conditions of paragraph 3;

(b) States in the region, particularly land-locked States and States with limited access to living resources off their coast; and

(c) All other States.

The coastal State may establish reasonable regulations and require the payment of reasonable fees for this purpose.

3. The priority under paragraph 2 (a) above shall be reasonably related to the extent of fishing by such State. Whenever necessary to reduce such fishing in order to accommodate an increase in the harvesting capacity of a coastal State, such reduction shall be without discrimination, and the coastal State shall enter into consultations for this purpose at the request of the State or States concerned with a view to minimizing adverse economic consequences of such reduction.

4. The coastal State may consider foreign nationals fishing pursuant to arrangements under articles . . . (provision 94 and provision 104, formula B) as nationals of the coastal State for purposes of paragraph 2 above.

Provision 104

Formula A

Neighbouring developing coastal States shall allow each others' nationals the right to fish in a specified area of their respective fishery zones on the basis of long and mutually recognized usage and economic dependence on exploitation of the resources of that area. The modalities of the exercise of this right shall be settled by agreement between the States concerned. This right will be available to the nationals of the State concerned and cannot be transferred to third parties by lease or licence, by establishing joint collaboration ventures, or by any other arrangement. Jurisdiction and control over the conservation, development and management of the resources of the specified area shall lie with the coastal State in whose zone that area is located.

Formula B

Neighbouring coastal States may allow each others' nationals the right to fish in a specified area of their respective economic zones on the basis of reciprocity, or long and mutually recognized usage, or economic dependence of a State or region thereof on exploitation of the resources of that area. The modalities of the exercise of this right shall be settled by agreement between the States concerned. Such right cannot be transferred to third parties.

Formula C

1. Measures adopted by the coastal State shall take account of traditional subsistence fishing carried out in any part of the fisheries zone.

2. When the coastal State intends to allocate to itself the whole of the allowable catch of a species, in accordance with these principles, it shall enter into consultations with any other State which requests such consultations and which is able to demonstrate that its vessels have carried on fishing in the fishery resources zone on a substantial scale for a period of not less than [10] years with a view to:

(a) Analysing the catch and effort statistics of the other State in order to establish the level of fishing operations carried out in the zone by the other State;

(b) Negotiating special arrangements with the other State under which the latter's vessels would be "phased out" of the fishery having regard to the developing fishing capacity of the coastal State; and

(c) In the event of agreement not being reached through consultation there shall be a "phasing out" period of [5] years.

6.2 Preferential rights of coastal States

Provision 105

On the basis of appropriate scientific data and in accordance with the recommendations of the competent international fishery organizations consisting of representatives of interested States in the region concerned and other States engaged in fishing in the region, the coastal State shall determine in the economic zone:

(a) The allowable annual catch of each species of fish or other living marine resources except highly migratory species of fish;

(b) The proportion of the allowable annual catch of each species of fish or other living marine resources that it reserves for its nationals;

(c) That part of the allowable annual catch of fish or other living marine resources that may be taken by other States holding licences to fish in the economic zone in accordance with articles . . . (provision 106, paras. 1, 2 and 3).

Provision 106

1. Permission for foreign fishermen to fish in the economic zone of a developed coastal State shall be granted on an equitable basis and in accordance with the provisions of articles . . . of this Convention.

2. Foreign fishermen may be allowed to fish in the economic zone of a developing coastal State by the grant of a special licence and in accordance with the provisions of articles . . . of this Convention.

3. When granting foreign vessels permission to fish in the economic zone and in order to ensure an equitable distribution of living resources, a coastal State shall observe, while respecting the priority of the States specified in articles . . . of this Convention in the following order:

(a) States which have borne considerable material and other costs or research, discovery, identification and exploitation of living resource stocks, or which have been fishing in the region involved;

(b) Developing countries, land-locked countries, countries with narrow access to the sea or with narrow continental shelves, and countries with very limited living marine resources; . . .

4. Any questions of payment for the grant of licences to foreign fishermen to fish in the economic zone of a developing coastal State shall be settled in accordance with the provisions of this Convention and the recommendations of the competent international fishery organizations and by agreement between the States concerned.

5. Payment for fishing permits granted to foreign fishermen in the economic zone of a developing coastal State shall be levied on a reasonable basis and may take various forms.

Provision 107

In order to enable the fishing fleet of other States whose fishermen have habitually fished in the economic zone established pursuant to article . . . of this Convention to change over to working under the new conditions, a coastal State shall continue to grant the fishermen specified in this article the right to fish in the economic zone for a transition period of not less than three years after the entry into force of this Convention.

6.3 Management and conservation

Provision 108

Formula A

1. In adopting measures to conserve living resources in the economic zone, the coastal State shall endeavour to maintain the produc-

tivity of species and avoid harmful effects for the survival of living resources outside the said zone.

2. The coastal State shall, for the foregoing purposes, promote any necessary co-operation with other States and with competent international organizations.

Formula B

1. It shall be the responsibility of the coastal State to provide proper management and utilization of the living resources within its zone of exclusive jurisdiction, including:

(a) Maintenance of the level of stocks which will provide the maximum sustainable yield;

(b) Rational utilization of the resources and the promotion of economic stability coupled with the highest possible food production; and

(c) Where the resource is required for direct human consumption in the coastal State, the highest possible priority to be given to the production of fish for direct human consumption.

2. Measures that the coastal State may take include:

(a) Requiring licensing by it of fishing vessels and equipment to operate in the zone;

(b) Limiting the number of vessels and the number of units of gear that may be used;

(c) Specifying the gear permitted to be used;

(d) Fixing the period during which fish or fish of a species or class may be taken;

(e) Fixing the size of fish that may be taken;

(f) Specifying the method of fishing that may be used in a specified area or for taking a specified species or class of fish and prohibiting any other methods.

3. The coastal State has responsibility to conduct research on the resources within the zone to enable it to fulfil its responsibility to provide proper management and rational utilization of those resources. It shall publish the results of that research within a reasonable period. Other States operating within the zone shall assist in the research programmes and shall provide comprehensive catch, effort and biological data at reasonable intervals as required.

Formula C

1. States shall co-operate in the elaboration of global and regional standards and guidelines for the conservation, allocation, and rational management of living resources directly or within the framework of appropriate international and regional fisheries organizations.

2. Coastal States of a region shall, with respect to fishing for identical or associated species, agree upon the measures necessary to co-ordinate and ensure the conservation and equitable allocation of such species.

3. Coastal States shall give to all affected States timely notice of any conservation, utilization and allocation regulations prior to their implementation, and shall consult with such States at their request.

An international register of independent fisheries experts shall be established and maintained by the Food and Agriculture Organization of the United Nations. Any developing State party to the Convention desiring assistance may select an appropriate number of such experts to serve as fishery management advisers to that State.

Provision 109

Formula A

The objective of conservation measures is to achieve the maximum sustainable yields of fishery resources and thereby to secure and maintain a maximum supply of food and other marine products.

1. Conservation measures must be adopted on the basis of the best scientific evidence available. If the States concerned cannot reach agreement on the assessment of the conditions of the stock to which conservation measures are to be applied, they shall request an appropriate international body or other impartial third party to undertake the assessment. In order to obtain the fairest possible assessment of the stock conditions, the States concerned shall co-operate in the establishment of regional institutions for surveying and research into fishery resources.

2. No conservation measures shall discriminate in form or in fact between fishermen of one State from those of other States.

3. Conservation measures shall be determined, to the extent possible, on the basis of the allowable catch estimated with respect to the individual stocks of fish. The foregoing principle, however, shall not preclude conservation measures from being determined on some other

bases in cases where, due to lack of sufficient data, an estimate of the allowable catch is not possible with any reasonable degree of accuracy.

4. No State can be exempted from the obligation to adopt conservation measures on the ground that sufficient scientific findings are lacking.

5. The conservation measures adopted shall be designed so as to minimize interference with fishing activities relating to stocks of fish, if any, which are not the object of such measures.

6. Conservation measures and the data on the basis of which such measures are adopted shall be subject to review at appropriate intervals.

Formula B

1. The coastal State shall ensure the conservation of renewable resources within the economic zone.

2. For this purpose, the coastal State shall apply the following principles:

(a) Allowable catch and other conservation measures shall be established which are designed, on the best evidence available to the coastal State, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, taking into account relevant environmental and economic factors, and any generally agreed global and regional minimum standards;

(b) Such measures shall take into account effects on species associated with or dependent upon harvest species and at a minimum, shall be designed to maintain or restore populations of such associated or dependent species above levels at which they may become threatened with extinction.

(c) For this purpose, scientific information, catch and fishing effort statistics, and other relevant data, shall be contributed and exchanged on a regular basis;

(d) Conservation measures and their implementation shall not discriminate in form or in fact against any fishermen. Conservation measures shall remain in force pending the settlement, in accordance with the provisions of chapter . . . of any disagreement as to their validity.

Provision 110

Formula A

1. Fisheries for anadromous fish shall be conducted only within the exclusive economic zones of coastal States and subject to the terms, conditions and regulations which they may from time to time prescribe.

2. The coastal State in whose waters anadromous fish spawn shall have responsibility for the management of these stocks and for the maintenance of such stocks at their optimum level.

3. When fisheries for anadromous species originating in one State are conducted by other States within their own exclusive fishery zones, such fisheries shall be regulated by agreement between the coastal State (or States) concerned and the State (or States) of origin, taking into account the preferential rights of the State (or States) of origin and its (or their) responsibility for the maintenance of the stocks.

Formula B

1. The conservation and management of anadromous species shall be regulated through arrangements among the States participating in the exploitation of such species and, where appropriate, through regional intergovernmental organizations established for this purpose.

2. The special interest of the coastal State, in whose fresh or estuarine waters anadromous species spawn, shall be taken into account in the arrangements for regulating such species.

Formula C

1. Coastal States in whose rivers anadromous species of fish (*salmonidae*) spawn shall have sovereign rights over such fish and all other living marine resources within the economic zone and preferential rights outside the zone in the migration area of anadromous fish.

2. Fishing by foreign fisheries for anadromous species may be carried on by an agreement between the coastal State and another interested State establishing regulatory and other conditions governing fishing by foreign nationals.

3. Priority in obtaining the right to fish for anadromous species shall be given to States participating jointly with the coastal States in measures to renew that species of fish, particularly in expenditure for that purpose, and to States which have traditionally fished for anadromous species in the region concerned.

Formula D

1. Fishing for anadromous species seaward of the territorial sea (both within and beyond the economic zone) is prohibited, except as authorized by the State of origin in accordance with articles . . . provision 103, formula C and provision 109, formula B).

2. States through whose internal waters or territorial sea anadromous species migrate shall co-operate with the State of origin in the conservation and utilization of such species.

Formula E

1. The exploitation of anadromous species shall be regulated by agreement among interested States or by international arrangements through the appropriate intergovernmental fisheries organization.

2. All interested States shall have an equal right to participate in such arrangements and organizations. Any arrangement shall take into account the interest of the State of origin and the interests of other coastal States.

Provision 111

1. Fisheries for catadromous fish shall be conducted only within the fishery [economic] zones of coastal States and subject to the terms, conditions and regulations that they may prescribe.

2. The coastal State in whose waters catadromous fish spend the greater part of their life cycle (hereinafter called the producing State) shall have the responsibility for the management of these stocks and their maintenance at optimum levels; in particular, the producing State shall ensure the ingress and egress of migrating fish.

3. In circumstances where catadromous fish migrate through the fishery [economic] zone of another State or States, whether as juvenile or maturing fish, the management of such fisheries, including harvesting, shall be regulated by agreement between the producing State and the other State or States concerned, which agreement shall both ensure the maintenance of the stocks at their optimum levels and take into account the preferential rights of the producing State and its responsibility for the maintenance of such stocks.

*Provision 112**Formula A*

Fishing for highly migratory species shall be regulated in accordance with the following principles:

A. *Management.* Fishing for the highly migratory species listed in the annex hereto within the economic zone shall be regulated by the coastal State, and beyond the economic zone by the State of nationality of the vessel, in accordance with regulations established by appropriate international or regional fishing organizations pursuant to this article.

All coastal States in the region, and any other State whose flag vessels harvest a species subject to regulation by the organization, shall participate in the organization. If no such organization has been established, such States shall establish one.

Regulations of the organization in accordance with this article shall apply to all vessels fishing the species regardless of their nationality.

B. *Conservation.* The organization shall, on the basis of the best scientific evidence available, establish allowable catch and other conservation measures in accordance with the principles of article . . . (provision 109, formula B).

C. *Allocation.* Allocation regulations of the organization shall be designed to ensure full utilization of the allowable catch and equitable sharing by member States.

Allocations shall take into account the special interests of the coastal State within whose economic zone highly migratory species are caught, and shall for this purpose apply the following principles within and beyond the economic zone: [insert appropriate principles].

Allocations shall be designed to minimize adverse economic consequences in a State or region thereof.

D. *Fees.* The coastal State shall receive reasonable fees for fish caught by foreign vessels in its economic zone, with a view to making an effective contribution to coastal State fisheries management and development programmes. The organization shall establish rules for the collection and payment of such fees, and shall make appropriate arrangements with the coastal State regarding the establishment and application of such rules. In addition, the organization may collect fees on a non-discriminatory basis based on fish caught both within and outside the economic zone for administrative and scientific research purposes.

E. *Prevention of interference.* The organization shall establish fishing regulations for highly migratory species in such a way as to prevent unjustifiable interference with other uses of the sea, including coastal State fishing activities, and shall give due consideration to coastal State proposals in this regard.

F. *Transition.* Pending the establishment of an organization in accordance with this article, the provisions of this article shall be applied temporarily by agreement among the States concerned.

G. *Interim measures.* If the organization or States concerned are unable to reach agreement on any of the matters specified in this article, any State party may request, on an urgent basis, pending resolution of the dispute, the establishment of interim measures applying the provisions of this article pursuant to the dispute settlement procedures specified in chapter . . . The immediately preceding agreed regulations shall continue to be observed until interim measures are established.

Formula B

1. Any coastal State in whose economic zone or other waters (archipelagic, territorial and internal waters) highly migratory species are found or taken and any State whose vessels take such species may request the opinion of the Director-General of FAO as to whether proper management of such species requires the setting up of an appropriate international or regional organization. The Director-General of FAO shall respond within 90 days of any such request, rendering his opinion, and if such opinion is positive, designating the members of the organization. In addition the Director-General may recommend the institutional arrangements for the organization. All designated States shall have the obligation to take all action necessary to establish the organization within the shortest possible time.

2. All States shall co-operate fully with an appropriate international or regional organization (being either an organization which exists on the date of entry into force of this article or an organization set up pursuant to this article) established and empowered to issue regulations to conserve and manage the species concerned, including the allocation of national quotas.

3. In the absence of agreement to the contrary decisions of the organization shall require an affirmative vote of two thirds of its members.

4. In formulating regulations the organization shall take into account the following criteria:

(a) The coastal State's right in priority to other States to harvest the regulated species within its economic zone to the extent of its harvesting capacity subject only to conservation measures issued by the organization in order to maintain or restore the regulated species.

(b) The rational utilization of such species within its maximum sustainable yield based on the best available scientific evidence.

(c) Traditional harvesting patterns both in the region and in the economic zone, taking into account the desirability of avoiding to the maximum extent possible severe economic dislocations in any State as a result of the application of this article.

(d) The criteria applicable to other than highly migratory species, as set out in article . . .

5. (a) The organization shall fix a uniform fee for fish caught whether inside or outside an economic zone, provided that a coastal State shall be exempt from such fee in respect of fish caught by its vessels in its economic zone or other waters.

(b) The uniform fee shall be fixed at a reasonable level, with a view to providing for:

(i) The organization's administrative expenses.

(ii) Effective contribution to management and development programmes for the species concerned.

(iii) Enforcement.

(iv) Scientific research.

(c) The coastal State shall receive the uniform fee paid in respect of fish caught by foreign vessels within its economic zone.

(d) The organization shall establish rules for the collection and payment of the uniform fee, and shall make appropriate arrangements with the coastal State regarding the establishment and application of such rules.

(e) The organization may require a member to make a minimum contribution to its budget, taking into account fees received by the organization in respect of fishing by the member's nationals.

6. Each State shall give effect to the regulations issued by the organization:

(a) Within its economic zone or other waters it shall apply those regulations to all persons and vessels.

(b) Outside its economic zone it shall apply those regulations to vessels flying its flag.

Provision 113

Notwithstanding the provisions of this chapter with respect to full utilization of living resources, nothing herein shall prevent a coastal State or international organization, as appropriate, from prohibiting the exploitation of marine mammals.

Provision 114

Formula A

1. The coastal State may itself exercise control over the observance of the fishing regulatory measures initiated by it under . . .

2. In cases where the competent authorities of the coastal State have sufficient reasons for believing that a foreign vessel engaged in fishing is violating these measures, they may stop the vessel and inspect it, and also draw up a statement of the violations. The consideration of cases which may arise in connexion with violations of the said measures by a foreign vessel, as well as the punishment of members of the crew guilty of such violations, shall be effected by the flag State of the vessel which has committed the violation. Such State shall notify the coastal State of the results of the investigation and of measures taken by it.

Formula B

1. The coastal State may, in the exercise of its rights under this chapter with respect to the renewable natural resources, take such measures, including inspection and arrest, in the economic zone, and, in the case of anadromous species, seaward of the economic zones of the host State and other States, as may be necessary to ensure compliance with its laws and regulations, provided that when the State of nationality of a vessel has effective procedures for the punishment of vessels fishing in violation of such laws and regulations, such vessels shall be delivered promptly to duly authorized officials of the State of nationality of the vessel for legal proceedings, and may be prohibited by the coastal State from any fishing in the zone pending disposition of the case. The State of nationality shall within six months after such delivery notify the coastal State of the disposition of the case.

2. Regulations adopted by international organizations in accordance with article . . . (provision 112, formula A) shall be enforced as follows:

(a) Each State member of the organization shall make it an offence for its flag vessels to violate such regulations, and shall co-operate with other States in order to ensure compliance with such regulations.

(b) The coastal State may inspect and arrest foreign vessels in the economic zone for violating such regulations. The organization shall establish procedures for arrest and inspection by coastal and other States for violations of such regulations beyond the economic zone.

(c) An arrested vessel of a State member of the organization shall be promptly delivered to the duly authorized officials of the flag State for legal proceedings if requested by that State.

(d) The State of nationality of the vessel shall notify the organization and the arresting State of the disposition of the case within six months.

3. Arrested vessels and their crew shall be entitled to release upon the posting of reasonable bond or other security. Imprisonment or other forms of corporal punishment in respect of conviction for fishing violations may be imposed only by the State of nationality of the vessel or individual concerned.

Formula C

The jurisdiction and control over all fishing activities within the exclusive economic zone shall lie with the coastal State concerned.

7. Sea-bed within national jurisdiction

Provision 115

1. The coastal State shall comply with legal arrangements which it has entered into with other contracting States, their instrumentalities, or their nationals in respect to the exploration or exploitation of non-renewable natural resources; shall not take property of such States, instrumentalities or nations except for a public purpose on a non-discriminatory basis and with adequate provision at the time of taking

for prompt payment of just compensation in an effectively realizable form.

2. The coastal State shall pay, in respect of the exploitation of such non-renewable resources seaward of the territorial sea or the 200-metre isobath, whichever is further seaward (*insert formula*), to be used, as specified in article . . . for international community purposes, particularly for the benefit of developing countries.

7.1 Nature and characteristics

7.2 Delineation between adjacent and opposite States

Provision 116

Formula A

The delineation of the economic zone between adjacent and opposite States shall be carried out in accordance with international law.

Formula B

1. Where the coasts of two or more States are adjacent or opposite to each other and the distance between them is less than double the uniform breadth provided in this Convention, the delimitation of their economic zone and of their sea-bed areas shall be determined by agreement among themselves.

2. Failing such agreement, no State is entitled to extend its rights over an economic zone and sea-bed area beyond the limits of the median line every point of which is equidistant from the nearest points of the baseline, . . . from which the breadth of the above area of each of the two States is measured.

Formula C

1. Where the coasts of two or more States are adjacent or opposite to each other the delimitation of the respective economic zone shall be determined by agreement among them in accordance with equitable principles taking into account all the relevant factors including *inter alia* the geomorphological and geological structure of the sea-bed area involved, and special circumstances . . .

2. The States shall make use of the methods envisaged in Article 33 of the Charter of the United Nations, as well as those established under international agreements to which they are parties, or other peaceful means open to them in case any of the parties refuses to enter into or continue negotiations or in order to resolve divergences which may arise during such negotiations.

3. The States may decide to apply any one or a combination of methods and principles appropriate for arriving at an equitable delimitation based on agreement.

Formula D

1. The delimitation of the continental shelf or the exclusive economic zone between adjacent and/or opposite States must be done by agreement between them, in accordance with an equitable dividing line, the median or equidistance line not being necessarily the only method of delimitation.

2. For this purpose, special account should be taken of geological and geomorphological criteria, as well as of all the special circumstances . . .

Provision 117

Nothing provided herein shall prejudice the existing agreements between the coastal States concerned relating to the delimitation of the boundary of their respective coastal sea-bed area.

7.3 Sovereign rights over natural resources

Provision 118

The coastal State exercises over the sea-bed and subsoil of the submarine area adjacent to the coast but outside the area of the territorial sea, hereinafter referred to as the coastal sea-bed area, sovereign rights for the purpose of exploring it and exploiting its mineral resources.

7.4 Limits: applicable criteria

Provision 119

The coastal States shall have the right to establish the coastal sea-bed area up to a maximum distance of 200 nautical miles from the baseline for measuring the breadth of the territorial sea set out in . . .

8. Prevention and control of pollution and other hazards to the marine environment

Provision 120

Formula A

A coastal State shall also have jurisdiction to enforce in the maritime area adjacent to its territorial sea such measures as it may enact in order to prevent, mitigate or eliminate pollution damage and risks and other effects harmful or dangerous to the ecosystem of the marine environment, the quality and use of water, living resources, human health and the recreation of its people, taking into account co-operation with other States and in accordance with internationally agreed principles and standards.

Formula B

The coastal State shall exercise its rights and obligations in the economic zone in accordance with the provisions of this Convention, with due regard to other legitimate uses of the high seas and bearing in mind the need for a rational exploitation of the natural resources of the sea and the preservation of the sea environment.

Formula C

In exercising its rights with respect to installations and sea-bed activities in the economic zone, the coastal State may establish standards and requirements for the protection of the marine environment additional to or more stringent than those required by applicable international standards.

Provision 121

In exercising its rights with respect to installations and sea-bed activities, the coastal State shall take all appropriate measures in the economic zone for the protection of the marine environment from pollution, and ensure compliance with international minimum standards for this purpose established in accordance with the provisions of chapter ... (Pollution).

Provision 122

1. Every State undertakes to make the discharge of pollutants into the sea an offence punishable by adequate penalties.
2. Every State undertakes to make suitable provisions for the admission by its courts of law of documentary evidence, submitted by competent authorities of another State, concerning the commission by ships operating under its flag of an offence in respect of discharge of pollutants into the sea.

9. Scientific research

Provision 123

Formula A

It is also for the coastal State to authorize such scientific research activities as are carried on in the area; it is entitled to participate in them and to receive the results obtained. In such regulations as the coastal State may issue on the matter, the desirability of promoting and facilitating such activities shall be taken especially into account.

Formula B

Within the limits of the economic zone each State may freely carry out fundamental scientific research unrelated to the exploration and exploitation of the living or mineral resources of the zone. Scientific research in the economic zone related to the living and mineral resources shall be carried out with the consent of the coastal State.

PART VI. COASTAL STATE PREFERENTIAL RIGHTS OR OTHER NON-EXCLUSIVE JURISDICTION OVER RESOURCES BEYOND THE TERRITORIAL SEA (item 7)*

1. Nature, scope and characteristics

Provision 124

In a zone beyond its territorial sea, hereinafter called "the zone", the coastal State may exercise the rights and powers set forth in these articles.

*The Committee is conscious of the fact that the provisions contained in part VI are in fact mutually exclusive alternatives to the provisions contained in part V on the exclusive economic zone.

For purely methodological reasons, the positions of those delegations for whom the concept of a zone of preferential rights would be subsumed in a territorial sea that could be extended up to 200 miles is not reflected as a trend in part VI.

Provision 125

1. Subject to the articles set forth below, all States shall have the right to allow their nationals to engage in the exploitation of the fishery resources of the sea.

2. Such exploitation shall be regulated for the benefit of nationals of all States in such a way as to ensure the rational exploitation and conservation of the fishery resources of the sea in the interest of mankind as a whole.

3. For these purposes:

(a) In the zone referred to in article ... (provision 126), coastal States shall enjoy the fishing rights defined in these articles;

(b) All States shall maintain close co-operation at both the world and the regional levels in accordance with the following articles.

Provision 126

1. The zone shall not extend beyond ... nautical miles measured from the baseline of the territorial sea.

2. The extent of the zone shall be determined by the coastal State, within the limit referred to in paragraph 1, taking into account all relevant factors, in particular the geographical characteristics of the area and the fishery resources and their distribution off its coast.

Provision 127

Where the coasts of two States are opposite or adjacent to each other, the delimitation of their respective zones within the limits specified in article ... (provision 126) shall, failing agreement between them, be established in accordance with the provisions of article ...

2. Sea-bed resources

...

3. Fisheries

Provision 128

Formula A

1. To the extent consistent with the objective of conservation, a coastal State shall have a preferential right to ensure adequate protection to its coastal fisheries conducted in the adjacent waters, immediately beyond the limit of 12 miles from its coast, as follows:

(a) In the case of a developing coastal State:

The coastal State is entitled annually to reserve for its flag vessels that portion of the allowable catch of a stock of fish it can harvest on the basis of the fishing capacity of its coastal fisheries. In determining the part of the allowable catch to be reserved for the developing coastal State, the rate of growth of the fishing capacity of that State shall be duly taken into account until it has developed that capacity to the extent of being able to fish for a major portion of the allowable catch of the stock of fish.

(b) In the case of a developed coastal State:

The coastal State is entitled annually to reserve for its flag vessels that portion of the allowable catch of a stock of fish which is necessary to maintain its locally conducted small-scale coastal fisheries. The interests of traditionally established fisheries of other States shall be duly taken into account in determining the catch to be reserved for such small-scale coastal fisheries.

2. Measures to implement the preferential rights shall be determined by agreement among the coastal and non-coastal States concerned on the basis of the proposals made by the coastal State. For the purpose of such proposals, the coastal State may seek technical assistance from the Food and Agriculture Organization of the United Nations or such other appropriate organs.

3. The size of the preferential right of a coastal State shall be fixed within the limit of the allowable catch of the stock of fish subject to allocation, if the allowable catch for that stock is already estimated for conservation purposes. In cases where the estimate of the allowable catch is not available, the coastal and non-coastal States concerned shall agree on necessary measures in a manner which will best enable the coastal State to benefit fully from its preferential right.

4. No special status in the conservation of resources and no preferential rights shall be recognized to a coastal State in respect of highly migratory stocks of fish. The conservation and regulation of such stocks shall be carried out pursuant to international consultations or agreements in which all interested States shall participate, or through

the existing international or regional fishery organizations should such be the case.

5. No special status in the conservation of resources and no preferential rights shall be recognized to a coastal State in respect of anadromous stocks of fish. The conservation and regulation of such stocks shall be carried out pursuant to international consultations or agreements in which all interested States shall participate, or through the existing international or regional fishery organizations should such be the case.

Formula B

1. When in the interests of conserving any species it is necessary for the coastal State to fix a total allowable catch within its zone, it shall determine the total allowable catch so as to ensure the maintenance of the maximum sustainable yield.

2. The coastal State shall submit the figures determined pursuant to paragraph 1 to the appropriate regional or sectoral organizations. Those organizations may, on the basis of all relevant scientific data, recommend other figures.

3. Two or more coastal States may by mutual agreement decide to request a regional or sectoral fishing organization of their choice to determine the figures provided for in paragraph 1 for all stocks exploited jointly.

4. Within the framework of the above-mentioned aims of rational exploitation and conservation of fishery resources and taking account of the maximum allowable catch determined by the coastal State pursuant to paragraphs 1 to 3, as well as any recommendations made by appropriate organizations also pursuant to those paragraphs, the coastal State may reserve in its zone that part of the allowable catches of one or more species which vessels flying its flag are able to take.

5. When exercising its right under paragraph 4, the coastal State shall duly take into account the right of access of other States and particularly of:

- (a) States which have habitually fished in the zone;
- (b) Developing States of the same region, provided such States have not invoked paragraph 1 above to reserve for vessels flying their flag all the fish they can catch in their own zone;
- (c) States whose economies are to a very large extent dependent on fishing, where such States have not satisfied their needs by invoking the provisions of this article;
- (d) States of the same region with limited fishery resources whose economy is especially dependent on fishing;
- (e) Land-locked States.

6. In implementing paragraphs 4 to 6, allowance shall be made for cases where the coastal State adopting the measures referred to in paragraph 4 is a developing country or a country whose economy is to a very large extent dependent on fishing. A coastal State may claim the same right with respect to those parts of its territory in which the population is especially dependent on fishing for its livelihood and lacks alternative opportunities for permanent employment.

7. A coastal State wishing to avail itself of paragraphs 4 to 6 shall, in accordance with article . . . (provision 133, formula B, para. 1) notify the competent organization of the proposals concerning the rights to one or more species in its zone which it wishes to have reserved to vessels flying its flag and those to be granted to other States. The organization shall immediately hold consultations on these proposals. Failing agreement within four months of notification, the coastal State may determine, at a level equal to or lower than the proposed level, the rights it will reserve to vessels flying its flag.

8. Any State which considers that such decision taken by the coastal State is in violation of the rights accruing to it under paragraphs 4 to 6 may, within two months, have recourse to the procedure for settlement of disputes provided for in article . . . (Settlement of disputes).

9. Pending the decision of the special committee, the decision taken by the coastal State shall remain provisionally valid. However, the State which has referred the matter to the special committee, pursuant to paragraph 8 above, may in addition request the latter to prescribe certain provisional measures. The committee shall rule thereon within six weeks.

10. Every year, the decisions taken by the coastal State and the special committee and the agreement of the States concerned, as provided for in the preceding paragraphs, may be reviewed by the organization at the request of any of the interested parties. The provisions of paragraphs 7 to 9 shall apply to such review.

Provision 129

Formula A

1. The regulatory measures adopted to implement the preferential right of a coastal State may include catch allocation (quota by country) and/or such other supplementary measures as will be made applicable to vessels of non-coastal States engaged in fishing in the adjacent waters of the coastal State, including:

- (a) The establishment of open and closed seasons during which fish may or may not be harvested;
- (b) The closing of specific areas to fishing;
- (c) The regulation of gear or equipment that may be used;
- (d) The limitation catch of a particular stock of fish that may be harvested.

2. The regulatory measures adopted shall be so designed as to minimize interference with the fishing of non-coastal States directed to stocks of fish, if any, which are not covered by such measures.

Formula B

1. Measures necessary for maintaining, re-establishing or attaining the maximum yield from fishing shall be adopted by States and organizations. These measures shall be based on scientific data and take into account technical and economic considerations. They shall be adopted, subject to these articles, in the light of the regional situation and without discrimination as to form or substance.

2. The measures referred to in paragraph 1 shall be formulated having regard to the need to secure a supply of food for human consumption.

3. The measures referred to in paragraphs 1 and 2 may include:

- (a) Fixing the total allowable catch and its possible allocation;
- (b) Regulation of fishing activity;
- (c) The establishment of closed seasons;
- (d) A temporary ban on fishing in certain areas of the sea;
- (e) Any technical measures (relating, for example, to fishing gear, mesh sizes, fishing methods, minimum sizes of fish caught, etc.).

4. In accordance with the principles of rational exploitation and conservation, the regulatory measures referred to in paragraphs 1 to 3 shall be taken by the coastal State in its zone.

5. Vessels fishing in a zone subject to regulation under the conditions provided for in paragraph 4 shall respect the relevant regulations adopted by the coastal State.

The States whose flags are flown by such vessels shall take the necessary steps to ensure that these regulations are respected.

Provision 130

Formula A

1. With respect to regulatory measures adopted pursuant to the present régime, those coastal States which are entitled to preferential rights, and/or special status with respect to conservation, have the right to control the fishing activities in their respective adjacent waters. In the exercise of such right, the coastal States may inspect vessels of other States and arrest those vessels violating the regulatory measures adopted. The arrested vessels shall, however, be promptly delivered to the flag States concerned. The coastal States may not refuse the participation of other States in controlling the operation, including boarding officials of the other States on the coastal States patrol vessels at the request of the latter States. Details of control measures shall be agreed upon among the parties concerned.

2. Each State shall make it an offence for its nationals to violate any regulatory measures adopted pursuant to the present régime.

3. Nationals on board a vessel violating the regulatory measures in force shall be duly prosecuted by the flag State concerned.

4. Reports prepared by the officials of a coastal State on the offence committed by a vessel of a non-coastal State shall be fully respected by that non-coastal State, which shall notify the coastal State of the disposition of the case as soon as possible.

Formula B

1. The coastal State may stop, board and inspect fishing vessels within its zone, if it has valid reason to suspect that they have committed a breach of the fishery regulations as provided for in these articles.

2. The coastal State may also prosecute and punish offences committed by such vessels unless the flag State has established a procedure

permitting the prosecution and punishment of breaches of the fishery regulations of the coastal State adopted in conformity with these articles.

3. In that case, the coastal State shall send a report attesting the breach of regulations to the flag State and shall furnish the flag State with any particulars constituting evidence that such breach has been committed. Within a period of six months from the receipt of the report attesting that breach, the flag State shall make known to the coastal State whether or not it has brought the matter before its judicial authorities so that proceedings may be instituted.

4. Should the flag State not bring the matter before its judicial authorities, or should it fail to reply, the coastal State shall have the right to refer the matter to its own courts.

5. If the flag State has decided to bring the matter before its judicial authorities, it shall inform the coastal State of the outcome of the proceedings.

4. Prevention and control of pollution and other hazards to the marine environment

5. International co-operation on the study and rational exploitation of marine resources

Provision 131

1. A coastal State shall be recognized as having special status with respect to the conservation of fishery resources in its adjacent waters. Thus, the coastal State will have the right to participate, on an equal footing, in any survey on fishery resources conducted in its adjacent waters for conservation purposes, whether or not nationals of that coastal State are actually engaged in fishing the particular stocks concerned. Non-coastal States conducting the survey shall, at the request of the coastal State, make available to the coastal State the findings of their surveys and researches concerning such stocks.

2. Also, except for interim measures, no conservation measure may be adopted with respect to any stock of fish, without the consent of the coastal State whose nationals are engaged in fishing the particular stock concerned (or the majority of the coastal States in cases where there are three or more such coastal States).

3. A coastal State shall at the same time have the obligation to take, in co-operation with other States, necessary measures with a view to maintaining the productivity of fishery resources in its adjacent waters at a level that will enable an effective and rational utilization of such resources.

Provision 132

1. In order to assist in the development of the fishing capacity of a developing coastal State and thereby to facilitate the full enjoyment of its preferential right, there shall be international co-operation in the field of fisheries and related industries between the developing coastal State and other fishing States in concluding an agreement on the preferential right of that developing coastal State.

2. For the purpose of promoting the development of fishing industries and the domestic consumption and exports of fishery products of developing States, including land-locked States, developed non-coastal States shall co-operate with developing States with every possible means in such fields as survey of fishery resources, expansion of fishing capacity, construction of storage and processing facilities and improvements in marketing systems.

Provision 133

Formula A

Co-operation between coastal and non-coastal States under the present régime shall be carried out, as far as possible, through regional fishery commissions. For this purpose, the States concerned shall endeavour to strengthen the existing commissions and shall co-operate in establishing new commissions whenever desirable and feasible.

Formula B

1. Fishery organizations, hereinafter called "organizations" shall exercise the functions laid down in these articles. These organizations shall be responsible either for a region or for a given species.

States whose vessels fish or are concerned with and equipped for fishing within a region shall establish a regional organization if one does not already exist. Coastal States of the region, as well as any State

whose vessels fish or are concerned with and equipped for fishing in this region, shall be members of this organization.

States whose vessels fish or are concerned with and equipped for fishing for certain species such as tuna and whales shall establish a sectoral organization. This organization shall be established on a regional or world-wide basis if a competent sectoral or regional organization does not already exist. Coastal States in whose zone this activity is exercised, as well as any State whose vessels fish or are concerned with and equipped for fishing for the species in question, shall be members of this organization.

2. The constitutions or rules of procedure of these organizations shall ensure their most effective operation. In particular, they shall provide that the measures referred to in paragraphs 4 to 6 are as a general rule adopted by a majority greater than a simple majority, but not necessarily unanimously, and that they are binding upon the States members of the organization.

3. Where an appropriate regional or sectoral organization has not yet been established, the coastal State concerned shall consult with other interested States if it is unable to take the action provided for under articles . . . (provision 128, formula B, paragraphs 1 to 3 and 7 to 10) with respect to such an organization. The decisions taken by the coastal State after such consultations shall be reviewed each year pending the establishment of the organization.

4. The organization shall determine the procedures for applying the principles of rational exploitation and conservation as well as the basic principles of the measures to be adopted for this purpose.

5. Within the limits of their competence, they shall exercise the power to adopt the regulatory measures referred to in articles . . . (provision 129, formula B, paras. 1 to 3) in any part of a region beyond the zone in which a coastal State exercises such powers in accordance with article . . . (provision 129, formula B, para. 4).

6. The organizations shall co-ordinate the scientific research programmes of member States in order to ensure the supply of appropriate scientific information.

7. Vessels fishing in the area of competence of an organization are bound to comply with the measures adopted by such organizations.

8. Flag States parties to this Convention shall take the necessary steps to ensure such compliance.

9. The organization shall supervise the execution of its decisions.

10. Supervision shall be based, *inter alia*, on the examination of statistics which States members of the organization are required to compile and make available, and of all other data obtained from them.

11. Within the framework of an organization, its member States may decide, at the request of a coastal State, to establish in the zone of that State international fishery monitoring machinery for the purpose of reporting breaches of the regulations adopted by that State in accordance with article . . . (provision 129, formula B, para. 4). To this end, member States may appoint officers authorized to investigate breaches of the regulations of that State.

12. The provisions of article . . . (provision 130, formula B, paras. 2 to 5) shall be applicable to breaches so established. The organization shall inform the coastal State and the flag State of the findings of any inquiries it has made. The organization shall be kept informed of the outcome of legal proceedings.

13. The activities of the organization may be supplemented, as necessary, by those of an international fisheries authority, either existing or to be set up, the function of which could be:

(a) To promote the establishment of new organizations and, where a competent organization does exist, to exercise the powers which would normally devolve upon such organizations;

(b) To encourage all types of technical assistance in respect of fisheries.

Provision 134

The provisions of these articles shall not affect the rights and obligations of States under existing international agreements relating to specific fisheries.

Provision 135

1. The provisions of these articles

(i) Shall not prejudice the maintenance of any existing special fisheries régime existing among States members of a customs union;

- (ii) Shall not preclude the establishment of a special fisheries régime among the States fishing for a particular region for that region or among States members of a customs union.

2. Where such a special régime exists, vessels of participating States fishing in the zone of another participating State shall be treated on the same footing as vessels of the latter for the purpose of article . . . (provision 128, formula B, para. 4).

PART VII. HIGH SEAS AND TRANSMISSION FROM THE HIGH SEAS (items 8 and 24)*

1. Nature and characteristics

Provision 136

Formula A

The term "high seas" means all parts of the sea that are not included in the territorial sea or in the internal waters of a State.

Formula B

The waters situated beyond the outer limits of the patrimonial sea—economic zone—constitute an international area designated as high seas.

Formula C

The term "international seas" shall denote that part of the sea which is not subject to the sovereignty and jurisdiction of coastal States.

Formula D

The term "high seas" means all parts of the sea that are not included in the internal waters, the territorial sea or the exclusive economic zone of a State.

Provision 137

Formula A

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty.

Formula B

The international sea area and its resources are, in principle, jointly owned by the people of all countries.

Formula C

The international seas shall be open to all States, whether coastal or land-locked, and their use shall be reserved for peaceful purposes.

2. Rights and duties of States

Provision 138

Formula A

The coastal State shall enjoy preferential rights to exploit living resources in a sector of the sea adjacent to the zone under its sovereignty and jurisdiction, and may reserve to itself or its nationals a part of the permissible catch of such resources.

Formula B

Subject to the articles . . . (management and conservation of the living resources of the high seas), all States shall have the right to allow their nationals to engage in the exploitation of the fishery resources of the sea.

Provision 139

Every State, whether coastal or not, has the right to sail ships under its flag on the high seas.

Provision 140

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

*The inclusion both of provisions using the term "high seas" and provisions using the term "international sea", under item 8 (High seas), does not prejudice the position of delegations as to the use of either term.

2. Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Provision 141

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Provision 142

1. Every State is obliged effectively to exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. In particular, the flag State shall, in addition to its obligations under article . . . (provision 146), take the following action in respect of ships flying its flag:

(a) Maintain a register of shipping containing the names and particulars of ships flying its flag;

(b) Cause each such ship, before registration and thereafter at the intervals prescribed by international regulations, to be surveyed by a qualified surveyor of ships;

(c) Ensure that each such ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size and equipment of the ship;

(d) Ensure that each such ship has on board adequate charts, nautical publications and navigational equipment and instruments appropriate for the safe navigation of the ship;

(e) Cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to shipping or installations of another State, or to the marine environment;

(f) Assume jurisdiction under its municipal law over each ship and over the master, officers and crew in respect of administrative, technical and social matters concerning the ship; and

(g) Take the necessary measures to ensure that the master and officers are fully conversant with and are required to observe the appropriate applicable international regulations concerning the safety of life at sea, the prevention and control of marine pollution, the prevention of collisions and the maintenance of communications by radio.

Without prejudice to paragraph 1 of this article, the requirements of this paragraph do not apply to ships or boats which are excluded from generally accepted international regulations on account of their small size.

3. The flag State, in taking measures required under paragraph 2, above, shall conform to generally accepted international regulations, procedures and practices.

4. A State which has reasonable grounds to suspect that proper jurisdiction and control has not been exercised in accordance with this Convention may report the facts to the flag State and request it to investigate the matter further. Upon receiving such a request, the flag State shall investigate the matter, taking any action necessary to remedy the situation and notify the requesting State of the action taken.

5. The flag State shall co-operate in the conduct of any inquiry held in another State into any marine casualty or incident of navigation causing loss of life or serious injury to nationals or damage to ships or other installations of that other State, or to the marine environment.

Provision 143

The provisions of the preceding articles do not prejudice the question of ships employed in the official service of an intergovernmental organization flying the flag of the organization.

Provision 144

1. Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

2. (Part I, provision 43, para. 1.)

Provision 145

Ships owned or operated by a State and used only in government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

Provision 146

1. Every State shall take such measures for ships under its flag as are necessary to ensure safety at sea with regard *inter alia* to:

- (a) The use of signals, the maintenance of communications and the prevention of collisions;
- (b) The manning of ships and labour conditions for crews taking into account the applicable international labour instruments;
- (c) The construction, equipment and seaworthiness of ships.

2. In taking such measures each State is required to conform to generally accepted international standards and to take any steps which may be necessary to ensure their observance.

3. A State which has reasonable grounds for suspecting that such measures have not been taken may report the facts to the flag State and request it to investigate the matter further. Upon receiving such a request, the flag State shall investigate the matter, take any action necessary to remedy the situation and notify the requesting State of the action taken.

Provision 147

1. In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

Provision 148

1. Every State shall require the master of a ship sailing under its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

- (a) To render assistance to any person found at sea in danger of being lost;
- (b) To proceed with all possible speed to the rescue of persons in distress if informed of their need of assistance, in so far as such action may reasonably be expected of him;
- (c) After a collision, to render assistance to the other ship, her crew and her passengers and, where possible, to inform the other ship of the name of his own ship, her port of registry and the nearest port at which she will call.

2. Every coastal State shall promote the establishment and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and—where circumstances so require—by way of mutual regional arrangements co-operate with neighbouring States for this purpose.

Provision 149

All States shall be obliged to comply with international regulations designed to prevent, reduce or eliminate any damage or risks arising from pollution or other effects detrimental or dangerous to the ecological system of the international seas, water quality and use, living resources and human health.

Provision 150

1. All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.

3. When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already in position on the sea-bed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Provision 151

Every State shall take the necessary legislative measures to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable shall be a punishable offence. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Provision 152

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline they shall bear the cost of the repairs.

Provision 153

Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

3. Question of the freedoms of the high seas and their regulation

*Provision 154**Formula A*

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, *inter alia*, both for coastal and non-coastal States:

- (i) Freedom of navigation;
- (ii) Freedom of fishing;
- (iii) Freedom to lay submarine cables and pipelines;
- (iv) Freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

Formula B

1. The following freedoms shall be exercised on the international seas:

- (i) ... (same as formula A (i));
- (ii) ... (same as formula A (iv));
- (iii) ... (same as formula A (iii));
- (iv) Freedom to emplace artificial islands and other installations permitted under international law, without prejudice to the provisions of article ...;
- (v) Freedom of fishing, subject to the conditions laid down in article ...;
- (vi) Freedom of scientific research, subject to the conditions laid down in paragraph 2.

These freedoms shall be exercised by any State, with due consideration for the interests of other States in the exercise of the same freedom.

2. Scientific research in the international seas shall be open to any State and shall be promoted and facilitated under forms of co-operation and assistance which permit the participation of all States, irrespective of their level of development or of whether they are coastal or land-locked.

... (Complementary provisions on scientific research)

Formula C

Uses of the international sea area shall not prejudice the legitimate interests of other States and the common interests of all States.

4. Management and conservation of living resources

Provision 155

The coastal State has a special interest in maintaining the productivity of the living resources of the sea in an area adjacent to the patrimonial sea.

*Provision 156**Formula A*

1. Fishing in the international sea area shall be properly regulated to prohibit indiscriminate fishing and other violations of rules and regulations for the conservation of fishery resources.

2. Pending the establishment of a unified international fishery organization, States of a given sea area may set up a regional committee to work out appropriate rules and regulations for the regulation of fishing and the conservation of marine living resources in the international sea area. Fishing vessels of States of other regions may enter the said region for fishing activities provided they comply with the relevant rules and regulations of the region.

Formula B

1. Fishing and hunting in the international seas shall be subject to regulations of a world-wide and regional nature.

2. The aforesaid activities shall be carried out by techniques and methods which do not jeopardize adequate conservation of the renewable resources of the international seas.

Formula C

1. States shall co-operate with each other in the exploitation and conservation of living resources in areas beyond the economic zone of coastal States. States exploiting identical resources, or different resources located in the same area, shall enter into fisheries management agreements, and establish appropriate multilateral fisheries organizations, for the purpose of maintaining these resources. If such a body cannot be constituted among the concerned States, they may ask for the assistance of the Food and Agriculture Organization of the United Nations in establishing an appropriate regional or international regulatory body.

2. States, acting individually and through regional and international fisheries organizations, have the duty to apply the following conservation measures for such living resources:

(a) Allowable catch and other conservation measures shall be established which are designed, on the best evidence available to maintain or restore population of harvested species at levels which can produce the maximum sustainable yield, taking into account relevant environmental and economic factors, and any generally agreed global and regional minimum standards;

(b) Such measures shall take into account effects on species associated with or dependent upon harvested species and at a minimum shall be designed to maintain or restore populations of such associated or dependent species above levels at which they may become threatened with extinction;

(c) For this purpose, scientific information, catch and fishing effort statistics, and other relevant data shall be contributed and exchanged on a regular basis;

(d) Conservation measures and their implementation shall not discriminate in form or in fact against any fisherman. Conservation measures shall remain in force pending the settlement, in accordance with the provisions of chapter . . . , of any disagreement as to their validity.

3. With respect to anadromous species and highly migratory species, the provisions of article . . . and article . . . , respectively, shall apply.

*Provision 157**Formula A*

In respect of fisheries of highly migratory habits outside the limits of the exclusive fishery zone, regulations for their exploration, exploitation, conservation and development shall be made by the authority designated for the purpose by the Conference on the Law of the Sea.

Formula B

(Part V, provision 112, formula A).

Formula C

(Part V, provision 112, formula B).

Provision 158

With regard to the living resources of an area of the sea situated beyond the limits of the zones of sovereignty and jurisdiction of two or more States, which breed, feed and live by reason of the resources of that area, the States concerned may agree among themselves on appropriate regulations for the exploration, conservation and exploitation of such resources.

Provision 159

1. Regulations adopted to regulate fishing and hunting in the international seas shall ensure the conservation and rational utilization of living resources and the equitable participation of all States in their exploitation, with due regard to the special needs of developing coastal countries and land-locked countries.

2. Such regulations shall establish conditions and methods of fishing and hunting which prevent the indiscriminate exploitation of species and avert the danger of their extinction.

*Provision 160**Formula A*

Where a State has good reason to believe that vessels of the flag of another State have violated fishing and hunting regulations applicable to the international seas, the former State may request the flag State to take the necessary steps to punish those responsible.

Formula B

(Part V, provision 114, formula B).

*Provision 161**Formula A*

(Part V, provision 110, formula E).

Formula B

The right of exploitation of stocks of anadromous species shall be exercised only:

- (i) Within waters under the jurisdiction of the State of origin;
- (ii) Within waters under the jurisdiction of other coastal States, subject to such conditions and regulations as shall be agreed between such coastal State and the State of origin, taking into account the special role of the State of origin in the conservation of the species.

Formula C

(Part V, provision 110, formula D).

Provision 162

(Part V, provision 110, formula B).

Provision 163

(Part V, provision 113).

5. Slavery, piracy and drugs

Provision 164

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting:

- (a) That the ship is engaged in piracy; or
- (b) That the ship is engaged in the slave trade; or

(c) That, though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in subparagraphs (a), (b) and (c) above, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

Provision 165

Every State shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall, *ipso facto*, be free.

Provision 166

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Provision 167

Piracy consists of any of the following acts:

1. Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
2. Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
3. Any act of inciting or of intentionally facilitating an act described in subparagraph 1 or subparagraph 2 of this article.

Provision 168

The acts of piracy, as defined in article . . . (provision 167), committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

Provision 169

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article . . . (provision 167). The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Provision 170

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Provision 171

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Provision 172

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure.

Provision 173

A seizure on account of piracy may only be carried out by warships or military aircraft, or other ships or aircraft on government service authorized to that effect.

*Provision 174**Formula A*

1. All States shall co-operate in the suppression of illicit traffic in narcotic drugs by ships on the high seas, contrary to international conventions.

2. Any State which has reasonable grounds for believing that a vessel is engaged in illicit traffic in narcotic drugs may, whatever the nationality of the vessel but provided that its tonnage is less than 500

tons, seize the illicit cargo. The State which carried out this seizure shall inform the State of nationality of the vessel in order that the latter State may institute proceedings against those responsible for the illicit traffic.

3. Any State which has reasonable grounds for believing that a vessel flying its flag is engaged in illicit traffic in narcotic drugs may request the co-operation of another State to put an end to this.

Formula B

. . . (same as formula A, except that the words "narcotic drugs" should be replaced by the words "narcotic and psychotropic drugs".)

6. Hot pursuit*Provision 175*

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article . . . , the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.

3. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship are within the limits of the territorial sea, or as the case may be within the contiguous zone. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorized to that effect.

5. Where hot pursuit is effected by an aircraft:

(a) The provisions of paragraphs 1 to 3 of this article shall apply *mutatis mutandis*;

(b) The aircraft giving the order to stop must itself actively pursue the ship until a ship or aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continued the pursuit without interruption.

6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary.

7. Where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

*Provision 176**Formula A*

The right of hot pursuit shall apply, *mutatis mutandis*, to violations in the economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the economic zone or the continental shelf, including such safety zones.

Formula B

The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is

within the internal waters or the territorial sea or the economic zone of the pursuing State, and may only be continued outside the territorial sea or the economic zone if the pursuit has not been interrupted.

The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea or the economic zone of its own country or the territorial sea or the economic zone of a third State.

7. Transmission from the high seas

Provision 177

1. All States shall co-operate in the repression of unauthorized broadcasting from the high seas.

2. "Unauthorized broadcasting" consists of the transmission of sound radio or television broadcasts from a ship or installation on the high seas intended for reception by the general public contrary to international regulations, but excluding the transmission of distress calls.

3. Any person engaged in unauthorized broadcasting from the high seas may be prosecuted before the court of the flag State of the vessel, the place of registry of the installation, the State of which the person is a national, any place where the transmissions can be received or any State where authorized radio communication is suffering interference.

4. On the high seas, any of the States having jurisdiction in accordance with paragraph 3 above may, in conformity with article . . . (provision 164), arrest any person, or ship engaged in unauthorized broadcasting and seize the broadcasting apparatus.

PART VIII. LAND-LOCKED COUNTRIES (item 9)*

Provision 178

For the purpose of this Convention:

"Land-locked State" means any State which has no sea coast;

The term "transit State" means any State, with or without a sea coast, situated between a land-locked State and the sea, through whose territory the land-locked State shall have access to and from the sea;

The term "traffic in transit" means transit of persons, baggage, goods and means of transport across the territory of one or more transit States, when the passage across such territory, with or without transshipment, warehousing, breaking bulk or change in the mode of transport is only a portion of a complete journey which begins or terminates within the territory of the land-locked State.

1. General principles of the law of the sea concerning the land-locked countries

Provision 179

The existence and nature of the right of land-locked States to free access to and from the sea derive from the application of the principles of the freedom of the sea and the designation of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of that area, as the common heritage of mankind.

2. Rights and interests of land-locked countries

Provision 180

(Part V, provision 94, formula D, paragraph 2)

2.1 Free access to and from the sea: freedom of transit, means and facilities for transport and communications

Provision 181

Formula A

The right of land-locked States to free access to and from the sea is one of the basic principles of the law of the sea and forms an integral part of the principles of international law.

In order to enjoy the freedom of the seas and to participate in the exploration and exploitation of the sea-bed and its resources on equal terms with coastal States, land-locked States, irrespective of the origin

*Other proposals relating to the free access to the international sea-bed area beyond national jurisdiction (part VIII, item 2.3) and participation in the international régime, including the machinery and the equitable sharing in the benefits of the area (part VIII, item 2.4) are under consideration in the First Committee.

and characteristics of their land-locked conditions, shall have the right of free access to and from the sea in accordance with the provisions of this Convention.

The right of free access to and from the sea of land-locked States shall be the concern of the international community as a whole and the exercise of such right shall not depend exclusively on the transit States.

Since free transit of land-locked States forms part of their right of free access to and from the sea which belongs to them in view of their special geographical position, reciprocity shall not be a condition of free transit of land-locked States required by transit States but may be agreed between the parties concerned.

Formula B

Each land-locked State shall enjoy free access to and from the sea.

Neighbouring transit States shall accord, on a basis of reciprocity, free transit through their territories of persons and goods of land-locked States by all possible means of transportation and communication. The modalities of the exercise of free transit shall be settled between the land-locked States and the neighbouring transit States by means of bilateral or regional agreements.

Land-locked States shall have the freedom to use one or more of the alternative routes or means of transport, as agreed with the transit States concerned, for purposes of access to and from the sea.

Provision 182

Formula A

The provisions of this Convention which govern the right of free access of land-locked States to and from the sea shall not abrogate existing special agreements between two or more States concerning the matters which are regulated in this Convention, nor shall they raise an obstacle as regards the conclusion of such agreements in the future.

In case such existing agreements provide less favourable conditions than those contained in this Convention, the States concerned undertake that they shall bring them in accord with the present provisions at the earliest occasion.

The provisions contained in the preceding paragraph shall not affect existing bilateral or multilateral agreements relating to air transport.

Formula B

(Same as formula A, but with the deletion of the third paragraph thereof)

Provision 183

Provisions of this Convention, as well as special agreements which regulate the exercise of the right of free access to and from the sea and the area of the sea-bed, establishing rights and facilities on account of the special geographical position of land-locked States, are excluded from the application of the most-favoured-nation clause.

Provision 184

Formula A

Transit States shall accord free and unrestricted transit for traffic in transit of land-locked States, without discrimination among them to and from the sea by all means of transport and communication, in accordance with the provisions of this Convention.

Formula B

In order to have access to and from the international sea area for trade and other peaceful purposes, land-locked States have the right to pass through the territory, territorial sea and other waters of adjacent coastal States. Coastal States and adjacent land-locked States shall, through consultations on the basis of equality and mutual respect for sovereignty, conclude bilateral or regional agreements on the relevant matters.

Formula C

(Provision 181, formula B, second paragraph)

2.2 Equality of treatment in the ports of transit States

Provision 185

Formula A

Vessels flying the flag of a land-locked State shall have the right to use maritime ports.

Vessels of land-locked States are entitled to the most-favoured treatment and shall under no circumstances receive a treatment less favour-

able than that accorded to vessels of coastal States as regards access to and exit from the maritime ports.

The use of these ports, facilities, installations and equipment of any kind shall be provided under the same conditions as for coastal States.

Formula B

For the purposes provided for in this article, coastal States shall guarantee neighbouring land-locked States free passage through their territories, as well as equal treatment as regards entry into and use of ports, in accordance with internal legislation and any relevant agreements they may conclude.

Provision 186

Traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connexion with such traffic.

If the port installations and equipment or the means of transport and communication, or both, existing in a transit State are primarily used by one or more land-locked States, tariffs, fees or other charges for services rendered shall be subject to agreement between the States concerned.

Means of transport in transit used by the land-locked States shall not be subject to taxes, tariffs or charges higher than those levied for the use of means of transport of the transit State.

Provision 187

For convenience of traffic in transit, free zones and/or other facilities may be provided at the ports of entry and exit in the transit States, by agreement between those States and the land-locked States.

Such zones shall be exempted from the customs regulations of the coastal States. They remain, however, subject to the jurisdiction of those States with regard to police and public health regulations.

Provision 188

Land-locked States shall have the right to appoint customs officials of their own in the ports of transit or free zones, empowered in accordance with the practice of States, to arrange the berthing of vessels whose cargo is bound for or coming from the land-locked State and to make arrangements for and supervise loading and unloading operations for such vessels as well as documentation and other necessary services for the speedy and smooth movement of traffic in transit.

Provision 189

Transit States shall provide adequate means of transport, storage and handling facilities at the points of entry and exit, and at intermediate stages, for the smooth movement of traffic in transit.

Provision 190

When means of transport and communication in the transit States are insufficient to give effect to the rights of land-locked States of free access to and from the sea or when the aforesaid means of transport and communication or the port installations and equipment are inadequate or may be improved in any respect, the land-locked States shall have the right to construct, modify or improve them in agreement with the transit State or States concerned.

Provision 191

Except in cases of *force majeure* all measures shall be taken by transit States to avoid delays in or restrictions on traffic in transit.

Should delays or other difficulties occur in traffic in transit, the competent authorities of the transit State or States and of land-locked States shall co-operate towards their expeditious elimination.

2.3 Free access to the international sea-bed area beyond national jurisdiction

Provision 192

Land-locked States shall have the right of free access to and from the area of the sea-bed in order to enable them to participate in the exploration and exploitation of the area and its resources and to derive benefits therefrom in accordance with the provisions of this Convention.

For this purpose the land-locked States shall have the right to use all means and facilities provided for in this Convention with regard to traffic in transit.

2.4 Participation in the international régime, including the machinery and the equitable sharing in the benefits of the area

Provision 193

In any organ of the international sea-bed machinery in which not all member States will be represented, in particular in its Council, there shall be an adequate and proportionate number of land-locked States, both developing and developed.

Provision 194

In any organ of the machinery, decisions on questions of substance shall be made with due regard to the special needs and problems of land-locked States.

On questions of substance which affect the interests of land-locked States, decisions shall be made with their participation.

3. Particular interests and needs of developing land-locked countries in the international régime

4. Rights and interests of land-locked countries in regard to living resources of the sea

Provision 195

Formula A

Land-locked . . . States shall have the right to participate in the exploration and exploitation of the living resources of the . . . zone of neighbouring coastal States on an equal and non-discriminatory basis. For the purpose of facilitating the orderly development and the rational exploitation of the living resources of the particular zones, the States concerned may decide upon appropriate arrangements to regulate the exploitation of the resources in those zones.

Formula B

Nationals of a developing land-locked State shall enjoy the privilege of fishing in the neighbouring area of the exclusive economic zone of the adjoining coastal State on the basis of equality with the nationals of that State. The modalities of the enjoyment of this privilege and the area to which they relate shall be settled by agreement between the coastal State and the land-locked State concerned. This privilege will be available to the nationals of the land-locked State concerned and cannot be transferred to third parties by lease or licence, by establishing joint collaboration ventures, or by any other arrangement. Jurisdiction and control over the conservation, development and management of the resources of the specified area shall lie with the coastal State in whose zone that area is located.

Formula C

In any region where there are [land-locked] States, the nationals of such States shall have the right to exploit the renewable resources within the economic zones or patrimonial seas of the region for the purpose of fostering the development of their fishing industry and satisfying the nutritional needs of such populations.

Formula D

Coastal States shall, through bilateral or subregional agreements, as the case may require, in which the interests of all parties are given fair consideration, accord to States having no sea coast which are their neighbours or which belong to the same subregion preferential treatment over third States with regard to fishing rights in that area of their territorial sea which is not reserved exclusively for their nationals. Such preferential treatment shall be reserved for national enterprises of the States having no sea coast which operate in the area exclusively with ships flying the flag of those States and whose catch is intended for domestic or industrial consumption in the said States, or for national enterprises of the States having no sea coast which are associated with national enterprises of the coastal States.

Formula E

Through bilateral and, where appropriate, subregional agreements, . . . agreement shall be reached with States having no sea coast on an equitable régime for the exercise in the maritime area of fishing rights which shall be preferential in relation to third States. The said preferential rights shall be granted provided that the enterprises of the State which wishes to exploit the resources in question are effectively controlled by capital and nationals of that State and that the ships which operate in the area fly the flag of that State.

Provision 196

1. Land-locked ... States shall not transfer their rights under articles ... (provision 94, formula D, paragraphs 1 and 2 in Part V) to third States, except when otherwise agreed upon by the States concerned.

2. The provisions of paragraph 1 shall, however, not preclude land-locked ... States from obtaining technical or financial assistance from third States, or appropriate international organizations, for the purpose of enabling them to develop viable industries of their own.

PART IX. RIGHTS AND INTERESTS OF SHELF-LOCKED STATES AND STATES WITH NARROW SHELVES OR SHORT COASTLINES (item 10)

*Provision 197**Formula A*

For the purposes of these articles: "geographically disadvantaged States" means developing States which are ... or for geographical, biological or ecological reasons:

- (i) Derive no substantial economic advantage from establishing an economic zone or patrimonial sea, or a territorial sea beyond 12 miles; or
- (ii) Are adversely affected in their economies by the establishment of economic zones or patrimonial seas or territorial seas beyond 12 miles by other States; or
- (iii) Have short coastlines and cannot extend uniformly their national jurisdiction.

Formula B

"Geographically disadvantaged States" means land-locked States and coastal States which, for geographical reasons, are unable to declare a ... zone pursuant to ..., or do not declare such a ... zone because it would not be economically meaningful.

Provision 198

"Neighbouring coastal State" means a coastal State of a region situated within reasonable proximity to a disadvantaged State.

1. International régime

...

2. Fisheries

*Provision 199**Formula A*

... geographically disadvantaged States shall have the right to participate in the exploration and exploitation of the living resources of the ... zone of neighbouring coastal States on an equal and non-discriminatory basis. For the purpose of facilitating the orderly development and the rational exploitation of the living resources of the particular zones, the States concerned may decide upon appropriate arrangements to regulate the exploitation of the resources in those zones.

Formula B

... geographically disadvantaged States shall have the right to explore and exploit the living resources of the exclusive economic zones of neighbouring coastal States, subject to appropriate bilateral or regional arrangements or agreements with such coastal States.

Formula C

In any region where there are geographically disadvantaged States, the nationals of such States shall have the right to exploit the renewable resources within the economic zones or patrimonial seas or territorial seas beyond 12 miles of the region for the purpose of fostering the development of their fishing industry and satisfying the nutritional needs of such populations.

The States of the region shall co-operate to the fullest extent in order to secure the enjoyment of this right.

Formula D

In regions or subregions in which certain coastal States, owing to geographical or ecological factors, are unable, over all their coastlines, to extend the limits of their sovereignty and jurisdiction up to distances equal to those adopted by other coastal States in the same region or

subregion, the former States shall enjoy, in the seas of the latter States, a preferential régime vis-à-vis third States in matters relating to the exploitation of renewable resources, the said régime to be determined by regional, subregional or bilateral agreements taking into account the interests of the respective States.

Provision 200

1. ... geographically disadvantaged States shall not transfer their rights under articles ... (part V, provision 94, formula D, paragraphs 1 and 2) to third States, except when otherwise agreed upon by the States concerned.

2. The provisions of paragraph 1 shall, however, not preclude ... geographically disadvantaged States from obtaining technical or financial assistance from third States, or appropriate international organizations, for the purpose of enabling them to develop viable industries of their own.

3. Special interests and needs of developing shelf-locked States and States with narrow shelves or short coastlines

Provision 201

(Part V, provision 94, formula D, para. 2)

4. Free access to and from the high seas

PART X. ARCHIPELAGOS (item 16)

*Provision 202**Formula A*

These articles apply only to archipelagic States.

Formula B

A coastal State with one or more off-lying archipelagos, as defined in article ... (provision 203, formula A, paragraph 2) which form an integral part of its territory, shall have the right to apply the provisions of articles ... to such archipelagos upon the making of a declaration to that effect.

Formula C

The method applied to archipelagic States for the drawing of baselines shall also apply to archipelagos that form part of a State, without entailing any change in the natural régime of the waters of such archipelagos or of their territorial sea.

*Provision 203**Formula A*

1. An archipelagic State is a State constituted wholly by one or more archipelagos and may include other islands.

2. For the purpose of these articles an archipelago is a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

Formula B

1. On ratifying or acceding to this Convention, a State may declare itself to be an archipelagic State where:

(a) The land territory of the State is entirely composed of three or more islands; and

(b) It is possible to draw a perimeter, made up of a series of lines or straight baselines, around the outermost points of the outermost islands in such a way that:

(i) No territory belonging to another State lies within the perimeter,

(ii) No baseline is longer than ... nautical miles, and

(iii) The ratio of the area of the sea to the area of land territory inside the perimeter does not exceed ... provided that any straight baseline between two points on the same island shall be drawn in conformity with articles ... of the Convention (on straight baselines).

2. A declaration under paragraph 1 above shall be accompanied by a chart showing the perimeter and a statement certifying the length of each baseline and the ratio of land to sea within the perimeter.

3. Where it is possible to include within a perimeter drawn in conformity with paragraph 1 above only some of the islands belonging to a State, a declaration may be made in respect of those islands. The provisions of this Convention shall apply to the remaining islands in the same way as they apply to the islands of a State which is not an archipelagic State and references in this article to an archipelagic State shall be construed accordingly.

Provision 204

Formula A

An archipelagic State may employ the method of straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago in drawing the baselines from which the extent of the territorial sea, economic zone and other special jurisdictions are to be measured.

Formula B

... (same as formula A) ... or may employ as a baseline any non-navigable continuous reefs or shoals lying between such points.

Formula C

In the case of an archipelagic State, or of an archipelago that forms part of a State, the baselines from which the adjacent sea over which the State exercises its sovereignty and jurisdiction shall be measured may be drawn by straight lines which join the outermost points of the outermost islands and drying reefs of the archipelago.

Provision 205

The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

Provision 206

Baselines shall not be drawn to and from low-tide elevations unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.

Provision 207

The system of straight baselines shall not be applied by an archipelagic State in such a manner as to cut off the territorial sea of another State as determined under article ... of chapter ... of this Convention.

Provision 208

An archipelagic State shall clearly indicate its straight baselines on charts to which due publicity shall be given.

Provision 209

An archipelagic State may draw baselines in conformity with articles ... (bays) and ... (river mouths) of this Convention for the purpose of delimiting internal waters.

Provision 210

Formula A

The waters enclosed by the baselines, which waters are referred to in these articles as archipelagic waters, regardless of their depth or distance from the coast, belong to, and are subject to the sovereignty of, the archipelagic State to which they appertain.

Formula B

... (same as formula A) ... this sovereignty is exercised subject to the provisions of these articles and to other rules of international law.

Formula C

In such cases, the waters enclosed by the baselines shall be considered internal waters, though vessels of any flag may sail in them in accordance with the provisions laid down by the archipelagic State.

Provision 211

The sovereignty and rights of an archipelagic State extend to the air space over its archipelagic waters as well as to the water column and the sea-bed and subsoil thereof, and to all of the resources contained therein.

Provision 212

Formula A

If the drawing of such baselines encloses a part of the sea which has traditionally been used by an immediately adjacent neighbouring State for direct communication, including the laying of submarine cables and pipelines, between one part of its national territory and another part of such territory, the continued right of such communication shall be recognized and guaranteed by the archipelagic State.

Formula B

If the drawing of such baselines encloses a part of the sea which has traditionally been used by an immediately adjacent neighbouring State for direct access and all forms of communications, including the laying of submarine cables and pipelines, between one part of its national territory and another part of such territory, such rights of direct access and communications shall continue to be recognized and guaranteed by the archipelagic State.

Formula C

In addition to the right of passage through the sea lanes designated for international navigation, an archipelagic State shall recognize, for the sole benefit of such of its neighbouring States as are enclosed or partly enclosed by its archipelagic waters, a right of innocent passage through these waters for the purpose of gaining access to and from any part of the high seas by the shortest and most convenient routes.

To this effect, an archipelagic State shall enter into arrangements with any such neighbouring States at the request of the latter.

Provision 213

Formula A

Where a declaration made in accordance with article ... has the effect of enclosing as archipelagic waters areas which previously had been considered as part of the high seas, the archipelagic State shall enter into consultation, at the request of any other State, with a view to safeguarding the rights and interests of such other State regarding any existing uses of the sea in such areas, except the navigational uses provided for in article ... but including, *inter alia*, fisheries, submarine cables and pipelines.

Formula B

In any situation where the archipelagic waters, or territorial waters measured therefrom, of an archipelagic State include areas which previously had been considered as high seas, that archipelagic State, in the exercise of its sovereignty over such areas, shall give special consideration to the interests and needs of its neighbouring States with regard to the exploitation of living resources in these areas, and, to this effect, shall enter into an agreement with any neighbouring State, at the request of the latter, either by regional or bilateral arrangements, with a view to prescribing modalities entitling the nationals of such neighbouring State to engage and take part on an equal footing with its nationals and, where geographical circumstances so permit, on the basis of reciprocity, in the exploitation of living resources therein.

Provision 214

Formula A

Subject to the provisions of articles ... (provisions 215 to 219), ships of all States shall enjoy the right of innocent passage through archipelagic waters.

Formula B

1. Where parts of archipelagic waters have before the date of ratification of this Convention been used as routes for international navigation between one part of the high seas and another part of the high seas or the territorial sea of another State, the provisions of articles ... of this Convention apply to those routes (as well as to those parts of the territorial sea of the archipelagic State adjacent thereto) as if they were straits. A declaration made under paragraph ... (provision 203, formula B, para. 1) shall be accompanied by a list of such waters which indicates all the routes used for international navigation, as well as any traffic separation schemes in force in such waters in conformity with articles ... of this Convention. Such routes may be modified or new routes created only in conformity with articles ... of this Convention.

2. Within archipelagic waters other than those referred to in paragraph 1, the provisions of articles ... (innocent passage) apply.

Formula C

All ships shall enjoy equally freedom of passage in archipelagic straits, the approaches thereto, and those areas in the archipelagic

waters of the archipelagic State along which normally lie the shortest sea lanes used for international navigation between one part and another part of the high seas.

Provision 215

1. An archipelagic State may designate sea lanes suitable for the safe and expeditious passage of foreign ships through its archipelagic waters, and may restrict the passage of such ships, or any types or classes of such ships, through those waters to any such sea lanes.
2. An archipelagic State may, from time to time, after giving due publicity thereto, substitute other sea lanes for any sea lanes previously designated by it under the provisions of this article.
3. An archipelagic State which designates sea lanes under the provisions of this article may also prescribe traffic separation schemes for the passage of such ships through those sea lanes.
4. In the designation of sea lanes and the prescription of traffic separation schemes under the provisions of this article an archipelagic State shall, *inter alia*, take into account:
 - (a) The recommendations or technical advice of competent international organizations;
 - (b) Any channels customarily used for international navigation;
 - (c) The special characteristics of particular channels; and
 - (d) The special characteristics of particular ships.
5. An archipelagic State shall clearly demarcate all sea lanes designated by it under the provisions of . . . (provisions 215 to 219) and indicate them on charts to which due publicity shall be given.

Provision 216

1. An archipelagic State may make laws and regulations, not inconsistent with the provisions of these articles and having regard to other applicable rules of international law, relating to passage through its archipelagic waters, or the sea lanes designated under the provisions of . . . (provisions 215 to 219), which laws and regulations may be in respect of all or any of the following:
 - (a) The safety of navigation and the regulation of marine traffic;
 - (b) The installation, utilization and protection of navigational aids and facilities;
 - (c) The installation, utilization and protection of facilities or installations for the exploration and exploitation of the marine resources, including the resources of the sea-bed and subsoil, of the archipelagic waters;
 - (d) The protection of submarine or aerial cables and pipelines;
 - (e) The conservation of the living resources of the sea;
 - (f) The preservation of the environment of the archipelagic State, and the prevention of pollution thereto;
 - (g) Research in the marine environment, and hydrographic surveys;
 - (h) The prevention of infringement of the fisheries regulations of the archipelagic State, including, *inter alia*, those relating to the stowage of gear;
 - (i) The prevention of infringement of the customs, fiscal, immigration, quarantine, sanitary and phyto-sanitary regulations of the archipelagic State; and
 - (j) The preservation of the peace, good order and security of the archipelagic State.
2. The archipelagic State shall give due publicity to all laws and regulations made by it under the provisions of . . . (provisions 215 to 219).

Provision 217

Formula A

Foreign ships exercising the right of innocent passage through the archipelagic waters or the sea lanes designated under the provisions of . . . (provisions 215 to 219) shall comply with all laws and regulations made by the archipelagic State under the provisions of this article.

Formula B

Foreign ships exercising the right of free passage through the archipelagic waters or the sea lanes designated under the provisions of . . . (provisions 215 to 219) shall comply with the relevant laws and regulations made by the archipelagic State under the provisions of this article.

Provision 218

Formula A

If any foreign warship does not comply with the laws and regulations of the archipelagic State concerning its passage through the archipelagic waters or the sea lanes designated under the provisions of . . . (provisions 215 to 219) and disregards any request for compliance which is made to it, the archipelagic State may suspend the passage of such warship and require it to leave the archipelagic waters by such safe and expeditious route as may be designated by the archipelagic State.

Formula B

All ships passing through the straits and waters of archipelagic States shall not in any way endanger the security of such States, their territorial integrity or political independence. Warships passing through such straits and waters may not engage in any exercises or gunfire, use any form of weapon, launch or take on aircraft, carry out hydrographic surveys or engage in any similar activity unrelated to their passage. All ships shall inform the archipelagic State of any damage, unforeseen stoppage, or of any action rendered necessary by *force majeure*.

Provision 219

Formula A

Subject to the provisions of paragraph . . . (provision 218, formula A), an archipelagic State may not suspend the innocent passage of foreign ships through sea lanes designated by it under the provisions of . . . (provisions 215 to 219), except when essential for the protection of its security, after giving due publicity thereto and substituting other sea lanes for those through which innocent passage has been suspended.

Formula B

An archipelagic State may not interrupt or suspend the transit of ships through its straits or archipelagic waters, or take any action which may impede their passage.

Provision 220

The foregoing provisions shall not affect the established régime concerning coastlines deeply indented and cut into and the waters enclosed by a fringe of islands along the coast, as expressed in article . . .

PART XI. ENCLOSED AND SEMI-ENCLOSED SEAS (item 17)*

Provision 221

For the purpose of these articles:

- (a) The term "enclosed sea" shall refer to a small body of inland waters surrounded by two or more States which is connected to the open seas by a narrow outlet.
- (b) The term "semi-enclosed sea" shall refer to a sea basin located along the margins of the main ocean basins and enclosed by the land territories of two or more States.

Provision 222

In regions with special characteristics, such as semi-enclosed or enclosed seas, where it is impossible for coastal States to fix the maximum breadth of their territorial seas, the breadth of the said seas shall be determined by agreement between the coastal States of the same region.

Provision 223

Formula A

The general rules set out in chapters . . . (chapters relating to territorial sea and economic zone) of this Convention shall be applied, in enclosed and semi-enclosed seas, in a manner consistent with equity.

States bordering enclosed and semi-enclosed seas may hold consultations among themselves with a view to determining the manner and

* For purely methodological reasons the position of those delegations for whom global criteria should continue to apply is not reflected as a trend in part XI. For the same reasons the position of those delegations for whom the area adjacent to the territorial sea will become an exclusive economic zone or patrimonial sea, and shall not be considered as high seas, is not reflected as a trend in part XI.

method of application appropriate for their region, for the purposes of this article.

Formula B

The general rules set out in this Convention shall apply to an enclosed or semi-enclosed sea in a manner consistent with the special characteristics of these seas and the needs and interests of their coastal States.

Provision 224

Management, conservation, exploration and exploitation of marine living resources in semi-enclosed seas beyond the territorial sea shall be undertaken by the riparian States in such areas through the regional arrangements, taking into account the activities of international organizations concerned in these fields.

Provision 225

Formula A

The preservation and protection of the marine environment of an enclosed or semi-enclosed sea and the management of its resources shall be the responsibility of the coastal States. To this end the coastal States may, in addition to global norms:

(a) Adopt regional rules and standards aimed at the better protection of their environment against marine pollution.

(b) Co-ordinate their activities in relation to the management and exploitation of the renewable resources of the enclosed or semi-enclosed sea under regional arrangements.

Formula B

In those areas, the preservation of the marine environment and the control of pollution shall be managed jointly among the riparian States. Rules, regulations and standards for this purpose shall be based on internationally agreed standards. Due consideration shall be given to the work done by the competent international organizations in this regard.

Provision 226

Scientific research in an enclosed or semi-enclosed sea shall be conducted only with the consent of the coastal States concerned.

Provision 227

Formula A

1. Merchant ships and government ships operated for commercial purposes which are proceeding to or from a coastal State bordering a semi-enclosed sea whose access to ocean space lies exclusively through straits connecting two parts of the high seas and traditionally used for international navigation shall enjoy the right of free transit for this purpose.

2. The régime of passage provided for in this article . . . (paras. 1 to 3) shall, however, be applied in accordance with the following provisions:

(a) During passage ships shall observe all international regulations concerning the prevention of collisions and shall accordingly comply with such traffic separation schemes as may derive from this Convention or from recommendations by IMCO;

(b) Ships shall likewise take all preventive measures necessary to avoid causing any damage to the coastal States bordering the straits;

(c) Damage caused to the coastal State as a result of the exercise by a ship of the right of passage under the régime of free transit shall entitle that State to claim compensation;

(d) No State shall be entitled to interrupt or suspend free transit through straits or to take any measures likely to hamper such transit.

3. The provisions of this article . . . (paras. 1 and 2):

(a) Apply only to straits which connect two parts of the high seas and which are traditionally used for international navigation;

(b) Do not apply to straits already regulated by international conventions.

4. Warships and government ships operated for non-commercial purposes which are passing through straits under the conditions provided for in paragraph 1, shall enjoy the right of innocent passage.

5. The régime of innocent passage must be established in such a way as to safeguard the legitimate rights and interests of coastal States with regard, *inter alia*, to national security and safety of navigation.

Formula B

1. The provisions of this article apply only to straits which connect two parts of the high seas and which are customarily used for international navigation.

2. Ships of all States shall enjoy freedom of navigation in straits connecting two parts of the high seas, whether they are open seas or semi-enclosed seas.

Formula C

(See part III, provision 57, formula C; provision 58, formula B; provision 59, formula B; provision 60, formula B; provision 61; provision 63, formula B; provision 65 and provision 66, formula A.)

Provision 228

Where the establishment of a 12-mile territorial sea in a semi-enclosed sea, which constitutes part of the high seas, has the effect of enclosing as territorial sea areas previously considered as part of the high seas, freedom of navigation shall exist in those waters.

PART XII. ARTIFICIAL ISLANDS AND INSTALLATIONS

(item 18)*

Provision 229

The coastal State is entitled to construct artificial islands or immovable installations in its territorial sea.

Provision 230

The coastal State must not, through such structures, impede access to the ports of a neighbouring State or cause damage to the marine environment of the territorial seas of neighbouring States.

Before commencing the construction of artificial islands or installations as mentioned in the preceding provision, the coastal State shall publish the plans thereof and take into consideration any observations submitted to it by other States. In the event of disagreement, an interested State which deems itself injured may appeal to IMCO, which, though not empowered to prohibit the construction, may prescribe such changes or adjustments as it considers essential to safeguard the lawful interests of other States.

Provision 231

Formula A

(Part IV, provision 74, formula A)

Formula B

The coastal State shall have the exclusive right to authorize and regulate on the continental shelf the construction, operation and use of off-shore installations for the purpose of exploration or exploitation of natural resources or for other economic purposes.

. . . (Part IV, provision 74, formula B, paras. 2 to 5)

Provision 232

(Part IV, provision 75)

Provision 233

1. The coastal State may, on the conditions specified in the following paragraph, authorize the construction on its continental shelf of artificial islands or immovable installations serving purposes other than the exploration or exploitation of natural resources. Such structures shall be placed under its jurisdiction or under that of the State which undertakes their construction, and, with a view to their protection, may be surrounded by safety zones extending not more than 500 metres. Such artificial islands or immovable installations have no territorial sea of their own.

2. Before commencing the construction of artificial islands or installations as mentioned in paragraph 1, the State shall publish the plans thereof and take into consideration any observations submitted to it by other States. In the event of disagreement, an interested State which deems itself injured may appeal to . . . , which shall prescribe, where appropriate, such changes or adjustments as it considers essential to safeguard the lawful interests of other States.

* Reference in part XII to the continental shelf is without prejudice to the position of those delegations for whom the concept of the continental shelf would be subsumed under the concept of the exclusive economic zone.

Provision 234

Formula A

(Part IV, provision 76, formula A)

Formula B

(Part IV, provision 76, formula B)

Provision 235

Formula A

A coastal State shall authorize the laying of submarine cables and pipelines on the continental shelf, without restrictions other than those which may result from its rights over the same.

The establishment of any other type of installation by third States or their nationals is subject to the permission of the coastal State.

Formula B

(Part IV, provision 77, formula B)

Formula C

Subject to the provisions of paragraphs . . . (provision 73, formula A in part IV), the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

Provision 236

Formula A

The coastal State shall authorize and regulate the emplacement and use of artificial islands and any kind of facilities on the surface of the sea, in the water column and on the sea-bed and subsoil of the patrimonial sea.

Formula B

1. The coastal State shall have the exclusive right to authorize and regulate, in the economic zone, the construction, operation and use of artificial islands and installations for the purpose of exploration or exploitation of natural resources, or for other economic purposes, and of any installations which may interfere with the exercise of the rights of the coastal State in the economic zone.

2. The coastal State may, where necessary, establish reasonable safety zones around such off-shore installations in which it may take appropriate measures to ensure the safety both of the installations and of navigation.

3. The provisions of article . . . (provision 231, formula B and provision 234, formula B) shall apply, *mutatis mutandis*, to such artificial islands and installations.

Formula C

Subject to the provisions of paragraphs . . . (provision 237, formula B and provision 238), the coastal State shall have the sovereign right to engage in, decide on and regulate, within the economic zone, the construction, operation and utilization of non-coastal installations and other facilities, set up for purposes of exploration and exploitation of the natural resources of the economic zone.

Provision 237

Formula A

A coastal State shall not erect or establish artificial islands and other installations, including safety zones around them, in such a manner as to interfere with the use by all States of recognized sea lanes and traffic separation schemes essential to international navigation.

Formula B

None of the installations and other facilities or safety zones around them mentioned in paragraphs . . . (provision 236, formula C and provision 238) may be set up in places where they might be a hindrance to the use of the regular sea routes which are of essential importance to international navigation, or of areas which are of special importance to fishing.

Provision 238

The coastal State shall ensure compliance with the agreed international standards concerning the breadth of the safety zone around non-coastal installations and other facilities and navigation beyond the limits of the safety zone but close to such non-coastal installations and other facilities.

PART XIII. RÉGIME OF ISLANDS (item 19)

Provision 239

Formula A

An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

Formula B

1. An island is a vast naturally formed area of land, surrounded by water, which is above water at high tide.

2. An islet is a smaller naturally formed area of land, surrounded by water, which is above water at high tide.

3. A rock is a naturally formed rocky elevation of ground, surrounded by water, which is above water at high tide.

4. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide.

Formula C

1. An islet is a naturally formed elevation of land (or simply an eminence of the sea-bed) less than one square kilometre in area, surrounded by water, which is above water at high tide.

2. An island similar to an islet is a naturally formed elevation of land (or simply an eminence of the sea-bed) surrounded by water, which is above water at high tide, which is more than one square kilometre but less than . . . square kilometres in area, which is not or cannot be inhabited (permanently) or which does not or cannot have its own economic life.

1. Islands under colonial dependence of foreign domination or control

Provision 240

Formula A

In respect of a territory whose people have attained neither full independence nor some other self-governing status following an act of self-determination under the auspices of the United Nations, the rights to the resources of the economic zone created in respect of that territory and to the resources of its continental shelf are vested in the inhabitants of that territory to be exercised by them for their benefit and in accordance with their needs and requirements. Such rights may not be assumed, exercised or profited from or in any way infringed by a metropolitan or foreign power administering or occupying that territory.

Formula B

1. No economic zone shall be established by any State which has dominion over or controls a foreign island in waters contiguous to that island.

2. The inhabitants of such islands shall be entitled to create their economic zone at any time prior to or after attaining independence or self-rule. The right to the resources of such economic zone and to the resources of its continental shelf are vested in the inhabitants of that island to be exercised by them for their benefit and in accordance with their needs or requirements.

3. In case the inhabitants of such islands do not create an economic zone, the Authority shall be entitled to explore and exploit such areas, bearing in mind the interests of the inhabitants.

Formula C

The rights recognized or established in the present Convention shall not be invoked by the colonial or occupying Power in respect of islands and other territories under colonial domination or foreign occupation as long as that situation persists.

Formula D

Concerning islands under colonial domination, racist régime or foreign occupation, the rights to the maritime spaces and to the resources thereof belong to the inhabitants of those islands and must profit only their own development.

No colonial or foreign or racist Power which administers or occupies those islands shall exercise those rights, profit from them or in any way infringe upon them.

2. Other related matters

Provision 241

Formula A

Maritime spaces of islands shall be determined according to equitable principles, taking into account all relevant factors and circumstances including, *inter alia*:

- (a) The size of islands;
 - (b) The population or the absence thereof;
 - (c) Their contiguity to the principal territory;
 - (d) Whether or not they are situated on the continental shelf of another territory;
 - (e) Their geological and geomorphological structure and configuration.
2. Island States and the régime of archipelagic States as set out under the present Convention shall not be affected by this article.

Formula B

1. Subject to paragraph 4 of this article, the territorial sea of an island is measured in accordance with the provisions of this Convention applicable to other land territory.
2. The economic zone of an island and its continental shelf are determined in accordance with the provisions of this Convention applicable to other land territory.
3. The foregoing provisions have application to all islands, including those comprised in an island State.
4. In the case of atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea shall be the seaward edge of the reef, as shown on official charts.

Formula C

1. The sovereignty and jurisdiction of a State extends to the maritime zones of its islands determined and delimited in accordance with the provisions of this Convention applicable to its land territory.
2. The sovereignty over the island extends to its territorial sea, to the air space over the island and its territorial sea, to its sea-bed and the subsoil thereof and to the continental shelf for the purpose of exploring it and exploiting its natural resources.
3. The island has a contiguous zone and an economic zone on the same basis as the continental territory, in accordance with the provisions of this Convention.

Formula D

1. An island situated in the economic zone or on the continental shelf of other States shall have no economic zone or continental shelf of its own if it does not contain at least one tenth of the land area and population of the State to which it belongs.
2. Islands without economic life and situated outside the territorial sea of a State shall have no marine space of their own.
3. Rocks and low-tide elevations shall have no marine space of their own.

Formula E

1. The marine spaces of islets or islands similar to islets situated in the territorial sea, on the continental shelf or in the economic zone of another State shall be determined by agreement between the States concerned or by other means of pacific settlement used in international practice.
2. The marine spaces of such elevations of land situated in the international zone of the sea-bed shall be established by agreement with the international authority for that zone.

Provision 242

Formula A

1. In principle, a State may not invoke the existence, in one of its maritime zones, of islets or islands similar to islets, as defined in article ... (provision 239, formula C), for the purpose of extending the marine spaces which belong to its coasts.
2. Where such elevations of land are situated along the coast of the same State, in immediate proximity thereto, they shall be taken into consideration, in accordance with the provisions of this Convention, for the purpose of establishing the baseline from which the breadth of the territorial sea is measured.
3. Where an islet or island similar to an islet is situated in the territorial sea of the same State but very close to its outer limit, the State in question may reasonably extend its territorial waters seaward or establish an additional maritime zone for the protection of light-houses or other installations on such islet or island. The additional zones thus established shall in no way affect the marine spaces belonging to the coasts of the neighbouring State or States.
4. Islets or islands similar to islets which are situated beyond the territorial sea, on the continental shelf or in the economic zone of the same State, may have around them or around some of their sectors

security areas or even territorial waters in so far as this is without prejudice to the marine spaces which belong to the coasts of the neighbouring State or States.

5. Where such eminences of the sea-bed are situated very close to the outer limit of the continental shelf or of the economic zone, the extension of their security zones or their territorial waters shall be established by agreement with the neighbouring State or States, or, where appropriate, with the authority for the international zone, having regard to all relevant geographic, geological or other factors.

Formula B

1. An island, islet, rock or a low-tide elevation are considered as adjacent when they are situated in the proximity of the coasts of the State to which they belong.
2. An island, islet, rock or a low-tide elevation are considered as non-adjacent when they are not situated in the proximity of the coasts of that State to which they belong.
3. The baselines applicable to adjacent islands, islets, rocks and low-tide elevations, in accordance with article ... (paras. 1 and 2 and provision 239, formula B), are considered as the baselines applicable to the State to which they belong and consequently are used in the measurement of the marine spaces of that State.
4. The marine spaces of islands considered non-adjacent, in accordance with paragraphs ... (para. 2 and provision 239, formula B, para. 1), shall be delimited on the basis of relevant factors taking into account equitable criteria.
5. These equitable criteria should notably relate to:
 - (a) The size of these naturally formed areas of land;
 - (b) Their geographical configuration and their geological and geomorphological structure;
 - (c) The needs and interests of the population living thereon;
 - (d) The living conditions which prevent a permanent settlement of population;
 - (e) Whether these islands are situated within, or in the proximity of, the marine space of another State;
 - (f) Whether, due to their situation far from the coast, they may influence the equity of the delimitation.
6. A State cannot claim jurisdiction over the marine space by virtue of the sovereignty or control which it exercises over a non-adjacent islet, rock or low-tide elevation as defined in paragraphs ... (para. 2 and provision 239, formula B, paras. 2 to 4).
7. In accordance with paragraph 6, safety zones of reasonable breadth may nevertheless be established around such non-adjacent islets, rocks or low-tide elevations.
8. The provisions of articles ... (paras. 1 to 7 and provision 239, formula B) shall not apply either to island or to archipelagic States.
9. A coastal State cannot claim rights based on the concept of archipelago or archipelagic waters by reason of its exercise of sovereignty or control over a group of islands situated off its coasts.

Formula C

(See part I, provision 4, formula A; provision 5, formula A; provision 7, formula A and provision 8.)

Provision 243

Formula A

1. The delimitation of any marine or ocean space shall, in principle, be effected between the coasts proper of the neighbouring States, using as a basis the relevant points on the coasts or on the applicable baselines, so that the areas situated off the sea frontage of each State are attributed thereto.
2. Islands which are situated in the maritime zones to be delimited shall be taken into consideration in the light of their size, their population or the absence thereof, their situation and their geographical configuration, as well as other relevant factors.
3. Low-tide elevations, islets and islands that are similar to islets (of small size, uninhabited and without economic life) which are situated outside the territorial waters off the coasts and which constitute eminences on the continental shelf—whether lighthouses or other installations have been built on them or not—and man-made islands—regardless of their dimensions and characteristics—shall not be taken into consideration in the delimitation of marine or ocean space between neighbouring States.
4. The naturally formed areas of land referred to in paragraph 3 may have around them or around some of their sectors maritime safety

areas or even territorial waters, provided they do not affect marine spaces belonging to the coasts of neighbouring States.

5. The provisions of the present article shall not be applicable to islands and to other naturally formed areas of land which constitute part of an island State or of an archipelagic State.

Formula B

1. In areas of semi-enclosed seas, having special geographic characteristics, the maritime spaces of islands shall be determined jointly by the States of that area.

2. The provisions of this chapter shall be applied without prejudice to the articles of this Convention relating to delimitation of marine spaces between countries with adjacent and/or opposite coasts.

Formula C

1. In accordance with the provisions of articles . . . (provision 242, formula B, paras. 2, 4 and 5), the delimitation of the marine spaces between adjacent and/or opposite States must be done, in the case of presence of islands, non-adjacent islets, rocks and low-tide elevations, by agreement between them according to principles of equity, the median or equidistance line not being the only method of delimitation.

2. For this purpose, special account should be taken of geological and geomorphological criteria, as well as of all other special circumstances.

Formula D

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line, every point of which is equidistant from the nearest points on the baselines, continental or insular, from which the breadth of the territorial seas of each of the two States is measured.

2. Where the coasts of two or more States are adjacent or opposite to each other, the delimitation of the continental shelf boundaries shall be determined by agreement amongst themselves.

3. Failing such agreement, no State is entitled to extend its sovereignty over the continental shelf beyond the median line every point of which is equidistant from the nearest points of the baselines, continental or insular, from which the breadth of the continental shelf of each of the two States is measured.

4. Where the coasts of two or more States are adjacent or opposite to each other and the distance between them is less than double the uniform breadth provided in this Convention, the delimitation of their economic zones and of their sea-bed areas shall be determined by agreement among themselves.

5. Failing such agreement, no State is entitled to extend its rights over an economic zone and sea-bed area beyond the limits of the median line every point of which is equidistant from the nearest points of the baselines, continental or insular, from which the breadth of the above areas of each of the two States is measured.

Formula E

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its maritime spaces beyond the median line, every point of which is equidistant from the nearest points on the baselines, continental or insular, from which the breadth of the maritime spaces of each of the two States is measured.

Formula F

Where the coasts of two or more States are adjacent and/or opposite to each other, the delimitation of the respective maritime spaces shall be determined by agreement among them in accordance with equitable principles, taking into account all the relevant factors including, *inter alia*, the geomorphological and geological structure of the sea-bed area involved, and special circumstances such as the general configuration of the respective coasts, and the existence of islands, islets or rocks within the area.

Formula G

1. The delimitation of the continental shelf or of the economic zone between adjacent and/or opposite States shall be effected by agreement between them in accordance with an equitable dividing line, the median or equidistance line not being the only method of delimitation.

2. For this purpose, account shall be taken, *inter alia*, of the special nature of certain circumstances, including the existence of islands or islets situated in the area to be delimited or of such kind that they might affect the delimitation to be carried out.

Provision 244

APPENDIX II

Documents of the Second Committee

[See the list of documents at the beginning of the present volume.]

APPENDIX III

Index to the summary records of the meetings of the Second Committee

Meetings held from 3 July to 28 August 1974

1st meeting—3 July 1974

Organization of work:

Statements by the Chairman, and by the representatives of Bulgaria, Senegal, El Salvador, Finland, Singapore, United States of America, Chile, Turkey, France, Tunisia, Greece, Spain, India, Peru, Colombia, Israel, Bolivia and Guatemala

2nd meeting—9 July 1974

Territorial sea:

Statements by the Chairman, and by the representatives of Turkey, India, Indonesia, Guatemala, Greece, Ecuador, Guyana, United Republic of Cameroon, Bangladesh and Israel

3rd meeting—11 July 1974

Organization of work:

Statements by the Chairman

Territorial sea (continued):

Statements by the representatives of Federal Republic of Germany, Madagascar, Honduras, German Democratic Republic, United Kingdom of Great Britain and Northern Ireland, Spain, Israel, Uruguay, Philippines, United Republic of Cameroon, Peru, Guyana and by the Chairman and Canada

4th meeting—16 July 1974

Territorial sea (continued):

Statements by the representative of El Salvador, by the Chairman, and by the representatives of Turkey, Cuba, Union of Soviet Socialist Republics, Finland, Pakistan, Upper Volta, Guatemala, Netherlands, Tonga and Ecuador

[Statements by the representatives of Honduras and El Salvador in exercise of the right of reply]

5th meeting—17 July 1974

Territorial sea (continued):

Statements by the representatives of Brazil, Bangladesh, Republic of Korea, Colombia, Peru, Cyprus, Uruguay, Greece, Jamaica, Philippines, El Salvador and Albania and by the Chairman

[Statements by the representatives of the Union of Soviet Socialist Republics and Albania in exercise of the right of reply]

Organization of work:

Statements by the representative of Tunisia and by the Chairman

6th meeting—17 July 1974

Organization of work:

Statements by the Chairman and by the representatives of Iceland, Pakistan and Greece

Territorial sea (continued):

Statements by the representatives of Indonesia, Italy, Turkey, United Republic of Cameroon, Iran, Poland, Guinea, Ukrainian Soviet Socialist Republic, Paraguay, Venezuela and Iraq

7th meeting—17 July 1974

Territorial sea (concluded):

Statements by the representatives of Trinidad and Tobago, Peru, Republic of Viet-Nam, Bhutan, Chile, Somalia, by the Chairman,

by the representatives of Japan, the International Chamber of Shipping, by El Salvador, Paraguay, Bolivia, Guyana, Uruguay, Tunisia and Guyana.

8th meeting—18 July 1974

Organization of work:

Statement by the Chairman

9th meeting—19 July 1974

Organization of work:

Statement by the Chairman

Contiguous zone:

Statements by the representatives of Mexico, United Republic of Cameroon, Togo, India, Indonesia, Israel, Egypt, Kenya, Iraq, Algeria, Guyana, by the Chairman, and by the representatives of Pakistan, El Salvador, Bahrain, Peru, Kuwait, Lebanon, Nigeria, Spain, Portugal and Union of Soviet Socialist Republics

10th meeting—19 July 1974

Straits used for international navigation:

Statement by the Chairman

11th meeting—22 July 1974

Straits used for international navigation (*continued*):

Statements by the representative of Spain, by the Chairman, and by the representatives of Iran, Denmark, Finland, United Kingdom of Great Britain and Northern Ireland and Sri Lanka

12th meeting—22 July 1974

Straits used for international navigation (*continued*):

Statements by the representatives of Union of Soviet Socialist Republics, German Democratic Republic, Cuba, Mongolia, United States of America, Sweden, United Republic of Tanzania, Czechoslovakia and Italy

13th meeting—23 July 1974

Straits used for international navigation (*continued*):

Statements by the representatives of Canada, Egypt, Poland, Peru, Morocco, Hungary, Turkey, Iceland, China, Yemen, Ghana, United States of America, Argentina and Chile

14th meeting—23 July 1974

Straits used for international navigation (*continued*):

Statements by the representatives of Oman, Singapore, Spain, Fiji, Israel, Algeria, Chile, by the Chairman, and by the representatives of Nigeria, Albania, Kuwait, Bulgaria, Iraq, Ukrainian Soviet Socialist Republic, Liberia, India, Paraguay and Peru

[Statements by the representatives of China and the Ukrainian Soviet Socialist Republic in exercise of the right of reply]

15th meeting—25 July 1974

Straits used for international navigation (*concluded*):

Statements by the representatives of Democratic Yemen and by the Chairman

16th meeting—26 July 1974

Continental shelf:

Statements by the representatives of Austria, Nicaragua, Bangladesh, Israel, Honduras, Libyan Arab Republic, Paraguay, Peru and Portugal

17th meeting—26 July 1974

Continental shelf (*continued*):

Statements by the representatives of Zaire, Finland, Australia, Japan, Republic of Korea, Spain and Lebanon

18th meeting—29 July 1974

Continental shelf (*continued*):

[Statements on a point of order by the representatives of Iceland and Nepal and by the Chairman]

Statements by the representatives of El Salvador, Argentina, Singapore, Uganda, Nepal, Venezuela, Greece, Uruguay, Pakistan, Egypt, Trinidad and Tobago and Burma

19th meeting—30 July 1974

Continental shelf (*continued*):

Statements by the representatives of Romania, Guyana, by the Chairman, and by the representatives of Kenya, United Republic

of Cameroon, Israel, Switzerland, Ecuador, Turkey, Iraq, Iceland and Thailand

20th meeting—30 July 1974

Continental shelf (*continued*):

Statements by the representatives of Gambia, Union of Soviet Socialist Republics, Kenya, Denmark, Democratic People's Republic of Korea, Republic of Viet-Nam, Tunisia, Mauritius, Cyprus, Norway, Lesotho, Cuba, Federal Republic of Germany, Ghana, Ireland, Chile, Mexico, Mali, Italy, Jamaica, Panama, Malta and Indonesia

[Statements by the representatives of Republic of Korea and Democratic People's Republic of Korea in exercise of the right of reply]

21st meeting—31 July 1974

Exclusive economic zone beyond the territorial sea:

Statement by the representative of New Zealand

22nd meeting—31 July 1974

Continental shelf (*concluded*):

Statement by the representative of Bahrain

Exclusive economic zone beyond the territorial sea (*continued*):

Statements by the representatives of Honduras, Nigeria, Portugal, Mexico, German Democratic Republic, Yugoslavia, Upper Volta, Madagascar, Paraguay, Zaire, Congo, Cyprus, Barbados, by the Chairman, and by the representatives of Dahomey, Mauritania, Israel, Trinidad and Tobago, Laos, Switzerland, Ireland, Sweden and Finland

23rd meeting—1 August 1974

Exclusive economic zone beyond the territorial sea (*continued*):

Statements by the representatives of Bangladesh, United Republic of Tanzania, Kenya, Liberia, France and Sri Lanka

24th meeting—1 August 1974

Exclusive economic zone beyond the territorial sea (*continued*):

Statements by the representatives of China, El Salvador, Togo, Ghana, Greece, Iceland, Western Samoa, Tonga, United States of America, Burundi, India, Federal Republic of Germany, Cuba, Thailand, Peru and Romania

25th meeting—5 August 1974

Exclusive economic zone beyond the territorial sea (*continued*):

Statements by the representatives of Pakistan, Italy, Republic of Korea, Argentina, Ivory Coast, Uganda, Malaysia, Bolivia, Senegal, United Kingdom of Great Britain and Northern Ireland, Ukrainian Soviet Socialist Republic and Bhutan

26th meeting—5 August 1974

Exclusive economic zone beyond the territorial sea (*continued*):

Statements by the representatives of Poland, Brazil, Chile, Tunisia, Egypt, Australia, Byelorussian Soviet Socialist Republic, Nepal, Belgium, Albania, Indonesia, Guyana, Uruguay, Democratic Yemen and Somalia

[Statements by the representatives of Union of Soviet Socialist Republics, Albania and China in exercise of the right of reply]

27th meeting—5 August 1974

Exclusive economic zone beyond the territorial sea (*continued*):

Statements by the representatives of Singapore, South Africa, Khmer Republic, Panama, Turkey, Libyan Arab Republic, Ecuador, Haiti, Democratic People's Republic of Korea, Afghanistan, Spain and Guatemala

28th meeting—6 August 1974

Exclusive economic zone beyond the territorial sea (*continued*):

Statements by the representatives of Japan, Netherlands, Jamaica, Guinea, Bulgaria, Denmark, Venezuela, Union of Soviet Socialist Republics, Lebanon, Algeria and Austria

29th meeting—6 August 1974

Exclusive economic zone beyond the territorial sea (*concluded*):

Statements by the representatives of Burma, Canada, Colombia, Iraq, Mali, and by the Chairman

30th meeting—7 August 1974

Coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea:

Statements by the representatives of South Africa, France, by the Chairman, and by the representatives of Zaire, Denmark, China, Iceland, Union of Soviet Socialist Republics and Peru
[Statement by the representative of China in exercise of the right of reply]

31st meeting—7 August 1974

Coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea (*concluded*):

Statements by the representatives of Canada, Tunisia, Nigeria, Norway, Ghana, Finland, Congo, Italy and by the Chairman

Contiguous zone (*concluded*):

Statements by the representatives of German Democratic Republic, Honduras, Bahrain and India

High Seas:

Statements by the representatives of El Salvador, United Republic of Tanzania, New Zealand, Guyana, by the Chairman, and by the representatives of the United Kingdom of Great Britain and Northern Ireland, Senegal, Union of Soviet Socialist Republics and Peru

[Statements by the representatives of the United Republic of Tanzania and Japan in exercise of the right of reply]

32nd meeting—8 August 1974

Land-locked countries:

Rights and interests of shelf-locked States and States with narrow shelves or short coastlines:

Statements by the representatives of Nepal, Czechoslovakia, Upper Volta, Sweden, Ghana, Uganda, Austria, Mongolia, Senegal, Cuba, Switzerland, Hungary, Iran, Byelorussian Soviet Socialist Republic and Singapore

33rd meeting—8 August 1974

Land-locked countries (*continued*):

Statements by the representatives of Nigeria, Botswana, Bolivia, Paraguay, Lesotho, India, Panama, Afghanistan, German Democratic Republic, Venezuela, Iraq, Indonesia, Pakistan, Peru, Turkey and Chile

[Statements by the representatives of Uruguay and Bolivia in exercise of the right of reply]

34th meeting—9 August 1974

Land-locked countries (*concluded*):

Statements by the representatives of Jamaica, Union of Soviet Socialist Republics, Kenya, Tunisia, Algeria, Mali, Thailand, Israel, Albania, Uruguay, Romania, Ecuador and Zambia

35th meeting—9 August 1974

Rights and interests of shelf-locked States and States with narrow shelves or short coastlines (*concluded*):

Statements by the representatives of Jamaica, Barbados, Belgium, Liberia and Singapore

36th meeting—12 August 1974

Archipelagos:

Statements by the representatives of Indonesia, Australia, Japan, United Kingdom of Great Britain and Northern Ireland, Bulgaria, Netherlands, Fiji, India, France, Honduras, Philippines, Thailand and Bahamas

37th meeting—12 August 1974

Archipelagos (*concluded*):

Statements by the representatives of Portugal, Burma, Union of Soviet Socialist Republics, Ecuador, Peru, Egypt, Singapore, Cuba, Yemen, Mauritius, Spain, Pakistan, Malaysia, Chile, Canada, Algeria, Turkey, Tunisia, Nigeria, Laos and Argentina

38th meeting—13 August 1974

Enclosed and semi-enclosed seas:

Statements by the representatives of Iran, Israel, Denmark, Sweden, Thailand, France, Iraq, German Democratic Republic, Turkey, Union of Soviet Socialist Republics, Greece, Algeria and Democratic Yemen

[Statements by the representatives of Iran and Iraq in exercise of the right of reply]

Artificial islands and installations:

Statements by the representative of Belgium

Régime of islands:

Statement by the representative of New Zealand

39th meeting—14 August 1974

Régime of islands (*continued*):

Statements by the representatives of Denmark, Cuba, Colombia, Western Samoa, Romania, Tonga, Trinidad and Tobago, Fiji, Nicaragua, Canada, Turkey, Argentina, Singapore and Greece

40th meeting—14 August 1974

Régime of islands (*concluded*):

Statements by the representatives of Venezuela, Uruguay, France, Ecuador, Jamaica, Cyprus, Guatemala, Tunisia, Ivory Coast, Mauritius, United Kingdom of Great Britain and Northern Ireland, Algeria, Mexico, Madagascar, Italy, Spain and by the Chairman

Transmission from the high seas:

Statements by the representative of the United Kingdom of Great Britain and Northern Ireland and by the Chairman

41st meeting—16 August 1974

Introduction of draft proposals:

Statements by the Chairman, and by the representatives of Poland, Australia, United States of America and Turkey

42nd meeting—19 August 1974

Introduction of draft proposals (*continued*):

Statements by the representatives of France, Malaysia, Indonesia, New Zealand and Peru

43rd meeting—23 August 1974

Organization of work:

Statement by the Chairman

Introduction of draft proposals (*continued*):

Statements by the representatives of El Salvador, France, Bolivia, Lesotho, Indonesia, Iraq, Iran and Fiji

44th meeting—27 August 1974

Introduction of draft proposals (*concluded*):

Statements by the representative of Iran, by the Chairman, and by the representatives of the United Republic of Tanzania, Egypt, United States of America, Gambia and Canada

45th meeting—28 August 1974

Consideration of recent draft proposals:

Statements by the Chairman, and by the representatives of Indonesia, Italy, Ecuador, Philippines, Turkey, Iceland, Peru, Romania and United Kingdom of Great Britain and Northern Ireland
[Statement by Afghanistan on a point of order]

46th meeting—28 August 1974

Documentation:

Statement by the Chairman

Statement on the work of the Committee:

Statements by the Rapporteur, by the representatives of the United Republic of Tanzania, Chile, Bolivia, Federal Republic of Germany, by the Chairman, and by the representatives of Mexico, El Salvador, Thailand, France, Egypt, Czechoslovakia, Senegal, Yemen, Israel, United States of America, Yugoslavia, Guinea, Ecuador, Chile, Senegal, Peru, Kenya and Iraq

Completion of the Committee's work:

Statement by the Chairman

ANNEX III

Statement of activities of the Third Committee

Prepared by the Rapporteur of the Committee

Note:

1. The following statement contains a brief account of the activities of the Third Committee and does not constitute a report in a formal or traditional sense. The objective is to provide a document of record and

reference which will enable delegations, and the Committee as a whole, to continue without delay consideration of the subject-matter before the Committee at the next session of the Conference.

I. Establishment of the Committee

2. The Third Committee was one of three Main Committees established at the first session of the Conference, to deal with the subjects covered by the three sub-committees of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction.

3. The officers of the Committee were elected as follows:

Chairman: Mr. A. Yankov (Bulgaria)

Vice-Chairmen: Colombia, Mr. A. Escallon Villa; Cyprus, Mr. A. J. Jacovides; Federal Republic of Germany, Mr. W. H. Lampe, Mr. G. Breuer

Rapporteur: Mr. A. M. A. Hassan (Sudan)

II. Mandate of the Committee

4. By a decision of the Conference at its 15th meeting on 2 July 1974, upon the recommendation of the General Committee, the Third Committee was given the task of considering the following items from the list of subjects and issues:

Item 12. *Preservation of the marine environment*

- 12.1 Sources of pollution and other hazards and measures to combat them
- 12.2 Measures to preserve the ecological balance of the marine environment
- 12.3 Responsibility and liability for damage to the marine environment and to the coastal State
- 12.4 Rights and duties of coastal States
- 12.5 International co-operation

Item 13. *Scientific research*

- 13.1 Nature, characteristics and objectives of scientific research of the oceans
- 13.2 Access to scientific information
- 13.3 International co-operation

Item 14. *Development and transfer of technology*

- 14.1 Development of technological capabilities of developing countries
 - 14.1.1 Sharing of knowledge and technology between developed and developing countries
 - 14.1.2 Training of personnel from developing countries
 - 14.1.3 Transfer of technology to developing countries

5. The Conference also agreed that the following understanding reached in the sea-bed Committee on 27 August 1971 should be carried forward in respect of the Committees of the Conference:

"While each sub-committee will have the right to discuss and record its conclusions on the question of limits so far as it is relevant to the subjects allocated to it, the main Committee will not reach a decision on the final recommendation with regard to limits until the recommendations of Sub-Committee II on the precise definition of the area have been received, which should constitute basic proposals for the consideration of the main Committee."

III. DOCUMENTATION

6. By paragraph 6 of resolution 3067 (XXVIII), the General Assembly referred to the Conference the reports of the sea-bed Committee and all other relevant documentation of the General Assembly and the Committee. The Third Committee thus had before it all the documentation from Sub-Committee III of the sea-bed Committee including in particular the notes with annexes from the Chairmen of the two working groups of Sub-Committee III. The texts of these notes and annexes are reproduced in the report of the sea-bed Committee. A list of all formal proposals presented to date to the Committee is contained in the list of documents at the beginning of the present volume.

IV. ORGANIZATION OF WORK

7. During the second session of the Conference, the Third Committee worked through formal and informal meetings. It held 17 formal meetings and 21 informal meetings.

8. At its 2nd formal meeting held on 11 July 1974, the Committee accepted a proposal by the Chairman that it should start work with a brief general discussion to enable delegations to make statements on all the three items allocated to the Third Committee. At the conclusion of the general discussion, the Committee would hold its informal meetings to consider, alternately on a daily basis, item 12 at one meeting, and items 13 and 14 at the following meeting. The Committee agreed that when it held informal meetings on item 12 it should be under the chairmanship of Mr. José Luis Vallarta (Mexico). On 23 July 1974 the Committee agreed that when it held its informal meetings to consider items 13 and 14 it should be under the chairmanship of Mr. Cornel Metternich (Federal Republic of Germany).

9. During the general discussion, 43 delegations made statements on item 12 and 42 delegations on items 13 and 14. Representatives of several specialized agencies of the United Nations and other international organizations, among them the United Nations Educational, Scientific and Cultural Organization, the United Nations Environment Programme, the Inter-Governmental Maritime Consultative Organization and the Inter-Governmental Oceanographic Commission, made statements regarding subjects relevant to the mandate of the Committee.

V. WORK OF THE THIRD COMMITTEE AT ITS INFORMAL MEETINGS

10. The two Chairmen of the informal meetings of the Committee on item 12 and items 13 and 14 made regular weekly reports to the Committee on progress made. These reports were the personal assessments of the Chairmen and were not binding on any delegation. The informal meetings also met as drafting and negotiating groups. At the end of the Conference session in Caracas the two Chairmen transmitted notes to the Chairman of the Committee describing the work done during the informal meetings. The texts of these notes are contained in document A/CONF.62/C.3/L.14 and 16 respectively. The Chairmen also transmitted texts of draft articles whether agreed upon or with alternates in some cases, prepared in the informal meetings of the Committee. These texts are found in document A/CONF.62/C.3/L.15 as regards item 12 and for items 13 and 14 in document A/CONF.62/C.3/L.17.

VI. FUTURE WORK

11. The Third Committee made progress at this session of the Conference towards completion of the mandate assigned to it by the Conference. It therefore recommends that the opportunity should be provided for it to continue this work at a further session or sessions with a view to completing the drafting of articles dealing with the preservation of the marine environment, scientific research and development and transfer of technology.

APPENDIX I

Documents of the Third Committee

[See the list of documents at the beginning of the present volume.]

APPENDIX II

Index to the summary records of the meetings of the Third Committee

Meetings held from 4 July to 27 August 1974

1st meeting—4 July 1974

Organization of work:

Statements by the representative of Colombia, by the Chairman, and by the representatives of El Salvador, Senegal, Finland, Sri Lanka, Canada, United States of America and Romania

2nd meeting—11 July 1974

Organization of work:

Statements by the Chairman, and by the representatives of Senegal, Chile, Venezuela, Byelorussian Soviet Socialist Republic, Finland, Greece, Kenya, Spain, United States of America, Sudan, Pakistan, Sri Lanka, France, Algeria, Union of Soviet Socialist Republics, Canada, Brazil, Ireland and India

3rd meeting—15 July 1974

Preservation of the marine environment:

Statements by the Chairman, and by representatives of German Democratic Republic, Denmark, Iraq, Australia, Burma, Bangladesh and Madagascar

4th meeting—16 July 1974

Preservation of the marine environment (*continued*):

Statements by the representatives of Liberia, Egypt, Canada, Finland, Union of Soviet Socialist Republics, United Republic of Tanzania, Nigeria, Trinidad and Tobago and United Kingdom of Great Britain and Northern Ireland

5th meeting—17 July 1974

Preservation of the marine environment (*continued*):

Statements by the Assistant Director-General of the United Nations Educational, Scientific and Cultural Organization, and by the representatives of Sweden, Pakistan, Sudan, Israel, Italy, Japan, New Zealand, Greece, Portugal and Federal Republic of Germany

6th meeting—17 July 1974

Preservation of the marine environment (*continued*):

Statements by the representatives of China, Iran, Austria, Ecuador, France, Chile, Romania, Brazil, Barbados, Cuba, Spain, Libyan Arab Republic, India, by the Chairman, and by the representatives of Tunisia, United States of America and Denmark

7th meeting—18 July 1974

Scientific research:

Development and transfer of technology:

Statements by the representatives of Madagascar, German Democratic Republic, Sri Lanka, by the Chairman, and by the representatives of Sudan, Brazil, Burma, Colombia, France, United Republic of Cameroon, Denmark and Guyana

8th meeting—19 July 1974

Scientific research (*continued*):

Development and transfer of technology (*continued*):

Statements by the representatives of Panama, United States of America, Mexico, Israel, Ireland, Venezuela, China, Sweden, Federal Republic of Germany, Peru, Portugal and United Republic of Tanzania

9th meeting—19 July 1974

Scientific research (*continued*):

Development and transfer of technology (*continued*):

Statements by the representatives of Iran, Cuba, Spain, Nigeria, Austria, Yugoslavia, Union of Soviet Socialist Republics, Kenya, Iraq, Finland, Canada, Albania, Guinea, India, Libyan Arab Republic, Congo, Japan, Senegal, by the Chairman and by the representative of Brazil

10th meeting—26 July 1974

Reports of the Chairmen of the informal meetings:

Statements by the Chairman, and by the Chairmen of the informal meetings on item 12, and on items 13 and 14, by the representatives of Spain, France, Chile, Venezuela, Union of Soviet Socialist Republics, and by the Secretary of the Committee

Preservation of the marine environment (*continued*):

Statements by the representatives of Kenya, Greece, Japan, Trinidad and Tobago and Sudan

11th meeting—5 August 1974

Reports of the Chairmen of the informal meetings:

Statements by the Chairman, and by the Chairmen of the informal meetings on item 12, and on items 13 and 14

Preservation of the marine environment (*continued*):

Statements by the Secretary of the Committee, and by the representatives of India, Iran, New Zealand, Guyana, Ghana, Canada, Peru, Bangladesh, Denmark, Argentina, Kenya, Greece, Philippines and Ireland

12th meeting—5 August 1974

Scientific research:

Statements by the representatives of Yugoslavia, by the Chairman, by the representative of the Federal Republic of Germany and by the Secretary of the Committee

Preservation of the marine environment (*continued*):

Statements by the representatives of Israel, Nigeria, India, Jamaica, South Africa, Malta and Federal Republic of Germany

13th meeting—9 August 1974

Reports of the Chairmen of the informal meetings:

Statements by the Chairmen of the informal meetings on item 12 and on items 13 and 14

Scientific research (*continued*):

Statements by the representatives of Trinidad and Tobago, Spain, India, Egypt, Brazil, Pakistan, Byelorussian Soviet Socialist Republic, Kenya, France, Yugoslavia, Argentina, South Africa, Morocco, Barbados, by the Chairman and by the representatives of the Netherlands, Liberia, Greece and the Federal Republic of Germany

14th meeting—9 August 1974

Preservation of the marine environment (*continued*):

Statements by the representatives of Japan, the United Nations Environment Programme, the United States of America, Kenya, India, Pakistan, by the Chairman, and by the representatives of Barbados, Federal Republic of Germany and United Kingdom of Great Britain and Northern Ireland

Organization of work:

Statements by the Chairman and by the Secretary of the Committee

15th meeting—16 August 1974

Reports of the Chairmen of the informal meetings:

Statements by the Chairmen of the informal meetings on item 12 and on items 13 and 14

Preservation of the marine environment (*continued*):

Statements by the representatives of Italy, Chile, by the Chairman, and by the representatives of the Netherlands, the Inter-Governmental Maritime Consultative Organization, Iceland, United Kingdom of Great Britain and Northern Ireland, Federal Republic of Germany, India, Union of Soviet Socialist Republics, Spain and German Democratic Republic

Organization of work:

Statements by the Chairman, and the Rapporteur, and by the representatives of Colombia, Mexico, India, Yugoslavia, China, Venezuela and Spain

16th meeting—23 August 1974

Organization of work:

Statements by the representative of Israel, by the Chairman, and by the representatives of Guyana and Italy

Development and transfer of technology (*concluded*):

Statements by the representative of Sri Lanka, by the Chairman, and by the representatives of Nigeria, Pakistan, New Zealand, India, Australia, Senegal, Malta, Kenya, China, Bulgaria, Philippines, Ireland, Greece, France and Ukrainian Soviet Socialist Republic

Scientific research (*continued*):

Statements by the representatives of Colombia, India, Kenya, by the Chairman, by the representatives of China, Union of Soviet Socialist Republics, Somalia, Ecuador, Guyana, Norway, the Inter-Governmental Oceanographic Commission (UNESCO) and by the representatives of Spain, France, Ukrainian Soviet Socialist Republic, Pakistan and Mexico.

17th meeting—27 August 1974

Preservation of the marine environment (*concluded*):

Statements by the representatives of Norway, France and Chile

Scientific research (*concluded*):

Statements by the representatives of Netherlands, Austria, India, Colombia, Kenya, Yugoslavia, by the Chairman, and by the representatives of Madagascar, Argentina, Pakistan, Singapore, Libyan Arab Republic, Lesotho, Sierra Leone and Liberia

Statements by the Chairman of the informal meetings:

Statements by the Chairmen of the informal meetings on item 12, and on items 13 and 14, by the representative of Sweden, by the Chairman, and by the representatives of India, the Inter-Governmental Maritime Consultative Organization, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Lesotho and the United Nations Environment Programme

Consideration of the statement of activities of the Committee:

Statements by the Rapporteur and the Chairman, and by the representatives of Algeria, Lesotho and Sudan

Concluding statement by the Chairman

ANNEX 29

UN Diplomatic Conference, Plenary, 60th session, 6 April 1976

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.60

60th Plenary meeting

Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume V (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Fourth Session)

stipulation could lead to a dangerous undermining of the security mechanism of the United Nations. It was for the Security Council alone to decide whether or not a dispute threatened international peace and security, and, on that basis, to take the measures which it deemed appropriate.

Consequently, article 18, paragraph 2, should be amended so that the disputes referred to would be excluded *ipso jure* from the procedures provided for in the convention.

The meeting rose at 6 p.m.

60th meeting

Tuesday, 6 April 1976, at 10.15 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Settlement of disputes (*continued*) (A/CONF.62/WP.8,¹ WP.9 and Add.1)

It was decided to permit the International Ocean Institute, a non-governmental organization which had been invited to the Conference and was represented by an observer, to take part in the current debate.

1. Mr. RIPHAGEN (Netherlands), speaking also on behalf of the delegations of Belgium and Luxembourg, said that dispute settlement was not a separate branch of international law, but was related to the substantive rules in different fields of international law. With regard to the law of the sea, difficulties would arise not only as a result of traditional and new uses of the sea, but also because new concepts had emerged, such as the concepts of mankind and of environment, both transcending traditional notions of nations and territory. Those concepts required a measure of international management, including international procedures for the settlement of disputes. The development of such procedures was in the interests of all States. The abstract rules which were to be elaborated, particularly in relation to the marine environment, required methods for the settlement of disputes which conflicting interests were likely to generate. Whatever differences of opinion still existed as to the contents of the rules on dispute settlement, a balance must be struck between the interests of coastal States, those of the other users of the sea and those of the international community as a whole. That would be impossible without a set of rules the primary object of which was a functional division of rights to be exercised within the same ocean space or spaces by the various entities involved. In that respect the seas would continue to be treated in a way totally different from the way land was treated in international law.

2. While the contents of the rights of the various entities in the various maritime zones were necessarily different, their status was always the same. Thus, if the concept of an economic zone was accepted, within that zone some rights would be reserved for the coastal State while others would continue to be enjoyed by all States. But from the legal point of view all those rights would be "sovereign," whatever their practical importance for the States concerned. Such a division of rights had difficulties the solution of which required not only international rules, such as those in the single negotiating text, but also international machineries. Furthermore, the functional division would be different in

different maritime zones and those zones would have to be delimited and divided both among States and among States and the international community, in particular the Authority. There again, the delimitation would be quite different from the delimitation of land, since there were no natural boundaries in the seas and the seas would never be the normal habitat of man. Nevertheless, for legal purposes, it was necessary to draw boundaries in the seas. The numerous provisions on the subject in the single negotiating text were and probably would remain rather vague, since it was virtually impossible to cover all existing geographical situations by abstract rules. There again, international machinery for reaching decisions in concrete situations was essential.

3. The new law of the sea convention provided for a completely new type of international organization, namely, the Authority. It was obvious that the Authority must be subject to international rules limiting its powers and regulating the legal relationships it entered into with other entities and, generally, its activities affecting the interests of other entities, whether States or natural or juridical persons. The traditional rules and procedures relating to the interpretation and application of the constitutions of existing international organizations and their contracts did not suffice. The Authority must be subject to some form of judicial control. Accordingly, compulsory dispute settlement was an essential element of any new legal order for the seas. The choice between the various possible methods of dispute settlement must also correspond to the specific character of the applicable rules and to the subject-matter of the particular dispute. Different procedures should therefore be envisaged, while seeking to avoid creating problems of positive or negative conflicts of competence between those procedures. Furthermore, the common principle underlying those procedures should be that ultimately a binding and final decision must be reached.

4. The system of dispute settlement would necessarily be complicated, since a simple, uniform solution would hardly do justice to the great variety of situations. Furthermore, care must be taken to admit a negotiated settlement at all times. In that connexion, the three delegations on whose behalf he was speaking favoured the idea underlying annex III, entitled "Information and consultation," of the single negotiating text submitted by the President of the Conference (A/CONF.62/WP.9). Should direct consultations and negotiations fail after a certain period of time, impartial third-party assistance should be accepted. Accordingly, a compulsory conciliation procedure along the lines of that provided for in the Vienna Convention on the Law of

¹ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

Treaties² of 1969 should be provided for in the future convention for disputes to which no "special procedures" applied. Third-party assistance need not necessarily be directed towards a negotiated settlement of the dispute; in appropriate cases, it could be directed towards an agreed method of settling the dispute through fact-finding judicial interpretation.

5. If conciliation failed, there should be a compulsory dispute settlement procedure entailing a binding decision. It was at that stage that a differentiation in procedures according to the subject-matter of the dispute should be envisaged, as was the case in annexes II A (Fisheries), II B (Pollution) and II C (Scientific research) to document A/CONF.62/WP.9. Other special procedures would be required for other topics, such as disputes between an operator and the Authority, regarding the management of sea-bed resources in the international zone. Incidentally, where the issue was the validity of decisions taken by the Authority, there was bound to be a special procedure and prior negotiation or conciliation were obviously excluded.

6. For disputes to which no special procedures applied, a general procedure of compulsory judicial settlement should be provided for. The choice was between the International Court of Justice, a new permanent tribunal or arbitration. In that connexion, he recalled that in 1972 the International Court of Justice had adopted several important amendments to its rules of procedure. It was now possible for the parties to a dispute to have it settled by a chamber of the Court, the composition of which was determined in consultation with the parties. That new procedure gave greater flexibility to the Court and filled the gap between judicial settlement and arbitration.

7. It was the conviction of the delegations on whose behalf he was speaking, that undoubtedly no consensus on the choice of a particular body would be possible in the future convention. The choice should be left to each contracting party. A contracting party which did not make such a choice should be considered to have accepted the choice made by the contracting party with which it was involved in a dispute. Each contracting party should at least subject itself to one of the three general methods for the final settlement of disputes when no special procedures applied.

8. In any dispute the need for interim measures of protection might arise, particularly if it concerned law of the sea matters where interference with the movement of vessels and aircraft was involved. The competence to prescribe such measures should appertain to the tribunal which, in the final stage, was empowered to settle the dispute. That would present no problem if the International Court of Justice or the law of the sea tribunal was accepted by the parties. If a special procedure applied or the parties had accepted only the general procedure of arbitration, the need for interim measures of protection might arise before the tribunal was constituted. In such cases, another permanent judicial body should be competent to prescribe such measures pending the constitution of the tribunal, which in turn should be empowered to review the decision taken.

9. Under the general rules of international law no proceedings could be instituted before an international tribunal unless local remedies had been exhausted. That rule, which was a matter of dispute in the doctrine of international law, could be varied or done away with in a treaty. There were good practical reasons for that, if only to advance the speedy settlement of disputes. He recalled in that connexion that in many cases involving the application of the future conven-

tion, the rule of exhaustion of local remedies did not apply anyway and that there were many countries where national courts were not empowered to apply treaty rules and other rules of international law if their application was incompatible with the application of their national legislation. Nothing in the future convention should deny States parties to a dispute their right to decide by common agreement on any procedure for the settlement of their dispute other than those provided for in the convention. Nor was there any reason automatically to substitute the procedures in the convention for any previously agreed procedures between the States parties which entailed binding decisions.

10. The question whether entities other than sovereign States should be able to initiate one or more of the procedures provided for in the future convention was closely linked with the substantive rules which were yet to be negotiated. However, it could safely be assumed that there would be clauses in the convention giving rights to and imposing obligations on entities other than States, in particular the Authority and operators. Access of those entities to the dispute settlement procedures should in any case be allowed.

11. Lastly, the dispute settlement system of the convention should apply to all disputes relating to the interpretation or application of the convention. There was no justification for any of the exceptions mentioned in article 18 of the single negotiating text submitted by the President. That article was based to a large extent on confusion between the competence of a tribunal and the rules to be applied. It was obvious that a claimant had to allege that the defendant had exceeded his rights or had not fulfilled his obligations under the convention. If such an allegation were made, the applicable dispute settlement procedure should be followed and the question whether the allegation was well founded in law and in fact could hardly be "preliminary."

12. Particularly unjustified was the exception in article 18, paragraph 2(d), relating to "disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations." That provision was in clear contradiction to Article 36 of the Charter of the United Nations and it was open to the controversy about when the Security Council was actually exercising its functions. Furthermore, any of the permanent members of the Security Council, whether or not involved in the dispute, could through its veto power prevent the Security Council from determining proceedings under the future convention would not interfere with the exercise of its functions. If it was at all necessary to provide for the case in which the same dispute that was brought before the Security Council was at the same time the object of a dispute settlement procedure under the future convention, it should at least be required that the Security Council should decide that the procedure under the convention was in fact interfering with the exercise of the Council's functions, before the procedure provided for in the convention was discontinued. Indeed, the Security Council could take such a binding decision at any time, even in the absence of such a provision in the future convention, let alone any reservation of any State party to that convention, a reservation which in any event could affect only disputes in which that State was the defendant.

13. Mr. ZEA (Colombia) said that his delegation believed that document A/CONF.62/WP.9 could serve as a basis for negotiation, even though it did not agree with several of the provisions therein. The text should be studied in a forum to which all delegations had access, so that the work on it could be completed.

14. It was essential that the settlement of disputes should be an integral part of the new convention on the law of the

² *Official Records of the United Nations Conference on the Law of the Sea, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27.

sea. In view of the unsatisfactory results of the Conference on the Law of the Sea held at Geneva in 1958, that question should not be the subject of an additional instrument, protocol or annex. The only means of settling the countless possible disputes was to establish flexible machinery which would also be dynamic and effective, accepted by all and enshrined in the future convention.

15. It was for that reason that his delegation believed that the settlement of disputes which might arise in connexion with the application of the convention should be compulsory. The obligation to settle disputes by legal means was one of the pillars of the international policy of Colombia, which had not hesitated to accept the compulsory jurisdiction of the International Court of Justice. Any dispute should be subject to settlement which was compulsory both in form and in substance. To that end, his delegation therefore agreed that all types of consultation, negotiation and other procedures could be used, provided that they necessarily led to a definitive settlement. In addition, it believed that the principle of a specialized jurisdiction should be studied. The Conference should carefully study the proposal for the establishment of a tribunal convened specifically to consider disputes which might arise under the new convention. Uniformity of judicial decisions would result; furthermore, not only the States parties to the convention, but also the Authority, the international bodies established to study questions concerning the sea, and natural or juridical persons could be parties to a dispute concerning the application of the convention and have access to the said tribunal. Thus, the settlement of disputes would probably be accelerated.

16. His delegation believed that the parties to a dispute should have the possibility of choosing the peaceful means provided for under international law and enshrined, particularly, in Article 33 of the Charter of the United Nations. It continued to believe that, in cases involving a judicial settlement, the International Court of Justice was the pre-eminent international tribunal. It would be desirable to establish a chamber within the Court to deal with disputes concerning the sea and, in order to extend its jurisdiction so that entities other than Member States might have access to it, its Statute and, consequently, the Charter of the United Nations should be amended—as Colombia had been proposing for some time.

17. All parties to the convention should have access, for the settlement of their disputes, to the judicial bodies provided for in the convention, but none of them should be able to avoid the jurisdiction of those bodies if it was impossible to choose another means of peaceful settlement in agreement with the other party to the dispute.

18. It was for that reason that his delegation had serious objections with respect to article 18 on exceptions. Certainly any matter which manifestly affected the sovereignty of a State could not be contested before international tribunals. The relevant provisions of the convention would have to be precise lest pretexts be advanced to avoid recourse to the international tribunals and the rights of third States, recognized under the convention, be infringed.

19. His delegation would make the observations which it deemed appropriate during the consideration of the negotiating text article by article and it reserved the right to propose alternatives or additions to that text.

20. Mr. MARTÍN HERRERO (Spain) said that, in order to serve as an instrument for peace and the development of peoples, the future convention on the law of the sea should provide a just and effective method for the settlement of disputes.

21. With respect to the activities carried out in the international zone of the sea-bed, his delegation believed that the features of the problems and their new character required a separate means of dispute settlement and, consequently, a special tribunal organically linked to the Authority but functioning quite independently. That tribunal should have certain features: it should be able to ensure that the rules laid down by the competent bodies of the Authority conformed to the provisions of the convention. It should also have the power to consider cases referred to it by natural or juridical persons which had concluded a contract with the Authority for the execution of activities in the zone.

22. With respect to the other questions dealt with in parts II and III of the single negotiating text (see A/CONF.62/WP.8), he wished to point out the importance of appropriate regulations concerning diplomatic means of settling disputes and, above all, of recourse to regional agencies and arrangements. It would be necessary to provide for recourse to a system of compulsory judicial settlement if those procedures did not lead to a settlement. The methods for the settlement of disputes provided for in Article 33 of the Charter of the United Nations should therefore simply be adapted to the requirements of the new law of the sea.

23. His delegation understood that, with the informal working group on settlement of disputes, two main concepts had emerged in that regard: the general method of settling disputes and the functional methods. The first assumed that judicial settlement was a starting-point or a position of principle. The advocates of functional methods supported the establishment, for each particular category of dispute, of a special means of settlement which would not necessarily always be judicial settlement. His delegation believed that the general method was most suitable, on the understanding that the number of cases that would be exempt from compulsory judicial settlement should be reduced to the minimum. Thus, compulsory judicial settlement should be applied not only to disputes between States which might arise in the zones beyond the limits of national jurisdiction, but also to disputes which might arise inside the zones situated within the limits of national jurisdiction. If compulsory international jurisdiction were to apply only to disputes arising within zones not subject to national jurisdiction, international judicial settlement would lose much of its justification. There already existed a special means of settling disputes within the international zone of the sea-bed. Since only the high seas would not come under national jurisdiction, only disputes arising in that zone would be subject to compulsory international jurisdiction.

24. With respect to the choice of the body responsible for the judicial settlement of disputes, the informal working group on settlement of disputes had envisaged the possibility of using the International Court of Justice, the Law of the Sea Tribunal or arbitral tribunals. His delegation believed that the International Court of Justice had successfully performed the function entrusted to it by the Charter of the United Nations. It did not therefore see why the International Court of Justice should not be the pre-eminent body responsible for the judicial settlement of disputes. It would then be unnecessary to establish special judicial bodies such as the law of the sea tribunal. Furthermore, it should be borne in mind that the simultaneous functioning of permanent judicial bodies could give rise to non-uniformity of jurisprudence. That danger could be avoided if, besides the International Court of Justice, special—in other words, non-permanent—judicial bodies were created, such as the arbitral tribunals which were constituted to hear specific cases. The preponderant role of the International Court of Justice should not preclude recourse to arbitration if the parties to a dispute so decided. Indeed, arbitration was a means of settling disputes that had proved satisfactory and

had existed alongside actual judicial settlement because it could be adapted to specific categories of dispute.

25. His delegation therefore proposed that recourse to the judicial settlement of disputes, once diplomatic means had been exhausted, should be defined in the future convention in terms similar to those in article 66, paragraph (a), of the Vienna Convention on the Law of Treaties. The corresponding text could be worded as follows: "Any one of the parties to a dispute concerning the application or the interpretation of this Convention may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration."

26. Mr. LAI Ya-li (China) said that the discussion on the settlement of disputes was particularly important because it involved the sovereignty of all States. Currently the small and medium-sized States were struggling to defend State sovereignty and marine resources against maritime hegemonism. Those States firmly demanded the abolition of the old law of the sea, which served the interests of colonialism, imperialism and maritime hegemonism, and the establishment of a new law of the sea in keeping with current trends and giving expression to their legitimate interests and particularly to the interests of the developing countries. The super-Powers for their part, were trying by every possible means to weaken and restrict the legitimate rights of other countries and were clinging obstinately to their position of maritime hegemonism. To protect their vested interests they were capable of resorting to dispute settlement procedures designed to weaken the provisions in the new law of the sea which reflected the interests of the third world countries and to restrict the sovereignty and jurisdiction of those countries over the sea areas within their own jurisdiction and their rights and interests in the areas beyond the limits of national jurisdiction.

27. The Chinese Government had consistently held that States should settle their disputes through negotiation and consultation on an equal footing and on the basis of mutual respect for sovereignty and territorial integrity. Of course, States were free to choose other peaceful means to settle their disputes. However, if a sovereign State were asked to accept unconditionally the compulsory jurisdiction of an international judicial organ, that would amount to placing that organ above the sovereign State, which was contrary to the principle of State sovereignty. Moreover, problems within the scope of the State sovereignty and exclusive jurisdiction of a sovereign State should be handled in accordance with its laws and regulations. That was why his delegation considered that the provisions in document A/CONF.62/WP.9 concerning the compulsory jurisdiction of the law of the sea tribunal were inappropriate.

28. Since the question of the settlement of disputes involved the sovereignty of all States, the procedures to be followed must be chosen by States themselves. If most States agreed to draft specific provisions on dispute settlement procedures, those provisions should not be included in the convention itself but should form a separate protocol so that countries could decide for themselves whether to accept it or not.

29. Mr. VARVESI (Italy) said that his country had always considered that the settlement of disputes was an integral part of international law. In its view, use should first be made of diplomatic means of solution and conciliation. Where those means failed, however, compulsory recourse to arbitration or judicial settlement constituted an indispensable guarantee of the security of international legal relationships.

30. The future convention would no doubt be very detailed and would include many new legal concepts. Many of its

articles would embody compromise solutions resulting from negotiations which were frequently difficult. It was therefore important that the interpretation of the future convention should be entrusted to competent bodies.

31. A number of guiding principles should be followed. First, the dispute settlement machinery should form an integral part of the future convention and should not appear in an optional protocol. The rules concerning the settlement of disputes should be included in the same document as the substantive rules, so that States could not be bound by one set of rules only. Secondly, the dispute settlement machinery should be compulsory in the sense that States were obliged to submit to it and were bound by the decisions. Thirdly, the machinery in question should be as simple and practical as possible; it should make it impossible to avoid or delay the solution of disputes and should be suited to all possible types of dispute.

32. The application of those principles raised the awkward question of the use of the dispute settlement machinery and its structure. In principle, all exceptions to the application of the dispute settlement machinery, such as those envisaged in article 18 of document A/CONF.62/WP.9, were contrary to the very purpose of the system envisaged. That system should function for the application of all the rules of the future convention. It was inadmissible that any exception should be made to the principle of the sovereign equality of States, which would allow one party to impose on the others its interpretation of the rights and obligations it had freely accepted upon becoming party to the convention.

33. With regard to the dispute settlement procedures applicable in cases where diplomatic consultations and conciliation procedures failed, he noted that the document proposed a mixture of special and general procedures. The general procedures envisaged were arbitration and recourse to the International Court of Justice and the law of the sea tribunal. The powers of the Law of the Sea Tribunal, as envisaged in that text, differed from those of the International Court of Justice on only two points: the Tribunal would be open to individuals and companies, and it could function as a permanent body for supervision of the legitimacy of the rules and regulations of the Authority. It followed that the special power of the law of the sea tribunal only concerned questions regarding the exploration and exploitation of the sea-bed and the Authority.

34. In the light of the guiding principle that any dispute settlement machinery should be simple and practical, it was doubtful whether it was necessary to establish a law of the sea tribunal with general and special competence. That function could be carried out by the International Court of Justice or an arbitral tribunal. One reason why recourse to the International Court of Justice or an international tribunal seemed advisable was that there would no doubt be a considerable time lag between the signing of the convention and its entry into force. Even after its entry into force, the convention would probably not be binding on all States. It was therefore appropriate that the same bodies should settle both disputes which might arise between contracting parties concerning the interpretation of the convention and disputes which might arise between contracting parties and States which had not yet ratified the convention, or between States which had not yet ratified the convention, concerning rules of general international law as modified by the convention. Thus the competence of the law of the sea tribunal could be limited to a special procedure, concerning the exploration and exploitation of the sea-bed or questions relating to the Authority and to the rules and regulations it would establish. The tribunal would then no longer have the both general and special characteristics which seemed to be envisaged in document A/CONF.62/WP.9.

35. Although he recognized that the question of access to the law of the sea tribunal could not be settled before a solution had been found to certain substantive problems, he expressed the hope that natural and juridical persons would be permitted access to the tribunal. The Court of Justice of the European Communities and the International Centre for Settlement of Investment Disputes at Washington were very interesting examples of the usefulness of such a solution.

36. The law of the sea tribunal could be permanent, as proposed, but the Conference should not reject the idea of a panel of judges who could constitute a tribunal in the event of a dispute or the idea of a mixed system. In the latter case, the permanent tribunal would be competent only in cases where urgent measures had to be taken.

37. His delegation favoured special procedures adapted to particular problems. However, it was not in favour of the possibility of appeal from decisions taken as a result of special procedures. If the experts who participated in those special procedures were also legal experts, as envisaged in annex II A of the single negotiating text concerning fisheries, the possibility of appeal could be excluded. If recourse to that special procedure was limited to the establishment of the facts, legal questions could also be reserved for the general procedures.

38. Mr. RUIVO (Portugal) stressed the importance of ocean uses to Portugal, particularly in connexion with fisheries and navigation. It was essential to adopt rapidly a new ocean régime which would take into account the interests of countries and of the world community. However, the régime proposed in the convention under preparation was somewhat vague. Of course, considerable time was needed to reach agreement on the numerous and important issues under consideration and that agreement would depend in the end on the spirit of compromise displayed by the countries participating in the Conference. A revised text should therefore be ready by the end of the session. His delegation considered that formal negotiations should be initiated during the current year.

39. The provisions of the future Convention concerning the settlement of disputes should as far as possible provide details on the procedures and related mechanisms and should be based on the principle of the use of peaceful means as set forth in the Charter of the United Nations. They should also enshrine the concept of compulsory jurisdiction. Exceptions to that principle would depend on the final formulation of the rights and duties of States in the convention. His delegation was prepared to consider favourably the various mechanisms for the settlement of disputes. Although it considered it desirable to encourage direct negotiations, it accepted in principle arbitration procedures and special procedures for disputes concerning fisheries, pollution and scientific research, as well as the general procedures envisaged, including the possible establishment of a law of the sea tribunal. However, it reserved its position on that question.

40. Flexibility and the right of all States involved in a dispute to choose the procedure they wished to follow were principles which could help to reconcile positions. His delegation would return to that question in due course. It had difficulty in accepting the idea that entities other than States parties to the convention should be able to resort to the dispute settlement procedures envisaged in the convention.

41. While consensus could be expected to be achieved on many items and general principles, there seemed to be a considerable difference of opinion on detailed aspects, particularly on the exceptions covered by article 18 of document A/CONF.62/WP.9. His delegation believed that the Conference would of necessity have to arrive at a general compromise. Document A/CONF.62/WP.9, like the three parts

of document A/CONF.62/WP.8 could serve as a basis for discussion. His delegation was ready to adopt a less elaborate set of provisions with a view to achieving a more rapid agreement. It shared the President's view that effective dispute settlement "would also be the guarantee that the substance and intention within the legislative language of a treaty will be interpreted both consistently and equitably" (A/CONF.62/WP.9/Add.1, para. 6). In that context, his delegation supported the view expressed by the representative of Sri Lanka at the previous meeting concerning a suggestion made at the 14th plenary meeting in Caracas by the Secretary-General. The Secretary-General had stated that it would be advisable to consider the possibility of organizing a periodic assembly of the parties to the convention to review the problems and develop ways to meet any difficulties produced by new uses of the seas. Such a measure would no doubt promote co-operation among the contracting parties in the effective implementation of the convention. The assembly might meet every three years, on the understanding that it should not be involved in the revision of the convention. The assembly could provide a forum for the development of new ideas which in some cases could contribute to the settlement of issues which had not been afforded sufficiently detailed solutions in the convention.

42. In the opinion of his delegation, it would not be necessary to establish any new permanent machinery, but it would probably be desirable to request an *ad hoc* inter-governmental committee, adequately representative of different tendencies and reflecting an equitable geographical distribution, to assist with the planning and preparation of the assemblies. The *ad hoc* committee could be serviced by the Secretariat of the United Nations, with the active co-operation of the competent United Nations bodies, such as those mentioned in document A/CONF.62/WP.9. Such an approach would facilitate the rational use of staff, facilities and resources to avoid duplication among those agencies and would also facilitate concerted action in matters of common interest. He hoped that the Conference would give serious consideration to the suggestion made in Caracas by the Secretary-General since it would go a long way towards preventing and even resolving difficulties and pave the way for the establishment and consolidation of international institutional arrangements essential to the harmonious and uniform implementation of the convention.

Mr. Perišić (Yugoslavia), Vice-President, took the Chair.

43. Mr. JACOVIDES (Cyprus) said that his delegation was in favour of an effective, comprehensive, expeditious and viable dispute settlement system entailing a binding decision regarding all disputes arising out of the substantive provisions of the convention and believed that such a system should form an integral part of the convention.

44. That position was dictated both by his country's attachment to the general principle of equal justice under the law and by national self-interest, since Cyprus was a small and militarily weak State which needed the protection of the law, impartially and effectively administered, in order to safeguard its legitimate rights. There was a danger that the substantive articles which the Conference was attempting to formulate might be interpreted arbitrarily and applied unilaterally. It was to be feared that disputes would multiply or that the whole system would disintegrate amid complete anarchy. Should that happen, it was the smaller and weaker States which stood to lose the most. The existence of a legal régime arrived at with the participation and consent of all States could not fail to benefit all members of the international community, large and small. A third-party dispute settlement system, capable of providing solutions to disputes on the basis of objective and, to the extent possible, predictable lines was therefore essential.

45. His delegation considered that such a system, far from being incompatible with national sovereignty, could only further the effective exercise of the sovereignty of the weaker States by preventing the stronger States from imposing their will. Participation in any collective effort of that nature naturally demanded self-imposed restrictions on the part of States—as was the case when they became Members of the United Nations—but that was a very small price to pay considering that the alternatives were anarchy and the law of the jungle.

46. Referring to the single negotiating text presented by the President (A/CONF.62/WP.9), he said that the author had made a serious effort to deal in a constructive and comprehensive manner with the complex subject under discussion, and that his delegation was prepared to regard the document as a basis for negotiation. Depending on the outcome of the debate, the document could be considered in detail in a representative body, possibly a working group of the whole presided over by the President of the Conference. The document would thus acquire a status equivalent to that of the other parts of the single negotiating text. The text presented by the President was based on the right premises and contained the essential elements required for an acceptable solution to the question of third-party dispute settlement. However, while his delegation was in principle favourably disposed towards the text, it reserved the right to examine its provisions in detail and to analyse them more closely, as it had done with the other negotiating texts before the Conference. The document in question should be examined systematically, article by article, at meetings at which all the participants in the Conference would be represented, after all the various interested groups had had a chance to formulate and express their positions. He took the opportunity to pay a tribute to the members of the informal working group on dispute settlement. His delegation had participated in the work of that group, which had done a great deal to pave the way for the current discussion.

47. His delegation preferred a general rather than a functional approach to the settlement of disputes arising under the convention. The law of the sea tribunal, as envisaged in the text by the President, should be established and should be given the central role in the system. The Tribunal, so constituted and elected as to enjoy wide confidence, was the appropriate body to adjudicate, in the final analysis, in matters concerning the new law of the sea. Uniform interpretation and application of the convention would thereby be ensured. At the same time, his delegation saw no difficulty in allowing the possibility of recourse to other bodies (the International Court of Justice or *ad hoc* arbitral tribunals), provided that both parties to a given dispute had exercised the same option. In order to ensure wider acceptability of the dispute settlement machinery, his Government was also prepared to consider the possibility of supplementing the general procedure by special procedures applicable in specific areas, such as disputes concerning fisheries, pollution and scientific research.

48. Assuming the dominant position of the law of the sea tribunal in the over-all scheme, it might be appropriate for the tribunal to operate through two chambers, one dealing exclusively with sea-bed matters, so as to satisfy what was envisaged in the First Committee's single negotiating text (see A/CONF.62/WP.8), the other exercising general jurisdiction arising out of the convention as a whole. Such an approach might go a long way towards facilitating the solution of the thorny question of whether only States could appear before a tribunal or whether international organizations and natural or juridical persons could also do so. Moreover, it would then become unnecessary to set up two new permanent bodies for the settlement of disputes relating to the law of the sea.

49. His delegation was not in favour of allowing any exceptions or reservations to the compulsory dispute settlement procedure. If, after further debate and detailed examination of the matter, it was found that some exceptions had to be permitted in order to secure wider acceptability, such exceptions should be kept to the minimum. More specifically, his delegation was opposed to any exception regarding matters of delimitation of the maritime zones—whether the territorial sea, the contiguous zone, the exclusive economic zone or the continental shelf—between opposite States. Such matters clearly lent themselves to third-party settlement, as they were likely to cause disputes which might escalate into political, economic or even military confrontation. Under such circumstances, small and weak States would be left at the mercy of arbitrary interpretations and unilateral measures by States strong enough to impose their will. That would be especially true if the criteria for such delimitation were not based on definite legal rules, such as the "median line", but on such vague notions as "equitable principles" or "special circumstances", which lent themselves to subjective interpretation. If the latter type of criteria were accepted, the need for third-party adjudication would become even more imperative.

50. He pointed out that during the general debate at the second session in Caracas he had stressed the need to give serious consideration to the opportunities for change offered by the Conference without risking the creation of a chaotic situation. The proper balance could be struck by adopting the new approach required by technological advances and the political and economic changes of the times while at the same time not throwing overboard those positive rules of the international law of the sea which had stood the test of time, bearing in mind the principles of the Charter of the United Nations, which was the mainstay of modern international law. His delegation was gratified to note that now, nearly two years later, the Conference had made considerable progress towards adopting substantive rules in accordance with those basic tenets. It was his delegation's sincere hope that the same could also be said of the other corner-stone of the current undertaking, namely, an effective legal system for the settlement of disputes. If that could be achieved, both the rule of law among nations and the international community as a whole would stand to gain.

Mr. Mukuna Kabongo (Zaire), Vice-President, took the Chair.

51. Mr. SAMPONG SUCHARITKUL (Thailand) pointed out that, since the late nineteenth century, Thailand had signed a number of treaties on arbitration and the peaceful settlement of disputes, and that, after the Second World War, Thailand had become a Member of the United Nations and a party to the Statute of the International Court of Justice. It had, therefore, always maintained an open-minded and flexible attitude during the negotiations on the settlements of disputes which might arise under the future convention.

52. So far, the world had witnessed a progressive development not only of substantive international law but also of adjective law, namely, the international machinery designed to dispense international justice. There was already a wide variety of procedures available for the pacific settlement of disputes, apart from those enumerated in Article 33 of the Charter of the United Nations. National and regional procedures and, at the international level, the Permanent Court of Arbitration and the International Court of Justice deserved special mention. Nevertheless, new procedures and new machinery were being studied so as to encourage speedier adjudication in more specialized fields, such as the law of the sea, pollution, scientific research and so forth. The new procedures envisaged in the present draft convention, both

the general system and the special procedures, could not be intended to exclude the traditional tribunals from exercising their jurisdiction. The new procedures were designed to provide additional facilities and did not in any way conflict with existing régimes of judicial and arbitral settlement. It was essential to endeavour to provide as many and as effective means as possible for the settlement of disputes. To that end, it would be helpful to observe a number of fundamental principles or guidelines. First, flexibility was essential in order to achieve a balanced solution, which was vital to the successful conclusion of a Conference of such magnitude. Secondly, the choice of methods or procedures for the settlement of disputes should be made by the parties themselves, especially when proceedings were to be instituted against States. The consent of States was still the basis of international adjudication, although there were several ways of indicating such consent. Thirdly, no attempt should be made to lay down a strict hierarchy among the various methods and procedures available, the selection of which should also be at the option of the parties. Fourthly, the special procedures should be streamlined so as to avoid an excessive number of concurrent specialized jurisdictions and to ensure a practical division of labour without totally eliminating the possibility of some overlapping. Fifthly, in view of the independence of each system or procedure, appellate jurisdiction was difficult to justify; however, the possibility of reviewing certain cases within the same or allied systems should not be precluded. Sixthly, concurrence of jurisdiction, rather than conflict, would, in fact, operate to improve the quality of adjudication. As parties were likely to use the procedures most attractive to them, each system would strive to inspire the confidence of States. Seventhly, acceptance by States of the different procedures for the settlement of disputes could be further encouraged and facilitated if States could be assured that the law to be applied by the tribunals would not only be just and equitable but would also take into account the interests of countries which had taken little or no part in the development of traditional international law. Eighthly, the draft convention should aim at the widest possible acceptance and participation by States. It should not in any way seek to impose on unwilling States any new procedure or a choice of available jurisdictions or procedures. Although the consent of States was a sound basis for jurisdiction, there appeared to be no need to secure the approval of parties to the dispute in order to appoint members of a given tribunal. Ninthly, in order to facilitate wider acceptance and participation, States should be accorded the possibility of making exceptions or reservations with regard to the nature of the disputes, as well as with regard to parties to the disputes. Such exceptions or reservations should not, however, render illusory or arbitrary the general obligation to settle disputes. Tenthly, since the settlement of a dispute was a matter between the States concerned alone, the choice of procedures or jurisdiction should be made by the States themselves. Eleventhly, the Conference should strive for moderation and be guided by practical considerations in its efforts to find alternative solutions to the delicate problem of dispute settlement. Lastly, he believed that work could be expedited by the adoption of a single negotiating text, which could serve as a basis for future negotiations.

53. His delegation reserved the right to make further observations regarding specific parts of the draft convention at an appropriate time.

54. Mr. FUJISAKI (Japan) said that, in his delegation's view, the establishment of machinery for the settlement of disputes relating to the interpretation and application of the new convention on the law of the sea was no less important than the elaboration of the substantive articles of the convention. Agreement on a compulsory dispute settlement proce-

dure must be an essential element in an over-all solution of major issues in the current negotiations. That was all the more necessary since the new legal instrument would have to strike a delicate balance between the rights, obligations and interests of States within the framework of a wider jurisdiction of coastal States than had previously been recognized. His delegation therefore had certain apprehensions that disputes might arise more frequently than had been the case in the past.

55. His delegation wished to emphasize that the general obligation of States to settle their disputes by peaceful means and their right to choose their own methods should be recognized and respected as having equal validity and strength in the field of the law of the sea as in all other fields of international law. Thus, his delegation could support articles 1 to 5 of document A/CONF.62/WP.9 which incorporated that principle. Moreover, when an agreement existed between parties to a dispute whereby they had assumed an obligation to settle any given dispute by recourse to a particular method, that agreement should have precedence over the procedures agreed upon in the new Convention. Article 3 and the explanations given in paragraphs 12 and 13 of the memorandum by the President (A/CONF.62/WP.9Add.1) were of special relevance in that regard.

56. His delegation also wished to emphasize the necessity of making the general obligation to settle disputes an integral part of the future convention. In his delegation's view, the solution adopted at the First United Nations Conference on the Law of the Sea in 1958, in the form of an Optional Protocol of Signature, was insufficient and unacceptable.

57. The question of excepting certain matters from the obligation to settle a dispute, which was dealt with in article 18 of document A/CONF.62/WP.9, was related to the question of the acceptance of compulsory settlement of disputes. Without going into details, he wished to state that his delegation could not agree to such exceptions because they undermined the principle of the compulsory settlement of disputes. On that point his delegation fully shared the views expressed at the previous meeting by the delegation of the Federal Republic of Germany.

58. From the practical standpoint, his delegation favoured the functional approach, which envisaged special procedures for the settlement of various categories of disputes. The scope of the law of the sea was very broad; it would therefore seem appropriate to establish several organs, each with a specific field of responsibility (questions of the sea-bed, fisheries, pollution and the like). In order to ensure the speedy settlement of disputes, those organs should be empowered to take final and binding decisions and should be constituted on a permanent basis. By expressing support for the functional approach, his delegation did not mean to exclude a general system for the settlement of disputes. There might well be instances in which the International Court of Justice, as the principal judicial organ of the United Nations, could play an important role. His delegation was unable to support the establishment of the proposed law of the sea tribunal because there was every likelihood that the problems which would arise under the law of the sea régime could be solved by the existing judicial system. Moreover, the establishment of a new tribunal would give rise to duplication and to conflicts of competence between it and the International Court of Justice.

59. In conclusion, he expressed the hope that the question would be dealt with more comprehensively and perhaps more formally than in the past, in view of the importance that many delegations attached to it.

60. Mr. WOLF (Austria) said that, from the very beginning

of the Conference, his delegation had consistently underlined the importance which it attached to establishing machinery for the peaceful settlement of disputes. The rule set forth in Article 33 of the Charter of the United Nations served as the basis for and was a necessary prerequisite of the international system. Since States had conflicting interests, it was essential to have machinery for the settlement of disputes, culminating in a body with judicial powers, so as to ensure the effective application of international law and the protection of the interests of States according to the existing legal régime.

61. So far as the law of the sea was concerned, only dispute settlement machinery would guarantee that the results of the long negotiations in progress would be converted into international law and spelt out by an international judicial body. Such a body would be particularly helpful in the case of States for which recourse to the settlement procedure represented the only means of asserting their rights. His delegation believed that the future convention must embody a dispute settlement system based on compulsory jurisdiction. That was the only means of ensuring uniform interpretation of the provisions and avoiding fragmentation of jurisdiction.

62. As to the form of that machinery, his delegation was in general in favour of a single judicial institution. Owing to the divergent structure of the different parts of the future convention, as they appeared in the single negotiating text, it was undoubtedly necessary to make the machinery flexible. Flexibility, resulting in a limited functional approach, was necessary in respect of access to the Court and the problem of the applicable law. First of all, it would be necessary to provide for a special system in respect of disputes which might arise in connexion with part I of the single negotiating text (see A/CONF.62/WP.8), but other special features, too, would have to be taken into account; at the same time, there was a need to simplify and speed up procedures in order to stimulate recourse to the system. At the beginning of the session, the President had presented in document A/CONF.62/WP.9, part IV of the single negotiating text, which reflected the President's own ideas on the dispute settlement machinery. His delegation appreciated the obvious endeavour to comply in that text with all the demands put forward by States, even if the complexities of the future law of the sea were not taken fully into account. It feared that the "Montreux formula" would give rise to various difficulties and problems, thereby impeding the functioning of the legal system eventually adopted. Moreover, it was hardly acceptable that States should be prevented from having recourse to the judicial machinery in respect of matters which were regulated by international law or even by the convention itself. The example that sprang to mind was the economic zone, the provisions on which ranked first among the exceptions to compulsory jurisdiction. As the economic zone was a new legal institution and had to be defined explicitly in the convention, interpretations concerning it could hardly be left to the discretion of coastal States but should rather be spelt out by an international judicial body. To enable that body to discharge its functions, it would be necessary to incorporate the chapter on the settlement of disputes in the convention itself rather than in an optional protocol, for experience demonstrated that only a few States would become parties to the optional protocol, while the majority would refrain from ratifying it.

63. Lastly, it would also be necessary to decide whether the International Court of Justice itself should be entrusted with the task of adjudicating law of the sea disputes or whether an independent law of the sea tribunal should be instituted. His delegation was prepared to listen to any suggestions in an attempt to find a solution which would take all aspects of the matter into account. Various possibilities had already been put forward, apart from the two solutions that he had mentioned.

64. His delegation reserved the right to speak later in the debate on the future procedure for drafting of the articles on the settlement of disputes.

Mr. Driss (Tunisia), Vice-President took the Chair.

65. Mr. ANDERSEN (Iceland) said that although it was difficult to take a definitive position on the question of settlement of disputes before the articles of the convention had taken final shape, some preliminary opinion was now clearly needed. The document presented by the President was therefore very helpful. It was obvious that a dispute settlement mechanism would be required, since the application of the convention would inevitably give rise to conflict in many fields. However, a fundamental consideration was to ensure from the outset that every effort had been made to minimize the possibility of disputes. It was therefore imperative to make the substantive provisions of the convention crystal-clear.

66. The future convention should be constructed on five main pillars: a territorial sea of up to 12 miles; unimpeded transit through straits; the delimitation of the continental shelf; an exclusive economic zone of up to 200 miles; and a régime for the international sea-bed area. At the present stage of the debate his delegation would deal only with the question of the settlement of disputes relating to the exclusive economic zone. His delegation saw that as a realistic economic resource zone in which the coastal State had sovereign rights over the living and non-living resources. So far as the living resources were concerned, the convention should determine that the surplus, i.e. that part of the allowable catch which the coastal State did not have the capacity to utilize, would be made available to other States on the basis of special agreements. Those provisions should be made crystal-clear in order to avoid any misunderstanding.

67. Yet many States, although professing to support the concept of the economic zone, were endeavouring in various ways to weaken it. They wanted to open up the possibility of disputing the decisions of the coastal State, and there could be no doubt that conflicts might arise if the provisions of the convention were not sufficiently explicit, particularly in connexion with decisions concerning conservation standards, the size of the total allowable catch, the coastal State's capacity to utilize the stocks and similar matters. If that were to happen, the concept of the exclusive economic zone would be rendered illusory and meaningless, notwithstanding the fact that it represented a vital element of the package solution on which the future convention must be based. Consequently, the decisions of the coastal State with regard to the resources within the exclusive economic zone must be considered final. That was why, if unnecessary disputes were to be avoided, the provisions of the convention must be spelt out with total clarity at the present stage.

68. Mr. Chang-Choon LEE (Republic of Korea) felt that document A/CONF.62/WP.9 should serve as the basis for discussion with a view to establishing dispute settlement procedures. Compulsory settlement procedures involving a third party were indispensable not only to the stabilization of the new international economic order but also to the maintenance of international peace and security. His delegation unreservedly adhered to the principles embodied in Articles 2 and 33 of the Charter of the United Nations, under which Members were required to settle their disputes by peaceful means—principles which the Republic of Korea had always faithfully respected.

69. An effective system for the compulsory settlement of disputes would clearly provide safeguards against the occurrence of disputes and would permit uniformity of interpretation and application of the future convention. The single negotiating text struck a balance between the scope and nature of national and of international jurisdiction. Such

a system would also be a special guarantee of the rights and interests of small States. In his delegation's view, however, the Conference should consider establishing a special consultant group consisting of a limited number of experts, or an open-ended informal working group, in order to assist the President in carrying out his function, in view of the complexity and special nature of the issue involved.

70. His delegation favoured a comprehensive system which incorporated both general and special procedures, as envisaged in document A/CONF.62/WP.9. Without minimizing the importance of special procedures, his delegation believed that the principle of the compulsory settlement of disputes should find its place in the convention and it therefore favoured the creation of a law of the sea tribunal. The scope and complexity of the problems involved in that field, particularly if one took into consideration the revolutionary trends in development and the parallel evolution of law, required the establishment of a new tribunal and the elaboration of appropriate procedures.

71. His delegation felt that the provisions for the settlement of disputes contained in part I of the single negotiating text (see A/CONF.62/WP.8) could be amalgamated with those submitted in document A/CONF.62/WP.9, it being understood that disputes relating to the sea-bed would be covered by the general procedures set forth in the latter. His delegation accordingly favoured the preparation of a single text concerning the settlement of disputes, which would constitute a separate part of the convention.

72. At the same time, it took the view that the right of access to dispute settlement procedures should also be granted to natural and juridical persons and to international organizations, taking into account the special character of the emerging sea-bed régime, as well as the particular needs of the new law of the sea, such as the need for the prompt release of detained vessels.

73. With regard to article 18 of document A/CONF.62/WP.9, his delegation believed that the exceptions provided for therein applied to nearly all important disputes and therefore seemed to defeat the whole purpose of the settlement procedures envisaged. When exceptions were allowed in a treaty extreme care must be exercised. In that connexion, he drew attention to article 19 of the Vienna Convention on the Law of Treaties of 1969 concerning the question of reservations. Bearing in mind that, in international law, States had the capacity to make exceptions to a treaty, it did not seem necessary to make express provision for exceptions in the case of compulsory dispute settlement procedures, since exceptions, exclusions, limitations and other reservations which the parties to the convention might wish to make could be made in the established manner.

74. Mr. KARASIMEONOV (Bulgaria) said that the provision of effective dispute settlement procedures was essential for stabilizing the complex structure of which the convention on the law of the sea would be capstone. He felt that the text submitted by the President was a useful working tool and that the proposed provisions should be grouped together in a special part of the convention in keeping with the approach adopted by the Chairmen of the Second and Third Committees.

75. Articles 1-4 of that text dealt with the general obligation of States to settle disputes by peaceful means, in accordance with the principles of the Charter of the United Nations. They would offer the parties the possibility of choosing among the different methods of peaceful settlement of disputes available to them. Those articles were acceptable to his delegation as they stood.

76. In general, his delegation favoured a system of special procedures, which was gaining increasing support from delegations. It supported the special procedures for the settlement of disputes in the field of fisheries, pollution and scientific research proposed in annex II to the single negotiating text. It also favoured a special procedure of either arbitral or judicial character in the case of disputes concerning the sea-bed. Furthermore, it had no objection to the adoption of special procedures for certain other matters. Since one of the reasons for such procedures was the need for an expeditious settlement, his delegation agreed with the French delegation regarding the possibility of establishing a special procedure for disputes relating to navigation, especially with regard to the detention of vessels.

77. If the principle of special procedures was to be eventually accepted, the question arose whether a general system would be necessary at all. His delegation felt, however, that a general system would make it possible to settle disputes arising from the interpretation and application of the convention. In that connexion, it believed that the existing institutions were adequate and that it was in the interest of the international community to strengthen the role of the International Court of Justice instead of establishing a new tribunal with similar functions.

78. As to the question of the choice of procedure, his delegation took the view that the choice should be left to the parties to the dispute, but it opposed giving a central role to any one of the procedures. In that connexion it would prefer the so-called Montreux formula. States could also have the possibility of making a declaration in the instrument of ratification concerning their acceptance of a special procedure. In the absence of such a declaration, it should be assumed that the State concerned preferred to be bound by the general system.

79. His delegation felt that the right of access to the proposed settlement procedures should be accorded only to States and not to natural and juridical persons. Such persons should, in the event of a dispute concerning them, present their claims through the State whose nationals they were. As to the settlement of disputes arising from the exploitation of the sea-bed in the international area, provisions could be embodied in the contracts concluded with the Authority.

80. Article 18, which dealt with exclusions and exceptions, raised a very complex question because it touched upon the delicate balance with regard to activities concerning the economic zone. His delegation had declared that it approved of clearly defining the rights of a coastal State for the purpose of exploring and exploiting the natural resources of the economic zone. It was therefore ready to accept reasonable exceptions to the dispute settlement procedures. Nevertheless, it could not agree with the exclusion from those procedures of disputes arising out of the exercise of discretionary rights by a coastal State. Exclusion of all disputes arising in areas where a coastal State had some clearly defined rights would leave other States without any possibility of protecting the rights legitimately granted to them in those areas by the convention. On the other hand, his delegation could agree that States should be given the possibility of declaring that they did not accept the dispute settlement procedures concerning boundary delimitations and other matters referred to in article 18, paragraph 2 (b) and (c). With regard to paragraph 2 (d), under which parties could exclude disputes in respect of which the Security Council was exercising the functions assigned to it by the Charter of the United Nations, his delegation, while accepting the idea in principle, took the view that it had no place in article 18; rather, it should be made the subject of an independent provision.

The meeting rose at 1.05 p.m.

ANNEX 30

UN Diplomatic Conference, Plenary, 62nd session, 7 April 1976

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.62

62nd Plenary meeting

Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume V (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Fourth Session)

economic zone was merely a part of the high seas. Disputes between parties to the convention relating to matters under the jurisdiction of the coastal State should be settled through the peaceful means cited in Article 33 of the Charter of the United Nations. Naturally, procedures could be explored whereby, in clearly defined circumstances, certain matters might be referred to some type of international conciliation

or arbitration machinery. However, the ensuing recommendations should not be binding unless the parties had agreed otherwise beforehand. With regard to disputes on matters relating to the area beyond the limits of national jurisdiction, the convention should, in many instances, provide for compulsory jurisdiction.

The meeting rose at 6 p.m.

62nd meeting

Wednesday, 7 April 1976, at 10.25 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Settlement of disputes (*continued*) (A/CONF.62/WP.8¹WP.9 and Add.1)

1. Mr. NIMER (Bahrain) said that the President's single negotiating text (A/CONF.62/WP.9) remedied many of the deficiencies in existing conventions on the settlement of disputes. The settlement of disputes in the past had been adversely affected by the unwillingness of one of the parties to co-operate for reasons involving national sovereignty.
2. Under articles 8, 9 and 10 of the text, the parties to a dispute would be required to recognize the jurisdiction of the law of the sea tribunal, an arbitral tribunal or the International Court of Justice. Article 9, paragraph 1, provided that the law of the sea tribunal would have compulsory residuary jurisdiction to decide upon the matters in dispute; thus an attempt was being made to achieve what the former Permanent Court of International Justice and the present International Court of Justice had failed to accomplish in the general field of international relations.
3. The compulsory jurisdiction of the proposed law of the sea tribunal should be limited to matters concerning the international sea-bed area as defined in General Assembly resolution 2749 (XXV). Disputes relative to areas outside the international area should be settled by the law of the sea tribunal in accordance with the procedures set forth in article 9, paragraph 2, of the President's text, as was the case with the arbitral tribunal and the International Court of Justice.
4. His delegation welcomed the provisions of article 13, paragraph 4, and felt that they should be extended to cover the liberation movements which had participated in the Conference as observers.
5. The idea of entrusting the settlement of disputes concerning fisheries, pollution and scientific research to technical bodies was unacceptable because it was provided for in the general procedure in the text, and because the members of such bodies might not have the necessary legal knowledge not only to apply, but occasionally to interpret, the convention.
6. Under article 18, paragraph 1, States would not be required to submit to the dispute settlement procedures any dispute arising out of the exercise by a coastal State of its exclusive jurisdiction in the exclusive economic zone, save in two categories of dispute. That provision might have

unduly adverse effects on land-locked and geographically disadvantaged countries and should be reviewed.

Mr. Medjad (Algeria), Vice-President, took the Chair.

7. Mr. GAYAN (Mauritius) said his delegation was aware that the chapter on the machinery for the peaceful settlement of disputes might well prove to be the key to a widely accepted convention. For the sake of completeness, and because of the many new activities that would be carried out in ocean space, the new convention on the law of the sea should prescribe a procedure for the settlement of the disputes arising out of it. Ideally, the Conference should draw up a convention that would minimize the possibility of conflicts and should provide for a system for resolving any conflicts that might arise before they had time to develop into serious disputes. Its primary concern, however, should be to draft clear substantive provisions with a view to avoiding conflicting interpretations.
8. His delegation was glad to note that the President's text (A/CONF.62/WP.9) gave concrete form to some of the peaceful means of dispute settlement enumerated in Article 33 of the Charter of the United Nations. The starting-point, in so far as the settlement of disputes between States by a third-party procedure was concerned, was the consent of the States parties to the dispute. That fundamental principle should be fully reflected in the future machinery for the peaceful settlement of disputes under the new convention on the law of the sea.
9. Disputes could be expected to arise in two areas: first, the exclusive economic zone or the continental shelf of a State; and, secondly, all areas beyond the limits of national jurisdiction.
10. Since the coastal State exercised sovereign rights over the first area, it was natural that the national tribunals of that State should be the only competent forums for the settlement of disputes arising in that area; that principle was intrinsic to the basic notion of State sovereignty. To opt for any other system would be to invite abuse by, for example, States entitled to participate in the exploitation of the living resources of the exclusive economic zone of a coastal State. Under a compulsory procedure system, such States might bring the coastal State before tribunals whenever the latter adopted measures within its exclusive economic zone. Were that to happen, needless tension and bad feeling would be created among neighbouring States. It might be argued that the neighbouring States should be presumed to act reasonably, but there would have to be the same assumption in the case of the coastal State. The premise on which the new convention should be based was that of co-operation be-

¹ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

tween States on the assumption that all States would comply with the provisions of the new convention in good faith. In the view of his delegation, the reasons for not having a compulsory procedure for dispute settlement in areas of national jurisdiction were overwhelming.

11. His delegation was nevertheless in favour of a compulsory procedure for the settlement of disputes arising within the ambit of the International Sea-bed Authority and believed that there should be a special tribunal for the régime of the sea-bed. Such a tribunal would adjudicate all disputes of a commercial nature arising out of activities carried out, or to be carried out, in the international sea-bed area between the Authority and applicants, whether natural or juridical persons, or between the Authority and States or any combination of those parties. The tribunal should adopt a functional approach and its procedure should be simple and expeditious. It would be composed of independent judges, elected on the basis of equitable geographic distribution, but would not be competent to review the policy guidelines of the Assembly, the supreme organ of the Authority.

12. It was not necessary or desirable to establish a law of the sea tribunal to deal with matters other than those relating to the work of the First Committee. Such a measure, as proposed in the President's text, would be a luxury. The International Court of Justice could be used for the same purpose and could act with greater authority; indeed, it had already proved itself to be responsive to law of the sea problems in general. It should be borne in mind that arbitration was the method favoured by States for the solution of international disputes.

13. His delegation did not agree that there should be special procedures to settle specific problems. The special procedures proposed in the President's informal text could give rise to delays and uncertainty as to the proper forum in the case of mixed disputes; consequently the entire subject should be completely rethought.

14. The machinery for the peaceful settlement of disputes should provide for a wide choice of modes of settlement and should be dealt with in an optional protocol. A compulsory third-party settlement procedure could not be imposed on sovereign States.

15. As most of the disputes that might arise would be of a regional or subregional character, the Conference should study the possibility of providing for regional arrangements to deal with the peaceful settlement of disputes.

16. Mr. NYAMDO (Mongolia) expressed appreciation to the President for the text he had proposed on the settlement of disputes, which would serve as a basis for further discussion of that question. He merely wished to emphasize that the question of procedures for the settlement of disputes concerning the interpretation and application of the convention was fully as important as other questions relative to the law of the sea. His delegation therefore agreed with other speakers that the question should be solved on a "package" basis.

17. The peaceful settlement of disputes was one of the generally recognized principles of contemporary international law by which Mongolia was guided in its foreign policy activities.

18. His delegation wished to emphasize the significance of the peaceful means for the settlement of disputes between States enumerated in Article 33 of the Charter of the United Nations. In his delegation's opinion the entire system for the settlement of disputes arising out of the interpretation and application of the convention should be based on the provisions of Article 33 of the Charter. His delegation therefore welcomed the present wording of article 1 of document A/CONF.62/WP.9. It also considered that another impor-

tant principle to be observed when elaborating a system for dispute settlement was the principle of freedom of choice by the parties to a dispute, regarding the most appropriate means of settlement. That principle was especially important in the case of arbitral or judicial settlements. That principle was fully applicable to disputes that could arise in connexion with the interpretation and application of the convention. His delegation therefore considered that the consent of all parties to a dispute to the submission of that particular dispute to arbitral or judicial proceedings was essential.

19. With regard to access by natural or juridical persons to procedures for the settlement of disputes, his delegation considered that only sovereign States should be the subject of a dispute. Mongolia supported the suggestions made by those delegations that favoured the deletion of certain provisions dealing with natural and juridical persons. It was also in favour of deleting paragraph 2(a) of article 18 of the text, because it failed to make proper provision for the legitimate rights and interests of States other than coastal States, and it accordingly proposed the deletion of article 14 from the text.

20. Mr. KABONGO (Zaire) said that the law of the sea was being reviewed in the new spirit which had inspired the United Nations ever since the first United Nations Conference on Trade and Development. Since that time, the United Nations had sought to promote the economic goals laid down in Article 55 a of its Charter, with a view to creating the conditions of stability and well-being which were necessary for peaceful and friendly relations among nations.

21. The Third United Nations Conference on the Law of the Sea, and particularly the economic planning commission provided for in the future convention, also had a role to play in the establishment of the new international economic order. Bearing in mind the interests of both consuming and land-based mineral producing countries, and in particular the developing countries among them, the economic planning commission would make recommendations to the Council of the International Sea-bed Authority in order to avoid or minimize adverse effects on developing countries whose economies substantially depended on the revenues derived from the export of minerals and other raw materials originating in their territories.

22. The spirit of the convention currently being elaborated was quite different from that of the 1958 Conventions on the Law of the Sea. That was because it was being drawn up within the framework of a broader, more diversified international community. That new factor called for new formulas. For example, the International Sea-bed Authority must be granted certain economic prerogatives within the international area. A balance of interests must be established if the organs of the Authority were to be able to function and cope with structural problems and the economic problems of the moment.

23. The new convention should take account not only of the interests of the coastal States but also of the interests of the international community and of the land-locked and geographically disadvantaged countries.

24. The future law of the sea tribunal should have general jurisdiction to deal with disputes relating to the interpretation or the application of the convention. It should co-operate with the organs of the United Nations, including the International Court of Justice.

25. His delegation welcomed the diplomatic, regional and arbitration procedures outlined in document A/CONF.62/WP.9 and felt that the special procedures were acceptable in so far as they related to technical matters.

26. The articles proposed in the President's text were linked to substantive articles concerning such subjects as the

delimitation of ocean space, procedures for the exploitation of ocean space, and navigation. His delegation would therefore comment on the text on the settlement of disputes at a later stage.

27. Mr. DRISS (Tunisia) said that, in view of the functions assigned under the Charter to the International Court of Justice in the matter of the settlement of disputes, the establishment of a single system for the settlement of disputes—the law of the sea tribunal—gave rise to some difficulties. However, a possible solution might be to establish a link between the law of the sea tribunal and the International Court of Justice, enabling the tribunal to request opinions of the Court without thereby delaying its own procedure. It should therefore be recommended, at the end of the current discussion, that the elaboration of a single text dealing with the settlement of disputes should be industriously pursued so that the text could become a part of the convention on the law of the sea. The establishment of a suitable system for the settlement of disputes was the only means of guaranteeing the effective implementation of the new convention. Consequently, some decision should be taken regarding the necessary framework for dealing with the question of the settlement of disputes and regarding the status to be accorded to part IV of the single negotiating text (A/CONF.62/WP.9). Certain options regarding the substance of the question should also be made clear.

28. The importance of the subject, which had been debated in small informal working groups in which many of the developing countries had been unable to participate, necessitated a decision on the establishment of a formal working group on the settlement of disputes, in accordance with rule 50 of the rules of procedure of the Conference. Document A/CONF.62/WP.9 could provide a basis for that working group's discussions. However, his delegation wished to make it clear that that latter proposal should not be construed as prejudging its final position regarding that document.

29. As far as the substance of the question of the settlement of disputes was concerned, account should be taken of all the basic principles designed to safeguard the legitimate interests of all members of the international community, particularly those which would: first, ensure the rule of law based on equity and justice, while safeguarding the sovereignty and equality of States; secondly, ensure that the new convention was interpreted uniformly; thirdly, enable the parties concerned to exercise options within the framework of the system finally adopted. Proceeding from those principles, his delegation would prefer a compulsory system for the settlement of disputes, since such a system would give true meaning to the legal régime to be established. However, the principle of equitable geographic distribution must be taken into account in the composition and structure of such a system. The system for the settlement of disputes should thus be a single system, so as to ensure the uniform application and interpretation of the convention. The proliferation of international jurisdictional bodies would only complicate problems, exacerbate disputes and be detrimental to the convention.

30. The law of the sea tribunal could consist of at least two chambers, one of which would deal with matters relating to the exploration and exploitation of the international area, while the other would concern itself with other problems that might arise in the course of implementing the convention. That would not prevent national courts from exercising exclusive jurisdiction in the areas coming under their exclusive jurisdiction. In principle, only States would have access to the tribunal; however, natural and juridical persons engaging under contract in exploration and exploitation activities in the international area would also have the right of access to the tribunal. Other natural and juridical persons should

not have such access. The recognized liberation movements might, however, be granted access to the tribunal in cases where decisions were necessary to preserve their national heritage.

31. The conciliation procedure provided for in annex I C of document A/CONF.62/WP.9 seemed sound. The idea might be extended by enabling the law of the sea tribunal to recommend that the parties resort to conciliation if they have not resorted to that procedure. His delegation would not be averse to giving States the option of resorting to arbitration within the framework of the single system for the settlement of disputes.

Mr. Jusuf (Indonesia), Vice-President, took the Chair.

32. Mr. BALLAH (Trinidad and Tobago) said that the question at issue was not whether dispute settlement procedures were necessary within the framework of the new law of the sea convention, but whether they could be usefully discussed at the present juncture, given the need to relate such procedures to substantive rules that had still to be negotiated. On the other hand, broad agreement on dispute settlement procedures might facilitate agreement on some of the substantive issues.

33. Document A/CONF.62/WP.9 envisaged that States parties to the convention could, in accordance with articles 1 to 5, resort to the settlement of disputes regarding the application or interpretation of the convention, either by reference to such peaceful means as negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, or by reference to regional agencies, regional arrangements or to other peaceful means of their own choice. His delegation maintained a flexible position with respect to the employment of any of those means or of other procedures established under existing international instruments to which Trinidad and Tobago was a party.

34. The document also gave priority to three functional five-member committees, which were empowered to prescribe binding provisional measures, or eventually binding decisions, in specific areas such as fisheries, marine pollution and scientific research. That provision needed careful study by the Conference, since it might touch directly on the jurisdiction of coastal States, and, if adopted as it stood, might create greater problems than it sought to resolve. Consideration might be given to the setting up of rosters of experts in the three fields of pollution, scientific research and fisheries, who would be nominated by their respective Governments. That body of experts could serve as a very useful fact-finding technical committee in the event of disputes arising between States on those matters. His delegation would be prepared to consider conferring on those functional committees the power to make technical recommendations, as suggested in the paper itself. Such technical fact-finding and recommendations by those functional committees would be of tremendous assistance to the parties to a dispute, since they could provide the basis upon which meaningful negotiations could be conducted.

35. The pacific settlement procedure for conciliation provided for in article 7 and annex I A was satisfactory to his delegation. It was a well-established dispute-settlement procedure which was fundamental to the process of dispute settlement. The Conference might wish, however, to consider whether parties resorting to conciliation should also be able to establish a balanced functional committee to prepare an objective technical fact-finding report to assist the parties concerned.

36. His delegation would like to see included in the text an article which would provide that where resort to negotiation, enquiry, mediation or conciliation had not resolved the dispute, the matter could then be referred to third-party adjudication. Contracting parties could resort either to a law

of the sea tribunal, an arbitral tribunal or to the International Court of Justice, in accordance with its Statute and the relevant provisions of the Charter. The system proposed provided some interesting alternatives which were worthy of consideration. Trinidad and Tobago had not yet taken a firm position, but, like many other States, it had its reservations about conferring compulsory jurisdiction on the International Court of Justice for the purpose of resolving international disputes. The Court had unfortunately not enjoyed the confidence of a considerable number of States and had, as a result, remained largely unemployed.

37. The informal single negotiating text also proposed, in article 9, paragraph 2 and annex I B, the establishment of an arbitral tribunal whose decisions would be binding. States parties could deposit written declarations accepting as compulsory the jurisdiction of the arbitral tribunal in relation to any other contracting party which had undertaken the same obligation. Arbitration had been a successful way of resolving several international disputes and was also known in domestic jurisdiction. His delegation had as yet no strong objections to that proposal, but considered further discussion necessary in order to work out the detailed mechanisms of that procedure.

38. Another approach to third-party adjudication was the proposed creation of a law of the sea tribunal structured in much the same way as the International Court of Justice. Three major innovations were proposed in the statute of the law of the sea tribunal: first, its jurisdiction would automatically be binding on all parties to the convention; secondly, its members were to be elected on an equitable geographic basis; and thirdly, greater emphasis was to be laid on the adjudication of disputes by a chamber of three judges rather than by the full court of 15 judges. His delegation's first reaction was that the creation of such a tribunal to deal only with law of the sea matters could mean the establishment of yet another costly international mechanism which might be under-utilized. His delegation was prepared, however, to give it serious consideration.

39. Referring to article 13, which identified those entities which would have access to the dispute settlement procedure set out in the convention, he said that in order to determine the extent of access to those procedures, it was necessary to determine whether the sea-bed tribunal envisaged in document A/CONF.62/WP.8/Part I, article 32, was to remain separate from other dispute settlement procedures. The development of the international sea-bed area would involve huge investments in both capital and technology and it would seem necessary to have the kind of permanent specialized tribunal which could build up its own jurisprudence and which could determine cases as expeditiously as possible. If that was acceptable, then access to such a tribunal could be made open to international organizations as well as to natural and juridical persons involved in scientific research, prospecting, evaluation, exploration and exploitation and other related activities.

40. The President should prepare a revised single negotiating text, which would take into consideration the statements made in the general debate. Such a revised text could then form the basis for discussion and negotiation, possibly by a small open-ended working group of the Conference constituted in accordance with the principle of equitable geographic representation.

41. Trinidad and Tobago had reached no final position on the subject of dispute settlement. His delegation would co-operate with the President in efforts to elaborate a dispute settlement machinery which would be generally acceptable to all States. Trinidad and Tobago remained committed to the principle of the peaceful settlement of all disputes.

42. Mr. LOVATO (Ecuador) said that all the States represented in the Conference were interested in and committed to the formulation of a new law of the sea whose machinery would include institutions which would ensure the effectiveness of a system for the peaceful settlement of disputes. A useful text would emerge only as a result of a mandate from the Conference, and a fully representative working group should be established to prepare such a text.

43. His delegation considered it essential to promote and suitably regulate voluntary procedures for the peaceful settlement of disputes and, in the event of compulsory jurisdiction, considered it necessary to safeguard the application of laws, regulations and procedures of the coastal State in those areas of the sea under its sovereignty and/or jurisdiction. It shared the view that parties to a dispute should be entitled to utilize the settlement procedure of their choosing. Article 33 of the Charter of the United Nations enumerated the various means to which the parties could resort in seeking a peaceful solution. In adopting a dispute settlement procedure the Conference should be guided by the spirit and letter of that Article. The machinery to be established by the convention would have to be considered supplementary to the voluntary procedures agreed upon by States.

44. Disputes arising from incidents occurring in areas under the sovereignty and/or jurisdiction of a State should be subject to national jurisdiction and compulsory or mandatory jurisdiction of an international tribunal should not apply in such cases. Furthermore, the compulsory jurisdiction of an international tribunal should not cover acts or measures which originate in a coastal State and occur within the sea area under its sovereignty and/or jurisdiction. Naturally, States should ensure proper submission of those disputes to their national tribunals.

45. Welcome statements had been made concerning traditionally accepted procedures for the protection of the nationals of a State in the event of unwarranted denial or delay of justice in the tribunals of another State.

46. His delegation was not opposed to the establishment of a law of the sea tribunal with compulsory jurisdiction applicable in sea areas outside national jurisdiction, but it felt that in the organization of such a tribunal there should be adequate representation of legal systems reflecting new trends in the law of the sea as well as the aspirations of the developing countries. The tribunal should be established in the light of the special features characterizing activities connected with the exploration and exploitation of the sea-bed and ocean floor, and any natural or juridical person having any contractual relationship with the authority should have access to the tribunal for the settlement of cases involving such activities.

47. His delegation was not in favour of establishing special procedures for disputes in areas such as fisheries, pollution and scientific research.

48. The norms governing the peaceful settlement of law of the sea disputes which were to be agreed upon would obviously depend on various other substantive norms, and it seemed inappropriate to anticipate an agreement on such norms without a thorough knowledge of all the other norms. Ecuador's position with respect to the peaceful settlement of disputes was therefore contingent upon prior adoption of acceptable substantive norms which fully guaranteed its rights.

Mr. Zegers (Chile), Vice-President, took the Chair.

49. Mr. NAJAR (Israel) said that it would have been easier to hold the debate on the question of dispute settlement after the text of the convention had been prepared. Although the general outline of a possible agreement had emerged from the work done at the sessions in Caracas and Geneva, the crystallization of such an agreement had not yet taken place.

The divergence of views was still wide, although not as wide as might be believed. For instance, there was still a pre-occupying shadow on the subject of freedom of navigation and overflight in economic zones and in straits. The convention would not see the light of day until such doubts were dispelled and negotiations resulted in the universally desired positive solution. The problem of possible disputes and the settlement of disputes would, at that stage, no longer seem so complex and formidable as it did at present. What was needed then was to tackle the problem with a state of mind corresponding to an agreement happily reached rather than with a state of mind characteristic of a long and laborious negotiation still going on. Solutions would then appear much simpler than was currently generally believed.

50. His delegation did not believe that a great effort of innovation was required in dealing with the problems that could arise in connexion with the interpretation or application of the new convention. That convention was not the first international convention nor the first convention to deal with delicate technical problems. The world community had considerable experience in that respect.

51. The attachment of States to their sovereignty did not appear to have diminished, and their sensitivity even to apparent or relative restrictions on their freedom of political choice remained very acute. The future behaviour of States appeared unlikely to differ from behaviour in the past. Political, geographic and economic differences between States were real factors which could not be overlooked and which constituted the basis and justification for the limitations imposed on the jurisdiction of international judicial organs universal in space and indefinite in time. That was the case of the International Court of Justice and it was doubtful that States would renounce that prerogative in that domain. Simplistic solutions were therefore unlikely to stand the test of time.

52. While supporting, within the above mentioned limits, the inclusion in the convention of a compulsory clause for the peaceful settlement of disputes among States parties to the convention, his delegation felt it was useless and even harmful to establish a law of the sea tribunal as envisaged in document A/CONF.62/WP.9. From the point of view of international practice, the composition of the tribunal was questionable and its competence and powers unacceptable. States had a sufficient number of well tried methods for the settlement of disputes, such as those envisaged in the Charter of the United Nations and the Statute of the International Court of Justice.

53. As to the special procedures for the settlement of disputes in areas such as pollution and scientific research, committees of competent experts seemed particularly effective. The decisive importance of arbitration procedures was also to be stressed.

54. The only genuine innovation in the convention was the establishment of the International Sea-bed Authority. The doctrine of the rights of States over the sea-bed within the economic zones had been preceded by the 1958 Convention on the Continental Shelf.² Reserved fishing zones had long been in existence. Excellent treaties concerning pollution had already been signed and implemented, while others were being prepared. The exceptional and revolutionary nature of the International Sea-bed Authority perhaps justified the establishment of a special judicial organ, independent of the Authority and having jurisdiction suited to its operational requirements.

55. Various delegations had expressed the view that in that area alone the right of access to the special judicial organ

could be given to entities other than States. His delegation would eventually give favourable consideration to such limited participation while consideration was deserved by more strict opinions—well founded in international law—and while obligating arbitration clauses might well prove more useful.

56. There still remained the question of relations between the Authority and States, but that question could not easily be settled before the provisions of the final agreement on the status, functions and powers of the Authority could be studied.

57. His delegation had previously stated that the extension of the width of the territorial sea at the time of the establishment of economic zones merely reflected an anachronistic concern, would place a useless financial burden on the coastal States without contributing to their safety or promoting their economic interests and would create avoidable problems in the field of international navigation. Similarly, his delegation feared that the creative enthusiasm of the Conference might lead to unnecessary innovation and the establishment of a useless, complex, regrettable and expensive judicial superstructure.

58. Mr. PRANDLER (Hungary) said that his delegation disagreed with those delegations which considered that a general debate on the subject of dispute settlement procedures was premature at that stage. Dispute settlement procedures should form an integral part of the over-all package deal which the Conference sought to achieve, and accordingly the elaboration of that part of the convention could not be postponed until the substantive law provisions of the other parts of the convention were settled. At the same time, his delegation agreed with all those who believed that the most important contribution to an effective dispute-settlement procedure would be a well-balanced and carefully worded convention, which should enjoy the support of all parties concerned and which should be adopted by consensus. As the representative of Sri Lanka had emphasized, mutual confidence and co-operation between parties to a dispute were more likely to smooth the way for dispute settlement than the existence of a list of names of conciliation commissioners.

59. The informal single negotiating text contained in document A/CONF.62/WP.9 provided a very useful basis for current and future deliberations. Although based on the generally recognized principle of international law that States should settle their international disputes by peaceful means, the draft was flexible enough to be in conformity with another equally important principle according to which the choice of the methods and means of peaceful settlement should be left to the parties concerned. No State party to a dispute could be forced by a unilateral action of the other party to accept a given procedure without its consent.

60. When effective dispute-settlement procedures were being devised, two major extremes and dangers should be avoided. One danger was to rely too heavily on a strict, unified and comprehensive compulsory settlement procedure. That approach could not claim universal acceptance. As at September 1975, the best known comprehensive compulsory settlement procedure—the acceptance of the compulsory jurisdiction of the International Court of Justice under Article 36, paragraph 2, of its Statute—was being adhered to by only 45 States, many of which recognized that jurisdiction with well-known reservations. There was no evidence to indicate a trend towards the acceptance of such compulsory jurisdiction. The second danger was the inclusion of special provisions which would give the coastal States full exemption concerning “disputes arising out of the exercise of discretionary rights by a coastal State pursuant to its regulatory and enforcement jurisdiction under the present Convention” (A/CONF.62/WP.9, article 18, para. 2(a)).

² United Nations, *Treaty Series*, vol. 499, p. 311.

61. Representing a land-locked country, his delegation could not accept such an extension of the jurisdiction of coastal States. The rights and duties of all States should be duly balanced and the convention should contain adequate safeguards against the abuse of those rights by any of the contracting parties. For that reason, his delegation could not support the view that in an area outside the territorial sea, "matters in dispute should be kept exclusively within the jurisdiction of the coastal State" (A/CONF.62/WP.9/Add.1, para. 33).

62. His delegation was confident that other significant issues raised in the informal single negotiating text would be fully discussed in the appropriate forum. It had an open mind as regards the exact form and procedure of such a forum, and would accept any feasible proposal.

63. Mr. RASHID (Bangladesh) said that Bangladesh attached great importance to the procedure of dispute settlement, since, as a developing country, it would be depending more and more on the extensive exploitation and exploration of sea resources, which could be carried out only when the interests of countries like Bangladesh were secure and an atmosphere of peace reigned over the ocean.

64. His delegation recognized the need for an effective dispute-settlement machinery to be incorporated into the convention. The stability of the new law of the sea would depend largely on the establishment and effective functioning of a dispute settlement procedure. Such a procedure could not be dissociated from the substantive provisions of the convention.

65. The informal single negotiating text contained in document A/CONF.62/WP.9 envisaged a comprehensive and sometimes over-complicated machinery. His delegation was committed to the principle of the compulsory peaceful settlement of disputes and believed that a mandatory procedure should be incorporated into the convention. Without such a procedure, the value of the convention in the settlement of conflicts resulting from varying interpretations of the law would be greatly diminished. It also believed that a law of the sea tribunal was needed. The creation of such a tribunal would not detract from the role of the International Court of Justice, which would continue to be the principal judicial organ of the United Nations. Submission of disputes only to the International Court did not appear to answer the primary requirements of speed, technical expertise and access to the Court. Just as the International Law Commission and the United Nations Commission on International Trade Law coexisted without detriment to their effectiveness, so could the International Court and the proposed tribunal coexist, and the tribunal should deal with all parts of the convention, not only part I.

66. His delegation remained unconvinced of the need for special procedures. Under the general procedures, technical committees might function in specialized fields. He did not support the mandatory provision for exchange of information and consultation in annex III, and suggested its deletion.

67. While supporting a mandatory procedure for the peaceful settlement of disputes, his delegation favoured flexibility. The parties should be able to select any of the peaceful means set forth in Article 33 of the Charter or any other peaceful means of their choice, but such flexibility should not exempt the State from its primary obligation to resort only to peaceful means. The inadequacy of the 1958 Optional Protocol concerning the compulsory settlement of disputes³ should not be repeated: the parties should have the option to choose binding procedures without being allowed to opt out entirely.

68. With regard to access to the tribunal, his delegation was open-minded. Article 13 of the single negotiating text needed to be examined carefully, since it was likely to give rise to many new intricate situations. His delegation appreciated the concern expressed by delegations with regard to accepting broad jurisdiction in ocean disputes in relation to entities other than States.

69. One of the most difficult issues was related to possible general limitations on the jurisdiction of the dispute settlement machinery. His delegation appreciated the importance which some delegations attached to the exercise by States of exclusive jurisdiction over resources within national jurisdiction; it believed, however, that the exceptions might not be so many as to jeopardize the settlement procedure, and that article 18 of the single negotiating text needed to be examined in the light of paragraph 32 of the President's memorandum (A/CONF.62/WP.9/Add.1).

Mr. Mwanguhunga (Uganda), Vice-President, took the Chair.

70. Mr. JUSUF (Indonesia) said that his delegation's position on the question of the settlement of disputes depended largely on the nature of the compromises to be achieved in the final text on the convention, since questions of sovereignty and security were his country's primary concern. If its basic interests were taken into account in the final text, it would be able to consider stronger dispute-settlement provisions. At the current stage, however, his delegation was unable to express a more definite view.

71. His country had not yet accepted the compulsory jurisdiction of the International Court of Justice or any other compulsory arbitral procedures except in certain specific cases of arbitration to which it had expressly agreed. In general, his country resorted to consultation for the settlement of disputes. It felt that the procedures set forth in Article 33 of the Charter were generally acceptable. Its basic approach was aimed at preventing disputes from arising, and it had done its best to settle questions relating to territorial and marine boundaries in a neighbourly manner and to the satisfaction of all parties.

72. The Association of South-East Asian Nations had established machinery for the peaceful settlement of disputes, and disputes concerning the law of the sea could also be resolved through that machinery. While it preferred regional machinery for such purposes, his delegation did not rule out the use of other means. Provided its economic interests were not affected, and subject to a consensus in the Group of 77, his country could agree to the compulsory jurisdiction of the proposed tribunal with regard to the international area in cases relating to contractual arrangements or operations. His delegation also shared the view that the settlement of disputes could be regulated in an optional protocol.

73. With regard to part IV of the single negotiating text (A/CONF.62/WP.9), his delegation was unable to state its position in greater detail, mainly because of the uncertain outcome of negotiations, and because that text was still being studied by his delegation.

74. Mr. FALCÓN BRICEÑO (Venezuela) noted that, in beginning the debate on the settlement of disputes, delegations did not have before them documentation reflecting even the main trends concerning that question. The paper submitted by the informal working group on the settlement of disputes reflected the views of the three co-Chairmen of the group in the light of the discussions which were held by the group during the Caracas and Geneva sessions. While it was a valuable adjunct to consideration of the item, its authors had never claimed that it reflected the whole range of positions of States participating in the Conference, still less a body of rules approved by the working group.

³ *Ibid.*, vol. 450, No. 6466, p. 169.

75. The Conference had decided at the previous session to entrust the Chairmen of the three Committees with the preparation of single texts relating to each of the items within their competence, but it had not taken the same decision with regard to the settlement of disputes, a question that had not yet been discussed. Document A/CONF.62/WP.9 was therefore only one element that could assist the group that should be established for the purpose of preparing a text to serve as the basis for future negotiations on that item. That document, and the paper prepared by the informal working group, were merely working instruments that could be approved by delegations to the extent that they deemed appropriate. His delegation, for its part, was prepared to contribute to the study of peaceful means for the settlement of disputes relating to the interpretation and implementation of the future convention.

76. His country's Constitution stipulated that any international agreement concluded by Venezuela must contain a clause whereby the parties undertook to settle, through peaceful means recognized by international law or previously agreed upon by them, disputes that might arise relating to the interpretation or application of the agreement. Furthermore, it had accepted the principles concerning the peaceful settlement of disputes laid down in the Charter of the United Nations and in that of the Organization of American States.

77. Furthermore, Venezuela had signed and ratified without reservations various global and regional conventions providing for peaceful means of settling disputes, including the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas⁴ and the 1954 International Convention for the Prevention of Pollution of the Sea by Oil.⁵

78. The best means of settling disputes involving sovereignty, security and national defence was negotiation among the parties concerned. His delegation could therefore not accept any procedure, involving the participation of third parties, which might lead at any stage of the dispute to a decision binding on the States parties in the case of disputes involving such matters. His delegation accordingly supported the provisions of article 18, paragraph 2, of document A/CONF.62/WP.9.

79. It believed that there was no need to establish a special tribunal for the settlement of disputes relating to the interpretation or application of the convention, since such functions could be exercised by the International Court of Justice. It would not, however, oppose the establishment of such a body, if the majority desired it. On the other hand, it would be appropriate to establish a tribunal that would deal with disputes arising from the exploration and exploitation of the resources of the international area.

80. His delegation had reservations regarding certain solutions proposed in the documents to which he had referred earlier, particularly with respect to preventive measures and advisory opinions. Those questions, and certain others, needed to be studied in depth.

81. Mr. BAJA (Philippines) said that his country had always been committed to the provisions of Article 2, paragraph 3, of the Charter of the United Nations, which enjoined all Member States to settle their international disputes in such a manner that international peace and security and justice were not endangered. His delegation therefore supported efforts to provide for a peaceful settlement of disputes in a future convention.

82. Prior agreement to accept third-party procedures for the settlement of disputes would provide a valuable means of

lowering the temperature of a dispute. Such an agreement would also establish a more or less permanent structure of international relations and would serve as a safety-valve against internal repercussions if the outcome of a particular settlement procedure did not meet expectations. The advantages of such a system could not be more pronounced than in the future convention, which was expected to be composed of delicate compromises, of provisions which, as the representative of France had aptly observed, were being conceived with deliberate ambiguity.

83. It was remarkable to note the reluctance, even the failure, of Governments to use available means for the peaceful settlement of disputes. In most cases, a solution of the dispute was probably better for the State concerned than the prolongation of the dispute.

84. Two important factors might militate against the settlement of disputes through third-party procedures. The first was, rightly or wrongly, the lack of confidence in the adequacy, effectiveness and impartiality of available procedures. The second involved State sovereignty. Governments understandably preferred to keep control of any eventual settlement. The fundamental problem was to persuade them of the advantages of having recourse to various institutions and procedures for the settlement of disputes. Such obstacles must be removed before dispute settlement procedures and machinery were established.

85. His delegation wished to express some preliminary views on the settlement of disputes. First, a dispute settlement system should form an integral part of the future convention. Secondly, to be effective, it should include compulsory jurisdiction leading to a binding decision by the jurisdictional organ concerned. Thirdly, the scope of the dispute settlement machinery should be as broad as politically possible; it should, however, assume a role that did no more than supplement traditional and direct bilateral negotiations, as in the case of the Association of South-East Asian Nations. Fourthly, acceptance of compulsory jurisdiction would require sufficient assurances that a State's vital interests were adequately safeguarded, since acceptance of compulsory third-party procedures derogated, however subtly, from State sovereignty. Article 18 of document A/CONF.62/WP.9 was one safeguard. On the other hand, there was a need for precision with regard to exceptions and reservations: they should not be so broad or so numerous as to negate the concept of compulsory jurisdiction. Fifthly, it might be too early to consider the so-called functional approach or special procedures. Since those concepts covered areas and subjects concerned more with national jurisdiction, wide acceptance was much more difficult to attain. Special procedures might also open the door to a proliferation of dispute settlement mechanisms and competing jurisdictions. There was no strong reason, however, why such procedures should not find a place in a general or comprehensive dispute-settlement system. Sixthly, access to the system should generally be limited to States. If individuals and organizations were granted access on the same footing as States, it might constitute an obstacle to wider acceptance of the system. That should not, however, be a hard and fast rule: it should be possible, especially in matters involving the international area, for parties other than States to avail themselves of the dispute system. Seventhly, the progressive development of the law of the sea should entail a corresponding development of the dispute system. If the procedures were not adequate, or adequately applied, there was a danger that the progressive development of the law would only lead to the same number of disputes. His delegation viewed with favour the proposal to establish a special sea-bed tribunal as one of the institutions for the settlement of disputes involving matters relating to the international area. However, the establishment of new dis-

⁴ *Ibid.*, vol. 559, p. 285.

⁵ *Ibid.*, vol. 327, p. 3.

pute-settlement machinery should be undertaken only when existing mechanisms were inadequate and when the new jurisdictional procedure for machinery could command wide acceptance. The International Court of Justice still had considerable capacity for the peaceful settlement of disputes.

86. A dispute settlement system would command universal acceptance only when the substantive provisions were clear and settled. Acceptance of a particular dispute system would depend on the outcome of discussions in the three Committees. His delegation believed, however, that the valuable work started on the subject of the settlement of disputes should continue, and it would co-operate in existing arrangements on the subject as well as in other systematic, broadly representative and practical work in that regard.

Mr. Amerasinghe (Sri Lanka) resumed the Chair.

87. Mr. LUPINACCI (Uruguay) said that his delegation supported the adoption of provisions for the establishment of a system for the peaceful settlement of disputes relating to the interpretation or application of the future convention. Support for such a system was in line with the unswerving attitude which Uruguay had adopted in many international and regional forums. That policy had been given practical expression in the conclusion of bilateral treaties of arbitration and the signature in 1921 of the optional clause of the Statute of the Permanent Court of International Justice. He wished especially to recall that the 1948 Pact of Bogotá, in the preparation of which a Uruguayan jurist had participated, had provided the most complete international instrument known on that subject, placing inter-American regional law in the forefront of the legal preservation of peace. The treaty, signed in 1973 by Uruguay and Argentina, relating to their common boundaries had also established a system for the peaceful settlement of disputes, prescribing conciliatory stages and, in the case of lack of agreement, providing for recourse to the International Court of Justice. Thus, Uruguay's position was consistent with its traditional policy on the subject.

88. First, it was necessary to establish the principle of compulsory peaceful settlement of all disputes that might arise between parties to the future convention. Secondly, the principle of the freedom of the parties in the choice and application of the settlement procedures should prevail. The free and effective agreement of the parties in selecting the procedure would undoubtedly facilitate a successful outcome of the dispute. In the absence of such an outcome, however, or if there was no agreement on the selection of the peaceful means, the system should provide procedures to which any of the parties could have recourse in order to seek a peaceful solution.

89. A dispute should be submitted to a conciliatory, not a jurisdictional, body, before recourse was had to an arbitrator or a judge. The functioning of the system must make it possible for any controversy to be settled. The system must therefore be both complete and dynamic in its procedures, with set stages and with full guarantees to the parties in the exercise of their rights. At the same time, it was necessary to preclude the possibility of the overlapping of procedures, by ensuring that the timing of the various stages was adhered to. Only when a procedure failed should the next procedure be instituted.

90. Such procedures must be prescribed in a precise form, guaranteeing equality of the parties and providing them with sufficient flexibility but with clear time-limits. Such a system should culminate in the submission of a settlement that had not been resolved by diplomatic or conciliatory procedures for a judicial decision. The system must have a jurisdictional basis, so that any dispute could eventually be settled in accordance with the law, or also *ex aequo et bono* if the

parties so agreed, by the compulsory decision of a tribunal.

91. It would be pointless to establish a technically comprehensive system if it was subsequently to be rendered ineffective by reservations with regard to the application of jurisdictional procedures or specific types of disputes involving serious threats to the peace. Some reservations must be allowed, if only to make it politically feasible for the largest possible number of States to ratify the provisions in question, but care must be taken to avoid constructing an apparently stable edifice that was in fact basically unsound. Neither was it tolerable for certain States to profess support for a system of peaceful settlement of disputes when, in reality, they were merely prepared to submit to non-compulsory procedures the settlement of minor disputes with other States.

92. His delegation was not retreating from a position of full respect for the sovereignty of States, but was in fact supporting the establishment of an international legal order enabling equal sovereign States to live together in justice and peace. Within that framework, it would be possible to exclude the submission, at least to certain procedures, of disputes that might arise in the exercise by a coastal State of its discretionary powers under the convention.

93. With regard to jurisdictional procedures, his delegation considered that the proliferation of tribunals or judicial organs would create various difficulties, although it was necessary to recognize the existence of basically different situations, particularly in the case of the international area as compared with the other maritime or sea-bed areas, whether or not subject to national jurisdiction.

94. The establishment of the proposed law of the sea tribunal, along the lines of the International Court of Justice, required proper justification. The principal innovation lay in the possibility of access to the tribunal being extended to entities other than States, namely, territories participating in the Conference as observers, intergovernmental organizations and natural and juridical persons, on an equal footing with States parties to the convention.

95. His delegation radically disagreed with any formula that might mean giving *locus standi* to international organizations or natural or juridical persons before the law of the sea tribunal or any other tribunal in matters relating to rights, powers or activities exercised by States in any part of the sea or to incidents or situations occurring within the territorial sea, the economic zone or the continental shelf.

96. The only exception should concern the activities of the International Sea-bed Authority. The different circumstances of the international area justified a situation where such entities or persons, after fulfilling certain requirements, could be parties to cases submitted to a jurisdictional procedure with regard to activities in the international area, when such cases were expressly provided for in the convention or in other international instruments accepted by the parties to the dispute.

97. While the establishment of a tribunal in connexion with the international area should be given every consideration, his delegation was opposed to granting access to the tribunal to those entities or persons on an equal footing with States in matters relating to the rights, powers or activities of States or to incidents or situations occurring, or having an effect, in areas under national jurisdiction. Such entities or persons should have recourse to competent national tribunals and, when internal remedies were exhausted, the general principles concerning diplomatic protection and international responsibility of States should be applied.

98. While his delegation was favourably disposed in principle towards the establishment of a law of the sea tribunal for the settlement of disputes relating to the international area,

other questions relating to the interpretation and application of the convention should be submitted to the International Court of Justice, whose Statute was sufficiently flexible to enable it to perform such a function.

99. On that basis, his delegation would co-operate in a

spirit of compromise in the preparation of a text on the settlement of disputes, which it considered part and parcel of the new law of the sea.

The meeting rose at 1.05 p.m.

63rd meeting

Thursday, 8 April 1976, at 10.30 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Addition to the list of non-governmental organizations

1. The PRESIDENT announced that an additional non-governmental organization in consultative status with the Economic and Social Council, namely the Commission to Study the Organization of Peace, had expressed interest in attending the Conference as an observer. The request would be approved under rule 65 of the rules of procedure if there was no objection.

It was so decided.

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

Settlement of disputes (continued) (A/CONF.62/WP.9,¹ WP.9 and Add.1)

2. Mr. AKKUM (Surinam) said that his delegation was in agreement with the addendum to the informal single negotiating text on the settlement of disputes (A/CONF.62/WP.9/ Add.1). The dispute settlement system contained therein was comprehensive because it covered disputes which might arise from any use of the ocean and disputes between States and juridical persons. It also affected international as well as national ocean space and the functions and structure of all the major intergovernmental organizations dealing with the use of ocean space and its resources. It was therefore a model for the kind of ocean management structure that eventually had to emerge if the vast resources of the oceans were to be utilized for the benefit of all countries.

3. With regard to specific aspects of that document, his delegation shared the preference of the Group of 77 for general procedures as opposed to functional or special ones, while realizing that the system must be flexible enough to accommodate the many special issues that might arise. Disputes should be settled at the level and in the area they affected, and new ways of combining functional and general principles were needed. The provision that the general procedure would automatically prevail when parties to a dispute disagreed as to the tribunal to be chosen seemed satisfactory.

4. His delegation also shared the preference of the Group of 77 for a new law of the sea tribunal as opposed to the International Court of Justice, since it would ensure a larger role for the developing countries. The election of the judges should be based on the equality of sovereign States as expressed in the one State, one vote system, without discrimination of any kind, and the number of judges should be equitably divided among the various regions. The law of the

sea tribunal should have preference in case of disagreement between the parties concerned as to the appropriate forum.

5. The special meeting of States to elect the judges was extremely important because it could also periodically review the general situation arising from the convention, and, specifically, the situation with regard to its observance, thus providing the kind of continuity which was essential for such a complex and novel treaty. His delegation therefore supported the proposal made by the delegation of Sri Lanka at the 59th meeting.

6. Finally, his delegation favoured establishing a special organ of the Conference to deal with the elaboration and negotiation of part IV of the single negotiating text and felt that such an organ should have a legal status and responsibility equal to that of the other main Committees of the Conference. Such a body would not only offer the most efficient way of concluding the work on part IV but would also ensure unity of purpose and comprehensiveness of basic perspectives.

7. Mr. ABUL-KHEIR (Egypt) said that an effective system for the settlement of disputes had to be included in the convention. A special committee should be established to work out details regarding the selection of methods in accordance with Article 33 of the Charter of the United Nations. His delegation favoured negotiation, conciliation and arbitration. Those devices should be available to everyone, and there should be complete freedom of choice of methods by the parties concerned.

8. Where it was necessary to resort to international jurisdiction, uniformity should replace the proliferation of various jurisdictions.

9. Three kinds of questions would arise under the convention: questions regarding the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction; traditional questions covered by international law; and questions relating to the national jurisdiction of coastal States.

10. With respect to the first question, the protection of a common patrimony required special rules and special jurisdiction independent of the Authority, and his delegation was therefore in favour of a special tribunal. Organizations with observer status as well as national liberation movements should have access to such a tribunal. With regard to the second question, his delegation was opposed to the proliferation of jurisdictions. The International Court of Justice would be competent if the parties agreed, but a special chamber should be established within the Court to deal with such disputes and judges should be determined on an *ad hoc* basis. Special procedures could be employed for specific technical matters such as fisheries, pollution and scientific research.

¹ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

ANNEX 31

UN Diplomatic Conference, Plenary, 105th session, 19 May 1978

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.105

105th Plenary meeting

Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume IX (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Seventh and Resumed Seventh Session)

the exploitation of the exclusive economic zone, with a view to clarifying the concept. He hoped the objections to that proposal would be withdrawn.

83. His delegation disagreed fundamentally with certain aspects of the formulations contained in document NG4/9/Rev.2 and, in particular, it had reservations regarding the right of land-locked States to the living resources of the exclusive economic zones of coastal States, in which coastal States exercised sovereignty. His delegation therefore had difficulty in accepting paragraph 3 of article 69 and paragraph 4 of article 70, as proposed in that document. The surplus principle must be respected.

84. His delegation regretted that worth-while results had not been achieved by negotiating group 6. It continued to support the Irish proposal, which it regarded as viable in that it permitted a harmonization of the interests of coastal States with those of the international community. It was essential that the right of coastal States to exploit the continental shelf to its limit should be recognized.

85. His delegation considered that the results achieved in negotiating groups 4 and 6 represented part of a fundamental negotiating package. It could not accept any formula proposed by negotiating group 4 if a satisfactory formula was not produced in negotiating group 6.

Mr. Amerasinghe resumed the Chair.

86. Mr. RUIVO (Portugal) said that the position of his delegation continued to be that the object of the negotiations which had taken place during the Conference was to reach a compromise solution based on an over-all package deal which in turn would consist of a number of package deals on key issues. From that point of view, his delegation believed that progress had been made during the current session, and he therefore hoped that the results achieved would be trans-

mitted to the next session of the Conference as a basis for further negotiation. The formula contained in document NG4/9/Rev.2 represented an improvement on the informal composite negotiating text, and his delegation was prepared to accept it with certain amendments. In particular, the relative level of economic development as a factor in negotiations on access to the exclusive economic zone required more precise definition. His delegation was in favour of the references to the nutritional needs of the populations of the respective States and to the need to avoid effects detrimental to the fishing industries of coastal States, but it was concerned at the references in the proposed wording of articles 69 and 70 to the subregion or the region, without any accompanying clarification of those concepts. His delegation considered that the criterion which should be applied in identifying the region or subregion should be based on objective considerations such as geographical proximity.

87. His delegation was satisfied with the formula proposed by the Chairman of negotiating group 5 (NG5/15), which represented a realistic solution that took account of the need to conserve resources and to manage them in a rational manner, and would also help indirectly to safeguard access, without discrimination, to surpluses. He regretted that his delegation's informal suggestion regarding article 61 and a new article 67 *bis* (C.2/Informal Meeting/26), which had been designed to clarify the criterion of maximum allowable catch, had not been adopted.

88. Mr. ZEGERS (Chile) said that his delegation considered that the results achieved by negotiating groups 4 and 5 represented a good basis for negotiations with a view to reaching a compromise. The difficulty with regard to the concept of rights of land-locked and geographically disadvantaged States could be avoided.

The meeting rose at 11.45 p.m.

105th meeting

Friday, 19 May 1978, at 10.15 a.m.

President: Mr. H. S. AMERASINGHE.

Adoption of a convention dealing with all matters relating to the law of the sea, pursuant to paragraph 3 of General Assembly resolution 3067 (XXVIII) of 16 November 1973, and of the Final Act of the Conference (continued)

REPORT OF THE SECOND COMMITTEE (concluded)

1. The PRESIDENT said that he wished to correct any false impression that might have been created by an observation from the Chair during the statement by the representative of Poland at the previous meeting. No discourtesy had been intended. He had intervened merely to expedite the proceedings and to avoid the possibility of a succession of points of order.

2. Mr. ZEGERS (Chile) said that his delegation fully supported the observations made at the 102nd meeting by Mr. Castañeda, Chairman of the group of coastal States. In that connexion, it was certain that the reports of negotiating groups 5 and 7 would be presented in due course by the President of the Conference, and that the part of the report of the Chairman of the Second Committee (100th meeting)

which related to the work of negotiating group 6 would be reflected in the documents of the Conference.

3. The compromise suggestions by the Chairman of negotiating group 4 (NG4/9/Rev.2)¹ provided a sound basis for negotiation and might represent the nucleus of a possible compromise on the establishment, for land-locked and geographically disadvantaged States, of a right of participation on an equitable basis in the fishing surpluses of a region or subregion.

4. He believed that the problem raised by the word "rights" could be solved by adopting the suggestion of the representative of Peru to delete the word "the" in the English text.

5. Turning to the proposals contained in the report of negotiating group 5 (NG5/17)², he said that they seemed to offer a good basis for negotiation in so far as they provided that disputes with regard to fisheries within the 200-mile exclusive economic zone should not be subject to compulsory settlement.

¹Official Records of the Third United Nations Conference on the Law of the Sea, vol. X (United Nations publication, Sales No. E.79.V.4), p. 93.

²*Ibid.*, p. 117.

6. In regard to the work of negotiating group 7 on delimitation (NG7/21)³, there appeared to be a consensus on the delimitation of the territorial sea between adjacent and opposite States, but no consensus on the delimitation of the exclusive economic zone on the continental shelf between such States, since neither the informal composite negotiating text⁴ nor the formulations suggested in the group had commanded wide support. His delegation felt that the final solution should be based on the principle of equidistance and that provision should be made for compulsory settlement of disputes on delimitation.

7. The PRESIDENT confirmed that the reports of negotiating groups 5 and 7 would be presented by him when the plenary took up part XV of the negotiating text. He said that there was difficulty over the status to be given to the reports of the chairmen of the committees and the chairmen of the negotiating groups, since the Conference was considering at formal meetings reports which had not been formally approved. He therefore proposed, without in any way wishing to prejudge the status of the reports, that they should be reproduced under the following title "Reports of the Committees and negotiating groups on negotiations at the seventh session, contained in a single document both for the purposes of record and for the convenience of delegations." That document would be circulated to participants in the Conference with the date and the original language specified.

It was so decided.

8. Mr. YANKOV (Bulgaria), speaking as Chairman of the Third Committee, drew attention to a further category of documents, namely the MP series. There had been a feeling in the Third Committee that it would be a pity to lose sight of those documents. He suggested that they might be issued for further consideration by the Conference, without changing their informal status.

9. The PRESIDENT suggested that the texts of reports presented by the chairmen of committees and negotiating groups should be printed in full and that any working paper containing important points should also be printed.

It was so decided.

10. Mr. BRENNAN (Australia) asked whether the above documents would be the only ones to be produced by the presidential team.

11. The PRESIDENT said that no decision on the documents to be issued could be reached by the presidential team until the Conference had completed its work.

12. Mr. AL-NIMER (Bahrain) said that, in general, document NG4/9/Rev.2 provided a good basis for the revision of the negotiating text in order to achieve a fair balance between the interests of coastal States and those of the land-locked and geographically disadvantaged States.

13. The negotiating text could be said, in general, to favour coastal States. Article 61, for example, authorized the coastal State to determine the allowable catch of the living resources in its exclusive economic zone; paragraph 2 of article 62 gave the coastal State the right to determine the access, if any, of other States to the surplus of the allowable catch; and paragraph 4 of the same article conferred on the coastal State the right to control fishing activities in the exclusive economic zone. It was therefore important to redress the balance; the proposed amendment to paragraph 2 of article 62 was particularly useful in that connexion and should be included in a revised version of the negotiating text.

14. Turning to paragraph 2 of article 70, which was of great importance since it established the conditions for participation in the exploitation of the living resources of the exclusive economic zone, he said that the compromise suggestions in

document NG4/9/Rev.2 were not equitable and would give rise to serious complications in the future. That paragraph should most certainly be modified and it would also be desirable to reintroduce the term "geographically disadvantaged States" in any future text. He supported the views of the representative of the United Arab Emirates that the economic situation of a country should be taken into account when determining the right of access to surplus fishing resources.

15. Mr. BAKER (Israel) said he hoped that the various comments, reservations and suggestions made during the informal deliberations of the Second Committee would be taken into account, and, where necessary, transmitted to the Drafting Committee. In particular, his delegation could not accept the arbitrary, artificial and unwarranted distinctions between various types of straits which derived from the present structure and language of articles 35, 37, 38 and 45 of the negotiating text. He would have liked to draw attention to a number of difficulties, especially in part IX of the negotiating text, on enclosed and semi-enclosed seas, a matter in some respects related to straits. His delegation had in fact submitted proposals on articles 33, 55, 109 and 110 which, he hoped, would be taken into account. The question of historic waters, which had been raised by a previous speaker, had given rise to some reservations and should be discussed further. He also agreed that the term "States with special geographical characteristics" needed to be more clearly defined.

16. Mr. KOH (Singapore) said that the compromise suggestions by the Chairman of negotiating group 4 did not satisfy his delegation entirely, firstly because they did not employ the term "geographically disadvantaged States"; secondly because, although the coverage of paragraph 2 of article 70 had been widened, it was still inadequate and some of the States concerned would fall outside the coverage; and thirdly because his delegation had certain objections to paragraph 4 of article 69 and paragraph 5 of article 70.

17. In spite of those reservations, he still believed that the suggestions by the Chairman of negotiating group 4 were better than the corresponding formulations in the negotiating text and offered a substantially improved prospect of reaching a consensus on that issue.

18. He shared the disappointment of the representatives of the coastal States in general, and of the wide-margin States in particular, that no solution had been achieved in negotiating group 6. The issue considered by that group was one of the core issues, and a satisfactory solution to it must be found if the Conference was to adopt a convention. He was convinced, that under the able leadership of the Chairman of the Second Committee and with goodwill from all sides, it would soon be possible to find a solution that was fair to the wide-margin States and to the rest of the international community. His delegation would participate in further negotiations with goodwill and in a constructive spirit.

19. Lastly, he wished to pay a tribute to the Chairmen of negotiating groups 4 and 5 for the excellent work which they had done at the session. If nothing else had been achieved at the present session, their work alone would have made the session a tremendous success.

20. Mr. GORI (Colombia) said that some pessimism had been expressed in regard to the work of negotiating group 7, but there were indications that an understanding might possibly be reached. There was certainly a consensus on the delimitation of the territorial sea (article 15 of the negotiating text), a matter which was governed by a substantive rule of law. Opinions were divided, however, in regard to the delimitation of the exclusive economic zone and the continental shelf, some delegations preferring delimitation in accordance with equitable principles and others supporting the equidistance solution. There was an important difference of princi-

³*Ibid.*, p. 124.

⁴*Ibid.*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

ple between the two approaches, and his delegation had no doubt which was the right one. It was essential to adopt a legal rule on the basis of which clear decisions could be made. The equidistance principle provided such a rule and his delegation was formally in favour of its adoption, with provisions for compulsory implementation if necessary. The matter was set out in detail in the proposal which his delegation had co-sponsored (NG7/2).

21. Mr. DIOP (Senegal), referring to the work of negotiating group 4, said that his delegation was opposed to the exclusion of the concept of surpluses from the convention. The fears expressed by some African countries were not justified, since saturation of surpluses did not occur in Africa. The interests of African land-locked countries were protected by the provisions of paragraph 5 of article 69. In his delegation's view, the definition of countries with special geographical characteristics, as contained in the proposals by the Chairman of negotiating group 4, was vague and should be clarified.

22. The purpose of the uncontroversial amendment submitted by Senegal to subparagraph 4 (a) of article 62 (C.2/Informal Meeting/37) was to prevent the saturation of a particular sector and to allow countries sufficient latitude to orient their contributions to a sector of their choice.

23. Turning to the report of negotiating group 5, he said that his delegation had some difficulty in accepting a rule calling for compulsory settlement of disputes concerning the exercise of a coastal State's sovereign rights, since such a provision was found to give rise to abuse. He therefore supported the compromise text contained in document NG5/15, although he was prepared to consider other proposals, including that put forward by the United States (NG5/11).

24. Although no compromise had been reached in negotiating group 7, progress could be made if the concept of equidistance as the exclusive or privileged criterion for delimitation was abandoned.

25. Mr. SANTISO-GÁLVEZ (Guatemala) said that his delegation fully supported the views expressed on the previous day by the representative of Mexico on behalf of the group of coastal States with regard to the work of negotiating group 4. It also endorsed the views expressed by the representatives of Peru and Honduras (103rd meeting), as well as Uruguay (104th meeting).

26. Mr. ADDAE (Ghana) said that the results achieved by negotiating groups 4 and 5 constituted an acceptable basis for further negotiation. His delegation regretted, however, that there had been a lack of any appreciable progress in negotiating group 6. In its view, the régime of the continental shelf should have been subsumed under that of the exclusive economic zone. It was also essential that the outer limit of the continental shelf should not exceed 200 nautical miles if activities on the sea-bed beyond the limits of national jurisdiction were to be regulated for the benefit of mankind as a whole, in accordance with the concept of the common heritage of mankind. In that respect, article 76 of the negotiating text did not reflect the expectations of most delegations concerning the establishment of a new international economic order.

27. Of the two proposals concerning delimitation of the continental shelf put forward in negotiating group 6, the Soviet proposal (C.2/Informal Meeting/14) was more acceptable to the Ghanaian delegation than the Irish formula (see A/CONF.62/C.2/L.98), but required further study. Ghana did not favour the proposed linkage of the issue of the delimitation of the continental shelf with the question of access to the living resources of the exclusive economic zone, since the prospects for consensus on such a linkage were not good.

28. Mr. CLINGAN (United States of America) said that the compromise suggestions put forward by the Chairman of

negotiating group 4 increased the likelihood of consensus and should be incorporated in any revision of the negotiating text. It was regrettable that no consensus had emerged regarding the definition of the continental margin beyond 200 miles or the related question of revenue sharing, but a package which accommodated the interests of all States was emerging nevertheless. The elements of that package were as follows: first, the Irish formula, which was legally defensible, scientifically sound and politically realistic and avoided the dangers of a distance criterion unrelated to natural features; secondly, the sharing of revenue from the exploitation of mineral resources beyond 200 miles, commencing five years after commercial exploitation had begun and based on the value of production at the site, with the rate increasing to an agreed maximum; and thirdly, some formula for adjusting the distribution of benefits that would take into account the contribution made by developing countries which had exploited the resources of the margin beyond 200 miles.

29. His delegation was opposed to the Bulgarian proposal for the preparation of regional maps (103rd meeting), since it would seriously delay the work of the Conference and interfere with the momentum of negotiations, as well as duplicating the work already done by experts from the Intergovernmental Oceanographic Commission and the International Hydrographic Organization in reviewing the present secretariat study.

30. The United States supported the report of the Chairman of negotiating group 6, including the amendments to three non-hard-core issues, which should be included in any revision of the negotiating text. It was opposed to amendments on which it had not made specific comments, for the reasons expressed at previous sessions.

31. The discussions on article 55 in the Second Committee had demonstrated that there was strong support for the package contained in the negotiating text regarding the exclusive economic zone, and there was also a recognition of the careful balance which it had struck. Article 89 provided that no State might validly purport to subject any part of the high seas to its sovereignty and, according to the terms of paragraph 2 of article 58, articles 88 to 115 applied to the exclusive economic zone, in so far as they were not incompatible with part V. Nothing in part V was in fact incompatible with article 89. At the same time, it was clear that the sovereign rights and jurisdiction of the coastal State were not prejudiced. It was not the intention of the United States, in supporting the Soviet proposal concerning the amendment of paragraph 2 of article 55 (C.2/Informal Meeting/7), to upset the present balance. The inclusion of a no-sovereignty clause in that paragraph would merely give political prominence to a principle on which there was broad agreement and would not change the legal meaning of the provisions of the negotiating text.

32. Mr. GOUK (Democratic People's Republic of Korea) said that articles 17, 29 and 30 of the negotiating text should be amended in order to take into account the view expressed by a number of countries that foreign warships should only pass through the territorial sea of a coastal State with the prior permission of, or with prior notification to, that State. His delegation opposed the idea that disputes relating to the exercise of the sovereign rights and jurisdiction of a coastal State should be submitted to compulsory adjudication, and considered that the relevant articles, in particular article 296, should be revised. In addition account should be taken, in paragraph 2 of article 58, of the Peruvian proposal that foreign warships and military aircraft should refrain from engaging in manoeuvres or using weapons while passing through the exclusive economic zone of a coastal State (C.2/Informal Meeting/9).

33. Mr. DE LACHARRIÈRE (France) said that the views of the members of the European Economic Community on

the results achieved by negotiating group 4 had already been expressed by the representative of Denmark (103rd meeting). Those results, however, should not be seen in isolation but should be considered in conjunction with the equally important issue of the definition of the outer limit of the continental shelf. At the present stage, the only proposal capable of leading to an equitable and scientifically justified solution to the problem of defining the outer limit of the continental margin was the Irish formula. On the question of the legal regime of the exclusive economic zone, the French delegation supported the informal proposal put forward by the Soviet delegation.

34. On the question of islands, the French delegation fully supported the Japanese proposal to delete paragraph 3 of article 121 (C.2/Informal Meeting/27). The Belgian suggestion to amend article 25 relating to archipelagos (C.2/Informal Meeting/15) had met with broad support and should therefore be included in any revision of the informal composite negotiating text.

35. The French delegation noted with satisfaction that it had been possible to arrive at a compromise in negotiating group 5, but regretted that negotiating group 7 had not been able to draft provisions better than those now contained in the negotiating text.

36. Mr. VELLA (Malta) said that all the suggestions which had been made with regard to the definition of the continental shelf should be taken into account in further negotiations. Some of those suggestions were aimed not only at precision but also at providing safeguards against further shrinkage of the common heritage of mankind.

37. Although the question of delimitation covered in articles 74 and 83 was one of the most intractable problems before the Conference, possible ways of achieving a solution had been suggested and negotiations should continue at the next session on the establishment of criteria for delimitation and settlement of disputes on delimitation. The discussion so far had shown that the present provisions of the informal composite negotiating text did not offer a basis for a compromise solution.

38. With regard to the régime of islands, he said that his delegation recognized the difficulty of defining maritime spaces because of the presence of islands, but it could not support the suggestions which had been made on the subject of islands unless a clear distinction was drawn between island States and other islands. The proposal put forward with regard to enclosed and semi-enclosed seas deserved further consideration and enjoyed his delegation's support, since it would be difficult to exploit the resources of such seas as the Mediterranean without full co-operation between bordering States.

39. Mr. DORJI (Bhutan) said that a number of coastal states had referred to the direct linkage of the issues considered by negotiating groups 4 and 6, and had stated that the concept of such a linkage had originated with certain land-locked and geographically disadvantaged States. He wished to point out, however, that neither his delegation nor the group of land-locked and geographically disadvantaged States had proposed any such direct linkage, although the issues discussed by the two negotiating groups were inter-related to the extent that they formed part of an over-all package.

40. The texts which had resulted from the discussion in negotiating groups 4, 5 and 6 came close to representing a consensus and could therefore be accepted as a basis for further negotiations. In particular, the Irish formula had never been rejected and should therefore be given further consideration. His delegation was disappointed with the lack of progress in negotiating group 7, although it could accept the compromise put forward as a basis for further negotiation. That acceptance should not, however, be construed to

mean that it agreed with the conciliation formula for other types of dispute.

41. Mr. DROUSSIOTIS (Cyprus) said that his delegation endorsed the report of the Chairman of negotiating group 7. The report showed, in particular, that none of the formulations put forward for articles 74 and 83 had received widespread support, that there was no consensus on the present formulation of those articles in the negotiating text, and that the rules of delimitation and settlement of disputes should not be separated.

42. The proposals contained in document NG7/11 contained certain positive elements, including recognition of the principle of equidistance in articles 74 and 83 and the establishment of a close link between delimitation and settlement of disputes which would, in his delegation's view, ultimately constitute the basis for an acceptable compromise.

43. The delegation of Cyprus had consistently expressed the view that no distinction whatsoever should be made between insular and continental territories with regard to entitlement to zones of maritime jurisdiction. It also had serious reservations of principle as to whether the concept of enclosed and semi-enclosed seas should be included in the convention, since its inclusion would lead to further fragmentation. It recognized, however, that there was a need for co-operation among States in the same region. Cyprus was in favour of freedom of navigation and semi-enclosed and enclosed seas and therefore supported the Yugoslav suggestion concerning article 36 (C.2/Informal Meeting/2).

44. Mr. MARSIT (Tunisia) said that the proposals put forward by negotiating group 4 were worthy of support, although his delegation had some reservations regarding the terminology and phraseology which had been used. He supported the views expressed at the 104th meeting by the representative of Egypt concerning freedom of passage through straits used for international navigation. It also endorsed the view that the continental shelf should not extend beyond 200 miles and it considered that consensus could be reached on a provision to that effect. Tunisia was ready to participate in all efforts to enable negotiating group 7 to reach an acceptable compromise which would take the interests of the various parties fully into account and would lead to the establishment of legal principles that were not subject to misinterpretation.

45. Mr. AL ATTRACHE (Syrian Arab Republic) said that his delegation could support the proposals put forward by negotiating group 4, although they did not fully reflect the position of Syria. The conclusions reached by negotiating group 5 could also form the basis for a compromise formula. Syria supported the proposal for compulsory settlement of disputes concerning the exclusive economic zone, since such settlement offered an element of stability and would be in accordance with legal principles.

46. The Syrian delegation supported the position taken by the Group of 77 and the group of land-locked and geographically disadvantaged States concerning the exclusive economic zone and considered that the continental shelf and the exclusive economic zone should have the same status. The outer limit of the continental shelf should not extend beyond 200 miles.

47. His delegation did not accept the concept of equidistance with regard to questions of delimitation which, in its view, should be settled on the basis of the principle of equity and in the light of local geographical, social and economic conditions.

48. It would not be advisable to link the conclusions of negotiating groups 4 and 6, since the discussions in those groups had shown that points of divergence were very wide. The results achieved by negotiating group 4 must be respected and should form the basis of further negotiations.

49. Mr. MONNIER (Switzerland) said that the considerable progress made in negotiating groups 4 and 5 was a source of satisfaction to his delegation. The compromise provisions suggested by the Chairman of negotiating group 4 marked a substantial improvement on the corresponding provisions in the informal composite negotiating text. It was regrettable, however, that the term "geographically disadvantaged States" had not been used in the suggested compromise provisions and that, in paragraph 3 of the proposed article 69, a distinction was drawn between developed and developing land-locked States. In view of the safeguard clause provided for in paragraph 4 of article 69, such a distinction was unjust.

50. It was regrettable that no progress had been made in negotiating group 6. His delegation regarded as inappropriate the linkage advocated by several delegations between insertion in the future revised text of the positive results of the discussions in negotiating groups 4 and 5 and acceptance by the Conference of a particular method for delimitation of the continental shelf. If there was to be any linkage, it should be between the adoption of a precise criterion for delimitation and the establishment of a more satisfactory system for the sharing of the benefits of the resources of the continental shelf beyond 200 miles than that provided for in the existing text.

51. Mr. ADIO (Nigeria) said that the new formulations for articles 69 and 70 contained in the report of the Chairman of negotiating group 4 provided a good basis for further negotiations.

52. Although he could accept the report of negotiating group 5 as a good basis for further negotiations also, he would prefer texts which did not provide for compulsory recourse to adjudication.

53. Turning to the results of negotiating group 6, he said that in real quantitative terms the Irish formula condoned boundless extension of the continental shelf whereas the Soviet proposal authorized a distance of no more than 300 miles. In effect, the Irish proposal sought to annex what should be part of the high seas as part of the continental shelf, whereas under the Soviet proposal that area would be preserved for continued exploitation by long-distance factory fishing fleets. Both formulae were unacceptable to his delegation. A distance of 200 miles appeared to be the most equitable.

54. In conclusion, he said that further work should be undertaken on the issues covered by negotiating group 7. As a package, the results of the negotiations that had taken place in negotiating groups 4, 5, 6 and 7 were satisfactory.

55. Mr. EIRÍKSSON (Iceland) said that Iceland's economy was overwhelmingly dependent on fisheries. It was therefore particularly important that the Icelandic position on fishery matters should not be misinterpreted as a result of application of the rule of silence under which the Conference was working. For the reasons it had expressed in negotiating group 5, his delegation must reserve its position on the formulations currently under consideration with respect to disputes relating to fisheries in the exclusive economic zone, in particular with respect to the exercise by the coastal State of its sovereign rights in the zone.

56. Mrs. PULIDO SANTANA (Venezuela) said that her delegation had not had time to examine the documents produced by negotiating groups 4 and 5 with the attention they deserved. A preliminary examination, however, seemed to show that the results achieved by those groups were satisfactory and could constitute a basis for further negotiations.

57. Venezuela reserved its position concerning the articles that had been discussed in negotiating group 7.

58. In conclusion, she said that her delegation supported

the informal suggestion made by the Japanese delegation for the deletion of paragraph 3 of article 121.

59. Miss SKINNER (Ireland) said that her delegation supported the delegations of Iraq, Turkey and Cyprus which had referred to the need to give time at the forthcoming session for a discussion on article 121. She could not agree with delegations which had claimed that the negotiations on the provisions of that article had been exhaustive. The article had implications for other provisions in the convention, including those dealing with delimitation, which also remained to be satisfactorily resolved by further negotiation.

60. Her delegation was opposed to the proposal by Japan for the deletion of paragraph 3 of article 121. It would explain its position on that article at the appropriate time.

61. The PRESIDENT said that the Conference had completed its discussion of Second Committee matters. It should, however, take a decision on the proposal submitted by the representative of Bulgaria (103rd meeting), and supported by the representatives of Colombia, Iraq, Poland and Yugoslavia, for the preparation by the Intergovernmental Oceanographic Commission, with the assistance of other competent international organizations, of larger-scale maps of the oceans of the world, in which account would be taken of the proposal made in article 76 of the informal composite negotiating text, the proposal by the Arab group (NG6/2), the Irish formula and the USSR proposal. In the past, it had been customary for any such requests to be adopted by consensus. He had held consultations on the matter and found that opinions on the proposal were divided. He suggested, therefore, that the Secretariat should be requested to record on the existing map the effect of the application of the USSR proposal, and to make inquiries regarding the financial, technical and administrative implications of the preparation of the proposed new maps.

62. Mr. YANKOV (Bulgaria) said that a number of other delegations, including those of Portugal and Cameroon, had also supported the proposal made by his delegation.

63. His delegation appreciated the small-scale maps that had been produced following a suggestion made by the representative of Colombia at the previous session. After studying them, however, it had come to the conclusion that all the implications of the various formulae could not be adequately shown on a small-scale map. He wished to state categorically that the sole purpose of his delegation in making the proposal was to facilitate achievement of the aims of the Conference; it was certainly not its intention to delay the Conference's work or to involve the United Nations and other organizations in unjustified expenditure. It did consider, however, that small-scale maps did not provide a comprehensive and clear picture of the real scope and implications of the various formulae that had been presented to the Conference. A map on the scale of 1:10,000,000 prepared by a competent organization, such as the Intergovernmental Oceanographic Commission, would provide the necessary background information on which to base a decision. His delegation's preoccupations in the matter would not be met by adding the implications of new proposals to the small-scale maps. It was difficult to understand why certain delegations should object to a proposal which, if adopted, would enable the Conference to take a decision in full knowledge of the facts. It was necessary to have reliable data in order to be able to decide which of the formulae was the best.

64. The PRESIDENT said that he took it that the representative of Bulgaria agreed that in the first instance the secretariat would be requested to show the implications of the Soviet proposal on the existing map, and in the meantime to request the Commission to examine all the implications of adoption of the Bulgarian proposal.

65. Mr. YANKOV (Bulgaria) said that his delegation's proposal was that work should be started on preparation of

larger-scale maps. The financial, technical and administrative implications of such work would, of course, have to be taken into consideration, but the proposal was that the maps should be produced.

66. The PRESIDENT said that preparation of the larger-scale maps had not been ruled out. Nevertheless, the first step must be to examine the financial and technical implications of the proposal.

67. Mr. GARDINER (Ireland) said that, in general, he agreed that the proposal should be dealt with in the manner suggested by the President. His delegation viewed with very deep concern the implications of the proposal, which would not facilitate achievement of a compromise on the vital hard-core issue of the definition of the continental shelf.

68. Mr. KOZYREV (Union of Soviet Socialist Republics) fully supported the proposal made by the representative of Bulgaria. He failed to understand why certain delegations were opposed to the preparation of accurate maps.

69. The PRESIDENT suggested that discussion of the question be suspended.

REPORT OF THE FIRST COMMITTEE (concluded)*

70. The PRESIDENT said that he understood that the Group of 77 did not wish to discuss the substance of the reports of the First Committee and its negotiating groups.

71. Mr. GHELLALI (Libyan Arab Jamahiriya) said that it was the understanding of his delegation that the reports produced by the chairmen of negotiating groups 1, 2 and 3 could only be considered as representing their own personal points of view on what might have appeared to them as the trends of the negotiations. There had not been sufficient time to have a proper discussion on the reports, so there was no question of accepting or rejecting their contents. He recalled that the Chairman of the First Committee, in his report to the plenary, had said that the decision of the Group of 77 not to raise any objection to the reports of negotiating groups 1, 2 and 3 providing or constituting a basis for negotiations at the next session of the Conference was without prejudice to the informal composite negotiating text, the proposals of the Group of 77 and other individual proposals of delegations. In the opinion of his delegation, that meant that the negotiating text would constitute the principal basis for further negotiations at the next session. The reports produced by the chairmen of negotiating groups 1, 2 and 3—which could not be said to have won widespread support—could not be considered for the time being, in his delegation's opinion, as a basis for any revision of part XI of the informal composite negotiating text. Acceptance of them as the sole basis for further negotiations would be tantamount to acceptance of indirect revision of the informal composite negotiating text.

72. His delegation wished to suggest that, in future, arrangements should be made for the First Committee to hold more formal meetings, because the lack of such meetings would create many gaps in the knowledge of the future generation about the work which was done in the First Committee and the evolution of the principle of the sea-bed as a common heritage of mankind.

73. In conclusion, he said that his delegation endorsed the comments made by the Chairman of the First Committee concerning the inadequacy of the translation services. Because of that inadequacy, the Arabic-speaking delegations had not been able to express their views as they would have wished. The Arabic language had not been given sufficient attention, particularly in small meetings.

74. The PRESIDENT said that every effort would be made to ensure that the Arabic language was treated on an equal footing with the other languages of the Conference.

*Resumed from 101st meeting.

75. He reminded the Conference that, in his report to the Conference at its 101st plenary meeting, the Chairman of the First Committee had said that the Group of 77, in spite of its inability to have an in-depth review of the package in the short time available, had nevertheless endeavoured to consider the package in a preliminary way, and in a spirit of co-operation had decided to raise no objection to the reports of negotiating groups 1, 2 and 3 providing or constituting a basis for negotiations at the next session of the Conference. That was "without prejudice", the Group of 77 had said, "to the informal composite negotiating text, the proposals of the Group of 77 and other individual proposals of delegations". That approach had been accepted by the First Committee. He understood that to mean that the results of the negotiations of the seventh session, as reported to the plenary Conference by the chairmen of the committees and negotiating groups, would be collated in one conference document for use at future sessions. He suggested that, if that procedure was acceptable, there was no need to proceed further with discussion of First Committee matters.

It was so decided.

76. Mr. BENDIFALLAH (Algeria) said that the status of the proposals originating from the various negotiating groups should be made quite clear for the purposes of future negotiations. However important the proposals made at the current session might be, they should be reflected only in working papers, which should in no circumstances be placed on an equal footing with the informal composite negotiating text—the sole and continuing basis for any future negotiations. Any proposals made at the current session could serve only as guidelines for certain groups or certain delegations.

77. Mr. RAOELINA (Madagascar) supported the comments made by the representative of the Libyan Arab Jamahiriya. The First Committee had not had sufficient time properly to examine the reports of the chairmen of negotiating groups 1, 2 and 3. In the view of his delegation, therefore, the informal composite negotiating text and the documents prepared by negotiating groups 1, 2 and 3 should constitute the basic documents for the next session.

78. Mr. KOZYREV (Union of Soviet Socialist Republics) said that the package of articles elaborated in the First Committee represented a compromise which the Conference had long been endeavouring to achieve and could form the basis for further negotiations. In that respect, his delegation supported the decision by the Group of 77.

79. The package was not altogether free from defects; but, as there was obviously a general desire not to discuss the substance of the provisions in the package, his delegation would not mention the difficulties it still had with those provisions. The compromise versions of articles drafted in the negotiating groups on First Committee issues enjoyed such a high degree of support that there was undoubtedly a prospect of reaching a consensus on them.

REPORTS OF NEGOTIATING GROUPS 5 AND 7

80. The PRESIDENT drew attention to the reports submitted by the chairmen of negotiating groups 5 and 7 (NG5/17 and NG7/21). In the area of dispute settlement, there would appear to be some issues that still needed to be resolved. Two of those issues had been selected as hard-core issues and dealt with in negotiating groups 5 and 7. Negotiating group 5 had considered the question of disputes relating to the exercise of sovereign rights by coastal States in the exclusive economic zone. It had arrived at a compromise formula which, according to the report by its chairman, had enjoyed substantial support amounting to a conditional consensus. The principal issue dealt with by the group was reflected in

paragraph 3 of the new draft of article 296, which provided for the submission to a compulsory conciliation procedure of any of the categories of disputes referred to in that article.

81. Negotiating group 7 had considered disputes concerning sea-boundary delimitations between adjacent and opposite States; although it had not reached a compromise, it had held a full exchange of views. According to the Chairman of the group, sub-group on the settlement-of-disputes aspects of that question had prepared a paper on possible approaches to a compromise solution. Undoubtedly, any provisions for the settlement of disputes must necessarily be dependent on the substantive parts of articles 74 and 83. That did not, however, preclude the Conference from examining the alternative compromise formulae that had resulted from the work of that group.

82. In the circumstances, delegations should address themselves to the specific formulations in the compromise text of the Chairman of negotiating group 5. On the subject matter of negotiating group 7, delegations should address themselves to the specific concept in the settlement-of-disputes provision within the mandate of negotiating group 7 in relation to subparagraph 1 *a* of article 297 of the informal composite negotiating text.

83. Mr. NAKAGAWA (Japan) said that his delegation wished to state its position on the compromise formula relating to paragraph 4 of article 296 of the informal composite negotiating text; that paragraph was now incorporated as paragraph 3 in the proposed new draft article 296. His delegation had consistently advocated the principle of the judicial settlement of all disputes arising under the convention, in particular fisheries disputes in the exclusive economic zone. It had nevertheless expressed a willingness to accept certain exceptions to that principle with a view to contributing to a compromise. If the compromise formula had provided for even a limited application of the principle of judicial settlement for that category of disputes, his delegation would certainly have accepted it. Unfortunately, there was a serious lacuna in the compromise formula with respect to that principle, and his delegation was obliged to enter a strong reservation concerning the proposed new text for paragraph 3 of article 296.

84. On the question of the rearrangement of other paragraphs of article 296 and, in particular, paragraph 1 of the new text of article 296, his delegation thought some reference to the exclusive economic zone should be made in the introduction to that paragraph, since for the past two or three sessions the Conference had been working on that introduction on the implicit understanding that it related to disputes arising in connexion with the exclusive economic zone. In order to make that point clear, therefore, his delegation wished to suggest that the words "part V of" should be inserted between "provided for in" and "the present Convention" in paragraph 1 of article 296. His delegation felt there was a danger that, under the present text of the introduction, disputes relating to the exercise of the jurisdiction of a coastal State in the high seas over its own ships might be excluded from the traditional settlement procedures, which was certainly not the intention of the paragraph. Even if the Conference retained the wording of the introduction contained in document NG5/16, the paragraph should, in the opinion of his delegation, be interpreted in the manner he had described.

85. The present wording of subparagraph 1 *a* of article 297 of the informal composite negotiating text was not the only possible solution for the settlement of delimitation disputes. However, the basic structure of the subparagraph should be maintained in any further negotiations so as not to destroy the balance of interests reflected therein. In that connexion, his delegation would study carefully the working paper submitted by the United States representative enumer-

ating possible compromise formulas relating to that subparagraph (NG7/20).

86. Mr. STAVROPOULOS (Greece), speaking as Chairman of negotiating group 5, presented his report on the results of the work of the negotiating group (NG5/17) and his suggestion for a compromise formula (NG5/16). The latter document contained three articles: a new article 296, an article 296 *bis* and a general provision in the form of an article.

87. Article 296 of the informal composite negotiating text consisted of five paragraphs. Paragraph 4 of that article constituted the most important part of the group's mandate. The compromise reached on that issue was reflected in paragraph 3 of new article 296. That new draft had obtained a conditional consensus, i.e. a consensus conditional upon an overall package deal. It had been felt that paragraph 3 of the new article would provide a better basis for negotiation than the corresponding provision in the informal composite negotiating text, and should therefore be incorporated in the revision of the text and substituted for the existing paragraph 4 of article 296 in the informal composite negotiating text. However, since reservations had been expressed, the matter should be treated as an issue falling within the second category of issues listed in paragraph 9 of document A/CONF.62/L.28, namely, issues on which a degree of support for a particular formula or provision was so widespread and substantial as to offer a reasonable prospect of a consensus being reached.

88. As a result of the revision of paragraph 4, the other paragraphs of article 296 of the informal composite negotiating text had been treated in the following manner. Paragraph 1 of that article, which dealt with procedural aspects, had become new article 296 *bis*. That change had been accepted by consensus within the group; but because of its implications for paragraphs 2 and 3, the substance of which had not been within its mandate, that article would have to be considered by the plenary Conference or the appropriate committee, as the case might be. Because of the need for such consideration, therefore, the article should, in his opinion, also be included within the second category of issues listed in paragraph 9 of document A/CONF.62/L.28.

89. Paragraphs 2 and 3 of article 296 of the informal composite negotiating text, while unchanged in substance, had been incorporated as paragraphs 1 and 2 of the new article 296. Although the introduction to the new paragraph 1 had been amended, the change did not affect the substance of that provision.

90. Paragraph 5 of article 296 of the informal composite negotiating text had become paragraph 4 of the new article 296 with only a minor drafting change.

91. In addition, the group had discussed a general provision on the abuse of rights. It had been agreed by consensus that a provision concerning the concept of abuse of rights should be considered by the plenary Conference for incorporation in a suitable part of the convention. As that matter had repercussions beyond the mandate of the group, the group's view represented a recommendation to the plenary Conference.

92. Certain delegations had felt that article 297, subparagraph 1 *b* of the informal composite negotiating text was related to article 296, and had expressed the desire that its contents should be considered by the plenary Conference at an appropriate time.

93. Mr. DÍAZ GONZÁLEZ (Mexico) said that document NG5/16 contained a compromise formula which could be regarded as satisfactory and represented the result of effective negotiations between parties whose original positions had been diametrically opposed. It had been the compulsory conciliation procedure that had made it possible to reconcile apparently irreconcilable interests. The new text stipulated,

on the one hand, that parties had an obligation to adopt the conciliation procedure provided for in annex IV of the informal composite negotiating text and, on the other hand, that the report of the conciliation commission should not be legally binding. That provision would, in his opinion, prevent an abuse of legal procedures and would prevent the sovereign rights and discretionary powers of coastal States from being called intermittently into question. Since that point was of vital importance for the exercise and very existence of such rights and powers, the compulsory conciliation procedure had important advantages in that no legal opinions would be binding and problems arising from the improper implementation of the convention would be solved.

94. Mr. BILGE (Turkey) said that his delegation found itself once again obliged to point out that, when disputes existed between two or more States, recourse to judicial settlement or arbitration could be decided on and implemented only by mutual agreement between the States concerned. For that reason, without opposing judicial or arbitration procedures *per se*, his delegation firmly believed that the parties concerned should directly exercise freedom of choice concerning appropriate means of settling each individual dispute. That procedure was implicitly provided for in Article 33 of the Charter of the United Nations.

95. In one of its decisions, the International Court of Justice had stated that the parties had an obligation to undertake negotiations with a view to reaching an agreement. That obligation had been mentioned in particular in the case of enclosed waters in a recent decision handed down by an arbitration tribunal. Meaningful negotiations had become, in State practice, the main tool for the settlement of delimitation disputes.

96. The need for parties to decide by mutual agreement on the means of settling a dispute was of vital importance for States in the case of political and, in particular, territorial questions. In that connexion, the delimitation of maritime zones was no different from that of territorial zones—a point which the International Court of Justice had made, in the decision he had just mentioned, in connexion with the continental shelf.

97. State frontiers had always been determined directly and by mutual agreement by the States concerned, without the participation of third parties. Such frontiers, whether on land or sea, were as much within the domain of State sovereignty as within that of the State's vital interests.

98. In the opinion of his delegation, any dispute between States in those areas should be studied by the parties themselves. That was consistent with the principle of agreement, in accordance with which all delimitation questions could be

settled. For those reasons, his delegation opposed the adoption of a general system of compulsory jurisdiction within the context of the Conference. However, if certain States considered that compulsory jurisdiction would be more appropriate for their situation, the Conference could provide for an optional system of compulsory jurisdiction which could be adopted by those States that favoured it. In that manner, one group of States would be prevented from imposing its views on another, and States which were unwilling to bind themselves in advance to a system of compulsory jurisdiction would still be able to endorse the future convention.

99. If an optional system was not agreed on by the Conference, it was essential that article 297 of the informal composite negotiating text should clearly provide for the exclusion of disputes relating to the delimitation of maritime areas. In that connexion, subparagraph 1 (a) of that article should end after the words "historic bays or titles".

100. Mr. EVENSEN (Norway) said that his delegation had supported the position adopted by the group of coastal States as a whole during the negotiations on the question whether the procedures for the binding settlement of disputes should also apply to disputes which arose from the exercise by the coastal State of its sovereign rights over living resources in the exclusive economic zone. His delegation agreed with the delegations of other coastal States that an exemption from mandatory and binding settlement procedures must be made for such disputes.

101. The compromise formulas contained in document NG5/16 and, in particular, the proposed paragraph 3 of article 296, were far removed from the solution which his delegation would have wished for the important question of mandatory settlement procedures for disputes arising out of the exercise by the coastal State of its sovereign rights with regard to living resources in the exclusive economic zone. On that question the compromise formula would establish a procedure of compulsory conciliation which in practice could turn out to be very burdensome for the coastal State. Nevertheless, his delegation had expressed a willingness to accept a system on the lines proposed in the compromise formula, provided that those proposals met with similar approval by all other groups of delegations, and subject to a satisfactory solution of other issues. That favourable, though conditional, response remained the position of his delegation. In a spirit of compromise, it would be prepared to agree that the texts before the Conference should be regarded as having the broad support necessary for their eventual inclusion in a revised version of the informal composite negotiating text.

The meeting rose at 1 p.m.

106th meeting

Friday, 19 May 1978, at 1.30 p.m.

President: Mr. H. S. AMERASINGHE.

Adoption of: convention dealing with all matters relating to the law of the sea, provided in paragraph 3 of General Assembly resolution 3167 (XCVIII) of 16 November 1973, and of the Final Act of the Conference (continued)

Report of NEGOTIATING GROUP 3 (continued)

1. Mr. HAHM (Republic of Korea) noted with regret that some delegations had declined from giving their full support

to machinery for settling disputes arising from the interpretation and application of the future convention. Yet such machinery was an integral part of any package deal designed to obtain a consensus. His delegation had always considered that, for a small country, the availability of effective procedures for the settlement of disputes was the best and sometimes the only means of safeguarding its legitimate interests and sovereign rights, particularly with respect to the delimitation of maritime boundaries.

ANNEX 32

The British Indian Ocean Territory Order 1976 (S.I. 1976/893)

1976/893

STATUTORY INSTRUMENTS

1976No. 893

OVERSEAS TERRITORIES
The British Indian Ocean Territory Order 1976

*Made**9th June 1976**Coming into force**28th June 1976*

At the Court at Buckingham Palace, the 9th day of June 1976

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Colonial Boundaries Act 1895(a) or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and Commencement

1. This Order may be cited as the British Indian Ocean Territory Order 1976 and shall come into operation on the appointed day.

Interpretation

2.—(1) In this Order unless the context otherwise requires—

"the Territory" means the British Indian Ocean Territory specified in the Schedule hereto;

"the appointed day" means the 28th day of June 1976;

"the Commissioner" means the Commissioner for the Territory and includes any person for the time being lawfully performing the functions of the office of Commissioner.

(2) The Interpretation Act 1889(b) shall apply, with the necessary modifications, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting and otherwise in relation to Acts of Parliament of the United Kingdom.

Revocations

3.—(1) The British Indian Ocean Territory Order 1965(c) and the British Indian Ocean Territory (Amendment) Order 1968(d) are revoked.

(2) The revocation of those Orders shall be without prejudice to the continued operation of any laws made and laws having effect thereunder and having effect as part of the law of the Territory immediately before the appointed day; and any such laws shall have effect on and after the

- (a) 1895 c. 34.
- (b) 1889 c. 63.
- (c) S.I. 1965/1920 (1965 III, p. 5767).
- (d) S.I. 1968/111 (1968 I, p. 304).

appointed day as if they had been made under this Order and (without prejudice to their amendment or repeal by any law made under this Order) shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

Establishment of office of Commissioner

4.—(1) There shall be a Commissioner for the Territory who shall be appointed by Her Majesty by Commission under Her Majesty's Sign Manual and Signet and shall hold office during her Majesty's pleasure.

(2) During any period when the office of Commissioner is vacant or the holder thereof is for any reason unable to perform the functions of his office those functions shall, during Her Majesty's pleasure, be assumed and performed by such person as Her Majesty may designate in that behalf by instructions given through a Secretary of State.

Powers and duties of Commissioner

5. The Commissioner shall have such powers and duties as are conferred or imposed upon him by or under this Order or any other law and such other functions as Her Majesty may from time to time be pleased to assign to him and, subject to the provisions of this Order and of any other law by which any such powers or duties are conferred or imposed, shall do and execute all things that belong to his office according to such instructions, if any, as Her Majesty may from time to time see fit to give him.

Official Stamp

6. There shall be an Official Stamp for the Territory which the Commissioner shall keep and use for stamping all such documents as may be by any law required to be stamped therewith.

Constitution of offices

7. The Commissioner, in the name and on behalf of Her Majesty, may constitute such offices for the Territory as may lawfully be constituted by Her Majesty and, subject to the provisions of any law for the time being in force in the Territory and to such instructions as may from time to time be given to him by Her Majesty through a Secretary of State, the Commissioner may likewise—

- (a) make appointments, to be held during Her Majesty's pleasure, to any office so constituted; and
- (b) dismiss any person so appointed or take such other disciplinary action in relation to him as the Commissioner may think fit.

Concurrent appointments

8. Whenever the substantive holder of any office constituted by or under this Order is on leave of absence pending relinquishment of his office—

- (a) another person may be appointed substantively to that office;
- (b) that person shall, for the purpose of any functions attaching to that office, be deemed to be the sole holder of that office.

Power to make laws

9.—(1) The Commissioner may make laws for the peace, order and good government of the Territory.

(2) All laws made by the Commissioner in exercise of the powers conferred by this Order shall be published in such manner and at such place or places in the Official Gazette for the Territory as the Commissioner may from time to time direct.

(3) Every such law shall come into operation on the date on which it is published in accordance with the provisions of subsection (2) of this section unless it is provided, either in such law or in some other enactment, that it shall come into operation on some other date, in which case it shall come into operation on that date.

Disallowance of laws

10.—(1) Any law made by the Commissioner in exercise of the powers conferred by this Order may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever any law has been disallowed by Her Majesty, the Commissioner shall cause notice of such disallowance to be published in such manner and in such place or places in the Official Gazette for the Territory as the Commissioner may from time to time direct.

(3) Every law so disallowed shall cease to have effect as soon as notice of disallowance has been published as aforesaid; and thereupon any enactment repealed or amended by, or in pursuance of, the law so disallowed shall have effect as if such law had not been made, and, subject thereto, the provisions of section 38(2) of the Interpretation Act 1889 shall apply to such disallowance as they apply to the repeal of an Act of Parliament.

Commissioner's powers of pardon, etc.

11. The Commissioner may, in Her Majesty's name and on Her Majesty's behalf—

- (a) grant to any person concerned in or convicted of any offence against the laws of the Territory a pardon, either free or subject to lawful conditions; or
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any sentence imposed on that person for any such offence; or
- (c) substitute a less severe form of punishment for any punishment imposed by any such sentence; or
- (d) remit the whole or any part of any such sentence or of any penalty or forfeiture otherwise due to Her Majesty on account of any offence.

Judicial proceedings

12.—(1) All proceedings that, immediately before the commencement of this Order, are pending before any court established by or under the existing Order may be continued and concluded after

the commencement of this Order before the corresponding court established under the provisions of this Order.

(2) Any decision given before the commencement of this Order by any such court as aforesaid shall for the purpose of its enforcement or for the purpose of any appeal therefrom, have effect after the commencement of this Order as if it were a decision of the corresponding court established by or under this Order.

Disposal of land

13. Subject to any law for the time being in force in the Territory and to any Instructions from time to time given to the Commissioner by Her Majesty under Her Sign Manual and Signet or through a Secretary of State, the Commissioner, in Her Majesty's name and on Her Majesty's behalf, may make and execute grants and dispositions of any lands or other immovable property within the Territory that may be lawfully granted or disposed of by Her Majesty.

Amendment of Seychelles (Constitution) Order 1975

14. The First Schedule to the Seychelles (Constitution) Order 1975(a) is amended as follows:—

(a) the word "Desroches" is added to the list of islands under the heading "Poivre Islands":

(b) the words

"Aldabra Group, consisting of:

West Island

Middle Island

South Island

Cocoanut Island

Polymnie Island

Euphratis and other small islets"

are added immediately below the list of islands under the heading "Cosmoledo Group";

(c) the words "Farquhar Islands" are added immediately below the list of Islands under the heading "Aldabra Group".

Power reserved to Her Majesty

15. There is reserved to Her Majesty full power to make laws from time to time for the peace, order and good government of the British Indian Ocean Territory (including, without prejudice to the generality of the foregoing, laws amending or revoking this Order).

N. E. Leigh

Section 2(1)

THE SCHEDULE

Diégo Garcia
Egmont or Six Islands
Péros Banhos

Salomon Islands
Three Brothers Islands
Nelson or Legour Island
Eagle Islands
Danger Island.

(a) 1975 III, p. 8585.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes new provision for the administration of the British Indian Ocean Territory and for the return to Seychelles of the Aldabra Group of islands, Desroches and Farquhar Islands from the Territory.

ANNEX 33

UN Diplomatic Conference, Statement of Romania dated 2 April 1980

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/WS/2

Statement by the delegation of Romania dated 2 April 1980

Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume XIII (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Ninth Session)

12. The delegation of Paraguay considers the matter to be of the utmost importance and therefore requests the General Committee to take the necessary steps to ensure that the same thing will not happen at the resumption of this session.

13. It is the understanding of the delegation of Paraguay that the Conference operates on the principle that full consideration will be given to every proposal and that none will be put aside under the pretext of new precedents or the existence of other priorities.

14. In conclusion, the delegation of Paraguay wishes to recall that the purpose of this international gathering is to enact laws for the future. Its outcome, everyone hopes, will radically change the course of development of many of the institutions of international law. Therefore, let us not permit ourselves to be swept along by haste or by drastic decisions which our generation and, in particular, future generations may have reason to regret.

DOCUMENT A/CONF.62/WS/2*

Statement by the delegation of Romania dated 2 April 1980

[Original: English]
[10 April 1980]

1. With regard to the negotiations and the reports submitted at the end of the first part of the ninth session of the Third United Nations Conference on the Law of the Sea, the Romanian delegation would like to reaffirm its position concerning the particular importance of the Conference for the establishment of a new type of relations among States in this field. Such relations should reflect the increasing role of seas and oceans in the economies of all countries and in particular the developing ones. At the same time, they should contribute to a genuine solution of some fundamental problems of the world economy, namely to the establishment of a new political and economic order. The future convention should create better conditions for the development of all countries and a better climate of understanding and co-operation among all peoples, in the interest of world peace and security.

2. In our epoch, when an increasing number of States consider the utilization of the marine resources as being of paramount importance in their development strategies, Romania—a socialist and developing country—has an experience of its own in this area. Romania has made great economic efforts to develop a fishing fleet and technological and scientific capacities for the exploitation of marine resources; it actively participates in international co-operation in this field.

3. In the light of the above-mentioned principles and realities, Romania, together with other States, has acted to ensure that the provisions of the future convention on the law of the sea will be based on the fundamental principles of international law and, in particular, on the strict observance of national sovereignty of all countries, the equal rights of access in equitable terms to marine resources and the right to participate in the activities relating to the rational use of the ocean space. At the same time, Romania has insisted that the principles of common heritage of mankind—recognized for the seabed area beyond national jurisdiction—should be fully and correctly reflected in the provisions concerning the system of exploration and exploitation of those resources. These principles should also be reflected in democratic institutional arrangements which should ensure the participation of all States in the new organization to be established for promoting international co-operation in this area.

4. We have constantly proceeded from the need to use the seas and ocean space exclusively for peaceful purposes and thus to contribute to rapprochement among peoples providing in such a way a wide area for co-operation among all countries to the benefit of development and prosperity of the whole world.

5. From the point of view of these requirements, the results of the present session of the Conference, as reflected in the reports submitted to the plenary, mark a certain progress as they shape a wide framework of rules which should govern international maritime relations. At the same time, one cannot ignore the fact that not all the basic objectives and principles which we have referred to are fully and correctly reflected in

the reports. Moreover, these principles have not been entirely followed even in the process of negotiations. The reports do not take into account, in an appropriate manner, certain vital interests of States in this respect and the diversity of situations of various countries, as evident from the negotiations.

6. This does not conform, obviously, either with the principles of consensus which were accepted by the Conference as a basic norm for the elaboration and adoption of decisions, or with the unanimously accepted rule of solving the main issues before the Conference as a package deal. There should be a reasonable balance of rights and obligations of all parties to the future convention. The present negotiating text does not reflect fully this requirement and the negotiations at this session failed to ensure such a balance.

7. Under these circumstances, the Romanian delegation is of the opinion that, in regard to a series of problems, the reports are not satisfactory because they do not reflect appropriately the proposals made during the session relating to vital interests of certain States. This is even more regrettable as a number of countries spoke in support of such proposals. New efforts aimed at finding generally acceptable solutions are needed. We refer particularly to the access of geographically disadvantaged States and of countries situated in regions or subregions poor in biological resources, to fisheries in the economic zones, to the delimitation of the maritime spaces between States, to innocent passage through the territorial sea, to the outer limit of the continental shelf and certain aspects relating to the final clauses.

(a) We believe that the right of access to the living resources of the geographically disadvantaged States situated in the regions or subregions poor in biological resources is not reflected in an appropriate manner in the revised informal composite negotiating text, namely in article 70 (A/CONF.62/WP.10/Rev.1). That is why my delegation made several proposals during the last sessions in order to find a generally acceptable formula. As it is shown in the report of the Chairman of the Second Committee (A/CONF.62/L.51), the Romanian delegation proposed a new paragraph *1 bis* in article 70, which reads as follows:

"If the region or subregion where States with special geographical characteristics are situated is poor in living resources, the rights of those States under paragraph 1 shall apply to the neighbouring regions or subregions." (C.2/ Informal Meeting/51.)

This amendment was supported by an important number of delegations, which proves that new efforts are necessary in order to elaborate a just and equitable solution to this matter. Pending the settlement of this question, my delegation considers that there is no consensus on provisions concerning fisheries.

*Incorporating document A/CONF.62/WS/2/Corr.1 of 19 May 1980.

(b) With regard to the question of delimitation, my delegation firmly believes that the basic element in this field should be the agreement between interested States and equitable principles, by taking into account all relevant factors. The islets that are uninhabited and without their own economic life should not have negative effects vis-à-vis the maritime spaces which belong to the main coasts of the respective States. Pending an agreement between States concerned, the parties shall not take any unilateral measures which jeopardize or hamper the reaching of the final agreement. The present revised negotiating text, concerning the settlement of disputes resulting from delimitation is unacceptable to my delegation. We can go along with the proposals of the Chairman of negotiating group 7 and we can accept compulsory conciliation (See A/CONF.62/L.47).

(c) We have to reaffirm our well-known position that innocent passage through the territorial sea of foreign warships must be submitted to the prior authorization of or notification to the coastal State. In this respect we should remember that a proposal was made during the present session to this effect, which has had widespread support in the Second Committee. Such a provision is based on present international law, the long practice of States and on national legislations, including my own country's laws. It is understood that such a provision cannot affect navigation through international straits. It is our conviction that all these proposals will be reflected in an objective manner in the second revision of the negotiating text.

(d) Regarding the outer limit of the continental shelf, we do not see sufficient support either for the provisions of the negotiating text, or for the new amendments made to article 76 during this session. We consider that the extension of the continental shelf beyond the 200 miles—provided in those texts—is

excessive. It affects considerably the common heritage of mankind and the sharing revenues do not compensate the large losses suffered by the international community as a whole.

8. We believe that in the elaboration of the second revision of the negotiating text, the above-mentioned considerations should be taken into account with the attention they surely deserve.

9. As is well known, consensus means the achievement of generally acceptable solutions through equal participation of all States and duly taking into consideration their positions and interests. The positions and interests of each country should be fully respected on the basis of the principles of sovereign equality, which is applicable to all participants irrespective of the size and the technological and economic capacities of their countries.

10. In spite of the late stage of our negotiations, there are some other important political, legal and practical issues which have not been thoroughly discussed in all their aspects; we are referring to the preamble and the final clauses.

11. It is our firm conviction that at the resumed session at Geneva we shall have appropriate conditions for a profound and complete examination of these questions, so that a harmonious convention—governed by clear principles conforming with the new principles of international relations and especially with the objectives of a new international economic order—can be adopted.

12. My delegation is fully prepared to make any necessary efforts in order to reach an agreement on all still controversial issues and we hope that the other delegations will proceed in the same manner, in a spirit of genuine co-operation and understanding.

DOCUMENT A/CONF.62/WS/3

Statement by the delegation of Mongolia dated 3 April 1980

(Original: English)
(10 April 1980)

1. My delegation joins other delegations in expressing its appreciation to the President of the Conference and the Chairmen of the three committees, negotiating groups and groups of legal experts for the fruitful work that you, as a team, have undertaken during the last two years and which has found its due reflection in the reports presented.

2. In the view of my delegation, the work of this part of the ninth session of the Conference was productive. Most of the complicated issues were considered and successfully solved, and the Conference, in general, moved closer toward the final drafting of a global and comprehensive convention on the law of the sea. It should be noted that considerable progress has been made especially in the Second and Third Committees.

3. The preamble of the future convention was discussed in several meetings of the informal plenary and the text that emerged, as presented by the President (A/CONF.62/L.49), is acceptable to our delegation. It is neither too long nor too short, non-controversial and non-polemical, and, what is most important, it emphasizes that the convention shall be of historic significance and an important contribution to the maintenance of peace, justice and progress for all the peoples of the world. We are also pleased to note that the preamble expressly notes that the problems of ocean space are closely interrelated and need to be considered as a whole.

4. The questions of the First Committee were thoroughly discussed and progress was made towards arriving at a mutually acceptable text for further negotiations in the field of transfer of technology, financing of the Enterprise etc. The anti-monopoly clause in paragraph 3 (d) of article 6 in annex II could be acceptable to my delegation if its provisions would

equally be applicable both to reserved as well as non-reserved areas.

5. The most difficult question yet to be resolved within the First Committee, and in fact within the Conference, is the question of decision-making in the Council. It is a very sensitive political and legal issue with far-reaching implications, the outcome of which, as was rightly mentioned, will in fact determine whether the Council shall be an effective instrument of co-operation of States or an instrument of discrimination, permitting one group of States to impose its views on others. Its immediate outcome, no doubt, would have direct impact on all major issues of the Conference, including composition of the Council, competence and balance of power between the Assembly and the Council, etc.

6. My delegation agrees with paragraph 14 of part IV of the report of the co-ordinators to the First Committee (A/CONF.62/C.1/L.27 and Add.1), which points out that broadly speaking the four elements which, during negotiations, appeared to command consensus were the necessity for attaining consensus or decisions, an over-all majority, a protective blocking minority for interest groupings, and protective blocking by geographical regions—i.e. ensuring that no decisions will be taken which are opposed by the totality of any given region.

7. Bearing all these elements in mind, my delegation, together with some other delegations, has worked out a compromise formula and presented it orally to the First Committee. It is based on the well-established international practice in decision-making and at the same time takes into account the specifics of the Conference and the issues involved. Thus we

ANNEX 34

UN Diplomatic Conference, Plenary, 128th session, 3 April 1980

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.128

128th Plenary meeting

Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume XIII (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Ninth Session)

128th meeting

Thursday, 3 April 1980, at 3.35 p.m.

President: Mr. H.S. AMERASINGHE

Statements on the second revision of the informal composite negotiating text (concluded)

1. Mr. CHANDARA-SOMBOON (Thailand) said that the second revision of the informal composite negotiating text (A/CONF.62/W.P.10/Rev.1) should maintain the delicate balance between the conflicting interests of the various groups and make further improvements in the text for the benefit of all mankind. In particular, his delegation had reservations with regard to the proposed revision of article 155, paragraph 5, in the report of the co-ordinators of the working group of 21 (A/CONF.62/27 and Add.1), on a moratorium in connexion with the system of exploration.

2. The report of the First Committee (A/CONF.62/L.54) had, in general, introduced considerable improvements. However, the provisions on the transfer of technology, the financing of the Enterprise, the voting procedures of the Council and its relations with the Assembly, the relationship between the Authority and the Enterprise, the question of tax exemption in the initial years, the question of immunities and privileges contained in article 12 of annex III, and the question of the settlement of disputes contained in Part XI should be improved through further consultations in order to achieve a more flexible balance.

3. His delegation did not feel that the joint proposal to place the three countries mentioned in article 156, paragraph 3, on the same footing as candidates for the seat of the Authority (A/CONF.62/L.48/Rev.1) was an amendment, regarding it rather as a proposed corrigendum of an error resulting from an oversight.

4. With regard to the report of the Second Committee (A/CONF.62/L.51), a limit should be set to the further extension of national jurisdiction which could encroach on areas reserved for exploration for the benefit of mankind as a whole. The formulation of provisions for the delimitation of the continental shelf and the exclusive economic zone among adjacent and opposite coastal States should also be finalized. His delegation could support any solution based on the principle of consent. No delimitation should be imposed unilaterally by or on any State. He felt that all the proposed formulas were acceptable, since delimitation was clearly subject to the agreement of the parties to employ suitable criteria. His delegation could accept any text which did not violate general principles of international law, and he urged delegations to be flexible and not to seek undue advantage or prejudge the outcome of the delimitation negotiations.

5. The report on the final clauses (FC/20) showed the need for further negotiations before a finalized text could be adopted. Lastly, he expressed satisfaction with the report of the Third Committee (A/CONF.62/L.50), since only articles 254 and 264 were subject to further negotiation.

6. Mr. PRANDLER (Hungary) said that his delegation would support the inclusion of the draft preamble (A/CONF.62/L.49) with the changes contained in A/CONF.62/L.49/Add.2 in the second revision. Those preambular paragraphs contained the fundamental purposes and principles on which the convention would be based. With regard to the report of the Second Committee, the revised provisions on the definition of the continental shelf, on the commission on the limits of the continental shelf and on marine mammals could be incorporated into the new revised text. His delegation attached great importance to the work of negotiating group 7, since the problem of the delimitation of maritime boundaries was very important to many countries and its early

solution would have a positive effect on the final outcome of the negotiations. He expressed the hope that the proposal contained in the report of the Chairman of negotiating group 7 (A/CONF.62/L.47) would facilitate final agreement between the two groups concerned and felt that the new version of article 298, paragraph 1 (a), was a definite improvement over the previous provision. Nevertheless, his delegation expressed disappointment at the refusal to incorporate a new article 96 *bis* on the immunity of sunken warships and other vessels which were only engaged in non-commercial government services.

7. With regard to the report of the First Committee, his delegation was in favour of adopting most of the changes proposed in documents A/CONF.62/C.1/L.27 and Add.1. Although it did not support all the new formulas, it felt that they provided a proper basis for further negotiations. Considerable progress had been made in formulating the new proposal on transfer of technology in article 5 of annex II, since more attention had been paid to the different interests of the developing and developed countries. His delegation felt that it was advisable to include, in the second revision of the negotiating text, the new text of article 6 of annex II containing the anti-monopoly clause. The wording of that provision, however, should be further improved in order to exclude any possibility of monopolizing the exploration and exploitation of the seabed. With regard to article 151 on production policies, his delegation felt that the new version contained in documents A/CONF.62/C.1/L.27 and Add.1 was a good basis for a compromise. The final text should also ensure the adequate protection of the interests of commodity importers. His delegation was not opposed to the new proposals concerning the financial terms of contracts and the financing of the Enterprise, but he stressed that it was time to work out more exact and concrete provisions concerning the financial obligations of States parties to the convention. With regard to the voting system of the Council of the sea-bed Authority, his delegation strongly urged that the compromise text should reflect the interests of all groups and regions. The existing text of article 161 of the revised negotiating text best met that requirement. Nevertheless, in the light of the objections expressed by several delegations, he fully supported the Mongolian proposal submitted in the First Committee at the 47th meeting. Furthermore, the proposals elaborated by the group of legal experts on the settlement of disputes relating to Part XI were acceptable and were a positive step towards consensus.

8. With regard to the report of the Third Committee, he stressed that, in order to ensure the freedom of scientific research provided for in article 246, a specific research régime should be established on the continental shelf beyond 200 miles from the baselines from which the breadth of the territorial sea was measured. His delegation could accept the current wording of article 254 on the rights of neighbouring land-locked States but was resolutely opposed to any further weakening of that article.

9. Lastly, his delegation was not satisfied with the provisions in the current draft convention concerning the régime and breadth of the continental shelf, the economic zone, the future sea-bed régime, marine scientific research and other issues. Nevertheless, it was prepared to act in a spirit of compromise and expected other delegations to manifest the same conciliatory attitude.

10. Mr. FERRAO (Angola) said that, although his delegation was satisfied with the concept of the exclusive economic zone, it was concerned at a tendency to rob that concept of its content to the detriment of coastal developing States. With regard to

the settlement of disputes concerning the delimitation of maritime boundaries between adjacent and opposite States, his delegation could not accept the mandatory settlement of questions affecting sovereignty by a third party. Nevertheless, his delegation supported the proposal concerning articles 63, 77 and 96 *bis* submitted in the report of the Second Committee. With regard to the continental shelf, his delegation felt that the work currently in progress would lead to an acceptable solution.

11. As regards the work of the First Committee, he fully supported the proposed amendment to article 140 contained in document A/CONF.62/C.1/L.27. With regard to the international sea-bed Authority, his delegation expressed concern that the system of exploration and exploitation of the sea-bed would require funds in excess of the revenue of the Authority. Developing countries wished to establish an organization which would promote their development and not be a source of further expense. With regard to the transfer of technology to the Enterprise and to developing countries, he was not satisfied with the text proposed in documents A/CONF.62/C.1/L.27 and Add.1. Although his delegation still had some difficulty regarding the question of financing the Enterprise and the possibility of financing the first site, it supported in principle the financial terms of contracts contained in article 12 of the revised informal composite negotiating text. Articles 8 and 8 *bis* of annex II contained in part II of document A/CONF.62/C.1/L.27, favoured the monopoly of certain States and consortiums and ran counter to the parallel system. With regard to the composition of the Council of the sea-bed Authority, steps should be taken to protect the land-based investing States, especially developing countries. With respect to voting, he felt that the proposal of the Mongolian delegation merited consideration. The formula submitted by the First Committee with regard to production limitation should be further refined to meet the interests of land-based producing States and potential producing States. Due account should be taken of the possible catastrophic effects of production limitation on the economies of certain developing countries.

12. Lastly, with regard to the report of the Third Committee, his delegation had difficulties with the wording of article 246 and strong reservations concerning article 254, paragraph 1, because of the need to safeguard the rights of coastal States.

13. Mr. BRENNAN (Australia) said that his delegation supported the inclusion in the second revision of the negotiating text the latest text of the preamble. With regard to the report of the First Committee he supported the inclusion of all the texts suggested, subject to the points proposed in documents A/CONF.62/C.1/L.27 and Add.1. With respect to the report of the Second Committee his delegation supported the proposed amendments to article 25, paragraph 3, and articles 65, 76 and 111, as well as the inclusion of Southern blue fin tuna in annex I. He could support the inclusion of the proposed new formulation on ocean ridges in article 76 if other delegations accepted that formulation as part of the over-all package on the outstanding issues concerning the continental shelf. Subject to a reservation with regard to article 76, paragraph 7, his delegation generally supported the annex. The existing formulation of that paragraph in the revised negotiating text more accurately reflected the sovereign nature of the rights of coastal States over their continental shelf than the suggested reformulation. With regard to article 7, the words "paragraph 7" should be deleted from the phrase "in conformity with article 76, paragraph 7", since all of article 76 was relevant.

14. His delegation noted the contents of the report of the Chairman of negotiating group 7 and expressed the hope that the work on delimitation would be completed early in the Geneva session. He welcomed the strengthened new text of article 65 by the Second Committee on marine mammals and felt that further work should be done at Geneva on article 63 in relation to straddling stocks.

15. With regard to the report of the Third Committee, his delegation generally supported the proposed changes to the revised negotiating text. The agreement of a coastal State to waive the exercise of some of its rights in regard to marine scientific research on the continental shelf beyond 200 miles, as proposed in article 246, paragraph 6, was without prejudice to the sovereign character of the coastal State's rights over the continental shelf. His delegation would prefer a formulation of article 246, paragraph 6, which would give the coastal State greater flexibility to designate areas in accordance with that paragraph. He supported article 255 on port access because it clearly stated that the obligation to endeavour to facilitate port access was subject to the provisions of the internal law of the coastal States.

16. Lastly, since the problem of decision-making in the Council of the international sea-bed Authority was impeding the work of the First Committee and progress on the final clauses and the question of the preparatory commission, priority should be given to the work of negotiating group 3 in the coming session at Geneva.

17. Mr. NAKAGAWA (Japan), referring to the report of the working group of 21 to the First Committee, said that the proposed new text dealing with the transfer of technology was an improvement, although certain provisions, such as those concerning assurance of the transfer of third party technology and the transfer of technology to developing countries, needed further clarification. With regard to production limitation, his delegation welcomed the idea of the minimum floor as introduced in the formula of the co-ordinators' report but wished to reserve its position with regard to the figure of 3 per cent and the scheme of the ceiling. His delegation had difficulty with the figures given in the provisions relating to the financial terms of contracts and with the financing of the Enterprise. Those two problems were linked with each other and with other First Committee issues and should be studied as a whole. He expressed great disappointment that no breakthrough had been achieved regarding the problem of the Council of the international sea-bed Authority. It was of the utmost importance that the economic interests of deep sea-bed mining countries should be properly protected in the decision-making process of the Council. It was to be hoped that that problem would be solved in the coming session at Geneva. With regard to the settlement of disputes relating to Part XI, the work done by the group of legal experts was generally satisfactory. The remaining main issues dealt with in the First Committee were closely inter-related and should be considered as a package. His delegation supported the inclusion of all the proposals of the respective co-ordinators in the second revision of the negotiating text.

18. With regard to the report of the Second Committee, he supported the recommendation to include the proposals relating to articles 25, 65, 76 and 111 and annexes I and II in the second revision of the negotiating text. Article 65 should not contain a special provision regarding marine mammals since the principle of optimum utilization of living resources should apply equally to that category. Furthermore, there was no scientific reason to single out cetaceans among marine mammals and subject them to special treatment. Nevertheless, in order to arrive at a mutually acceptable solution, his delegation supported the recommendation to include the new text of article 65 in the second revision of the text. In that regard, it was the understanding of his Government that the measures regarding the conservation, management and study of cetaceans in the exclusive economic zone would not necessarily be taken simultaneously and include every stock of cetaceans but would be taken on an individual basis when such measures were found to be appropriate through consultations between the States concerned, taking into account such relevant factors as population and level of harvest of individual stocks. His delegation expressed satisfaction that a breakthrough had been achieved with regard to article 76 and supported the recommendation to revise annex I by adding Southern blue fin tuna.

to the list of highly migratory species. With regard to the problem of the delimitation of the exclusive economic zone and the continental shelf, his delegation fully associated itself with the view expressed by the representative of Spain at the 126th meeting, speaking on behalf of the sponsors of document NG7/2/Rev.2.

19. With regard to the report of the Third Committee, his delegation felt that freedom of marine research activities should be ensured as much as possible in the new régime since it was in the common interest of mankind. At the same time, the settlement of disputes relating to such activities should be mandatory. Although his delegation was not fully satisfied with the proposals contained in the report, it would have no difficulty in supporting them in view of the painstaking efforts to strike a balance between the interests of coastal States and those of researching States.

20. Mr. AL-WITRI (Iraq) said that his country, as a member of the Group of 77, reaffirmed the position of that group with regard to the report of the First Committee, especially on the question of the exploitation and exploration of the sea-bed. The question of the transfer of technology to the Enterprise and to developing countries would have to be settled before developing countries could accept the parallel system, which would otherwise lose its desired balance. With regard to article 161 concerning decision-making in the Council, a solution might be reached by excluding the possibility of any veto or weighted vote so that all States would have an equal vote. The question of a review conference dealt with in article 155 should receive further study, since a moratorium system with regard to sea-bed activities would have to be contemplated if the Conference did not succeed in setting up a new system of exploration and exploitation as envisaged in the revised negotiating text.

21. With regard to the report of the Second Committee, his delegation shared the position taken by the group of Arab States calling for the limitation of the extent of the continental shelf of coastal States to a minimum distance assessed by precise measurements in order to safeguard the common heritage of mankind. As to the work of negotiating group 7 on the delimitation of the exclusive economic zone and the continental shelf (articles 74 and 83), he supported the position contained in documents NG7/10/Rev.2. The principles enunciated by the International Court of Justice with regard to the North Sea and the relevant rules of international law should be observed in order to take account of the special circumstances involved in settling disputes over the delimitation of sea-bed frontiers. His delegation supported the concept of binding settlement to safeguard peaceful relations between neighbouring States. The rights of geographically disadvantaged States with respect to fishing in neighbouring maritime areas had not been sufficiently protected in the revised negotiating text. Negotiations on article 70 would have to continue, therefore, in order to settle the problem and clarify the relationship between article 70 and articles 61 and 62. There were other crucial problems, such as the régime of islands, which required further attention since they hampered the delimitation of maritime frontiers and freedom of navigation in international waterways. The problem of enclosed or semi-enclosed seas was of particular interest to his country. Article 123 should be further refined to ensure co-operation of States bordering enclosed or semi-enclosed seas.

22. Lastly with regard to the report of the Third Committee, due account should be taken of the rights of geographically disadvantaged developing States in the area of scientific research.

Mr. Bhatt (Nepal), Vice-President, took the Chair.

23. Mr. Duk Choo MOON (Republic of Korea) said that he

would limit his comments to certain issues of importance but reserved the right to refer to other matters at the forthcoming session in Geneva.

24. He endorsed the position taken by the Chairman of the Group of 77 (see 126th meeting) on the proposals contained in documents A/CONF.62/C.1/L.27 and Add.1, which offered a better chance of achieving consensus at Geneva.

25. Referring to production policy, he said that consumption by the developing countries of minerals to be produced from deep sea-bed mining would inevitably increase in the future and that an adequate supply of such minerals would be important to those countries. The minimum ceiling on the growth rate should therefore be fixed at such a point that it would not disadvantage the land-based producers by being too high or frustrate plans for sea-bed mining.

26. Turning to the subject of innocent passage of warships through the territorial sea of coastal States, he said that his delegation's proposal (article 29 *bis*) that the coastal State may require foreign warships to give prior notification to its competent authorities for passing through its territorial sea represented a compromise of the conflicting interests involved. He requested the inclusion of that proposal as an addendum to the report of the Chairman of the Second Committee.

27. The question of the delimitation of the continental shelf and the exclusive economic zone was also of importance. He regretted that little progress had been made during the current session despite strenuous efforts by the chairman of negotiating group 7 and its members. However, he was encouraged by the prospects for reaching a consensus based on the compromise formula contained in the Chairman's report.

28. At the same time, the new compromise suggested by the Chairman of negotiating group 7 appeared too ambiguous for the process of delimitation, since it purported to effect delimitation by reference to the somewhat vague concept of international law. He hoped that guidance might be provided by a judgement rendered by the International Court of Justice on the North Sea continental shelf and by the Anglo-French Arbitration involving the delimitation of the continental shelf. The question of delimitation was one of the most important elements of the package, and he trusted that the various parties would demonstrate their political will by accepting a compromise along the lines suggested by the Chairman of negotiating group 7.

29. With regard to interim measures and the settlement of disputes concerning delimitation, he endorsed the proposals contained in document NG7/45. They represented the best chance of reaching a consensus on the question of delimitation. It would be against the interests of all States to leave valuable resources in disputed areas unexploited simply because one party to a dispute, while making an unreasonable claim, refused to negotiate. Such difficulties might arise in a dispute between a small State and its larger neighbour, in which case it would be unfair for the small State to subject its rightful share of potential resources to the arbitrary discretion of its larger neighbouring State.

30. Turning to Third Committee matters, he endorsed the new proposals on marine scientific research contained in document A/CONF.62/L.50. In particular, the newly proposed article 246, paragraph 6, was worthy of support in that it safeguarded the sovereign rights of the coastal State over the continental shelf beyond 200 miles in respect of marine scientific research, thus ensuring the unity of the continental shelf régime.

31. Although some difficult problems remained, there had been considerable progress in past weeks towards the goal of a new comprehensive legal order for the seas and oceans. His delegation's response to many of the proposals in the reports was positive, for they represented a considerable improvement over the revised negotiating text.

¹North Sea Continental Shelf, judgement, I.C.J. Reports 1969, p. 3.

32. Mr. HING UN (Democratic Kampuchea) said he trusted that the present session would lead to a convention on the law of the sea which met the legitimate interests of all its signatories and the aspirations of all peace- and justice-loving peoples.

33. With reference to the Chairman's report on the work of negotiating group 7 on the delimitation of the exclusive economic zone and the continental shelf his delegation felt that the provisions of paragraph 1 of articles 74 and 83 of the revised negotiating text should be retained. Any other definition would represent a departure from the equitable principles upon which any delimitation should be based. In the interim, States should refrain from any acts which might prejudice definitive delimitation and the interests of other parties.

34. The settlement of delimitation disputes should be in accordance with article 2, paragraph 3, and article 33, paragraph 1, of the Charter of the United Nations whatever might be the settlement procedure adopted by the parties. The convention on the law of the sea should not oblige States parties to a dispute over the delimitation of maritime zones to accept a settlement procedure which they did not agree with. That would be contrary to current international law. Direct negotiations and consultations between the parties on the basis of equality and in accordance with the principles of the Charter would be preferable. His delegation had carefully noted the conciliation procedure contained in annex IV of the revised negotiating text.

35. He strongly supported those delegations which felt that the provisions on delimitation in the future convention must not be allowed to prejudice the legal *status quo* by engendering claims against sovereignty or other rights in respect of continental or island territory.

36. Turning to the innocent passage of warships, he endorsed the view of other delegations that a new subparagraph (b) should be added to article 21, paragraph 1, of the revised negotiating text whereby coastal States might adopt laws and regulations on the matter in accordance with the provisions of the convention and the norms of international law. It was in everyone's interest for a coastal State to be able to demand prior notification or authorization for the passage of warships through territorial seas.

37. With regard to the rights of coastal States over the continental shelf, his delegation supported the inclusion of a new paragraph 5 in article 77 calling for a coastal State to exercise sovereign rights over any object of archaeological or historic interest found on the continental shelf.

38. Furthermore, his delegation supported the principle of the peaceful use of the high seas and therefore endorsed the proposed amendment to article 88 contained in document C.2/Informal Meeting/555.

39. He reserved the right to comment on the documents in greater detail at the resumed session.

40. Mr. YUSUF (Somalia), referring to the reports submitted by the co-ordinators of the group of 21 (A/CONF.62/C.1/L.27 and Add.1) and by the Chairman of the First Committee (A/CONF.62/L.54), said that his delegation fully endorsed the views expressed by the Group of 77. The provisions on the transfer of technology, the review conference, the exemption of the Enterprise from taxation and the voting procedure in the Council needed further consideration.

41. He regretted that there had not been sufficient time to deal with the unresolved issues before the Second Committee. His delegation was disappointed at the absence in the Chairman's recommendations (See A/CONF.62/L.51) on the second revision of the negotiating text of any explicit reference to the right of a coastal State, in making laws and regulations relating to innocent passage, to require prior authorization or notification for passage of warships through its territorial sea. It was his delegation's view that such a right already existed in international law. Although the existing formulation in the

revised informal negotiating text did not preclude or prejudice the exercise of that right by coastal States, his delegation would prefer to see it more explicitly formulated in the second revision. In particular, the proposal contained in document C.2/Informal Meeting/58 deserved careful consideration.

42. He felt that the provisions of the revised negotiating text on the conservation of fishery stocks which overlapped the 200-mile limit or occurred in the economic zones of two or more States were inadequate. He therefore supported the Argentine proposal on article 63 (C.2/Informal Meeting/54), which would afford better protection for endangered species in the areas concerned. The absence of any recommendation for the inclusion of that proposal in the second revision of the negotiating text was regrettable.

43. He also regretted the fact that no compromise formula had been found for the delimitation of the exclusive economic zone and continental shelf between adjacent or opposite States. Such delimitation should be effected in accordance with equitable principles and all the relevant circumstances. The practice of States and judicial and arbitral precedents provided clear evidence of the widespread use of those criteria by the international community.

44. With reference to the report presented by the Chairman of the Third Committee (A/CONF.62/L.50), he was pleased that the reservations and objections of various delegations to some of the proposed changes in the text on marine scientific research had been recorded. He welcomed the proposals of the Chairman with respect to articles 242, 247, 249, 254 and 255. The proposed changes in those provisions constituted a step forward and might lead to a consensus. His delegation found it difficult, however, to accept the proposal on article 253, which weakened the legitimate right of coastal States to terminate a research project that was found to be in breach of the conditions under which consent had been granted. Further negotiations were necessary on that provision and on the related provisions of article 264 on dispute settlement.

45. He welcomed the draft preamble presented by the President (A/CONF.62/L.49), together with the draft proposals on final clauses submitted by the Chairman of the group of legal experts (FC/20). Delegations needed an opportunity to consider carefully the proposed provisions on final clauses, and he wished to reserve his delegation's position on those proposals.

46. While his delegation had limited its remarks to those issues because of the agreed time-limit, that did not mean that it supported or consented to the inclusion of all the other proposed suggestions in the second revision of the negotiating text. His delegation would express its views in a more comprehensive manner at a later date and reserved its position on those suggested amendments which it had not expressly accepted.

47. Mr. LUPINACCI (Uruguay) said that his delegation was in broad agreement with the President's draft preamble and that the proposals submitted by the co-ordinators of the various negotiating groups represented real progress.

48. As a member of the Group of 77, his delegation endorsed the proposals submitted to the First Committee by the relevant co-ordinator; it should be borne in mind that the financing of the Enterprise, the review conference and production limitation were the basic factors that had enabled the developing countries to accept the parallel system.

49. The compromise proposals contained in part V of document A/CONF.62/C.1/L.27 represented an appropriate balance, and his delegation supported their inclusion in the second revision of the negotiating text.

50. With respect to the continental shelf, he endorsed the comment made by the representative of Ireland, at the 126th meeting, that the amendments to article 76 would provide the basis for a consensus and he supported their inclusion in the second revision of the negotiating text. However, he had res-

ervations about the amendment to paragraph 8 whereby the words "taking into account" would be replaced by "on the basis of"; that would alter the legal nature of the acts of the commission on the limits of the continental shelf, which were termed recommendations by article 76 and by the commission's statute contained in the report of the Chairman of the Second Committee. His delegation basically endorsed the text of that annex but felt that some amendments might be made to it. He did not agree with the proposal contained in article 2, paragraph 5, on defraying the expenses of members of the commission, since it would not safeguard the commission's autonomy.

51. Turning to other Second Committee matters, he endorsed the recommendations of that Committee's Chairman regarding articles 65 and 111 and the inclusion of another highly migratory species in the list contained in annex I. The proposal on article 63 submitted by Argentina had received widespread support, and he trusted that it would provide a basis for negotiation at Geneva.

52. His delegation found unacceptable a number of provisions and omissions relating to Second Committee matters in the revised negotiating text. Some articles connected with key articles of the package deal had not been negotiated along with those key articles, so that their wording created ambiguity or confusion or even contradicted the key articles themselves. At the Geneva session, such ambiguities and contradictions should be eliminated and other amendments which could lead to a consensus should be considered. His delegation reserved the right to submit such amendments at the proper time.

53. With regard to Third Committee matters, his delegation reaffirmed its support for the rule that scientific research activities in the exclusive economic zone and on the continental shelf must be conducted with the consent of the coastal State, and it could not accept any derogation from that rule as set out in article 246 of the revised negotiating text. However, it had participated in the negotiations on the proposed amendments to that article and to part XIII of that text, some of which appeared to offer a basis for a consensus. In particular, his delegation supported the inclusion in the second revision of articles 242, 247, 249, 254 and 255 as contained in the report of the Chairman of the Third Committee.

54. His delegation also accepted the inclusion of articles 253 and 264 but felt that their wording needed to be made more precise. He favoured a specific reference in article 264 to article 253, paragraphs 1 and 3. That would be in keeping with the philosophy of the régime provided for in article 253, which drew a clear distinction between the circumstances necessitating the suspension of research activities and those necessitating their cessation.

55. With regard to research activities carried out on the continental shelf beyond 200 miles, the formula ultimately agreed upon must not limit the sovereign rights of the coastal State as recognized in customary and treaty law and in article 77 of the revised negotiating text. The wording of article 246 suggested by the Chairman of the Third Committee was acceptable to his delegation, given the provisions of paragraphs 7 and 8. Nevertheless, the establishment of a régime for scientific research on the continental shelf beyond 200 miles different from that applicable to the rest of the shelf as provided for in paragraph 6, created problems for many delegations, including his own, even if the principle of consent was retained. He recognized that the Chairman of the Third Committee had attempted to reach a compromise, but it was clear that no compromise solution had in fact been found.

56. His delegation considered it of vital importance that the first part of the ninth session should end with the completion of the second revision of the negotiating text, so that final negotiations leading to the formal adoption of the text could take place at the Geneva session.

— *Mr. Zegers (Chile), Vice-President, took the Chair.*

57. Mr. ANDERSEN (Iceland) said that his delegation supported the second revision of negotiating text and the inclusion of the revised preamble. All the elements of progress towards consensus in First Committee matters should be reflected.

58. He supported the amendments proposed by the Chairman of the Second Committee. He understood that the new provision regarding submarine ridges meant that the 350-mile limit criterion would apply to ridges which were a prolongation of the land mass of the coastal State concerned. He considered that the Argentine proposal on article 63 and the Canadian proposals on that matter should be further developed.

59. His delegation also supported the inclusion of the amendments proposed by the Chairman of the Third Committee.

60. Further efforts would have to be made at Geneva to solve the remaining problems in the revised negotiating text. The proposals on the preparatory commission were acceptable to his delegation (A/CONF.62/L.55).

61. He trusted that the convention would be ready for signing in Caracas within a few months, so that a process which had begun in 1949 with the work of the International Law Commission could finally be completed.

62. Mr. ABDEL MEGUID (Egypt) observed that the compromise text of the draft preamble contained in document A/CONF.62/L.49 highlighted the underlying principles, framework and goals of the future convention; however, he associated himself with the point of view of the Group of 77 with respect to the sixth paragraph. For lack of time, his delegation had not been able to consider all the proposals in detail and would therefore reserve its right to comment on them at the resumed ninth session. In any case, a definitive view would be premature before the package had been completed.

63. The new proposals submitted by the Chairmen of the three committees encompassed a number of improvements which had met with general agreement and should therefore be incorporated into the second revision of the negotiating text. The fact that his delegation accepted the idea of drawing up a second revision did not mean, of course, that it accepted all the proposals, except as a basis for future negotiation. It had some difficulty with those pertaining to the system of exploration and exploitation and the transfer of technology, and it believed that further efforts would be necessary to find more acceptable solutions in conformity with the principle of the common heritage of mankind. The financing of the Enterprise also required more careful study, as did the establishment of a common heritage fund. The necessary funds should be guaranteed to enable the Enterprise to begin its work at the same time as States and other entities, taking into account the initial problems it would face.

64. He was somewhat concerned at the lack of progress achieved on the issue of decision-making in the Council and hoped that some more acceptable solution would be found at the resumed session on matters pertaining to the continental shelf that were dealt with by negotiating group 6. His delegation still had some reservations about the natural prolongation of the continental shelf of coastal States, which could seriously impinge on the international Area. The text of article 76 was still too flexible in that respect, although the establishment of a commission on the limits of the continental shelf would help to mitigate the adverse effects to some extent. The report of the Chairman of negotiating group 6 and document NG6/20 represented a useful, but inadequate, attempt at a solution. Some ambiguities remained with respect to the definition of the continental shelf, and the revenue-sharing problem had not been sufficiently studied. A major issue on which a balance had to be struck between national sovereignty and the principle of the common heritage of mankind was that of the *pro rata* increase contemplated in article 82.

65. Turning to Second Committee matters other than those dealt with by the negotiating groups, he reaffirmed his delegation's support for the informal proposals relating to innocent passage (C.2/Informal Meeting/58), the proposal made by Italy with regard to the rights of the coastal State over the continental shelf with respect to objects of an archaeological and historical nature (C.2/Informal Meeting/43/Rev.2) and the informal proposal on the reservation of the high seas for peaceful purposes (C.2/Informal Meeting/55), all of which should be included in the second revision of the negotiating text. With respect to article 33 of the revised negotiating text, it was important that the coastal States should be entitled to exercise their right to protect their security by having total sovereignty over their own customs, fiscal, immigration and sanitary regulations.

66. On the subject of marine scientific research dealt with by the Third Committee, his delegation had some reservations with respect to the proposed wording of article 253 on the suspension or cessation of research activities: no distinction was drawn between research conducted in the exclusive economic zone and that conducted beyond that zone or on the extended continental shelf. The article thus detracted from the discretionary powers contemplated in the convention for the purpose of enabling coastal States to protect their national interests. His delegation's reservations also extended to article 264 on the settlement of disputes.

67. On the subject of the preparatory commission, he shared the view expressed by the Group of 77 that the issue could not be dealt with until the First Committee had completed its work. However, he supported the unanimous opinion that had emerged in the informal meetings regarding the establishment of the commission, namely, that its membership should consist of signatories of the convention and that its functions should be confined to procedural questions so as to enable the Authority and its main bodies to assume their responsibilities as soon as possible, once the convention had entered into force. In accordance with existing United Nations practice with respect to preparatory commissions or committees, the commission should not act in place of the Authority.

68. His delegation would comment on the excellent report on final clauses (FC/20) at the resumed ninth session.

69. Mr. MANANSALA (Philippines) said that substantial progress had undeniably been achieved on most of the hard-core issues, although his delegation regretted that, because of time constraints, some of the problems relating to Part IV of the revised informal composite negotiating text, particularly with respect to archipelagic sea lanes passage, had not yet been solved.

70. It was heartening to note that the First Committee had recognized the legitimate concern of land-based mineral producers at the possible loss of a fair share of the world market. Because of that concern, his delegation would have preferred it if the figures of 3 per cent and 100 per cent in article 151, paragraph 2 (b), had been left blank and the search for a solution deferred until the resumed session. He had noted the correction appearing in document A/CONF.62/C.1/L.27/Add.1 regarding the two-thirds majority in article 155, paragraph 5, but the deletion of the moratorium clause still posed problems for his delegation. In his view, further negotiation was needed on the subject of the transfer of technology, in article 5 of annex II; provisions on penalties, blacklisting and transfer of processing technology should be further elaborated.

71. In considering the work of negotiating group 2, his delegation still had some doubts about the workability of articles 9 and 12 of annex III but was prepared to study the provisions carefully. He had noted the failure of negotiating group 3 to arrive at a final solution on the composition of the Council and its decision-making procedures. However, the

optimistic attitude of the Chairman of that group regarding the imminence of a solution of that highly contentious issue was encouraging.

72. His delegation had already commented in the Second Committee on the compromise text dealing with the definition of the outer limit of the continental shelf and was pleased to note that a compromise text to deal with the unique problem of the Sri Lankan continental shelf would shortly be submitted. It was most regrettable, however, that the informal proposal on the navigation of warships through the territorial sea of a coastal State had not merited inclusion in the report of the Chairman of the Second Committee, since it had received considerable support. Further discussion would be required on that issue at the resumed session. The lack of progress in negotiating group 7 on the delimitation of maritime frontiers between adjacent or opposite States was disappointing but resulted from the complexity of the problem rather than from any lack of a spirit of accommodation. That was another issue that would have to be carried over to the resumed session.

73. At the previous session, his delegation had expressed misgivings about reopening the problem of arrangements for marine scientific research in the exclusive economic zone and on the continental shelf, for fear of creating more problems. However, it would study the new compromise text proposed by the Chairman of the Third Committee. It would have no objection to the inclusion of that text in the second revision of the negotiating text but had some reservations with respect to article 246, paragraph 6, which seemed to be a derogation of the sovereign right of a coastal State to regulate, authorize and conduct marine scientific research on its own continental shelf.

74. The preparation of the draft text of the preamble and the statute of the preparatory commission marked a significant accomplishment of the current session. He believed that they would help to bring about prompt acceptance of the convention which finally evolved, and he hoped that all outstanding issues would be speedily negotiated and resolved, thus ensuring a universally acceptable convention that would bring order to the oceans for the ultimate benefit of all nations.

75. Mr. KAMANDA wa KAMANDA (Zaire) said that, to a large extent, his delegation was prepared to regard the proposals submitted by the various negotiating groups as a basis for negotiation, although that in no way meant that it fully supported them, particularly those relating to the system of exploration and exploitation, financial matters, the powers of the Assembly and of the Council, the preparatory commission and the settlement of disputes relating to Part XI.

76. He associated himself with the statement made at the 126th meeting by the representative of the Group of 77; his delegation would submit its detailed written comments at a later stage.

77. Referring to the system of exploration and exploitation, and more specifically to production policies in article 151, he said that, although the efforts made by Mr. Nandan to reconcile the various positions and to find a compromise were appreciated, his delegation was nowhere near being able to endorse the formula proposed. For a number of reasons, it remained reluctant to see the introduction of the floor concept: first of all, the calculations, particularly the 3 per cent growth rate, were based on speculation; secondly, the floor would not prevent the sea-bed producers from monopolizing the market, to the detriment of land-based producers, when the growth rate dipped appreciably; thirdly, because of the way it operated, the floor would have the effect of imposing maximum restrictions on land-based production and thereby nipping in the bud any development of economies, such as that of his own country, which were based mainly on the export of land-based minerals; fourthly, such a formula would simply prevent the emergence of certain potential land-based producers, because no country would want to risk investing huge sums when it knew in

advance that the market would be glutted: fifthly, the formulation of article 151, paragraph 2 (b) (iii), served neither the letter nor the spirit of article 150 and sought to restrict the scope of the appeal launched by the General Assembly in resolution 2749 (XXV); sixthly, there was the question of the ambiguity surrounding the arrangements with regard to the computation of the ceiling on the basis of the 3 per cent growth rate in consumption. Over the five-year period between the beginning of the interim period and the first year of commercial production, land-based production would be seriously curtailed for the benefit of the sea-bed producers. His delegation could not accept a calculation which was tantamount to saying that 3 minus 1 equalled 3. However, it was aware that some other proposals were being worked out, and it would be willing to discuss a compromise formula on the basis of a reduction of the growth rate to 1 or 2 per cent, accompanied by compensatory conditions.

78. With respect to the provisions of article 150, more particularly subparagraph (g), which rightly sought to protect the developing countries his delegation believed that the convention should not overlook the purposes and principles of the United Nations, the principles of international law and the pertinent legal aspects of promotion of the establishment of a new international economic order, to which the concept of the common heritage of mankind was closely linked. The new order, of which the convention on the law of the sea would be a part, was designed to protect the interests of the developing countries by remedying the disequilibria of the past, which had militated against them.

79. In considering article 76, his delegation had always preferred the distance criterion because of its simplicity and the consequences arising from the principle of the common heritage of mankind, which was a pillar of the law of the sea. In those circumstances, the continental shelf would form the substructure of the economic zone and there would be no further need to discuss submarine ridges, the outer edge of the continental margin or the commission on the limits of the continental shelf. Since some believed that the compromise was moving in the direction of a combination of distance, depth and geomorphological criteria, he hoped that a satisfactory solution could be found to the question of payments and contributions with respect to the exploitation of the continental shelf beyond 200 miles. The suggestions made by Sri Lanka in that respect were extremely interesting; certain technical provisions had to be found to ensure that no part of the common heritage of mankind was affected. He therefore urged initiatives to establish a common heritage fund for the purpose of developing the non-living resources of the economic zone and of the continental shelf beyond 200 miles. The changes proposed in article 63 would damage co-operation between States in the management of fishery resources, and his delegation was therefore opposed to them.

80. It welcomed the efforts to arrive at a consensus in the Third Committee on marine scientific research. A positive outcome of discussions on the preamble, the settlement of disputes, final clauses and the preparatory commission would have to await completion of the negotiating process, which should take account of the many other elements that had come to light in the course of discussions. The improvement of articles 69 and 70 in favour of the land-locked and geographically disadvantaged States would strengthen the principle of non-discrimination. The right of those States to exploit fishery resources had to be strengthened, and their interests had to be taken into account in marine research.

81. Mr. LUSAKA (Zambia) expressed support for the view of the Group of 77 that sufficient progress had been made to warrant a second revision of the negotiating text even though there were a number of outstanding issues, some of which were of vital concern to his country.

82. With respect to the work of the First Committee, his

delegation endorsed the stand of the Group of 77 on the review conference (article 155, para. 5), the fiscal status of the Enterprise (annex III, articles 9 and 12), the transfer of technology (annex II, article 5), production policies (article 151), the financial terms of contracts (annex II, article 12) and the decision-making process in the Council (article 161, para. 7).

83. The proposal before the Conference on the question of production limitation under article 151, paragraph 2 (b), presented difficulties for many delegations, including his own. They felt that the floor figure of 3 per cent and the safeguard clause of 100 per cent were very high and displayed an insensitivity to actual market growth. They would force land-based producers to cut back on their production during periods of low growth in the market, a situation that would be catastrophic for developing land-based producers whose economies depended on the mining industry. The emerging consensus that the proposal required further negotiation offered improved chances of a solution: his delegation would therefore have preferred that the proposal not be incorporated into the second revision. It was only prepared to accept its inclusion if the figures were omitted. That procedure would ensure a free discussion of the text at the resumed session.

84. His delegation urged that the proposal for a common heritage fund contained in document C.2/Informal Meeting/45, which his delegation, among others, had sponsored, should be incorporated into the second revision, since it presented the Conference with a last chance to give meaningful effect to the principle of the common heritage of mankind. The inclusion of a common heritage fund in the new convention on the law of the sea would have a tremendous impact on the establishment of a new international economic order.

85. The proposal to amend articles 56 and 82 appeared to have majority support.

86. Finally, his delegation supported the inclusion in the second revision of the negotiating text of the draft preamble submitted in document A/CONF.62/L.49 and of the text on the settlement of disputes relating to Part XI.

87. Mr. STEPHANIDES (Cyprus) said that his delegation intended to make a detailed statement at the resumed session. With respect to First Committee matters, it fully supported the statement made by the Chairman of the Group of 77, while it regretfully had to express opposition to the proposal on general principles contained in document FC/18.

88. In noting the failure to find a basis for consensus on paragraph 1 of articles 74 and 83, he pointed out that that was a clear-cut case calling for immediate remedy by the collegium at its next sitting. If a really balanced and neutral text could not be found, that would be a serious omission which was not justified by the merits of the case. In that connexion, he fully supported the views expressed by the representative of Spain at the 125th meeting on behalf of the sponsors of document NG7/2/Rev.2.

89. He earnestly hoped that the close interrelationship between the three elements of the text, namely, delimitation criteria, interim measures and settlement of disputes, would continue to be recognized and fully safeguarded in the second revision of the negotiating text.

90. Attempts to change the text of article 121 on the well-established régime of islands would meet with the strongest opposition from his delegation, which represented an island nation.

91. Having supported the proposal of the United States for a new text of article 65 on marine mammals (C.2/Informal Meeting/49), he was glad to see that it was gaining wide support for inclusion in the second revision of the negotiating text. It was to be expected that the substantially improved, widely supported proposal relating to objects of archaeological or historical interest found on or under the continental shelf (C.2/Informal Meeting/43/Rev.2) would similarly, and deservedly, find its place. He voiced his delegation's support for

the proposals contained in the report of the Chairman of the Third Committee and its full agreement with the text of the draft preamble.

92. Mr. IMAM (Kuwait) said that the procedural division of the Conference into watertight compartments had made it difficult, if not impossible, for delegations to have an over-all view of the work of the various committees and that the problem had been compounded by the fact that most negotiations had taken place within small groups which had not been truly representative of various interest groups and schools of thought. The extreme case was reflected in paragraph 5 of the report of the Chairman of the Second Committee. His delegation strongly objected to that procedure, especially on vital issues such as the continental shelf, in which all delegations had an interest. He therefore made a plea for more democratic procedures during the resumed session: all delegations should have an equal opportunity to express their views on all topics.

93. On First Committee matters, his delegation had always been eager to maintain solidarity with the developing countries and the co-ordinator and other members of the Group of 77 had already echoed some of its tentative views on the issues. The question of the composition of the Council and its decision-making process were far from being resolved, and, while his delegation had no objection to the representation of interest groups within the Council, it did have serious objections to the creation of a blocking vote reminiscent of the veto power enjoyed by the five permanent members of the Security Council. That could only result in creating stalemate and preventing the Enterprise from carrying out activities in the area.

94. On Second Committee matters, his delegation believed that any extension of the continental shelf beyond 200 miles from the baselines from which the breadth of the territorial sea was measured would constitute an encroachment on the common heritage of mankind: that position had already been articulated by the chairman of the group of Arab States.

95. In view of its special stake in the question of the delimitation of the continental shelf between adjacent or opposite States, his delegation had carefully studied the numerous proposals presented but had become more and more convinced over the years that article 6 of the 1958 Convention on the Continental Shelf² offered the ideal solution. In the absence of agreement between the States concerned, the boundary should be determined by the median line every point of which was equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State was measured.

96. Silence on all the other proposals should not be construed as agreement. The second revision of the negotiating text would be referred to the competent authorities for consideration, and his delegation would make its views known on the various issues at the resumed session. It viewed the second revision merely as an additional step along the path of negotiation and believed that the status of its provisions would not be superior to that enjoyed by its two predecessors.

Mr. Bedjaoui (Algeria), Vice-President, took the Chair.

97. Mr. AL HADDAD (Democratic Yemen) said that his delegation welcomed the progress made on major issues in the First Committee and in the various related negotiating groups. That progress would provide a good basis for the second revision of the informal composite negotiating text. Where the report of the co-ordinators of the working group of 21 to the First Committee (A/CONF.62/C.1/L.27 and Add.1) was concerned, more attention should be devoted to the question of the transfer of technology, particularly in order to ensure that the Enterprise had access to the technology of the contractor and in order to ensure that sanctions were developed and used against those who did not transfer technology. The proposal put forward by the representative of Singapore in that connexion

constituted an improvement. With regard to decision-making in the Council, it was essential that the interests of States should be taken into account and that the Council should be empowered to discharge its functions adequately.

98. With regard to the Second Committee, negotiating groups 6 and 7 had accomplished commendable work. The outer limit of the continental shelf should be defined in accordance with the interests of the States involved and without prejudice to the principle of the common heritage of mankind. His delegation supported the compromise formula proposed by the President (see A/CONF.62/L.51) and endorsed his statement concerning the establishment of a commission on the limits of the continental shelf. However, it did not endorse the proposals concerning revenue-sharing and felt that they should be reconsidered in the light of the needs of the developing countries.

99. The report submitted by the Chairman of negotiating group 7 (A/CONF.62/L.47) constituted a suitable basis for a second revision of the negotiating text. However, his delegation wished to reserve its position with regard to the question of the settlement of disputes, since binding decisions would be prejudicial to the sovereignty of States.

100. The Third Committee had achieved results (see A/CONF.62/L.50), and it was to be hoped that the question of research in the exclusive economic zone could be settled. The new text should not affect the rights of the coastal State in its exclusive economic zone or on its continental shelf.

101. Lastly, his delegation considered the proposed text for the preamble (A/CONF.62/L.49) to be a most valuable contribution.

102. Mr. TORRAS DE LA LUZ (Cuba), referring to the proposed new texts said that adoption of the draft preamble was justified by the fact that the text in question emphasized the historic significance of the future convention.

103. With regard to the work of the First Committee, the reports of negotiating groups 1 and 2 represented a considerable improvement, particularly in the case of negotiating group 1 owing to the amendments introduced, which took up a number of observations made by the Group of 77. His delegation endorsed the formula suggested by the representative of Fiji as a basis for negotiation but agreed that a number of figures that it contained would have to be considered more closely. Where the question of decision-making in the Council was concerned, only a formula that guaranteed equal standing for the interests of all the groups of countries on the Council would work. Since the proposal put forward by the representative of Mongolia, at the 47th meeting of the First Committee, seemed to have that aim, it should be taken into account.

104. With regard to the work of the Second Committee, his delegation endorsed the formula proposed by its Chairman regarding definition of the continental shelf, since it was the one most likely to achieve a consensus. However, it would prefer adoption of a precise criterion based on distance that would guarantee the international community an equal share in the benefits of the shelf beyond 200 miles, in accordance with article 82.

105. With regard to article 298 paragraph 1 (a), on the settlement of disputes concerning delimitation, his delegation could not accept any settlement procedure that entailed a binding decision involving third parties, a position which was in keeping with prevailing international law.

106. Where the work of the Third Committee was concerned, his delegation favoured inclusion of the proposed texts in the second revision of the negotiating text.

107. The future convention would have to be the result of mutual concessions. For obvious reasons, the concessions would have to be greater on the part of the developed countries. It was therefore a matter of concern to his delegation that a number of delegations of developed capitalist countries failed

²United Nations, *Treaty Series*, vol. 499, No. 7302, p. 311.

to show proper regard for the interests of underdeveloped land-based producers of minerals that were to be mined on the sea-bed. Other delegations that had 200-mile economic zones and extensive shelves were reluctant to grant any benefits to land-locked countries and countries with special geographical characteristics. It was necessary to reconcile the legitimate interests of all concerned, but the needs of the countries of the so-called third world were greater.

108. Mr. SÈNE (Senegal) said that the work accomplished during the current session was encouraging because it would surely lead to the drafting of a convention. His delegation was in favour of a second revision of the negotiating text, provided that the second text had the same status as the first one and that it took the interests of all the parties concerned into consideration.

109. With regard to the question of the seat of the Authority, his delegation supported the draft decision in document A/CONF.62/L.48/Rev.1 and felt that the candidatures of Fiji, Jamaica and Malta should be considered on an equal basis. Where the clause on the European Economic Community was concerned, his delegation endorsed the contents of the letter dated 29 March 1980 from the representative of Italy to the President of the Conference (A/CONF.62/98). It was to be hoped that the European Economic Community would guarantee adequate implementation of the provisions of the future convention.

110. With regard to the work of the First Committee, his delegation considered that the text on financial matters submitted in the report of the co-ordinators of the working group of 21 to the First Committee (see A/CONF.62/C.1/L.27 and Add.1) constituted a good basis for negotiation. However, that text should deal with the question of the body responsible for determining the financing needed by the Enterprise in order to implement an integrated project. Moreover, article 12, paragraph 4 (d) and (e) and paragraph 5, should be more explicit with regard to the question of the tax immunity of the Enterprise.

111. With regard to the question of the system of exploration and exploitation, his delegation attached great importance to the transfer of technology, which was one of the reasons why it had accepted the parallel system. It therefore considered that the provisions of article 5, paragraph 3 (a), (b) and (c), on the extent of the undertakings by the operator as to duration and type of technology should be reconsidered. Similarly, paragraph 8 should be reconsidered with a view to reaching a more complete definition of the term "technology", which should include processing.

112. As it was currently worded, article 151 on production policies called into question the temporary nature of the system that was to be established. In that connexion, paragraph 5 should be changed so as to reinstate the moratorium. Moreover, while taking into account the interests of developing producers, article 151 should not operate to the detriment of developing non-producers and consumers.

113. With regard to the Assembly and the Council, his delegation rejected any solution based on a veto or blocking vote. A two-thirds majority should be reasonable, since individual interests must be borne in mind. In that connexion, his delegation was willing to consider the formula proposed in article 161, paragraph 7, of document A/CONF.62/91,¹ with variable x having a value of 9 or 10.

114. With regard to the Second Committee, his delegation had followed with interest the work of negotiating group 6. It wished to reserve its position regarding the various formulas under consideration on the question of revenue-sharing, although it felt that the formula proposed in document

A/CONF.62/L.51 constituted a good basis for negotiation. Where the question of delimitation was concerned, his delegation supported the statements made at the 126th meeting by the representative of Ireland on behalf of the sponsors of document NG7/10/Rev.1 and felt that negotiations should be pursued at Geneva with a view to finding a satisfactory solution.

115. With regard to the Third Committee, his delegation attached great importance to scientific research and to any effort to increase the humanitarian and peaceful aspects of such research. In that connexion, it welcomed the results obtained where article 242 was concerned. However, the need for flexibility in that area should not constitute a pretext for voiding the concept of the exclusive economic zone of its content or for diminishing the sovereignty of the State regarding its continental shelf. For that reason, it could be considered that the wording of article 246, paragraph 6, went as far as it was possible to go in an attempt to reach a compromise. Furthermore, his delegation welcomed the consensus achieved with regard to article 247 on research projects under the auspices of, or undertaken by, international organizations and regarding article 249 on the duty to comply with certain conditions. With regard to article 254 on the rights of neighbouring land-locked and geographically disadvantaged States, his delegation endorsed the concept that the legitimate interests of such countries should be taken into account in the future convention and considered that negotiations on that article should be continued. Lastly, the compromise which appeared to be taking shape with regard to article 264 on the settlement of disputes should be retained.

116. With regard to the report of the Chairman of the group of legal experts on final clauses (FC/20), his delegation welcomed the satisfactory outcome of negotiations on article 302, paragraphs 1 and 2, on entry into force. It proposed that the following wording should be substituted for the second sentence of paragraph 3: "The first Council shall be constituted in accordance with article 161. If the number of ratifications does not permit the first Council to be constituted in accordance with article 161, appropriate action shall be taken in order to achieve the purposes of that article." As had already been pointed out, the second sentence of that paragraph could give rise to a number of difficulties in connexion with ratification. His delegation was unable to accept the sentence in question for constitutional reasons. As regarded article 303, paragraph 1, the report of the Chairman was a suitable basis for negotiation. If the draft convention was adopted by consensus, his delegation would be in a position to accept the exclusion of reservations. Where article 305 on amendment was concerned, the period set for the convening of the conference in question was too long. With regard to article 306 on amendment by simplified procedure, his delegation was in favour of two amendment procedures, namely, a complex procedure and a genuinely simplified procedure. Where article 308 on denunciation was concerned, his delegation was in favour of the inclusion of a provision on the subject.

117. With regard to the settlement of disputes relating to Part XI, his delegation endorsed the recommendations made in that connexion.

118. As far as the draft preamble was concerned, its provisions were on the whole satisfactory.

119. The readiness to co-operate shown on all sides marked the beginning of a new era in international relations and had made the Conference one of the most significant undertakings of the international community. It was to be hoped that it would promote the innovative movement in international law that had been evident over the past two decades.

120. Mr. DEMBELE (Mali) said that, where the work of the First Committee was concerned, his delegation supported the views expressed by the Chairman of the Group of 77, particularly with regard to the question of a moratorium (article

¹Official Records of the Third United Nations Conference on the Law of the Sea, vol. XII (United Nations publication, Sales No. E.80.V.12).

155). transfer of technology (article 5 of annex II), production policies (article 151) and the legal status of the Enterprise (annex III). However, the text concerning the settlement of disputes relating to part XI constituted a good basis for negotiation as it stood and should not undergo excessive modification.

121. With regard to the work of the Second Committee, the question of the delimitation of the continental shelf was particularly important and should be the subject of negotiations that took into account the concept of the common heritage of mankind. During such negotiations, a solution to the problem of revenue-sharing must be found. Where the commission on the limits of the continental shelf was concerned, his delegation was opposed to the provision that a State party that had nominated a member of the commission should defray expenses incurred by that member. That provision would bar developing countries, and particularly land-locked developing countries, from membership in the commission. It was also to be hoped that the concept of the common heritage of mankind would be retained by the Conference. The proposal submitted by the Chairman of negotiating group 7 on the delimitation of the exclusive economic zone and of the continental shelf between adjacent or opposite States (articles 74 and 83) did not represent an improvement. It was therefore inadvisable to revise the current provisions of the revised negotiating text in that connexion.

122. The Third Committee had accomplished important work. However, article 254 on the rights of neighbouring land-locked and geographically disadvantaged States as regarded scientific research should be improved in order to take the interests of those countries more into account.

123. Mr. ENKHSAIKHAN (Mongolia) said that the work accomplished during the first part of the ninth session of the Conference had been productive. The preamble of the future convention submitted by the President was acceptable to his delegation, particularly because it underlined that the future convention was to be an important contribution to the maintenance of peace, justice and progress for all the peoples of the world.

124. Questions within the purview of the First Committee had been considered thoroughly, and progress had been made in drafting a mutually acceptable text for further negotiations in a number of fields. The anti-monopoly clause in annex II, article 6, paragraph 3 (d), would be more acceptable to his delegation if it was equally applicable to reserved and non-reserved areas.

125. The question of decision-making in the Council was a very sensitive political and legal issue and should be dealt with as such. His delegation endorsed paragraph 14 of part IV of the report of the co-ordinators of the working group of 21 to the First Committee, which listed the four elements that had appeared to command consensus during negotiations. Bearing those four elements in mind, his delegation, together with a number of other delegations, had worked out a compromise formula which it had presented orally to the First Committee. According to that formula, all decisions on questions of substance would be taken by a two-thirds majority of the members present and voting, provided that such majority included a majority of the members participating in the session as laid down in article 161, paragraph 7, of the revised negotiating text and provided that a simple majority of members in any two of the special categories referred to in article 161, paragraph 1, or all members of any geographical region provided for in that paragraph had not cast negative votes. The two new prerequisites in the suggested formula for binding decisions to pass would be that either a simple majority in any two of the five categories or all members of any geographical region had not cast negative votes. The reasons for the inclusion of those two new elements were well known. The provision that any two of the categories should not have cast negative votes ensured that

no single special category of States had blocking power, that, while none of the special categories of States had blocking power, each group's weight and importance was underlined, that the burden of blocking a decision would lie with the minority, that the number of negative votes required to block a decision would be higher than in other systems of decision-making, and that abstentions would benefit the majority and not the minority. The proposed formula would require that only unanimity of negative votes in any geographical region would block a decision. The formula's importance lay in its recognition of the fact that any binding decision taken in disregard of the interests of a whole socio-political system or any one of the regional groups would be ineffective and counter-productive. Any formula that disregarded those facts would, moreover, be ineffective in that it would confuse the number of mechanical votes required to block decisions with the very concept of the geographical regional group. It was to be hoped that that complicated issue could be settled during the resumed session at Geneva.

126. His delegation had no difficulty in endorsing the text proposed by the group of legal experts on the peaceful settlement of disputes relating to Part XI.

127. With regard to the work of the Second Committee, the proposal put forward by the Chairman of that Committee the previous week concerning the question of the definition of the outer limits of the continental shelf was not fully satisfactory to his delegation. However, the latter could endorse such a major concession to the broad-margin States in the hope that in the future that spirit of mutual accommodation would also be shown on the part of those States regarding the rights and legitimate interests of the land-locked and geographically disadvantaged States. His delegation supported the proposal put forward in the report to the plenary of the Conference by the Chairman of the Second Committee concerning the last sentence of article 76, paragraph 3. It also endorsed the proposal that the limits of the shelf established by a coastal State on the basis of the recommendations of the commission on the limits of the continental shelf should be final and binding. His delegation hoped that the future Commission would be composed in such a manner as to reflect the interests of the land-locked and geographically disadvantaged States.

128. Where the work of the Third Committee was concerned, his delegation welcomed the consensus reached on questions relating to marine scientific research (articles 242, 247, 249 and 255). The establishment of a different régime for marine scientific research on the continental shelf beyond 200 miles was fully justifiable.

129. His delegation supported the view expressed by an overwhelming number of delegations that it was desirable to proceed with the second revision of the negotiating text.

130. Mr. CASTILLO-ARRIOLA (Guatemala) said that his delegation welcomed the progress that had been made regarding a number of outstanding issues. It had thus been possible to achieve the consensus essential for developing and putting into effect the new international law of the sea, which would unquestionably be a pillar of the new international economic order. Although a number of amendments had not received universal support, significant progress had been made in the various fields and the amendments under consideration should therefore be included in the revised negotiating text. The collegium should proceed with the second revision of the negotiating text so that Governments would have the opportunity to consider it prior to the resumed session at Geneva. His delegation felt that during the resumed session it would be necessary to involve more delegations in the negotiating process. For the reasons he had mentioned, the second revision of the negotiating text would be very useful, although it would not be binding for delegations. His delegation endorsed the inclusion in the negotiating text of all the amendments that had obtained substantial support, particularly those submitted by the contact group and by the Group of 77.

131. With regard to the remaining problems, the draft preamble was considerably improved as a result of the proposal put forward by the President. In general, the final clauses (FC/20) were acceptable, but his delegation had reservations regarding the provisions on entry into force and on reservations.

132. In view of the complexity of the problems within the purview of the First Committee, his delegation welcomed the constructive proposals put forward by the Chairmen of negotiating groups 1, 2 and 3. In particular, his delegation endorsed the proposal on production limitation put forward by the Chairman of the First Committee. Since the future convention would give rise to rights and obligations, only sovereign States could become parties to it, although the interests and needs of peoples that had not yet gained independence should be taken into account. In principle, his delegation endorsed the proposals regarding the review conference and the question of the compulsory transfer of technology.

133. His delegation endorsed the proposals put forward by the Chairman of the Second Committee, which resulted in considerable improvements in the revised negotiating text. In particular, it supported the proposal regarding the shortening of the term of office of the members of the commission from 10 to 5 years and the proposal concerning the manner in which coastal States should determine the limits of their continental shelf. It also endorsed the inclusion in article 76, paragraph 1, of the amendment proposed by the Chairman of negotiating group 7.

134. With regard to the work of the Third Committee, his delegation agreed that the right of coastal States to regulate or authorize scientific research in their territorial sea or in their exclusive economic zone should be protected, but it had reservations with regard to article 246, paragraphs 3, 4, 6, 7 and 8, and articles 249, 253, 254 and 255, which would be duly considered by his Government.

135. His delegation attached great importance to the question of the representation of special interests in the Council. As a potential producer of nickel and cobalt, his country was particularly concerned that the interests of potential producers of minerals should be represented in that body.

136. The future convention should not permit innocent passage of warships without the consent of the coastal State.

137. Lastly, his delegation endorsed the proposal put forward by Argentina concerning the adoption of a régime to protect migratory species.

The meeting was suspended at 6.40 p.m. and resumed at 7.55 p.m.

Mr. Andersen (Iceland), Vice-President, took the Chair.

138. Mr. WAPENYI (Uganda) said that, as the representative of a land-locked country, he wished to add his voice in support of solidarity within the Group of 77 regarding all the proposals which the Group wished to see renegotiated at the resumed session at Geneva. The land-locked States stood to lose if the convention was signed in its present form. They were defending not only their own interests but also those of the coastal States, which sought to obtain jurisdiction beyond the present 12-mile territorial sea.

139. The enunciation of the principle of the common heritage of mankind in 1973 had been intended to promote the welfare of all mankind. Since then, however, most States, and particularly most of the developed States, had changed their attitude and the Conference had become one of special interests. Although a total of 53 States had been designated as land-locked and geographically disadvantaged, there were in fact at least 67 such States: more than 20 Arab States, more than 20 African States, about 3 Latin American States, 7 in the Caribbean and 10 Asian States. That group of States represented more than two-thirds of the membership of the Conference and their needs should be taken into account. It was not too late to

take action along those lines and revive the common heritage principle. His delegation therefore added its voice to those who had called on the Conference not only to endorse that principle but also to affirm that the economic zone beyond the 12-mile territorial sea was not within the exclusive jurisdiction of the coastal States. If that was not done, some 10 States at the Conference—most of them developed countries—stood to gain the most. His delegation therefore suggested that resources in addition to those obtained from exploitation of the economic zone should be set aside to establish the common heritage fund. It was never too late to give due consideration to the poorest among the poor, who represented seven tenths of the world's population and must enjoy equal benefits under the convention.

140. His delegation attached great importance to the deliberations in the Second Committee, which would determine the transit rights to be accorded to land-locked countries. It was certain that, as the representative of a member of the Group of 77, the Chairman of that Committee would ensure that Uganda's concerns were borne in mind.

141. It had been intimated that States did not have the right to designate themselves as geographically disadvantaged. However, his delegation believed that that was a decision to be taken by the States concerned and that one State could not decide whether or not another State was geographically disadvantaged.

142. The proposals regarding the common heritage principle were in keeping with the preamble of the convention and with the effort to establish a new international economic order. With regard to the delimitation of the continental shelf, his delegation welcomed the proposal to establish a commission on the limits of the continental shelf to ensure that States did not extend their economic zones beyond the continental shelf.

143. Mr. TUBMAN (Liberia) said that the purpose of the Conference was to elaborate a convention governing the peaceful uses of the seas and oceans of the world. Considerable progress had been made in that effort, and it must now be recorded in a second revision of the negotiating text. In that connexion, the preamble prepared by the President was most appropriate because, brief though it was, it dealt with the objectives of peace, justice and progress for all peoples.

144. The fact that not everything recommended in the reports on First Committee matters was acceptable showed that an effort had been made in that Committee to achieve a proper balance. With respect to the question of technology, the concerns of the developing countries were clearly projected by the position taken by the Group of 77, and his delegation supported that position. Unless the Authority acquired, through the Enterprise, the technology with which to conduct viable operations within the area, the parallel system would never succeed. The Group of 77 approached that issue on the basis of good faith, which underlay the acceptance of the parallel system by all sides in the negotiations. However, formulations must be found by which good faith could be translated into binding commitments. The language so far proposed at the Conference reflected movement in the right direction but was not sufficient. Loop-holes which would make it possible to evade the obligation to transfer technology must be closed. In addition, suitable language must be found to ensure that appropriate technology would be transferred to enable the Enterprise to function on a par with contractors conducting operations within the area.

145. With regard to the need for a second look to determine whether the parallel system should be continued after an initial trial period, his delegation agreed that to require a three-quarters majority for the relevant decision would be going too far and that the provision for a two-thirds majority should be retained.

146. The competing interests involved in production limita-

tion were not easily reconciled. If the production of sea-bed minerals was to benefit all mankind, it could not be undertaken at the expense of land-based producers. At the same time, there must be a balancing of interests between such States and the entire international community, particularly those developing countries which were not land-based producers and which quite correctly expected that operations in the area would result in benefits to them.

147. Regarding the question of balance between the Council and the Assembly, his delegation believed that weighted voting on the one hand and a collective veto on the other must be equally resisted. With regard to the question of financing the Enterprise, his delegation found the work done in the working group of the Group of 77 to be praiseworthy and had no difficulty in agreeing to its being incorporated with minor modifications and clarifications into the second revision of the negotiating text.

148. The issues surrounding definition of the outer limits of the continental shelf were of concern to many countries, and his delegation understood why some States appeared to favour a lack of precision on the question of where the shelf ended. However, that approach could not be in anyone's long-term interests, because it had the potential for diminishing the scope and content of the common heritage of mankind and could lead to serious conflict. He therefore hoped that those concerns which required further negotiation would find expression in whatever formulation eventually came before the Conference in the revised text.

149. His delegation believed that everything possible should be done to promote rather than impede legitimate, genuine scientific research. That, however, could not be done in a manner inimical to the security interests of coastal States. Efforts at consensus which bore that consideration in mind would receive widespread support.

150. While the issues connected with the final clauses were not yet ready for constructive comment, it was not too early to stress that the envisaged preparatory commission must not pre-empt functions properly to be reserved for the new organs when they came into operation, nor should it be used as a means of continuing the negotiations which had already gone on for so long. After nearly a decade, the international community was anxious for the Conference to end and for the beginning of a new era of international relations based on closer co-operation among all nations in profitable endeavours in the seas and oceans of the world.

Mr. Djalal (Indonesia), Vice-President, took the Chair.

151. Mr. RICHARDSON (United States of America) said that the work done in the First Committee, the working group of 21 and the group of legal experts on the settlement of disputes relating to Part XI must inevitably be controversial, not least among those in his country who were contemplating investment in deep sea-bed mining. However, that fact and the fact that work had not been completed on all the outstanding problems did not detract from his delegation's belief that the new text (see A/CONF.62/C.1/L.27 and Add.1) provided an improved basis for negotiation and pointed the way to eventual consensus at Geneva.

152. Among the unresolved issues was the critical one of voting in the Council, on which some progress had been made in advancing the mutual understanding of delegations of the limits of each other's flexibility and of the necessity to give adequate protection to the real economic interests at stake in sea-bed mining. His delegation welcomed the significant progress reflected in the revised text of article 151 on production limitation but remained concerned that that article, as now drafted, might still unduly restrict the exploitation of the sea-bed. It also welcomed the improvements made with regard to technology transfer, although it was disappointed that article 10, paragraph 3 (e), remained in the text. That paragraph had nothing to do with ensuring the viability of the Enterprise, and

it seriously imperilled acceptance of any text in which it was found.

153. Following discussions with many delegations, his delegation had submitted a working paper (IA/1) on the important question of protection for mining investments made in preparation for the entry into force of the convention. It believed that the paper's introduction at the present time would afford all delegations an opportunity to study the matter before the Geneva session. Reasonable provisions on that subject would greatly facilitate and encourage ratification of the convention.

154. With regard to the work of negotiating group 7, and, in particular, paragraph 1 of articles 74 and 83, his delegation had not advocated the proposed changes and had no objection to the existing text. That should not be understood to mean, however, that his delegation objected to a decision to include the amendments to articles 74 and 83 in a second revision of the negotiating text. Moreover, the United States recognized that the proposed amendment to article 298 was an important contribution to consensus. In that regard, his delegation assumed that there would be an opportunity at the resumed session to ensure that paragraph 3 of articles 74 and 83 was amended to take account of the legitimate interests of third States as well as States directly involved, pending agreement on the boundary.

155. His delegation believed that the Second Committee and negotiating group 6 packages of amendments both constituted major steps forward and should be included in any revision of the negotiating text.

156. His delegation's support for the proposal on the continental shelf contained in the report of the Chairman of the Second Committee (A/CONF.62/L.51) rested on the understanding that it was recognized—and, to the best of his knowledge, there was no contrary interpretation—that features such as the Chukchi plateau situated to the north of Alaska and its component elevations could not be considered a ridge and were covered by the last sentence of the proposed paragraph 5 *bis* of article 76.

157. His delegation continued to believe that article 82, paragraph 3, was inequitable and unfairly burdened the least developed countries. He regretted that there had been insufficient time to consider his delegation's proposal, which offered greater opportunities for all developing countries to assess their economic situation in the future and choose the course of action best suited to their needs.

158. His Government could not accept amendments that permitted a coastal State to require prior notification and authorization for the passage of warships through the territorial sea. While it had always recognized the need to protect objects of an archaeological and historical nature, it opposed the revised seven-nation proposal (C.2/Informal Meeting/43/Rev.3). His delegation was prepared to consult with the sponsors on alternatives and hoped that those problems could be solved at the start of the Geneva session.

159. It should be no surprise that his delegation could not agree with some of the remarks of other speakers regarding the texts on marine scientific research. He had repeatedly witnessed the erosion of compromise proposals that themselves offered far less protection for marine scientific research than his delegation and the scientific community considered desirable. However, in a spirit of co-operation with the Chairman of the Third Committee, his delegation would withhold its own criticisms and reactions and was prepared to accept the Chairman's judgement that those texts, without further change, were the best that could be achieved and would promote general consensus (see A/CONF.62/L.50).

160. His delegation wished to express its appreciation to the President of the Conference and the chairman of the group of legal experts for their work on final clauses (FC/20) and related matters, particularly the preamble (A/CONF.62/L.49) which was ready to be incorporated into the revised negotiating text.

161. Despite all the concerns and reservations of different delegations including his own, the texts presented by the various Chairmen could bring the Conference within reach of a final agreement at Geneva. That was the single most important fact which should be borne in mind in the collegium in the course of its assessment of the debate.

162. Mr. KASANGA MULWA (Kenya) said that while his delegation was far from satisfied with the results that had so far emerged from the negotiations, it was sufficiently encouraged that those results offered a much better basis than the corresponding provisions in the revised informal composite negotiating text for the eventual resolution of the remaining issues. His delegation therefore supported a second revision of the text on the understanding that such a revision would provide a negotiating text, as opposed to a negotiated one, and that the revised text would retain the same informal character. That would ensure that the few remaining but important issues would be fully negotiated and resolved during the resumed session in Geneva. If those issues were resolved, his delegation would find no merit in a further informal revision of the text. The Conference could then proceed with a revision that would lead to a formalized text.

163. His delegation agreed with the previous speakers from developing countries that further negotiations were still necessary to resolve some outstanding issues in negotiating group 1, including issues relating to the review conference, sanctions against owners of technology that failed to transfer technology, and transfer of processing technology.

164. With regard to production policy, a majority of delegations agreed that the general formula presented in the compromise proposal was acceptable, a floor and a ceiling were essential for controlling sea-bed mining for the common good of the sea-bed miners, land-based miners and potential producers of the affected metals, and a split of consumption growth in the ratio of 60:40 was a compromise. The main question was what constituted an acceptable floor and ceiling. His delegation felt that with tireless efforts that question would be resolved at Geneva.

165. With regard to the financing of the Enterprise, the financial terms of contracts and the statute of the Enterprise, his delegation believed that much progress had been made in the right direction although there were still several issues which needed to be negotiated further. Among those issues was the question of whether the Enterprise should be exempted from making payments to the Authority in accordance with article 12 of annex II of the revised negotiating text. On the issue of whether the offices and facilities of the Enterprise should be granted immunity from direct and indirect taxation by the host countries, his delegation felt that it could accept the provision as it had now been amended by the Chairman of negotiating group 2.

166. Although considerable effort had been made to reach a compromise on the outstanding issues relating to the Assembly and the Council, not much had been resolved. With respect to the decision-making mechanism in the Council, his delegation was strongly opposed to giving veto power to any country or geographical region and felt that further consultations and negotiations were necessary in that regard.

167. Although the results achieved thus far in the Second Committee were not in all respects satisfactory, his delegation was particularly pleased with the results of the work undertaken in the informal meetings. It could agree with some of those results; for example, it believed that the revised formulation of the definition of the continental shelf was acceptable as a good basis for compromise. However, it was not happy that the proposal concerning the conservation of fish stocks adjacent to or beyond the 200-mile exclusive economic zone had not been included in the provisions agreed upon for the second revision of the negotiating text. Such a provision was useful and should be included in the revised text.

168. With regard to the work done in negotiating group 7, his delegation reiterated its belief that delimitation of the exclusive economic zone and the continental shelf between adjacent and opposite coastal States should only be effected through agreement in accordance with equitable principles. To do otherwise would mean an introduction of uncertainty in inter-State relations with attendant undesirable consequences. However, he welcomed the latest proposal by the Chairman of negotiating group 7 (A/CONF.62/L.47) on delimitation criteria for both articles 74 and 83 of the revised negotiating text. The proposal, however, required further study and could not at the present stage be reflected in the proposed revision of the text. His delegation disagreed with the observation of the Chairman of negotiating group 7 that the present formulation of articles 74 and 83 had proved unacceptable to a number of delegations. It would have liked to see the Chairman adopt the position that, in the event his formulation for delimitation criteria proved unacceptable, the fall-back position for further negotiations must be found in the provisions of the revised negotiating text, and there could be no question of an imposed solution such as the one recently proposed.

169. On the question of the settlement of delimitation disputes, his delegation continued to believe that compulsory third party binding procedures were not suitable and that such disputes should be settled through means other than those which entailed compulsory procedures with a binding effect.

170. With regard to the work of the Third Committee, his delegation had no problem in accepting articles 242, 247, 249, 255, 253 and even 254 as amended. Its acceptance of those articles was based on the need for a compromise and the understanding that the substance of each article remained unchanged. It was not comfortable, however, with paragraph 6 of article 246. As a developing country without any deep sea-bed mining technology, Kenya felt that the continental shelf should be left to the coastal States for exploration and exploitation of non-living resources as provided in article 77.

171. His delegation wished to reserve its position on article 264 on the settlement of disputes. That was in no way an opposition to the inclusion of that article in the convention, because the settlement of disputes was an important element for the parties involved and for mankind as a whole.

172. The text of the preamble went a long way towards meeting the expectations of many participants in the Conference, despite the fact that there were aspects which his delegation would have wished to see elaborated, for example, General Assembly resolution 2749 (XXV). Much progress had been achieved in the area of the final clauses. Those clauses were crucial because they related to the fundamental questions of amendments to the convention, reservations, relationship to other conventions and so on.

Mr. Al-Witri (Iraq), Vice-President, took the Chair.

173. Mr. SCOTLAND (Guyana) said that his delegation supported the inclusion of the preamble proposed by the President in a second revision of the negotiating text. With regard to the work of the First Committee, his delegation accepted that the text of article 151 on production policies as reflected in documents A/CONF.62/C.1/L.27 and Add.1 should be included in a new revision of the text because it enhanced the prospect for consensus on that question. As to the review conference, his delegation believed that further work was required on the text of article 155 of the above-mentioned document in order that it might offer to developing countries the prospect of an early end to any practices which, in the light of experience, might not faithfully reflect the principle of the common heritage of mankind. Paragraph 5 of that article was not altogether satisfactory.

174. With regard to the transfer of technology, the proposed wording of article 5 fell somewhat short of offering the assurance that the contractor would honour his obligations in the matter of technology transfer. His delegation felt that there was

need for further consideration of the term "activities in the area" as used in that article and also of paragraph 8 of the same article.

175. The articles on financial terms of contracts (annex II, article 12) and financing of the Enterprise (annex III, article 10) proposed in document A/CONF.62/C.1/L.27 appeared to maintain the elements of their relationship and his delegation supported their inclusion in a second revision of the negotiating text as being an acceptable basis for further negotiations.

176. While his delegation had no substantive comment to make concerning the Council or its decision-making faculty, it noted that appropriate protection of special interests on the Council could not mean the bestowal on any geographical or interest group of either the power of veto or the faculty for inflicting paralysis on the work of the Council.

177. With regard to document A/CONF.62/L.48/Rev.1. on the seat of the International Sea-Bed Authority, his delegation saw no need to revise the text of the revised negotiating text since that matter had not been discussed in the Conference.

178. With respect to the work in the Second Committee, his delegation supported the view that there was need for a clear definition of the concept of innocent passage as it applied to foreign warships. Prior notice and permission of the coastal State should form elements on that concept. Article 63 was deficient in its silence on the protection of fish stocks; his delegation therefore supported the proposal of Argentina, as amended, for the conservation of stocks in danger of being overfished in the area outside the 200-mile economic zone.

179. Concerning delimitation, his delegation noted that, had both sides been willing to talk to each other and about the issue, the task of the Chairman would have been lighter and the Conference closer to consensus. While it was accepted by all that only direct bilateral negotiations could resolve delimitation questions, it was not accepted by all that a starting point for the resolution of such questions should be the subject of self-interpretation. The record of the negotiations revealed that the criteria for delimitation as set out in paragraph 1 of articles 74 and 83 were not an acceptable basis for negotiation. Despite what was set forth in document A/CONF.62/62,⁴ paragraph 10, his delegation believed that, once a provision had been rejected by a large number of delegations, it should not once again find its way into a text being presented as a basis for further negotiations leading to consensus. His delegation believed that the text set forth in the report of the Chairman of negotiating group 7, paragraph 1, contained interesting elements upon which efforts aimed at reaching a consensus could be based.

180. His delegation wished to emphasize the interrelationship between delimitation criteria, interim measures and settlement of delimitation disputes and the necessity of seeing those questions settled together in the same package. It continued, however, to believe that for small weak States, the only reasonable relief from the burdens of uncertain criteria on delimitation rested in compulsory third-party settlement.

181. With regard to the work of the Third Committee, his delegation wished to reserve its position on the texts of article 246, paragraph 6, and article 264, paragraph 2. It would rely on the assertion by the Chairman of the Third Committee that those provisions did not intend a derogation from the sovereign right of the coastal State to control and regulate marine scientific research within its maritime zone. It seemed, however, that the sovereign right of the coastal State over the continental shelf suffered from some ambiguity as set forth in article 246, paragraph 6, which would create two zones with different régimes on the continental shelf of the coastal State. His delegation had reservations regarding that provision, and also regarding article 284, paragraph 2.

182. Mr. GUEHI (Ivory Coast) said that, at the present stage, a second revision of the negotiating text did not confer official status on that document: there should still be a possibility of negotiating on unresolved matters at the resumed session at Geneva. He would therefore confine his comments to the results of the current session.

183. The draft preamble represented a genuine improvement on that contained in the revised negotiating text, which did not correspond to the scale of the convention which the Conference was drafting. The new text reflected his delegation's principal concern and should be incorporated in the second revision of the negotiating text.

184. With regard to matters covered by the First Committee, his delegation, like many others, had serious difficulty in accepting the inclusion in a second revision of provisions which did not enjoy widespread support. In particular, the transfer of technology, which was a condition for acceptance of the parallel system, must be guaranteed once that system was accepted. His delegation considered that it was of primary importance that the Enterprise should be able to function in the same conditions of profitability and viability as did the entities operating in the non-reserved area. A procedure for reviewing the entire system must be established. One pre-condition for the survival of the Enterprise was that the system of financing continued until the Enterprise reached maturity, and was not confined to the first site unless it was certain that the Enterprise was capable of standing on its own feet and of being competitive.

185. With regard to the production system, he supported the Canadian proposal to delete the figures given in the revised negotiating text, believing that those figures could have harmful consequences for the vital interests of many existing and potential land-based producers.

186. In connexion with the decision-making machinery, his delegation could not countenance any mechanism which might tend to render the Council's decisions open to the tyranny of a majority or the veto of a minority. Vital interests were at stake, and the decision-making machinery was of fundamental importance in the search for a balanced package.

187. Turning to matters considered by the Second Committee, he said that his delegation would have preferred a clearer, simpler and more concise definition of the outer limit of the continental shelf, in which reference was made solely to the criterion of distance. The new wording sacrificed the interests of the international community, and his delegation therefore had reservations with regard to its inclusion in the second revision of the negotiating text.

188. The proposed articles concerning the commission on the limits of the continental shelf opened up broad possibilities for achieving consensus, but could none the less be improved upon. As a sponsor of document NG7/10/Rev.2 his delegation agreed with the point of view expressed by the co-ordinator of negotiating group 7 with regard to the criteria for delimitation of maritime frontiers. The new formulation submitted by the Chairman was less satisfactory than the existing wording in the revised negotiating text, and the reference to international law in particular seemed ambiguous. With regard to marine mammals, his delegation accepted the new wording, which would contribute to improved conservation and protection of those species and would promote regional and interregional co-operation.

189. Turning to the work of the Third Committee, he said that his delegation would have no difficulty with articles 242, 247, 249 and 255, on all of which consensus had been reached. While consensus had not been achieved on articles 245, 253, 254 and 264, they none the less enjoyed widespread support. In a spirit of compromise his delegation supported the Chairman's proposal to include them in the second revision of the negotiating text, with the proviso that the compromise

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

formulas contained in document A/CONF.62/L.50 should be re-examined.

190. Finally, his delegation supported the Group of 77 in its recommendation that Jamaica be chosen as the seat of the Authority.

191. Mr. GAYAN (Mauritius) said that the report of the co-ordinators of the working group of 21 had highlighted some areas which were of special concern to his delegation. He continued to believe that the parallel system was palatable to the Group of 77 only on the understanding that there would be an effective and viable Enterprise with adequate financing and access to the technology needed to exploit the sea-bed and to carry out related activities, and that that system would be reviewed after a period of 20 years. Those elements remained central to any package on the system of exploration and exploitation. Referring to the review conference, he recalled that the formulation of article 155, paragraph 6, in the revised negotiating text was itself the result of a compromise on the part of the Group of 77, which had sought an automatic reversion to the unitary system if the review conference failed. The version proposed by the Chairman of negotiating group 1 gave concern to his delegation, which believed that the idea of a moratorium ought to be retained in the text, and that any formulation tantamount to a non-review of the system of exploration and exploitation was unacceptable.

192. His delegation was also concerned by the addition of certain words in article 155, paragraph 2, concerning the non-reviewability of the participation of States in activities in the Area. The amendment rendered illusory the system which the Group of 77 had advocated, and which was in keeping with the spirit of the common heritage of mankind. While his delegation realized that certain States had problems with the existing text in the revised negotiating text, those problems could not be resolved in a manner detrimental to the very existence of the concept of the common heritage of mankind. His delegation wished to reserve its position on the changes proposed to article 155.

193. On the transfer of technology, his delegation fully endorsed the comments of the Chairman of the Group of 77, but noted that the Chairman of negotiating group 1 had made some effort to meet the apprehensions of the developing countries in that area. Although that was a hopeful step forward, he believed that the issue must be reconsidered at the resumed session at Geneva.

194. It was unfortunate that the current session of the Conference had been unable to address the question of voting in the Council in a businesslike manner. It was to be hoped that it would be resolved in a manner satisfactory to all the interested parties, since there was a necessary link between the decision-making system in the Council and the viability of the Enterprise. As for the Enterprise itself, all were agreed that it must be run on sound commercial principles, and his delegation believed that all means must be provided to ensure that the central goal was achieved. It also believed that the Enterprise should be free to dispose of its funds in the manner best suited to give concrete form to the common heritage. It was unacceptable that funds made available to the Enterprise by all States parties should be devoted to a single project. The Enterprise should have wide discretion in the way it made use of its funds, and it should have sufficient latitude to organize its activities on the lines of any other business concern. His delegation did not see the Enterprise as a forum where political issues were permitted to interfere with its programme of development. For that reason, the Council should not have the power to issue directives to the Enterprise, which would in any case naturally be subject to the budgetary control of the Assembly and the rules, regulations and procedures of the Authority. However, his delegation suspended judgement on that matter until it was able to study the decision-making mechanism in the Council.

195. Regarding the composition of the governing board of the

Enterprise, he found it difficult to accept the suggestion made in some quarters that there should be the equivalent of permanent seats for a certain category of States on the Board. That proposal had rightly been rejected by the Chairman of negotiating group 2, since it could not in any way be considered as substantially improving the prospects for a consensus. A governing board controlled by a group of creditors could not be considered sound commercial practice. The aim remained one of establishing an effective and viable Enterprise unfettered by unnecessary political considerations: to achieve that aim, the States parties should suppress their preferences for any particular social or economic system.

196. Turning to the topics discussed in the Second Committee, he said that his delegation could accept the text proposed by negotiating group 6 on the commission on the limits of the continental shelf, on the clear understanding that the text represented the final package. It agreed with the proposal that exceptional treatment should be accorded to the continental shelf of Sri Lanka because of its unique geological and geomorphological features. It also agreed that such an exception could be made by way of a statement of understanding by the President as part of the final act of the conference.

197. It was unfortunate that, in spite of very hard work, negotiating group 7 had been unable to find a method of delimitation which would meet with widespread acceptance, and he hoped that the problem could be successfully resolved at the resumed session.

198. With respect to the matters considered by the Third Committee, he believed that the formulation on marine scientific research on the continental shelf beyond 200 miles met the interests of all States parties. It was his understanding that the formulation was the final concession that could be made by the coastal States, and any further erosion of their sovereign rights in the field of marine scientific research would not be acceptable. He shared the view held by other representatives that the provisions in no way detracted from the right of the coastal State to refuse requests to conduct such research should that State consider such activities to be unrelated to research.

199. His delegation welcomed the new version of the preamble, believing that it reflected the spirit which gave rise to the Conference, and that it could be included without difficulty in the second revision of the negotiating text.

200. In general, the various proposals contained in the reports indicated the progress that the Conference had made on the outstanding core issues, and his delegation felt confident that they substantially improved the prospects for a consensus.

201. Mr. KRISHNADASAN (Swaziland) said that sufficient progress had been made at the current session to warrant a second revision of the package contained in the negotiating text.

202. Referring to matters considered by the First Committee, he said that article 155, paragraph 6, which was the result of an earlier compromise and which provided for a moratorium on sea-bed mining contracts, with the exception of contracts already approved or contracts in the reserved areas, was a better reflection of the philosophy underlying his delegation's concept of the common heritage of mankind than the new proposal for that paragraph prepared by the Chairman of negotiating group 1. However, in the interests of achieving a mutually acceptable compromise, his delegation would be prepared to support the new proposal for amendments to the system of exploration and exploitation, provided they were adopted by a two-thirds majority and became binding upon all States parties following ratification, accession or acceptance by two thirds of those States parties.

203. With regard to the transfer of technology, he believed that the proposal made by the Chairman of negotiating group 1, taken together with the proposals of Trinidad and Tobago for amendments to article 5, paragraphs 3 (b) and (c) and

article 5, paragraph 8, merited consideration for inclusion in the second revision of the negotiating text. He was not, however, convinced that the obligations of the operator, as defined in article 6, paragraph 7, should be limited to a period of 10 years after the *Enterprise* had commenced commercial production.

204. The proposals made by the Chairman of negotiating group 2 on financial arrangements for sea-bed mining and for the *Enterprise* offered a substantially improved basis for negotiations, and he believed they should be included in the second revision of the negotiating text.

205. The provisions on the settlement of disputes relating to Part XI of the convention constituted a closely interrelated and comprehensive system for the settlement of sea-bed disputes, and the delicate and mutually satisfactory compromises which had been arrived at should also be incorporated in the second revision of the negotiating text.

206. Commenting on the topics discussed by the Second Committee, he expressed regret that the text proposed for article 76 (definition of the continental shelf) was still unsatisfactory and that the latest proposal on submarine ridges, in paragraph 6 of article 76, was very unclear and imprecise. The one positive feature in the new proposals relating to the continental shelf was that, according to paragraph 8 of article 76, taken in conjunction with article 8 of annex II in document A/CONF.62/L.51, the limits of the shelf established by a coastal State should be on the basis of recommendations made by the commission on the limits of the continental shelf. His delegation had some reservations on a number of the articles relating to the commission itself, and particularly the machinery for election to that body, currently based on the principle of equitable geographical representation.

207. With regard to revenue-sharing beyond the 200-mile limit, his delegation saw article 82 of the existing text as an outstanding and unresolved issue, in that the rate of contributions specified in the article was too low. It would not, however, insist on an increase in the percentage, provided a greater element of justice and equity was introduced into the Conference's deliberations on the matter. That principle of equity was clearly represented by the proposal for establishing a common heritage fund, a proposal which would represent a real and substantial move in the direction of the new international economic order.

208. With regard to the final clauses, he believed that significant progress had been made at the current session, and that the beginning of the resumed session would see a satisfactory resolution of all outstanding issues. As far as the preamble was concerned, while the new version should be included in the second revision of the negotiating text, due regard should if possible be paid to eliminating the repetition in the first and seventh paragraphs. That could be achieved by ending the first paragraph after the words "the present Convention", and by replacing the words "develop" and "embodied" in the sixth paragraph by the words "embody" and "contained" respectively.

Mr. Hayes (Ireland), Vice President, took the Chair.

209. Mr. EVENSEN (Norway) said that, although significant progress had been made in the First Committee, as could be seen from the report of its Chairman, there were still outstanding issues, particularly with respect to questions relating to the composition and decision-making of the Council. The formula proposed by Jamaica was perhaps the most likely to succeed as a compromise solution. He attached importance to the proper representation of small and medium-sized industrialized countries in the Council, an issue which had been raised by the representative of Sweden. The smaller countries might have an outlook on certain issues which was somewhat different from those of the major economic Powers, and might thus have independent contributions to make in the new and largely unexplored field of economic activities.

210. He also felt that the final success of the Conference would depend on its ability to provide answers to the few outstanding questions still facing the First Committee. In particular, the production ceiling formulation might need some further examination, although the work accomplished by the Chairman of negotiating group 1 had been a major contribution to a final text.

211. His delegation believed that the reports of the Chairmen of the Second and Third Committees contained acceptable solutions to most of the outstanding issues within the purview of those two Committees.

212. His country was a coastal State with a broad continental shelf, and his delegation had therefore actively participated in the work of negotiating group 6 concerning article 76, on the outer limits of the continental shelf. Its position was that the concrete proposals currently being put forward represented an improved basis for consensus provided it was accepted that all the elements contained in the report of the Chairman of negotiating group 6 constituted an entity.

213. Referring to the work of negotiating group 7, he said that three implications might be drawn from its report: first, that the existing revised negotiating text should be amended; secondly, that the amendment could possibly follow the line suggested by the Chairman of negotiating group 7 and, thirdly, that further negotiations were needed on matters related to articles 74 and 83.

214. The negotiations on marine scientific research conducted in the Third Committee and in smaller informal negotiating groups seemed to have paved the way for a generally acceptable compromise text. He felt, however, that further improvements could still be made, in particular to article 246, paragraph 6. He was especially concerned by the use of the term "detailed exploratory operations" in the last sentence of that paragraph. He had been assured by various delegations that the term should be given a broad interpretation, in order to encompass a wide range of exploratory operations. In that context it should be borne in mind that the freedom of scientific research envisaged in paragraph 6, applied to resource-oriented research. Such research should not take precedence over the resource-oriented research conducted by the continental-shelf country concerned. Bearing that in mind, his delegation did not object to the existing wording of the paragraph, but reserved its right to revert to the matter again at a later stage, in order to clarify its position regarding the interpretation of the article. In conclusion, he endorsed the recommendation that the President's proposed preamble should be incorporated in the contemplated second revision of the negotiating text.

215. Mr. MANYANG (Sudan), referring to the work of the First Committee, said that he fully supported the position of the Group of 77 as presented at the 126th meeting by its Chairman. In that connexion, he drew particular attention to the issues of the transfer of technology and the review conference, questions which he believed had not yet been thoroughly examined. With regard to the negotiations on the composition of, and procedure and voting in, the Council, his delegation strongly favoured the establishment of a mechanism which would enable the majority of States to participate in the decision-making process.

216. In connexion with the work of the Second Committee, his delegation agreed with the rationale underlying the position of the group of Arab States, as stated by its Chairman, with regard to delimitation of the outer limit of the continental shelf. Consequently, the proposal put forward by the Chairman of the Second Committee could not be a satisfactory compromise to all parties concerned. The situation required further and comprehensive negotiations and consultations if a generally acceptable compromise formula was to be reached. His delegation also believed that the issue of revenue-sharing should be decided upon in a manner which would give special consideration to the interests of the developing countries. In the

delimitation of the continental shelf between adjacent or opposite coasts, his delegation favoured use of the median line as the criterion. However, there were special circumstances of historical heritage which should be linked with the principle of equity when the question was examined by the Council.

217. The report of the Chairman of the Third Committee showed that substantial progress and positive results had been made. At the same time, he emphasized his delegation's concern that, in article 254, the term "geographically disadvantaged States" should remain unaltered.

218. While supporting the inclusion of the revised draft preamble, he stressed that the principles enunciated in General Assembly resolution 2749 (XXV) should be reflected in the convention.

219. In conclusion, he expressed his delegation's satisfaction at the results achieved by the group of legal experts on final clauses.

220. Mr. MESLOUB (Algeria) said that any new revision of the revised informal composite negotiating text must have the same status as the negotiating text, and must not exclude the possibility of renewed negotiations.

221. With regard to the work of the First Committee, he said that there was a genuine risk, when dealing with the system of exploration and exploitation, of arriving at a system which, though certainly unitary in nature, would be the contrary of the system originally envisaged in the light of the principle of the common heritage of mankind. The system being proposed in the amendments amounted to a continuation of the exclusive role of private and State enterprises in the exploration and exploitation of the resources of the area. The survival of the Enterprise was thereby seriously jeopardized.

222. The elimination of the moratorium from the provisions concerning the review conference was a retrograde step. The proposed new system for the adoption of amendments could be construed as conferring virtual veto power, and the risk thereby arose that the parallel system, far from being temporary in nature, might become a permanent arrangement. His delegation preferred the provisions of the revised negotiating text in that respect.

223. Developing countries had been induced to accept the parallel system in part because of the transfer of technology, which was a necessary condition for the viability of the Enterprise. However, the Conference was now undermining the very concept of the transfer of technology, notably in the proposed reference to recourse to the open market and the proposed restrictions in the definition of technology. His delegation hoped that renewed negotiations would enable the Enterprise to acquire all the necessary technology to play its proper role.

224. The changes introduced regarding the tax immunity of the Enterprise were somewhat unclear, and his delegation preferred the wording of the revised negotiating text. With regard to voting procedures in the Council, it was essential to exclude the use of any veto provision, in the spirit of genuine international democracy.

225. The provisions of article 8 *bis* emphasized the burden placed upon the Enterprise. The industrialized countries were already in a monopoly position in the non-reserved area, and were now being given the opportunity of gaining access to reserved sites through joint ventures. There must be an anti-monopoly clause to cover activities in the reserved area. The problem could be solved by guaranteeing the Enterprise a majority share should it decide to engage in joint ventures.

226. With regard to the work of negotiating group 6, the question of the continental shelf and its limits remained one of the most important unresolved issues. The revision of the negotiating text in that regard had taken place under somewhat dubious circumstances. The so-called compromise proposal submitted by the Chairman of the negotiating group was not the outcome of negotiations within the group, nor had it ob-

tained the required majority. Unfortunately, in spite of the remarkably conciliatory spirit displayed by 20 Arab countries and numerous land-locked and geographically disadvantaged countries, a new formula had now emerged which endangered any hope of consensus; it lent added uncertainty to the external limits of the continental shelf, and infringed the concept of the common heritage of mankind. The views reflected in the Conference documents were those of a curious coalition of certain Powers joined by a handful of other countries.

227. With regard to the work of negotiating group 7, there was no agreement between the authors of documents NG7/2/Rev.2 and NG7/10/Rev.2. However, there was wide support in the Conference for the relevant provisions on delimitation in the revised negotiating text. The so-called compromise proposal annexed to the report of the Chairman of negotiating group 7 offered no prospects for compromise, and was rejected by the authors of the two documents. His delegation held the view that the principle of equity was the only rule of international law which could bring about a solution to the problems of delimitation. It would be a paradoxical step to bestow the status of law on delimitation techniques such as the median line or equidistance, which had been shunned in recent court decisions.

228. With regard to the régime of islands, article 121 of the revised negotiating text was extremely dangerous, and could lead to serious disputes if applied, as tiny islands might gain more importance than individual States. He hoped that the Conference would have an opportunity to return to the issue, in order to prevent the presence of islands affecting delimitation.

229. An amendment had been proposed to article 21, rendering the passage of warships in territorial waters subject to authorization and prior notice, and his delegation favoured its incorporation in the second revision of the negotiating text.

230. His delegation hoped that the Conference, which had already lost a unique opportunity for international co-operation of a fruitful and original nature, and had chosen to ignore the new international economic order, would not commit any further errors. It had the grave responsibility of avoiding the establishment of dangerous precedents, such as decision-making machinery which was not in accordance with the requirements of international democracy.

231. Mrs. YUSOF (Malaysia) said that it was imperative for all the outstanding issues to be resolved before the negotiating text could be given the status of a draft convention. The second revision of the text need not necessarily be the final one.

232. Issues dealt with in the First Committee must be resolved in an equitable manner, and in accordance with the concept of the common heritage of mankind, in order to achieve a just régime of the international sea-bed area.

233. With regard to the work of the Second Committee, Malaysia was one of many coastal States which were concerned to see their rights protected without prejudice to the interests of other States. One difficulty concerned the legal régime of the Straits of Malacca and Singapore, which posed special problems owing to their navigational and geographical characteristics. She hoped that the commitment given by major users of the Straits to resolve those problems satisfactorily with the coastal States concerned would continue to be adhered to in future.

234. There were certain ambiguous terms in the articles falling within the purview of the Second Committee and they must be given precise definition to avoid unnecessary misunderstanding in the future application and interpretation of the Convention.

235. The formula recommended by the Chairman of negotiating group 7 concerning the criteria for delimitation was acceptable to her delegation.

236. Progress had been achieved in the Third Committee towards a satisfactory solution regarding marine scientific re-

search; however, article 246, paragraph 6, was one of several provisions requiring further negotiation.

237. Her delegation was one of those which supported the preamble.

Mr. Imam (Kuwait), Vice-President, took the Chair.

238. Mr. KOROMA (Sierra Leone) said that his delegation had considered the outcome of the negotiations in the light of the need to assist the collegium to determine whether progress had been achieved towards the goal of harnessing the mineral resources of the sea-bed for the benefit of both developed and developing countries.

239. With regard to the exploration and exploitation of sea-bed resources, the Enterprise must be provided with all the necessary technology in respect of mining, processing and marketing. However, that goal would be frustrated if contractors, while agreeing to transfer their own technology to the Enterprise, failed to undertake that third-party technology used in their operations would also be transferred. His delegation therefore welcomed the proposed provision to the effect that, failing an assurance to transfer the technology in question, it could not be used by the operator in carrying out activities in the Area. His delegation also welcomed the proposal to change the requirement for ratification from a three-quarters majority to a two-thirds majority, as that would prevent the establishment of a parallel system not subject to review.

240. With regard to the financial arrangements, his delegation looked forward to the proposed changes relieving the Enterprise of the requirement to pay charges to the Authority, and exempting its assets and facilities from taxation. There must be further examination of the issue of contributions in the case of a shortfall not exceeding 25 per cent, as the present provision was open to various interpretations. In terms of risk and financial sacrifice, the sacrifice to be made by the developing countries was as great as, if not greater than, that of the developed countries.

241. With regard to the Council, its membership must be democratic and representative of the interests of both developed and developing countries. The introduction of the veto would be a retrograde step, contrary to the common heritage principle. His delegation endorsed the proposal for the establishment of a common heritage fund. It also believed that the principle of the non-use of force applied equally on sea and on land, and that all States should refrain from the use of force against the territorial integrity of any State.

242. Mr. AL BAHARNA (Bahrain), recalling the comments made by his delegation on its reservations with regard to the reports of the Committees, said that he supported the position of the developing countries on First Committee matters. He especially supported the retention of article 155, paragraph 6, of the revised informal composite negotiating text relating to a moratorium on operations. That provision should not be replaced by the text of article 155, paragraph 5, proposed in documents A/CONF.62/C.1/L.27 and Add.1. He supported the retention in annex II of the text of article 5, on the transfer of technology, called for by the developing countries.

243. He also supported the position of the developing countries on the Assembly and the Council and the need for a harmonious distribution of powers in the Authority. The voting majority should be two thirds, and not three fourths, as provided in the new text of article 161, paragraph 7. He had no objection to the proposals regarding the settlement of disputes relating to Part XI, and hoped a consensus could be achieved on that question.

244. With regard to the work of the Second Committee and the definition of the continental shelf, his delegation supported the position of the Arab States. In article 76, paragraph 5, the criterion of depth should be set aside, as it would lead to an undesirable extension at the expense of the international Area. With regard to the question of oceanic ridges, he did not accept

the amendments proposed in the report of the Second Committee: they were vague and failed to provide an acceptable legal definition. Nor did he accept certain provisions in annex II, relating to the functions and composition of the commission on the limits of the continental shelf.

245. He opposed the wording of article 82 in the revised negotiating text, on payments with respect to the exploitation of the continental shelf beyond 200 miles, as the schedule of payments should be entirely revised to provide increased payments for the benefit of countries adversely affected by the extension beyond 200 miles. The article should also be amended to delete the reference to exemptions for the first five years.

246. In the light of the need to protect the rights of geographically disadvantaged States in the exclusive economic zone, his delegation opposed article 70 of the revised negotiating text. Geographically disadvantaged States had a right to participate on an equal basis in the exploitation of the living resources of the exclusive economic zone. There was also a need to reach a concrete definition of geographically disadvantaged States, to ensure that they could benefit from certain privileges in the exclusive economic zone, and to amend article 70 accordingly. The word "surplus" should be deleted, and the expression "nutritional purposes of their populations" should be replaced by a more suitable phrase, such as "the economic and development needs of the population". Article 62 of the revised negotiating text should be amended to reflect the right of geographically disadvantaged States to participate in fishing activities in the exclusive economic zone.

247. With regard to the report of the Third Committee, his delegation supported the deletion of article 246, paragraph 4. That paragraph was a superfluous interpretation of the term "normal circumstances" in paragraph 3. He also supported the position of the geographically disadvantaged States regarding the amendments to article 254, which should be retained in its existing form.

248. With respect to the settlement of disputes regarding boundaries between opposite or adjacent States, the provisions of the final clauses of the revised negotiating text should be retained.

Mr. Tubman (Liberia), Vice-President, took the Chair.

249. Mr. RATTRAY (Jamaica) said that the views now being expressed by delegations were of a preliminary nature. The debate had given an opportunity to assess whether proposals arising from the work of the committees and working groups were widely supported and would foster consensus. In the view of his delegation the revised informal composite negotiating text could not properly be regarded as a consensus document: it was a negotiating text. The second revision would reflect a general consensus, and that consensus must be achieved by positive and demonstrable support for each step. The various elements of the package offered an important basis for further negotiations. For example, the preamble was good material for negotiation, and should be incorporated in any revision of the negotiating text.

250. Considerable work had been done in the First Committee to refine the issues involved, and the results could be incorporated in a second revision. However, further negotiations were needed on such topics as the review conference and the moratorium.

251. With regard to the transfer of technology, there were a number of outstanding problems. In order for the parallel system to work, the Enterprise must have the necessary technology to operate in parallel with State and private enterprises. There must be adequate assurances regarding access by the Enterprise to processing technology. There was a need for further clarification in article 5, paragraph 7, of annex II, which, as currently drafted, might prohibit the Enterprise from obtaining technology from the contractor after 10 years had

elapsed from the beginning of production by the Enterprise. The 10-year limit should apply to production under individual contracts, so that the Enterprise was certain of obtaining the technology used.

252. With regard to the work of negotiating group 3, there was a need for an acceptable compromise on the decision-making mechanism, to protect vital interests while avoiding obstructing the work of the Council. Further negotiations were needed on the work entrusted to negotiating group 7.

253. As for what had already been said regarding the seat of the Authority, he reserved the right of his delegation to elaborate further on the basis on which the name of Jamaica had been incorporated in the text, and to indicate why there was no basis under the rules of the Conference for any revision of the negotiating text on that issue.

254. Mr. RAHMAN (United Nations Council for Namibia) said that the Council would like to express its gratitude to the Conference for accepting it as a full member and giving it the opportunity for meaningful participation in the negotiations.

255. The Council must record its dissatisfaction with some of the proposals which had emerged. The report of the co-ordinators of the group of 21 to the First Committee revealed the erosion over the years of many substantial provisions which might once have served as a basis for compromise. His delegation was alarmed at the attempt to amend article 140 of the revised negotiating text to limit the sharing of benefits to States parties to the convention, to the exclusion of peoples who had not yet attained full independence. Such an attempt was a misinterpretation of the fundamental principle that the sea-bed was the common heritage of mankind, and that activities carried out in the Area should be for the benefit of mankind as a whole. According to Decree No. 1 for the Protection of the Natural Resources of Namibia, no animal resource, mineral, or other natural resource produced in or emanating from the territory of Namibia was to be taken to any place outside the territorial limits of Namibia by any person or body without the consent or permission of the United Nations Council for Namibia or of any person authorized to act on behalf of the Council.

256. The transfer of technology, including processing technology, was a thorny question. Legally binding assurances that the owners of technology would make it available to the Enterprise were not enough; developing countries must be able to rely on the arrangements. The provision blacklisting the owner of technology, as contained in annex II, article 5, paragraph 1 (b) of the revised negotiating text, should therefore be main-

tained. Any failure to honour obligations to transfer technology would jeopardize the viability of the Enterprise.

257. As a new international economic entity involved in seabed mining for the benefit of mankind as a whole, the Enterprise should be immune from taxation on its assets, property and revenues, as specified in annex III, article 12, paragraph 5, of the revised negotiating text. Otherwise the Enterprise risked being taxed out of existence within a short period.

258. Issues in the Second Committee with a definite bearing on the development of Namibia related, in particular, to areas of national jurisdiction and the rights of coastal States. In the view of the Council for Namibia, the outcome of the negotiations on the territorial sea, the exclusive economic zone and the continental shelf, as contained in the revised negotiating text, adequately protected the interests of Namibia as well as those of third States. The Council attached particular importance to articles 2 and 3 on the juridical status and breadth of the territorial sea, article 10 on bays, article 55 on the specific legal régime of the exclusive economic zone, article 56 on the rights, jurisdiction and duties of the coastal State in the exclusive economic zone, article 61 on conservation of living resources, article 62 on the utilization of living resources, article 76 on the definition of the continental shelf, and article 77 on the rights of the coastal State over the continental shelf. The exploitation of living and non-living resources in the areas which should be under Namibia's jurisdiction was of vital importance for its people, who alone were entitled to derive benefit from such exploitation.

259. His delegation also supported the balanced compromise which had emerged from negotiating group 4, dealing with the access of land-locked and geographically disadvantaged States to the living resources of the exclusive economic zone, as well as articles 69, 70, 71 and 72, and Part X on the right of access of land-locked States to and from the sea and freedom of transit.

260. His delegation also welcomed the progress achieved in the Third Committee in respect of the conduct of marine scientific research. It was to be hoped that the issue would be satisfactorily resolved, as consensus had already been reached on articles 242, 247, 249 and 255, and was emerging in respect of articles 246, 253, 254 and 264.

261. The Council for Namibia was willing to make every effort to reach agreement on the outstanding issues, and was confident that the second revision of the negotiating text would represent a significant step towards the ultimate adoption of a universally acceptable convention.

The meeting rose at 10.25 p.m.

129th meeting

Friday, 4 April 1980, at 11:25 a.m.

President: Mr. H. S. AMERASINGHE

The seat of the International Seabed Authority

1. The PRESIDENT drew attention to the draft decision contained in document A/CONF.62/L.48/Rev.1 and said that, following consultations with the various groups, it had been decided that the foot-note to article 156 of the revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1) should be expanded to include the following sentence: "The Conference decided that at an appropriate time the Conference should be given an opportunity to express its preference among the candidatures of Jamaica, Malta and Fiji by means of a vote, unless the Conference decided otherwise."

2. If he heard no objection, he would take it that the Conference agreed to the addition of that sentence.

It was so decided.

Organization of future work of the Conference

3. The PRESIDENT said that following consultations with a cross-section of delegations and bearing in mind the decision which the Conference had taken to the effect that it must complete its work by the end of its ninth session he was proposing the following time-table for consideration by the Conference. First, the Drafting Committee should meet before the Conference resumed its session, possibly from 9 to 27 June 1980 in New York, to enable that Committee to complete the harmonization of the various language texts and to start the revision of the text itself. Secondly, the first two weeks of the resumed session should be devoted to the continuation of negotiations on all outstanding issues. Discussions would continue concurrently in informal meetings of the plenary Conference regarding the final and general clauses and the prepar-

ANNEX 35

Debate in Mauritius' Legislative Assembly of 28 June 1980

(10.26 p.m.)

The Attorney-General and Minister of Justice (Mr. Chong Leung) : Mr. Speaker, Sir, I move that the Interpretation and General Clauses (Amendment) Bill (No. XIX of 1980) be now read a *second* time.

This Bill seeks to amend the Interpretation and General Clauses Act 1974 by remedying certain defects which have become apparent over the years whilst at the same time making provision for certain essentially technical matters.

In the present state of our law, the definition of "State of Mauritius" or "Mauritius" does not specifically include Tromelin and the amendment proposed in the Bill seeks to remedy this defect.

Moreover questions relating to the service of process on corporations generally and their representation in Court are not free from doubt. Clauses 7 and 8 of the Bill are designed to remedy this defect by making unambiguous provisions on that particular aspect of court procedure.

In the past, the prosecution of persons for offences under several enactments has given rise to avoidable difficulties. The proposed new section 46 of the Act which is embodied in clause 9 of the Bill seeks to put the law on a more rational basis by ensuring that, although a person may be prosecuted under several enactments for the same act or omission, he will nevertheless be punished only once for offences arising out of the same act or transaction.

The Bill further provides that on the issue of any licence, permit or authority, the Government may impose terms and

conditions on the licence, permit or authority not only at the time of its issue or renewal but also during its currency.

New provision is made regarding certain corporations and other bodies. These new provisions are of an essentially technical nature. At present, certain bodies cannot operate because when they are just established, all the members thereof have not been or cannot be appointed. This Bill proposes to make provision for such bodies to operate notwithstanding vacancies when first established provided the requirements regarding quorum are satisfied.

Certain bodies may not operate in the absence of the Chairman. Provision is therefore made for these bodies to carry out their activities notwithstanding the absence of the Chairman, unless the Chairman is required to be present for the purpose of a quorum.

At present there are occasionally unavoidable delays in the reappointment of the members sitting on certain bodies. This prevents business from being transacted. This Bill therefore provides for the outgoing body to operate pending the appointment of the incoming body.

With these few remarks, Sir, I commend the Bill to the House.

Mr. Purryag rose and seconded.

(10.28 p.m.)

The Leader of the Opposition (Mr. A. Jugnauth) : Sir, this Bill again contains many provisions that are welcome by this side of the House and, there is that section 46 of the principal Act, wherein it is provided that :

"Where a person on the same fact may be committing more than one offence under different enactments, he should not be made to be punished twice."

It is very reasonable. As a matter of fact, I myself have experienced a case, where, on the same fact, even under one enactment, under the Public Order Act, someone was found with an offensive weapon in his possession with which he had threatened to strike somebody else. He was prosecuted for two offences :

- (1) for being in possession of an offensive weapon and
- (2) for intimidation with that offensive weapon.

I personally feel that this is not correct, this is not reasonable and in fact, it becomes a persecution, ultimately.

One other thing : it is provided also that, in case of societies and corporate bodies, anybody duly authorised, can represent that body. That is also a very good measure but, Sir, we, on this side of the House, feel that, in section 3 of this Bill which deals with the definition of "State of Mauritius", there is a great omission on the part of those who have drafted this Bill ; and, if it is, in fact, done purposely, it is a policy matter, well we believe that those who have done it must take the blame for it. Because we think, on this side of the House, that in the definition of "State of Mauritius", wherein we are now adding the word "Tromelin", we believe that we should have gone further and added "Chagos Archipelago".

Sir, I do not want to go into the whole history of the Chagos Archipelago, but we know that there have been certain deals between the Government of this

country when it was a colony and before independence was granted to this country, and the British Government. There was an Order in Council, by which the Chagos Archipelago was taken away from the territories forming part of Mauritius, and it has since been called the British Indian Ocean territory. There has been a lot of controversy on that, and at the beginning, we know the explanation that has been given by the Rt. Hon. Prime Minister as to what was the real transaction concerning this. We were made to understand, at one time, that we had all our rights preserved over these islands and that, as a matter of fact, only certain facilities had been granted. Well, ultimately, as time went on, we were told finally that, in fact, there has been a sale and what not ; but one thing is certain — this is very clear to everybody in this House and the country at large, this has been mentioned throughout — that in fact, there is nothing in writing, that everything was done verbally. Therefore so far as we are concerned, we understand the position to be that the only thing that there is in writing is that Order in Council, nothing else ! And that is why we maintain that, being given that we were still a colony, and being given the United Nations Resolution, that, before a colony is granted its freedom, the power which had colonised that country has no right to extract any part of its territory, therefore we consider that it was something completely unilateral and it has no validity whatsoever ; and we, in the Opposition, have made it very clear, we have even written to the British Government, stating what is our position in the MMM, and that if ever we come to power in this country, what stand we are taking as regards the Chagos Archipelago. When Mr. Luce was here recently, I conveyed this very clearly to him and I even in-

sisted that he should see to it that, even now as it is, we be allowed to use all facilities — except for Diego Garcia, where there are certain military installation, at least for the time being — that we be allowed even to make use of the other islands where there is no military installation. I can say that Mr. Luce listened to me with great attention and even promised me that he was going to raise this matter with his Government. I hope that, later on, we will hear from the British Government, we will know what is their stand concerning this matter.

Therefore, Sir, we believe that we will not be doing a good service to our country and to the generations that will be coming, if we ourselves to-day, commit that mistake of omitting, from the description of the "State of Mauritius", the Chagos Archipelago.

For this reason, I want to make it very clear that at the Committee stage, I am going to move that this also be inserted in the description of the Mauritian territory. Thank you Sir.

(10.39 p.m.)

Mr. T. Servansingh : (Third Member for Port Louis South & Port Louis Central) Sir, I shall speak on clause 3 of this Bill, about the amendment which the hon. Leader of the Opposition proposes to introduce at Committee stage. Sir, I am sure that there can be a lot to say about future power politics in the Indian Ocean, about keeping Indian Ocean a zone of peace and so on ; but the point I would like to make to-day is that when we are talking of the definition of the national territory, we, on this side, want that the Chagos Archipelago should be included in this definition of ...

Mr. Speaker : It should be better if the point could be taken at the Committee stage, when the motion has been made, then the hon. Member would explain.

(10.40 p.m.)

Mr. Chong Leung : Mr. Speaker, Sir, the Leader of the Opposition has stated that there has been an omission in the definition of the State of Mauritius, because Diego Garcia has not been included in that definition. First of all the definition of the State of Mauritius is wide enough to cover any island which forms part of the State of Mauritius. In section 2 of the Interpretation Act No. 33 of 1974, State of Mauritius includes :

- (1) the islands of Mauritius, Rodrigues, Agalega and any other island comprised in the State of Mauritius,
- (2) the territorial sea and the air space above the territorial sea etc. etc.

But the main reason why it has not been included ...

Mr. Speaker : I am sorry to interrupt the hon. Minister. This point will be taken at the Committee Stage, because many Members are going to raise the same point. The Minister will have time to answer.

Mr. Chong Leung : I thought that if I could dispose of it once and for all, it would be better.

Mr. Speaker : All the arguments of the Opposition have not been canvassed.

Mr. Chong Leung : I accept your ruling.

Question put and agreed to.

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the operation of the National Pension Fund. This situation could not continue and, therefore, we welcome this Bill, although we feel that it does not go far enough. The employers, we feel, should have been taken at their word, should have considered that the contribution to the National Pension Fund was an increase in fact in salary, and the whole of the severance allowance payable should have been maintained without any deduction at all. This is a half-way measure. We understand that this is the best that the Minister concerned could obtain from all the forces that come into play when such matters have to be decided. Therefore, for the time being we will accept this, but we want to make it very clear, that this is *un pis aller*; we are not going to stop there, the unions are not going to stop there; we are going to press for the restoration of the usual right, the former severance allowance, without any deduction at all.

One further remark that I would like to make, Sir, concerns clause 4 subsection (5), where the worker retired by the employer on attaining the age of 60 is treated. We would have wished the Minister to go much further than he has gone there. In the original Labour Act of 1975, the faculty was given to the employer to retire a worker at the age of 60 on payment of severance allowance at the normal rate. This was a good thing, but it did not go far enough, inasmuch as the worker who attained 60 did not himself have the faculty to ask to be retired, or to retire himself and to obtain severance allowance. Throughout our legislation, ever since the Employment and Labour Ordinance was introduced, severance allowance has been treated as a form of pension, because deductions were allowed for pension schemes and gratuities payable outside that particular piece of

law. So that to all intents and purposes severance allowance has been treated as a form of pension. Therefore it was anomalous that workers who attained the age of 60 could not themselves say: "All right, I am old now, I want to be retired, pay me my severance allowance". In effect we have created two categories of workers, two categories of Mauritians: on the one hand, there were workers employed in the public service and in the parastatal bodies, who automatically, on attaining the age of 60, could claim their right to retire and to payment of a pension. In fact they were not normally allowed to stay on.

It was considered, for that class of Mauritians, that they could retire, that they had done their duty towards society and they had earned the rest that they deserved for the remainder of their lives. But, as far as the private sector was concerned, no such provision was made. It is only the employer who would decide that he was going to retire So and So. In practice, what happens, Sir? The Minister is well aware of many concrete cases in the sugar industry, in the docks, particularly among large employers of labour. In practice, whenever an employee attains the age of 60, they just sit quiet, as if nothing had happened, they wait for the worker to retire, or to abandon his job, or even die in some cases, to fall ill, not to come to work, and to get rid of him in that manner without having to pay any compensation at all. I know of such cases, and, indeed, the hon. Minister knows cases like that. To-day, in the docks, there are 25 employees who are aged between 65 and 75 — there is even one employee who is aged 75, who has worked for 46 years in the docks. To-day he is half blind, Sir! He is one of several hundreds in a work force. The employer has not considered that he has

Mr. Venkatasamy : In clause 3 (a)

" Any person may appeal to the Minister "

Subsection (b) :

" The Minister's decision on hearing the appeal "

but there is no mention about the decision on the appeal itself. There is a decision on hearing the appeal, but what about the decision of the Minister on the appeal itself ?

Sir Veerasamy Ringadoo : I think, to make it better English it is being suggested that I should delete the word ' on ' and replace it by ' after '.

Clause 3, as amended, ordered to stand part of the Bill.

The title and enacting clause were agreed to.

The Bill was agreed to.

The following Bills were considered and agreed to :

- (1) The Intermediate and District Courts (Criminal Jurisdiction) (Amendment) Bill (No. XVI of 1980).
- (2) The Courts (Amendment) Bill (No. XVIII of 1980).

(1.20 a.m.)

THE INTERPRETATION AND GENERAL CLAUSES (AMENDMENT)

BILL (No. XIX of 1980)

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3 (Section 2 of the Principal Act amended)

Motion made and question proposed : " that the clause stand part of the Bill "

Mr. Jugnauth : Sir, I move for the following amendment in clause 3: that the word ' Tromelin ' " be deleted and replaced by the words " ' Tromelin ' and Chagos Archipelago ' "

Mr. Doongoor : Sir, I also want to move an amendment to add to what the hon. Leader of the Opposition said : that " Seychelles " also should be included in this. *(Laughter)*

Mr. Jugnauth : When we have an amendment, Sir, my hon. Friend wants to move another amendment; it will come in time.

The Chairman : May I point out to Hon. Doongoor that Seychelles is an independent country, we cannot have this amendment ?

Mr. Cheng Lenn : On a point of order, Sir, when the hon. Parliamentary Secretary, Ministry of Power, Fuel & Energy proposed an amendment to include Seychelles, some Members have laughed. I do not think that this is a laughing matter.

Mr. Jugnauth : Sir, I am on my feet, I have moved an amendment and I have not finished.

The Chairman : If the hon. Member has not finished, he may continue.

Mr. Jugnauth : Sir, I will explain why I am moving this amendment; we all know that the Chagos Archipelago forms part of the territory of Mauritius;

that, before independence was granted to this country, this part of our Mauritian territory had been excised by the British Government unilaterally. I say "unilaterally", because, as I said a moment ago, when we were having the second reading of this Bill, those who represented Mauritius then, were not representatives of a sovereign country. We were still a colony and, as we know, the British Government, before it gave independence to this country, had no right whatsoever to dismember the territory that belonged to Mauritius; for this reason, we maintain that we have all rights on the Chagos Archipelago, specially when we know, it has been said in this House and outside by the Rt. Hon. Prime Minister that, as a matter of fact, only certain rights were granted to the Britishers over these islands. Even at one time a period was mentioned, and we were told that we had reserved all our rights all round the island, over the islands; all the minerals that would be found, we were even told, could be exploited by Mauritius. The more so, we have been told that there is no written agreement whatsoever between this country and Great Britain. So far as we are aware, Sir, there is but an Order in Council which has created the British Indian Ocean Territory. Some people are speaking of Seychelles, but we know that there are some islands belonging to Seychelles, which were also excised in the same manner, but which Seychelles has recuperated and which have been given back to the State of Seychelles. Therefore, as I have said before, so far as the Opposition is concerned, we have made our position very, very clear, *vis-à-vis* the British Government and, in fact, I discussed this matter with Mr. Luce. For this reason, we are coming forward with this amendment. We know, on different occasions, there had been statements made

by the Members on the other side. There have been even campaigns made on the question of Diego Garcia, outside and for all intents and purposes, we have even been told, in the past, by the Prime Minister: "What do you expect me to do? Take a boat or to take guns and go and take Tromelin and Chagos and whatever it is?" Therefore what we are saying is that, for whatever it is worth, I think we will be asserting our rights by doing what I am suggesting: adding, to the definition of Mauritian territory the Chagos Archipelago. Because, if we, to night, reject this, I think the whole nation realises that, in so far as the recuperation of these islands in future is concerned, how difficult we are going to make our own position in the international forum and *vis-à-vis* Great Britain and the United States.

Therefore I strongly appeal to all the Members on the other side. This is not a partisan question: this is something very serious and very important, something which has to do with the sovereignty and the territory of our country. We will appeal to them to take it as seriously as possible; this vote that we will be taking tonight will be of very great importance for this country, and I hope that my Friends on the other side do realise the importance of this matter.

Mr. Bhayat: Sir, it is very sad that in this House, at this very late hour, we are taking such a serious matter so lightly. This is not a laughing matter and I hope Members will listen carefully to what we are saying because, this very week in the Lok Sabha — and the Prime Minister will be glad to hear this — this very week in the Parliament in New Delhi, a Parliamentary Question has been put by a Member of the Assembly as to what stand has Mauritius taken regarding

the return of Diego Garcia? And in the Lok Sabha, Mr. Chairman, we do not hear wishy-washy answers, like "As far as I know, I do not know". A very serious answer will, I am sure, be given there.

(Interruption)

By the Indian Government, of course we have to say, from information that they will receive. I do not know where they will get the information but they will give information and Ministers there will come to know about it. If they do not come to know about it, I will communicate the reply of the Minister concerned. I am sure that the reply will make Mauritius the laughing stock of the whole of India and of the whole of this region! This is why I have said this is a very serious matter and we ought not to take it so lightly.

Having said this, Mr. Chairman, we have seen hon. Doongoor coming and saying that he will propose an amendment to include Seychelles in the territory of Mauritius. This is so laughable that I do not want to spend any time on this, except to say that Seychelles is so much so a sovereign country, and was so much so a sovereign country in 1965 — there was an attempt to excise the islands belonging to it, in 1965, at the same time as the Chagos Archipelago was excised. There were the islands of Farquhar, Aldabra and two other islands — through the efforts of the Government of Seychelles which many Members of Government do not seem to like, through their intervention in international forum, these four islands have been returned to them. There is no question of sovereignty of the British Indian Ocean Territory. There is only one document purporting to create the

British Indian Ocean Territory and it is the Order in Council published in England on the 8th November, 1965 and reproduced under the signature of the Colonial Secretary, Mr. Tom Vickers, on the 30th of November 1965. It is only reproduced here for general information, and in fact it says so, "for general information, this is the Order in Council that has been passed in Westminster". But, we, in this country, we have never accepted this. We have always challenged this on the ground that, as a country which was on the verge of becoming independent, there is a very clear United Nations resolution that the Colonial power has no right to excise any part of a Colony before granting independence! This has been said, this is being repeated again today, by the Leader of the Opposition; and when we say it, we do not say it in the air. Britain knows about it, England knows about it and the United States know about it! If they did not know about it, they would not have sent Mr. Sheridan to Mauritius! Everybody knows what happened! When Mr. Sheridan came to Mauritius last year, sent by the British Government and received by the Prime Minister officially, in his *campement*, given an official car, given a Police escort, given an interpreter, officially here, sent by the British Government! For what purpose?

The Prime Minister: To help the people.

(1.35 a.m.)

Mr. Bhayat: To help the people! To come and do what we called an act of treason! To ask Mauritians to renounce their right to return to their country! This, to me, is an act of treason! Mr. Sheridan, when he came here, he committed an act of treason!

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Mr. Sheridan, when he came here, he committed an act of treason ! Anybody who helped him, was not helping the people; he was helping Sheridan to commit an act of treason, to induce Mauritians to commit an act of treason, to renounce their sacred right, to renounce their right recognised internationally, to have their land, to belong to their land, and to own their land, and to be sovereign on their land ! If the BIOT was sovereign, as some Ministers are trying to say, why did they send Mr. Sheridan ? Why did the Prime Minister have to give help to Mr. Sheridan, to get him to get these poor people to sign these papers, to renounce ? And they have not renounced ! The Prime Minister has not answered to several PQs which were put to him; he played the ignorant, the person who did not know anything, as usual, when he wants to hide things to the House ! But today, here, we, the Opposition, we want not only the Members of this House, not only the people of this country, but the world at large, more particularly all the people of this region; India, Pakistan, Australia, Madagascar, Seychelles, Comores, Tanzania, all the people in this area to know that we are lying claim to what is by right ours ! We are not going to give it up and we are proposing that, within the State of Mauritius, we should say that Mr. Sheridan has failed ! Whoever sent him here has failed, and whoever wanted to help him to renounce our right has failed ! So far we still recognise the Chagos Archipelago as still belonging to us and we want this to go on record in this Bill here ! Thank you, Sir.

Mr. Servansingh : I think after my Friend, Kader Bhayat, has spoken, I must also express my deception at the fact that when this matter has been taken up in this House, some people have found it right to make jokes about this. I think

this is a very important matter, and I know that all of us here realise how important it is.

Mr. Speaker, the only point I would like to make is that this question of the Chagos Archipelago is a very delicate matter. For we all know, international political reasons, for reasons of the super powers, for reasons which are much beyond our control as our country is isolated in the Indian Ocean. But what I would like to say this morning is that what we have to do in Parliament, while we add the Chagos Archipelago in the definition of our national territory, is to affirm the right of Mauritius to this country, and I would go as far as to say, that I believe the Government which is in power at any time in this country, has the right, is perfectly free, to have a policy, as far as the Indian Ocean is concerned. A Government which is in power, democratically elected, has the right to define a policy which it wants towards the Indian Ocean. Just as we have seen the Government of Australia once, when the Labour Government was in power, taking the position that the Indian Ocean should be a zone of peace. And when a Labour Government succeeded this Government, they changed their position. So I would go as far as to say that I believe a Government, which is in power in Mauritius, has the right to choose its policy towards the Indian Ocean. But I only ask in the name of all Mauritians, I ask in the name of the youth of Mauritius, I ask in the name of generations to come, that we should give that generation which is coming, that we should give the next Government that is coming, a chance to claim its right over what is our territory, a chance to define another policy which might not be the same policy as this one. This is the only claim that we want to make when we say that we should include

in the definition of the national territory, the Chagos Archipelago, Mr. Chairman. I know the line that will be taken is that it is understood, by the general definition that we already have, that the Chagos Archipelago forms part of our national territory. But we know that this is a matter of controversy, that tomorrow another Government might have to go to the International Court to fight this matter, to fight this case, and this is why we insist that this be included formally in the definition of the national territory. As I said, in respect for democracy, in respect for the next Government we will choose, in respect for the choice of future generations, I think we cannot fail, whether we are on this side of the House, or whether we are on the other side of the House, to add this archipelago to our definition of the national territory. Mr. Chairman, I have made my point. Thank you very much.

The Minister of Economic Planning and Development (Mr. R. Gurburra): Mr. Chairman, years ago, I was the first person to have raised my voice, when I was the High Commissioner of Mauritius in New Delhi, that Mauritius should take this issue to the Hague, and I thought Mauritius had got a right to this land, and if we took the matter to the Hague, we were sure to win it. From that time to this day, I have not changed my mind. There is no doubt that, when the islands were excised, it was done through an undue influence. England was a metropolis, we were a Colony. Even all our leaders who were there, even if they consented to it, their consent was viciated, because of the relationship. The major issue was to gain independence, and therefore the consent was viciated, there was no consent at all. There is no doubt that everyone here would like this country to come back to the State of Mauritius;

but there is unfortunately — and now I am appealing to the lawyers to see the legal issue about it — it is, as yet we have a claim one day I am sure we are going to get back this country. But at the moment, it is still with Great Britain. Today we have a very valid claim; unless we would have vindicated that claim, it won't be serving any purpose, if we were merely to add it.

(Interruption)

What we want to add here is what we own, Tromelin, which has never been excised; this is why we are putting it there. But this has been excised. I don't think it would, in the long run, do any good. The point I wanted to make, not only for record here, but for those outside also, is : even if it is not included here in this Act today, let it be known to everyone that it won't cause any prejudice to a claim we may have ! It is not by a tacit acceptance that we are giving it up. Our claim is there and one day, I very much hope and I can join any number of Members when the time comes; I am prepared to go and fight this case at the Hague when the time comes ! But then, we have to have the sanction of Government. We can't go and fight a case in the Court, unless you get the sanction of the Government. But so long as this is not done, I think it would be a bit futile for us to add this.

I would ask the Opposition, which has got very able lawyers there, to consider that very calmly. I have been giving some thought to this matter; because if I was satisfied that this was going to prejudice our case in the long run, I would have voted for this; but I don't want to take any step that is going to prejudice our claim in the future. That is why I am making my point, that if we don't include

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it today, it should not be constructed as a tacit acceptance; because, I very much hope, the time is not very far away when we shall go and claim this. I am confident that we shall claim this land and this land will come back to us. Thank you, Sir.

Mr. Bizall : M. le président, je me suis mis debout pour empêcher le secrétaire parlementaire de faire une gaffe au niveau du parlement. Je lui demanderai, bien humblement, de ne pas insulter la République des Seychelles en venant proposer que les Seychelles soient attachés au territoire de l'île Maurice. Il s'est mis debout, j'ai cru un instant qu'il allait venir avec cette motion.

Je voudrais attirer l'attention du ministre du plan en particulier, qui a parlé sur le *Chagos Archipelago*, en ce qui concerne son inclusion avec Tromelin et Agalega, comme territoires de l'île Maurice. M. le président, faudra-t-il se rappeler que la France a déclaré que Tromelin lui appartient, que la France a des soldats à Tromelin, que la France a fait des développements économiques à Tromelin ? Pour la France, Tromelin n'est pas un territoire mauricien, c'est un territoire français. Mais cela n'a pas empêché le Gouvernement mauricien d'inclure, avec Agalega, Tromelin comme étant partie de notre territoire. Moi je crois que la même politique adoptée par ce Gouvernement en ce qui concerne Tromelin, devrait être étendue en ce qui concerne le *Chagos Archipelago*. Demain ce sera une loi — est-ce que le Gouvernement va prétendre que la semaine prochaine il pourra mettre le pied à l'île Tromelin et revendiquer ses droits là-bas ? Le Gouvernement est en train de rêver, si le Gouvernement pense qu'il pourra récupérer Tromelin en l'incluant dans le territoire mauricien ! Mais le Gouverne-

ment a jugé, quant même, utile de le faire, bien que la France a exigé des droits sur Tromelin et se trouve en opposition directe avec le Gouvernement mauricien. Je vois mal comment le Gouvernement mauricien peut inclure Tromelin, et ne pas inclure l'archipel des Chagos !

(1.50 a.m.)

Mr. Dooganor : I want to remind the House — and you must remember also Mr. Chairman, you formed part of the delegation which left in 1977 for the United Nations — that at the last session of our work at the State Department, there were eleven countries represented. I voiced my opinion there concerning Diego Garcia. I stated that the occupation by the United States, of Diego Garcia, is a threat to peace in the Indian Ocean, and that it was the wish of the people and of the Government of Mauritius to recuperate that part of the territory of Mauritius, which is Diego Garcia. I did not stop there, Mr. Chairman. Recently I attended the conference held in Zambia where were present the President of the Labour Party, the Second Member for Belle Rose and Quatre Bornes, and my Friend, Mr. Fokeer. They both witnessed my stand at the conference, and heard what I said: that the occupation of Diego Garcia by the United States was resented by the Mauritian public. We don't feel, Mr. Speaker, that we are in complete security. What has been the history around the excision of Diego Garcia ? What I would like to see, and the public would like to see, is a copy of the agreement between the Mauritian Government, the British Government, and the United Nations, laid on the Table of the Legislative Assembly, so that more light be thrown on this issue. Mr. Chairman, when I mentioned that Seychelles

also should be included in our territory. I must go far back to 1956, when I was still a student of Standard VI, when I was studying geography. I was thirteen at that time, Mr. Chairman. And through the study of geography I learnt that the dependencies of Mauritius were the Seychelles, Rodrigues — that both Mauritius and the Seychelles formed part of the territory of Mauritius, as also Diego Garcia. When I said that Seychelles should also be included in this, I did it with the intention of throwing more light on the matter, and informing Members when, how and in what circumstances Seychelles has been excised from the territory of Mauritius. Sir, not all the Members are against the retrocession of Diego Garcia. I myself, when I was in presence of this Bill, Sir, I was astounded to see...

The Chairman : I am sorry to interrupt the hon. Member, but I want to put something on record. I am given to understand that the Reporters of the Assembly have been working since 10.00 this morning. They want to help and they are extremely tired. So I am making an appeal that we should make the speeches as short as possible, to keep to the point, in order to help, so that the Reporters who are really doing a very big effort tonight, who have been put to really hard work since the beginning of this week, can cope with the work. They want to help but they ask for our collaboration. Mr. Speaker has asked me to pass on to you that piece of information. So, I make a special appeal to all Members to go straight to the point and to be short.

Mr. Doongnar : I wish also to remind hon. Members that when I recently went on a CAP Conference in Zambia, I appealed that this issue should be taken up at the Court of The Hague.

Mr. Chairman, we are not against the retrocession of Diego Garcia. We want Diego Garcia to be part and parcel of the territory of Mauritius. But we are given to understand that, after forty to fifty years, Diego Garcia will be given back to Mauritius. So, I mentioned that Seychelles also should be included, just to throw more light on it — how another dependency of Mauritius was excised.

Mr. Boodhoo : Mr. Chairman, we fully agree with the request of the Leader of the Opposition and I believe that this request will give a golden opportunity to Government to cast aside any doubt which has crept into the minds of the public.

Mr. Béranger : Mr. Chairman, I'll try to be as short as possible. Je considère qu'il est extrêmement triste, M. le président, que, le débat, comme l'a dit mon collègue Kader Bhayat, ait démarré, comme il l'a fait avec un *front bench* le Premier ministre, le ministre des finances le ministre des affaires étrangères — encourageant un membre qui proposait ce qui, en fait, constitue une insulte à la République des Seychelles. Il est heureux, que, peu après, le débat soit redevenu ce qu'il doit être, c'est-à-dire, un débat aussi fondamental, aussi important que n'importe quel débat à cette Chambre peut l'être pour le pays. Il ne peut pas y avoir une question de Parti. Nous parlons de notre pays. Je suis d'accord avec ce que mon collègue...

Sir Harold Walter : Mr. Chairman, on a point of order. Section 51(1) of our Standing Orders reads thus :

"Mr. Speaker, or the person presiding, shall be responsible for the observance of the rules of order in the Assembly or in any Committee thereof and his decision upon any point of order shall not be open to appeal and shall not be reviewed except upon a substantive motion made in the Assembly after notice".

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The Chairman : In point of fact...

Sir Harold Walter : Wait a minute, Mr. Chairman. You ruled...

The Chairman : Please ! I have the Chair. I have the responsibility of order in this House ! Don't shout me down, please !

Sir Harold Walter : I did not shout.

The Chairman : Please ! Now, I have over-ruled the question of Seychelles. It has been shelved. The Member just alluded to it.

Sir Harold Walter : That is not the point.

The Chairman : He has not asked me to reopen the question. He has not appealed against my decision. He has simply said that it was, according to him, an insult to a sovereign country. But that is *en passant*. He is coming to the gist of the case. But I don't think the hon. Member is doing anything against the Standing Orders.

Sir Harold Walter : Mr. Chairman, if you will allow me to finish. Your ruling was based on the fact that Seychelles, being a sovereign country, and we having no sovereignty over it, the question cannot be debated. I want the same principle to be applied regarding the amendment which has been brought to this Bill. This is British Overseas Territory, excised, Mr. Chairman, by Order...

The Chairman : I am on my feet, Mr. Minister. This is why I expected you, as Minister, a long time ago to give some information to the House that it was some territory that formed part exclusively of some other territory. I was waiting for

you. You did not do it. I can't help it if the Member now has the floor and speaks about it.

Sir Harold Walter : Therefore, on a point of order, your ruling is that it does not apply, Mr. Chairman ?

The Chairman : You are coming too late !

Sir Harold Walter : There are degrees in lateness.

Mr. Béranger : I'll have to start again because he messed the whole thing, and I am very sorry for these ladies upstairs. Je répète...

Sir Harold Walter : Sir, I wish to state, on a point of order...

Mr. Béranger : I am not giving way. I am also up on a point of order !

The Chairman : The hon. Member has the floor, if he does not want to give the Minister the floor, the Minister will have to wait until he has finished, then he will put to me his point of order. Then I shall be able to listen to the Minister. But, for the moment, he has the floor !

M. Béranger : Je disais, M. le président, qu'il est triste que le débat ait démarré par une insulte, appuyée par le *front bench* d'en face, Riant, ricannant, alors que nous parlons du cœur même de notre pays, alors que nous parlons d'une république indépendante qui est à deux pas de nous, M. le président !

Sir Veerasamy Ringadoo : I thought we had dealt with that.

M. Béranger : Je le répéterai tant que j'aurais envie !

Sir Veerasamy Ringadoo : On a point of order, there is a Standing Order which says that unnecessary repetition is out of order.

Mr. Bérenger : Well, there is another Standing Order which says that interruptions like that are wasting the time of the House.

Sir Veerasamy Ringadoo : I was on a point of order, and I want the ruling of the Chair about it. Because I can't accept...

The Chairman : The Minister's point of order is absolutely receivable. I ask the Member to get to the gist of the matter now.

(2.05 a.m.)

Mr. Bérenger : If I am not stopped, I will do it. But I am stopped now and then by the front bench for no reason ! So, I carry on, as usual.

Comme je le disais, M. le président, je suis d'accord avec le député, mon camarade Servansingh, qui a proposé que, pour aujourd'hui, on sépare deux choses — la question de la politique du Gouvernement vis-à-vis de la militarisation de l'Océan indien, vis-à-vis de la militarisation de Diego Garcia ou non. Qu'on sépare cela aujourd'hui de la question de la souveraineté de l'Île Maurice sur ces îles, sur cet archipel.

J'irai loin. Je dirai qu'au nom du pays, ne retournons pas sur ce qui s'est passé en 1965 ! Qui a fait quoi, laissons cela de côté ! Au nom du pays, encore une fois ! *En passant*, je rappelle, M. le président, j'ai écouté le ministre du développement dire qu'il fut parmi les premiers, alors qu'il était à New Delhi, à

soulever la question ! Non, il ne pourra pas me prouver, je suppose, qu'il a soulevé la question parce que nos dossiers sont complets pour la période avant 1974 ! Or, l'Inde, M. le président — le *Order in Council* est fait le 8 novembre 1965 — dont M. Dinesh Singh est le *Deputy Minister of State for External Affairs* d'alors — le 18 novembre 1965, c'est-à-dire moins de deux jours après l'Order in Council — a élevé la voix disant que l'Angleterre n'a pas le droit de le faire ! Que c'est contre les résolutions des Nations Unies ! Et il prend la part d'un pays qui n'est même pas indépendant ! Je crois qu'il est important de le souligner, sans vouloir revenir, en ce qui nous concerne, sur ce qui s'est passé en vérité en 1965.

M. le président, j'ai écouté le ministre du développement nous dire que, si nous n'incluons pas, dans la définition de notre territoire de l'État mauricien, l'archipel des Chagos, "*it will not be a tacit acceptance. It will be worse than a tacit acceptance that this has been done once and for all !*" M. le président, j'aimerais vous rappeler, le député Finlay Saleem dans une question B/510 de 1977 ou 1978 — je crois que c'est 1978 — demande au Premier ministre *whether he will state the list of all territories which constitute the State of Mauritius ?* Le Premier ministre répond :

" Sir, the following islands form part of the State of Mauritius : Mauritius and the surrounding islands, such as, Round and Flat islands, Rodrigues, Agalga, Tromelin and Cargados Carajos Archipelago ".

C'est-à-dire, St. Brandon. Excluant Chagos — et ça c'est un précédent extrêmement grave, que des Français, comme Me Oraison, se permettent de nous faire la leçon, à nous, patriotes mauriciens ; ça c'est déjà un précédent grave ; ça peut être utilisé déjà contre nous, nonobstant

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ce que nous allons faire aujourd'hui ! Ça, c'est déjà un précédent grave, M. le président ! Heureusement — et personne ne le dit aujourd'hui — le ministre des pêcheries m'écoute — qu'il y a d'autres faits que nous pouvons mettre devant cette Chambre et devant la communauté internationale pour nous défendre ! Il y a à peine quelques mois, cette année même — que dis-je ? quelques mois — quelques semaines — nous avons voté un *Fisheries Bill*, qui a été proclamé, qui est devenu un *Fisheries Act* ! Dans ce *Fisheries Act*, il est donné des pouvoirs au *Principal Assistant Secretary* du ministère des pêcheries de décider combien de *nets* pourront être distribués in the *Chagos Archipelago* ! Comment concilier ces deux choses ? Nous avons applaudi le ministre, de ce côté de la Chambre : les Chagos forment partie de l'Etat mauricien ! Ou est la logique dans tout cela ?

The Prime Minister : Fishing rights !

Mr. Bérenger : Fishing rights ! Je continue, M. le président, j'en viens à 1974 — *Hansard* du 26 juin 1974 — le Premier ministre répond :

'Mauritius has reserved its mineral rights, fishing rights and landing rights and certain other things that go to complete, in other words, some of the sovereignty which obtained before, on that island'.

Je suis d'accord que c'est confus ! Mais quand même, c'est quelque chose que nous pouvons utiliser, sur quoi vient se greffer le *Fisheries Bill* et la déclaration qui a été faite. Il y a d'autres déclarations qui ont été faites. Il y a cette déclaration du Premier ministre à cette question B/634 de 1978, de mon collègue Amédée Darga lui demandant

'whether he will say if the British Government has recognised the jurisdiction of Mauritius over the waters surrounding Diego Garcia'.

Le Premier ministre répond :

'The British Government has, since July 1971, recognised the jurisdiction of Mauritius over the waters surrounding Diego Garcia'.

Nous ne comprenons pas la réaction du Gouvernement ! Je dis que — après le précédent contenu dans la réponse parlementaire B/510 — nous considérons que ce serait un véritable acte de trahison que de voter, aujourd'hui, un texte de loi incluant Tromelin et excluant spécifiquement l'archipel des Chagos ! Ce serait un véritable acte de haute trahison ! Ce n'est pas une question de politique de parti ; il est question de territoire national, de richesse nationale ! Parceque, un jour, l'île Maurice exploitera — je ne parle pas du côté militaire de la chose — mais en terme de ressources agricoles, en termes de poissons, en termes de minérales au fond de la mer. M. le président je crois que nous n'avons pas le droit de commettre cet acte de trahison ! Je pourrais aller plus loin ! Je pourrais citer le ministre des finances faisant campagne. Quand ? Pas des mois de cela ! En février, Sir Veerasamy Ringadoo promet une campagne internationale pour obtenir le retour de l'île à Maurice — on parle de Diégo Garcia : 'Nous sommes dans une position de force pour réclamer le retour de l'île à Maurice', a dit Sir Veerasamy. C'est pourquoi nous avons le droit de dire et aux Anglais et aux Américains qu'ils devraient s'écarter le camp de Diégo Garcia. Là, n'est pas la question, pour le moment ! Pour le moment, nous demandons seulement qu'un acte de trahison ne soit pas commis vis-à-vis de la nation, vis-à-vis de la patrie mauricienne et que cet amendement soit accepté *without further discussions* ! Hier, apparemment, — qu'on me démente si je me trompe — un nombre de députés et de ministres travaillistes ont signé une pétition qu'ils ont remis au Premier

ministre. Enfin, il faut être logique avec soi-même ! Comment peut-on signer une pétition hier, et aujourd'hui ne pas prendre position ? Il ne faut pas en faire une question de parti; nous aurions souhaité que le Premier ministre vienne lui-même avec l'amendement; nous aurions souhaité que lui-même propose que l'archipel des Chagos soit inclus dans l'Etat mauricien ! Ceci dit, M. le président, nous avons voulu ramener les débats au-dessus des partis. Je répète que ce que le ministre du plan et de développement économique a dit n'est pas correct. Ce serait pire qu'un *tacit agreement* si nous votions aujourd'hui ! Ce serait pire que de ne pas avoir inclus les Tromelin ! Inclure les Tromelin, en excluant les Chagos, serait pire que n'importe quoi ! C'est pourquoi nous demandons au Gouvernement — sur cette question, au moins, puisqu'il y va du sort du pays, du territoire mauricien, du territoire national — de ne pas en faire une question de parti, de prendre l'amendement — c'est un amendement qui n'appartient pas au MMM, c'est un amendement qui appartient au pays ! Nous le mettons devant tous les partis qui sont à cette Chambre et nous proposons que ce soit le Premier ministre, lui-même, qui, au nom de l'île Maurice, propose l'amendement, M. le président !

Sir Harold Walter : Sir, I know that it is late; we are in the early hours of the morning, after a hard day's work and our nerves are at the end of their tether. Therefore, we get excited; we use invectives and we allow steam to be let off after several defeats. I am prepared to concede that on a psychological platform. But, Mr. Chairman, we are dealing here with a very important question which goes to the root of the interpretation of the law regarding the definition of the State and the law governing

such definition. I know that, to go to the philosophy of it, would go a long time. So, I will come back to it in a minute. But, before I do that, I would like to place on record that it is the second time in this House that the Prime Minister is taken to task in a personal manner !

The hon. Member, Mr. Bhayat, has considered it fit to tell the Prime Minister that, by acting in the way he acted, in the interests of the *Ilois*, he had committed an act of treason ! I know that my Prime Minister, in the Sheik Hossen affair, has been called a murderer ! He has been called somebody who has set fire to a dwelling-house, who has treated the Police with all the names possible ! Thank God, *il y a encore des juges à Berlin !* They vindicated the head of the SSS ! Unfortunately, said under the parliamentary immunity, the Prime Minister could not do any thing about it ! It is said that to-day this voice has been re-echoed by somebody who sits on the front bench of the MMM, treating the Prime Minister of traitor ! A man who has brought independence to this country ! Who has given forty-two years of his life to the service of this country ! Who has given an uplift to everybody here for the respect of their dignity ! Who has given free education ! Who has made them what they are to-day ! Is that the man whom you call a traitor. When he was only acting in good faith, when he was acting in the interests of the *Ilois* ? What has happened to-day, Mr. Chairman ? Is it not the same Sheridan who has been requested to defend the interests of the *Ilois* ? So, where did the Prime Minister go wrong, Mr. Chairman ? Now, you cannot have your cake and eat it ! You cannot come and ask for compensation and say that 'I renounce all my rights to go there.'

and, in the same breath, you come here and add to a Bill a territory over which you have no sovereignty! We have been questioned, Mr. Speaker! Why Tromelin is added? Tromelin has never been excised, Mr. Chairman! As early as 1956, this Government let Tromelin on lease to Mr. Britter. In 1956, when the French wanted to operate a meteorological station there, they asked for permission from this Government and they were granted it. For historical and juridical reasons, we are standing on firm ground! But, Mr. Speaker, we do not believe *dans les mirages de la pensée idéologique de certains!* We only believe in dialogue! Tromelin is on the good way! Tromelin has been discussed at the highest possible level. The Prime Minister and the President of France! Am I to disclose here the contents of that conversation when the results are not final yet? You wait and see!

Now, Mr. Chairman, Diego Garcia: the statements of the Prime Minister have been quoted here, as if the Prime Minister has been saying a lie! What the Prime Minister has been saying all along is that at the moment that Britain excised Diego Garcia from Mauritius, it was by an Order in Council! The Order in Council was made by the masters at that time! What choice did we have? We had no choice! We had to consent to it because we were fighting alone for independence! There was nobody else supporting us on that issue! We bore the brunt! To-day everybody wants to jump on that bandwagon! Many of those sitting opposite where were they when independence was being fought? Who were those who wanted independence? To-day, independence is a nice basket of fruit and everybody wants his share out of it! Mr. Speaker, when the excision took place, it became the British Overseas

Territory and it is mentioned as such! When the discussions took place, it was made clear that the mineral rights, the fishing rights were preserved even employment of Mauritians on Diego Garcia was promised but, unfortunately, the British who discussed with us, never told us that they were going to have a military base there! What they told us was that they wanted a station for weather purposes.

They wanted a station for fuelling, for their transport and their fleet, that is all. A communications base; the British told us that. As to how the British leased it to the Americans, that's another matter. I am not going to enter into the merits and demerits of the presence of this base there, because it goes to the security of the area. So what is wrong in the answers given by the Prime Minister on Diego Garcia? Is that an act of treason? Now, it was by consent that it was excised. Even that has been mentioned to Mr. Luce when he was here only two or three weeks ago. We mentioned it at the Lusaka Conference to Lord Carrington in the presence of Mrs. Thatcher, we said: "When do you think we can get back Diego Garcia?" "Oh, you know it is on a lease, but we bear it in mind, we bear it in mind". Is that type of action, going to be conducive to a dialogue leading to the restitution of Diego when the time comes? There is no motive behind us! There is no hurry for us to get it back. We don't want to see another one coming to put himself there and say: "We want peace, but I enter Afghanistan with 80,000 soldiers"! Super powers again! I don't want to change one for the other. I don't want to be involved in it. We know why all these words are said; the louder they are said, the more beneficial they will be, we understand that. We are not going

to play that game, Mr. Chairman. You ruled, Sir, that Seychelles was an independent country and, therefore, we had no sovereignty over it and therefore it could not be entertained. If this principle is acceptable, Mr. Chairman, then for the British Overseas Territory excised from Mauritius, your ruling must hold the same and must carry the same weight. I go further, Mr. Chairman: those who believe in the OAU—though they refuse to pair with me because I will go and vote against their policy, probably I would have been more useful here—will be interested to know that the wise men who founded the OAU when the three groups merged in Cairo, laid down a principle in the OAU Charter: that the frontiers inherited at the time of independence will not be disputed; and had there been such respect, Mr. Speaker, today we would not have seen the tearing away of Africa, we would not have seen blood all over Africa, we would not have seen this period of strike through which it is going. On these two principles, Mr. Chairman, I move that the question cannot be entertained.

The Chairman : Will the Minister of External Affairs say to this House whether the British, what you call it, the British Indian Ocean Territory forms part of the sovereign totally independent country or not?

Sir Harold Walter : It forms part of Great Britain and its overseas territories, just as France has *les Dom Tom*; it is part of British territory there is no getting away from it; this is a fact, and a fact that cannot be denied; no amount of red paint can make it blue! It is not receivable, Mr. Speaker, in this light, there is no point of order.

(Interruption)

There is no point of order, Mr. Speaker, any decision of the Speaker thereon shall not be opened to appeal.

(Interruption)

The Chairman : I know, I know and I am going to take my responsibility. I have ruled that the Seychelles being a sovereign country, the question of the Third Member for Rose Belle and Grand Port cannot be entertained. In the same way I regret that as the BIOT forms part of Britain and is, therefore, an independent and sovereign State, this amendment is declared not receivable by me.

M. Bizall : Quand vous aviez rejeté la motion que Seychelles soit inclus du territoire mauricien, il existait des preuves, que Seychelles, effectivement, se trouve être un territoire indépendant; quand le ministre des affaires étrangères vient, par rapport à partir d'une motion, demander à ce que votre décision sur Seychelles soit étendue, en ce qui concerne les Chagos, la question que je me pose, M. le Président est : puisqu'il est prouvé qu'avant 1965 les Chagos formaient partie du territoire mauricien, il faudrait que le ministre des affaires étrangères prouve que cet archipel n'est plus à l'île Maurice et appartient à l'Angleterre ! Est-ce que le Gouvernement peut, par un document, prouver ce que le ministre a avancé ?

Sir Harold Walter : Je réponds à cette question. L'hon. député a cité le ministre des affaires étrangères. Je réfère l'hon. membre à l'autorité qu'un propre député de son parti a cité: the Order in Council where Diego Garcia has been excised and forms part of British Overseas Territory.

The Chairman : This cannot be discussed. This is my ruling. I stand by it, whether it is right or not.

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(At this stage, the Members of the Opposition left the Chamber)

Clause 3 ordered to stand part of the Bill.

Clauses 4 to 9 ordered to stand part of the Bill.

The title and the enacting clause were agreed to.

The Bill was agreed to.

The Labour (Amendment) Bill (No. XX of 1980) was considered and agreed to.

**THE NATIONAL PENSIONS
(AMENDMENT) BILL
(No. XIV of 1980)**

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3 — Section 20 of the principal Act amended.

*Motion made and question proposed :
"that the clause stand part of the Bill".*

Mr. Purryag : Sir, there is an amendment — I move that the words "the prescribed amount" be deleted and replaced by the words "the amount specified in the Second Schedule".

Amendment agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clauses 4 to 9 ordered to stand part of the Bill.

First Schedule ordered to stand part of the Bill.

On Second Schedule

Mr. Purryag : Sir, I move that, in regard to Section 45A(3), the following paragraph be added : "(c) in such cases as may be prescribed".

Amendment agreed to.

Second Schedule, as amended, ordered to stand part of the Bill.

The title and the enacting clause were agreed to.

The Bill, as amended, was agreed to.

**THE SUGAR INDUSTRY
LABOUR WELFARE FUND
(AMENDMENT BILL)**

Clauses 1 to 3 ordered to stand part of the Bill.

Sir Harold Walter : Mr. Chairman, it is sad that the Members of the Opposition have left the Chamber in such a shameful way. Sir, it is very serious, what I am going to say : each time they suffer a defeat, they are in that state. Probably none of them ever box — so they never learn how to take blows and to give as many.

The Chairman : It is their right to behave as they wish.

The title and the enacting clause were agreed to.

The Bill was agreed to.

The Fire Services (Amendment) Bill (No. XV of 1980) was considered and agreed to.

ANNEX 36

Port Louis, telno 104 of 28 June 1980

UNCLASSIFIED
DATE 07/10/1997 BY 1077507Z JUN 90
TO IMMEDIATE FOR
TELEGRAM NUMBER 104 OF 28 JUN 80

DIEGO GARCIA

1. FOLLOWING IS TEXT OF PRESS STATEMENT BY MAURITIUS PRIME MINISTER BEFORE DEPARTURE 27 JUNE FOR LONDON EN ROUTE FOR OAU SUMMIT: BEGINS
DIEGO GARCIA WAS EXCISED BY THE BRITISH GOVERNMENT BY AN ORDER IN COUNCIL BEFORE OUR INDEPENDENCE IN 1968. ACTUALLY, THE WHOLE PROCEDURE TOOK PLACE IN 1965. THIS WAS A VERY IMPORTANT DECISION TO TAKE. WE WERE CONSULTED AND WE AGREED TO GIVE AWAY DIEGO GARCIA AND THE BRITISH GOVERNMENT PAID US £3 MILLION AS COMPENSATION. SINCE THEN THERE HAVE BEEN MANY DEVELOPMENTS. THE BRITISH GOVERNMENT GAVE A LARGE SUM OF MONEY FOR THE DISPLACEMENT OF THE PEOPLE IN DIEGO GARCIA, SOME OF WHOM CAME TO MAURITIUS. AND EVEN TODAY, AFTER SO MANY YEARS, THE MATTER IS STILL IN DISPUTE. THERE HAS BEEN NO FINAL SETTLEMENT OF THE INTERESTS OF THE PEOPLE IN DIEGO GARCIA. AS A RESULT OF THE EXCISION, DIEGO GARCIA BECAME PART OF WHAT IS KNOWN AS THE BRITISH INDIAN OCEAN TERRITORIES. AND GREAT BRITAIN HAS SOVEREIGNTY OVER IT, ALTHOUGH WE, BY ARRANGEMENT WITH GREAT BRITAIN, HAVE PRESERVED OUR MINERAL RIGHTS, FISHING RIGHTS. AND THE DAY GREAT BRITAIN DOESN'T NEED DIEGO GARCIA, DIEGO GARCIA WILL BE RETURNED TO US WITHOUT COMPENSATION. I DON'T BRING THE UNITED STATES INTO IT, BECAUSE THE ARRANGEMENTS ARE WITH GREAT BRITAIN AND NOT WITH THE UNITED STATES.

LAST NIGHT, A REQUEST WAS MADE IN THE ASSEMBLY THAT WE SHOULD INCLUDE DIEGO GARCIA AS A TERRITORY OF THE STATE OF MAURITIUS. IF WE HAD DONE THAT, WE WOULD HAVE LOOKED RIDICULOUS IN THE EYES OF THE WORLD, BECAUSE AFTER EXCISION, DIEGO GARCIA DOESN'T BELONG TO US, ALTHOUGH WE HAD ALREADY LAID CLAIM FOR DIEGO GARCIA TO GREAT BRITAIN. AND I AND MY COLLEAGUE THE MINISTER FOR EXTERNAL AFFAIRS, WHILE WE ARE AT THE OAU CONFERENCE AND LATER ON IN ENGLAND, MEETING THE GOVERNMENT OF GREAT BRITAIN, WE WILL LAY FRESH CLAIMS TO THE GOVERNMENT OF GREAT BRITAIN AND ALSO MAKE KNOWN AT THE OAU OUR POSITION ON DIEGO GARCIA. IT IS A COMPLEX PROBLEM. AS YOU SEE, WE COULD NOT SAY, LAST NIGHT, THAT DIEGO GARCIA WAS MAURITIUS TERRITORY, ALTHOUGH WE HAVE ALL THE MORAL AND THE ETHICAL RIGHTS ON DIEGO GARCIA. SO, FOR THE TIME BEING, THIS IS ALL WE CAN DO. THEN, OF COURSE, AS YOU KNOW, IT IS DIFFICULT TO SAY WHAT WILL HAPPEN TO THE DISPLACED PEOPLE OF DIEGO GARCIA, IF DIEGO GARCIA WERE TO RETURN TO MAURITIUS.

SO IT IS NOT SUCH A SIMPLE MATTER AS SOME PEOPLE TRIED TO MAKE IT IN THE ASSEMBLY LAST NIGHT. WE ARE A PEOPLE WITH MANY PROBLEMS. NOT ONLY WE MUST PRESERVE OUR INTERESTS, WE MUST ALSO WORK WITHIN THE FRAMEWORK OF PEACE AND FRIENDSHIP WITH OTHER COUNTRIES. SINCE DIEGO GARCIA WAS PASSED OVER TO THE BRITISH GOVERNMENT, IT HAS BECOME ONE OF THE FORTRESSES FOR THE ADVANCEMENT OF PEACE IN THE WORLD, BY THE BUILDING UP OF DETERRENT FORCES ON THAT ISLAND BY THE UNITED STATES. ENDS.

/2. POINTS

2. POINTS MADE IN ANSWER TO QUESTIONS:

- (A) IT HAD BEEN AGREED WITH BRITISH GOVERNMENT THAT, FOR COMMUNICATIONS CENTRE, MEN AND PROVISIONS COULD BE TAKEN FROM MAURITIUS, AND MAURITIUS GOVERNMENT HAD MADE THIS REQUEST TO BOTH BRITISH AND US GOVERNMENTS:
- (B) MR LUCE HAD NOT RAISED QUESTION OF DIEGO BEING RENTED BUT NOW THAT IT WAS BEING DEVELOPED INTO MORE THAN A COMMUNICATIONS CENTRE THE INTERESTS OF MAURITIUS SHOULD BE MADE MORE APPARENT.

3. SEE MIFT.

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ANNEX 37

Report of the President on the work of the informal plenary meeting of the Conference on the settlement of disputes, 23 August 1980

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/L.59

Report of the President on the work of the informal plenary meeting of the Conference on the settlement of disputes

Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume XIV (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Resumed Ninth Session)

16. The consideration of general provisions in plenary Conference was thus concluded and all items were disposed of with

the exception of the proposal by Turkey concerning general principles and provisions (GP/7)

DOCUMENT A/CONF.62/L.59*

Report of the President on the work of the informal plenary meeting of the Conference on the settlement of disputes

[Original: English]
[23 August 1980]

1. The plenary Conference held six informal meetings on the settlement of disputes during the current session.

2. The first item taken up was a note by the President contained in document SD/3 of 6 August 1980, which dealt with the questions of compulsory submission to conciliation procedure and the restructuring of Part XV for the purpose of clarity. The note had attached to it the textual changes to Part XV and annex V that were to achieve this result. After an initial consideration of the proposals in document SD/3, the President presented document SD/3/Add.1 which contained changes to the text of document SD/3.

3. The structure suggested for Part XV suggested in document SD/3 met with a favourable response, and it appeared that the division of Part XV into three sections should be made. The sections are divided as follows: the first section, providing for the voluntary procedures; the second section, providing for the compulsory dispute settlement procedures entailing a binding decision; the third section, providing limitations and optional exceptions to the compulsory procedures referred to above. This third section thus includes all the cases where there is obligatory submission to conciliation procedure.

4. In addition, a second section to annex V was proposed in document SD/3 to govern the conciliation procedures to which there is an obligation to accept submission under the new section 3 of Part XV.

5. It was pointed out by the President both in document SD/3 and in the course of the meetings that the changes were suggested in an attempt to clarify and co-ordinate all the provisions which set out the new and unique régime for the settlement of disputes arising under the proposed convention. It was made clear by the President that changes of a substantive nature were not intended and would not be considered. Changes relating to outstanding hardcore issues under negotiation elsewhere were also not to be considered at this stage. In particular, it was to be understood that all changes regarding Part XV and its related annexes were to be made without reference to the question of article 298, paragraph 1 (a) concerning the settlement of delimitation disputes. It was also understood that an examination of this paragraph may be required at an appropriate time. In addition, other paragraphs of article 298, specifically paragraphs 3 and 4, may have to be reconciled with any new formulation that may emerge for paragraph 1 (a) of that article. A footnote to this effect was appended to document SD/3/Add.1.

6. The course of the negotiations conducted in the informal plenary meetings may be summarized as follows. Informal suggestions were made by some of the participants in the course of their interventions. These included suggestions regarding both drafting and substance. In particular, two suggestions were made which touched upon the question of delimitation, which were: firstly, that a cross-reference to article 298 *bis* of document SD/3 be made in article 298.1 (a) (ii); secondly, the exclusion of past or existing delimitation disputes as well as disputes relating to sovereignty over land or insular territories from the compul-

sory dispute settlement procedures and from compulsory submission to conciliation procedures as provided in article 298, paragraph 1 (a). These should be included in article 296 with the other exceptions in that article. The exclusion of future delimitation disputes by declaration would remain in article 298. Where no settlement had been reached, such disputes would be submitted to conciliation at the request of any party and the other party would be obliged to accept this procedure.

7. The President had stressed, both in document SD/3 and at the commencement of these negotiations, that changes of substance should be avoided, in particular, any changes concerning the texts of article 296, paragraphs 2 and 3. Since delicate compromises that had been very carefully negotiated are contained in that article, any attempt to raise these questions should be avoided. He pointed out that article 298, paragraph 1 (a), was closely linked to the delimitation issue. The President further stressed that attention should be concentrated on the structural changes alone to the exclusion of substantive changes. So far as paragraph 1 (a) was concerned even structural changes should be avoided.

8. The other informal suggestions made during these negotiations and accepted without objection or reservation by the informal plenary Conference were as follows:

(a) the suggestion to add to the title of article 282 a reference to "or other instruments". It was referred to in paragraph 1 of document SD/3/Add.1. This was found to be generally acceptable;

(b) the suggestion to add a reference to "Section 1 of" in paragraphs 2 and 3 of article 284, before the reference to "annex V". It was referred to in paragraph 2 of document SD/3/Add.1. This was considered a logical and necessary change, which makes paragraphs 2 and 3 consistent with paragraphs 1 and 4 of article 284 of document SD/3;

(c) the suggestion that article 287, paragraph 6 can be ended after the words "deposited with the Secretary-General", as the rest of its content is covered in paragraph 8 of that article. It was referred to in paragraph 3 of document SD/3/Add.1. This was also considered to be a sound suggestion and was accepted;

(d) the suggestion to reinstate article 296, paragraph 3 (d) as it appears in A/CONF.62/WP.10/Rev.2, and to delete article 15 of annex V in document SD/3 which was intended to replace it. This was referred to in paragraph 4 of document SD/3/Add.1. The suggestion was accepted without objection;

(e) the suggestion to give article 298 *bis* a title as follows: "Right of the parties to agree upon procedure". This was referred to in paragraph 5 of SD/3/Add.1, and it was accepted;

(f) the suggestion concerning the inadequacy of the scope of article 298 *bis*, which did not fully reflect, and cannot be a complete substitute for, the phrase "unless otherwise agreed on or decided by the parties concerned" in article 296, paragraphs 2 (a) and 3 (a), which it was intended to replace. As a minor addition to article 298 *bis* could alleviate this concern the following change to article 298 *bis* was suggested by the President: in paragraph 2, after the words "right of the parties to the dispute to agree to" insert "or decide upon" and continue the sentence as

* Incorporating document A/CONF.62/L.59/Corr.1 dated 23 September 1980.

it appears in document SD/3. This was referred to in paragraph 6 of document SD/3/Add.1, and was accepted;

(g) the suggestion that in the substantive text in Part XV and in annex V reference should be made to "Compulsory Submission to Conciliation". It seemed unnecessary to do so in the provisions of Part XV which merely express the obligation to submit to that procedure. But, as it did seem desirable to change the title, it was dealt with as follows: in section 2 of annex V, the title was changed to read "Compulsory Submission to Conciliation Procedure in accordance with section 3 of Part XV". This was referred to in paragraph 7 of document SD/3/Add.1. It was accepted subject to a drafting change. The title would thus read "Obligatory submission to conciliation procedure in accordance with Section 3 of Part XV at the request of any party";

(h) the suggestion to delete the words "*mutatis mutandis*" in annex V, article 12, and to substitute "subject to the provisions of this section". This was similar to the concern expressed over, and the suggestion to delete, the reference to *mutatis mutandis* in article 285 for the reason that it may not completely express the real intent. They were both considered questions of drafting. The change to annex V, article 12, was referred to in paragraph 8 of document SD/3/Add.1, and was accepted;

(i) the suggestion that article 297 be moved to section 2 of Part XV and located between articles 293 and 294. This was referred to in paragraph 10 of document SD/3/Add.1. It was explained that article 297 deals with compulsory procedures entailing a binding decision under section 2, whereas the other articles in new section 3 provide limitations and exceptions to the applicability of section 2. To maintain the purpose of each section in a coherent form, it was felt that article 297 would be more appropriately placed in section 2. It was suggested that it appear between articles 293 and 294. This suggestion was also accepted. The subsequent articles would have to be renumbered accordingly.

(j) the suggestion to change the title of Part XV, section 1, to read "General Provisions" rather than "General Obligations", which was the title suggested in document SD/3. The President suggested that the two concepts could be combined so that the title would read "General Provisions and General Obligations". There was no opposition to this suggestion, and it was accepted;

(k) the suggestion by the President to replace in article 282, line 4, the phrase "final and binding procedure" with the phrase "procedure entailing a binding decision". The intent of article 282 is that the procedure should be compulsory and that it should entail a binding result. Having regard to the emergency of obligatory submission to conciliation at the request of any party, article 282 could be confusing. In order to clarify it, reference has to be made to "a procedure entailing a binding decision". This suggestion was accepted.

9. The other suggestions made but which were found not to be essential or which did not receive sufficient support were as follows:

(a) that the annexes and in particular the annex dealing with conciliation (annex V) should have the same status as the convention itself. It was explained that the annex provides not only for technical matters, but several substantive matters of consequence. In the consideration of the final clauses, attention should, therefore, be paid to the need for safeguarding the status of the annexes in the same manner as the rest of the convention. This was particularly important in regard to the question of amendment. The President stated that he would take note of this in the negotiations regarding the final clauses. Further consideration of this issue was, therefore, not required;

(b) the suggestion that a provision should be added at the end of section 2 of annex V to provide for an amendment procedure regarding that annex which could be drafted on the lines of annex VI, article 42, paragraph 1. It was pointed out that while such a provision was appropriate and necessary in the case of a pre-constituted tribunal such as the Law of the Sea Tribunal, espe-

cially due to the need to permit the Tribunal to make proposals concerning amendments to its Statute under paragraph 2 of article 42, such a power to initiate would not be appropriate for an *ad hoc* conciliation commission. No such provision exists as regards the other *ad hoc* procedures, such as arbitration under annex VII and the special arbitration procedures under annex VIII. The President suggested that the issue could be resolved by making clear in the final clauses provisions that the annexes have the same status as the convention for the purpose of making amendments to them.

(c) the suggestion to insert a special section on conciliation between the present sections 1 and 2. While this was one possible way of structuring Part XV, the structure presented in document SD/3 was another alternative. There seemed to be a preference for the structure presented in document SD/3 as it reflected correctly the evolution of the system of dispute settlement in the Conference;

(d) the suggestion that article 284, paragraph 4 should make specific reference to article 8 of annex V rather than a general reference. This was not considered to be appropriate as there are other articles which provide for termination of the conciliation procedure, and it was not practical to list all;

(e) the suggestion to delete several articles in section 1 of Part XV, particularly those that repeated obligations under the United Nations Charter or those generally accepted under international law. This appeared to be a major change at this late stage of the negotiations, especially since those articles have been present from the very outset in document A/CONF.62/WP.9 and are considered important by many delegations. It was pointed out by the President that although several of the articles in section 1 were hortatory and not essential, it is not unusual for this convention to reiterate other obligations under the Charter. Furthermore, these provisions are not in conflict with the Charter and they should be left since they strengthen the régime under Part XV. It was also pointed out that the intention was to provide a comprehensive system for settlement of disputes and that end would be served by maintaining Section 1 as it is. This suggestion was not pursued;

(f) the suggestion to delete articles 13 and 14 of annex V in document SD/3 was opposed by several delegations on the grounds that article 13 was necessary to clarify the compulsory nature of the conciliation procedure, and that article 14 was necessary as it is customary for bodies having compulsory jurisdiction to determine their own competence, as well as because it is consistent with the other settlement of disputes procedures in Part XV. For these reasons, the suggestion was not accepted;

(g) the suggestion that the conciliation commission constituted under annex V should give reasons for its decision. A proposed formulation for such a provision was referred to in paragraph 9 of document SD/3/Add.1 for a new article 15 to appear in section 2 of annex V. Several delegations were of the view that the inclusion of such an article would constitute a substantive change and was, therefore, outside the scope of the examination by the plenary Conference at that stage. The proposal for a new article 15 of annex V was rejected. Annex V as found in document SD/3 would, therefore, only contain 14 articles;

(h) the suggestion to add a reference to "assessors" in article 289. The question was raised regarding the compatibility of article 289 with article 30.2 of the Statute of the International Court of Justice. Article 289 provides for "experts" to sit with the court or tribunal without the right to vote, whereas the Statute of the International Court of Justice provides for "assessors" who would perform essentially the same functions. It was suggested that these two provisions could be reconciled by the addition after the words "... to sit with such Court or Tribunal" of the words "as assessors" in article 289. After some discussion, it was decided that such an addition was not necessary as the International Court of Justice, when exercising jurisdiction under article 289, was not precluded from applying the provisions of its

statute concerning assessors in a manner compatible with the provisions of article 289;

(i) the suggestion to add to article 42 of annex VI a reference to the amendment procedures contained in the final clauses provisions. This appeared to be an unnecessary addition, as the procedures established for amendment of the convention as a whole would also apply to amendment of the annexes. Annex VI, article 42, paragraph 1 of document A/CONF.62/WP.10/Rev.2 makes it clear that the statute of the Law of the Sea Tribunal may be amended by the same procedure as provided for amendments to this convention. The suggestion was not pursued. It has been dealt with in relation to the final clauses;

(j) the suggestion by the President to add a paragraph to article 15 of annex VI in order to provide jurisdiction for a special chamber of the Law of the Sea Tribunal acting in accordance with article 188, paragraph 1 (a). This suggestion was contained in document SD/4 dated 15 August 1980. It was found unnecessary to include an additional provision to cover such jurisdiction as it was felt to be already covered by other provisions.

10. The President informed the plenary Conference that the Secretary-General of the Inter-Governmental Maritime Consultative Organization had brought to his attention the need for clarification with regard to the references to pollution from vessels in articles 1 and 2 of Annex VIII of document A/CONF.62/WP.10/Rev.2 on Special Arbitration Procedures. It seemed necessary to add appropriate references to "dumping" with regard to the kinds of disputes listed in article 1, and the fields of expertise and the lists of experts to be maintained by the appropriate inter-

governmental organizations in article 2. The President, having consulted the Chairman of the Third Committee, suggested the following changes, which were approved by the plenary Conference: in article 1, and at the end of the first sentence in article 2, after "vessels" add "and by dumping"; in line 8 of article 2, after "navigation" add "including pollution from vessels and by dumping."

11. There were minor drafting changes to document A/CONF.62/WP.10/Rev.2 which were brought before the plenary Conference by the President and were approved. They are as follows: in annex VI, article 4, paragraph 1, replace "a list" by "the list"; in article 17, paragraph 6, replace "required by article 2, article 8, paragraph 1, and article 11" by "required by articles 2, 8 and 11"; in article 29, line 5, replace "the decision" by "the claim"; in article 37, paragraph 2, line 3, replace "members" by "member" and in line 5 after "promptly make such" add "appointment or"; in annex VII, article 9, line 6, replace "the award" by "the claim".

12. The plenary Conference in informal meeting also considered the President's proposal that the title of the Law of the Sea Tribunal be changed. The President explained that the title was pedestrian and did not adequately describe the international status and the dignity of the tribunal to be established under this convention. The President, therefore, suggested that the name be changed to "International Tribunal for the Law of the Sea". This was accepted without objection. The change will have to be effected in all provisions of the informal composite negotiating text where there are references to the Tribunal.

DOCUMENT A/CONF.62/L.60*

Preliminary report of the President on the work of the informal plenary meeting of the Conference on final clauses

[Original: English]
[23 August 1980]

Consideration of the final clauses by the informal plenary Conference was taken up during the resumed session at fifteen meetings.

A full report on the negotiations relating to this subject will be submitted in due course.

The results may be summarized as follows:

Article 299—Signature; Article 300—Ratification; Article 301—Accession

These three articles as they appeared in document FC/21/Rev.1 were found acceptable except that the final form of articles 299 and 301 will depend on the decisions as to who may sign and who may accede to the convention. The appropriate dates will also have to be inserted in article 299.

Article 302—Entry into force

This article as appearing in document FC/21/Rev.1 was also found acceptable subject to the foot-note appended to paragraphs 3 and 4.

The foot-note to paragraph 4 is intended to indicate that the question of the preparatory commission including its decision-making procedure must be considered in conjunction with the results of the negotiations on the related provisions in the First Committee.

It was agreed that from the very date of entry into force of the convention there must be a set of rules, regulations and procedures to enable the Authority to function. The question of the

period of applicability of these rules, regulations and procedures and as to what will replace them on the expiry of that period has to be considered.

It was also decided that the number of instruments of ratification or accession required for entry into force of the convention under paragraph 1 should be 60 as specified in that paragraph.

Article 303—Reservations and exceptions

The text of article 303 as appearing in document FC/21/Rev.1 Add.1 was found acceptable together with the foot-note referred to in that document on the understanding that the articles referred to in the text must be interpreted to mean that a reservation would be permitted only where the substantive article specifically uses the term "reservation". An exception would be permitted only where the substantive articles specifically use the term "exception". It must be clearly understood that article 303 does not permit exceptions by any State Party to optional exceptions made by any other State Party under paragraph 1 (a) of article 298. It is also to be understood that the formulation of article 303 in document FC/21/Rev.1 Add.1 does not permit either of reservations to exceptions or of exceptions to reservations.

Some of the delegations that found difficulty, as a matter of principle, in renouncing the right to enter reservations were prepared to acquiesce in the text of the article provided the foot-note was retained.

Article 304—Declarations and statements

This article was found acceptable together with the foot-note appended to it in document FC/21/Rev.1. Declarations under article 287 are to be understood as being separate and distinct from

* Incorporating document A/CONF.62/L.60/Corr.1 dated 23 August 1981.

ANNEX 38

UN Diplomatic Conference, Plenary, 135th session, 25 August 1980

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.135

135th Plenary meeting

Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume XIV (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Resumed Ninth Session)

135th meeting

Monday, 25 August 1980, at 3.30 p.m.

President: Mr. H. S. AMERASINGHE

General debate (continued)

1. Mr. VALENCIA-RODRIGUEZ (Ecuador) repeated his country's view that the territorial sea should extend for 200 nautical miles; in view of the plurality of régimes, that solution would help maintain the desired balance in the convention. Without violating any rule of international law or infringing the principles of peaceful coexistence, Ecuador had taken a decision to that effect well before the Conference had been convened. His delegation was not advocating that all States should set the breadth of their territorial sea at 200 nautical miles, but those which could do so, in the light of geographical, geological, social, economic and other factors, should be entitled to take such action. In that connexion, in order to ensure a proper balance in the text, States should be able to express reservations or make declarations when they signed or ratified the convention or acceded to it, so as to secure the protection that they felt was essential on a vital point. Consideration might also be given to a safeguards clause in the convention itself. A solution of that kind would help his delegation to overcome the difficulties caused by the lack of provisions on archipelagos forming part of the territory of a State. In that connexion, he stressed the special situation of the Galapagos archipelago, which UNESCO had declared to be a natural heritage that must be preserved for the benefit of mankind and science. His delegation saw no valid legal reason to discriminate against archipelagos forming part of the territory of a State, whereas a special régime was being set up for archipelagic States. Identical geographical formations must be accorded identical treatment. To protect and defend the flora and fauna of the Galapagos, which were unique in the world, Ecuador was counting on the international technical co-operation, which would be extended to it through the machinery set up under the convention and other relevant international instruments.

2. In that connexion, and to defend the sovereignty and security of coastal States, a group of delegations, including the delegation of Ecuador, held the view that the passage of warships in the territorial sea must be subject to prior authorization by such States.

3. Ecuadorian waters were particularly rich in tuna, a highly migratory species that had always interested the large foreign fishing enterprises and thus brought about serious international conflicts, of which Ecuador had been a victim. Since a large part of the population of Ecuador earned their living from the fishing or marketing of tuna, the system of exploitation of that species was of fundamental concern to his country. Obviously, the coastal States must co-operate with the other States whose nationals fished for those species in the region and the competent international organizations must ensure the conservation and encourage optimum utilization of those species. But his delegation found it unacceptable that those organizations should be placed above States. The understanding should therefore be reaffirmed that article 64 of the convention could apply only if the other provisions governing the system of exploring and exploiting living resources, in particular articles 61 and 62, also applied. In that way, no decision affecting highly migratory species within the 200-nautical-mile limit could be adopted without the consent of the coastal State concerned.

4. On the question of marine scientific research, Ecuador had been surprised to see that the text did not properly reflect the extent of the rights and powers of the coastal State. The essential principle should be that third States or international organizations could not carry out research within the 200-nautical-mile limit or on the continental shelf without the express prior consent of the coastal State. The ways in which that principle was applied could

be adapted to the various maritime zones established pursuant to the convention.

5. It was not possible to go beyond recourse to compulsory conciliation in the case of disputes over fisheries and the exercise of sovereign rights by coastal States in matters relating to marine scientific research. Any change in the text that would make such disputes subject to compulsory international settlement would render the convention unacceptable.

6. Ecuador had supported and continued to support the decisions of the Group of 77 on every issue being dealt with by the Conference; its support was particularly strong on matters relating to the international Area of the sea-bed beyond the limits of the national jurisdiction. The principle that the Area and its resources were the common heritage of mankind must be translated into reality, and, to that end, it was necessary to strengthen the powers of the Authority and the Enterprise through the transfer of technology to those bodies and the developing States, and through the provision of the financial resources that they needed in order to operate for the benefit of mankind and to compete on an equal footing with other State or private enterprises. The Council must be constituted in such a way as to represent the interests of all groups and to take into account the importance and growing number of developing States. There was no place for a voting system that would directly or indirectly create a disguised veto or vote weighted in favour of certain States. The decisions of the Council must be taken democratically by majority vote.

7. His delegation noted with concern that the rights of coastal States, particularly developing coastal States, had been steadily whittled away in the successive negotiating texts. In accordance with the second revision of the informal composite negotiating text (A/CONF.62/WP.10/Rev.2 and Corr. 2-5), the high seas began where the 200-mile zone ended, regardless of the name or meaning given to that zone in the domestic laws of States.

8. Ecuador would not endorse a convention that deprived coastal States of some of their rights.

9. Lastly, his delegation hoped that greater efforts would be made in the third revision of the text to reconcile and respect the rights and interests of all States, for that was the only way to arrive at a universally acceptable convention.

10. Mr. GUK (Democratic People's Republic of Korea) expressed the position of his delegation on Romania's informal proposal for the amendment of article 70 (C.2/Informal Meeting/51). He fully understood the particular geographical situation of Romania and other States bordering the Mediterranean or the Black Sea which had limited fishing resources. Since the Romanian proposal was intended to defend effectively the interests of geographically-disadvantaged States situated in a region or subregion with limited fishing resources, his delegation fully supported it.

11. His delegation was gravely concerned about the recent enactment of unilateral national legislation governing the exploration and exploitation by the United States of the sea-bed area beyond the limits of national jurisdiction, legislation that was contrary to the interests of world peace and security, and to co-operation and understanding among nations. On that question his delegation shared the views expressed by the Group of 77, which opposed any unilateral legislation relating to the common heritage of mankind.

12. Mr. CARÍAS (Honduras) said that his delegation welcomed the progress made during the second part of the ninth session of the Conference on the outstanding issues. The texts resulting from the negotiations in the First Committee

(A/CONF.62/L.28/Add.1) were not entirely satisfactory to his delegation, but could be incorporated in the third revision. He supported article 140 and article 160, paragraph 2 (f), relating to activities in the Area carried out for the benefit of mankind and to the equitable sharing of benefits. He also supported the provisions concerning production policies, but considered that subparagraph (h) should be deleted from article 150. Article 151, paragraph 4, relating to a system of compensation, should be examined more thoroughly. His delegation supported the review procedure provided for in article 155 provided that the balance of concessions was maintained. Although not completely satisfactory, the system of decision-making by the Council provided for in article 162 was the result of a laudable effort at conciliation. Nevertheless, consensus could be defined more precisely. The text relating to the composition of the Council included the new category of "potential producers", which his delegation continued to support. Henceforth, consideration should accordingly be given to wording designed to ensure the genuine and effective participation of all States in the management of the restricted organ of the Authority, in accordance with the principles of equitable geographical distribution, the lowest level of development and the interest of mankind. The interest of the medium-sized industrialized countries must also be taken into account, in view of the future contribution that they would certainly make to the Authority. Honduras also supported the system of financing for the Enterprise, together with the recommendations concerning the transfer of technology, including the system provided for in annex III, article 5 (in particular in paragraph 3 (e), and the new paragraph 7 of that article).

13. Certain aspects of the questions considered by the Second Committee, had not been properly dealt with in the negotiating text: that was the case, in particular, with the conditions under which warships should pass through the territorial sea and internal waters when those areas had been delimited in accordance with the system of straight baselines. With respect to the exclusive economic zone, the second revision provided for a juridical régime which presupposed a balance of rights, powers and freedoms and could not be changed. Honduras, which had adopted those basic principles by means of a decree-law in 1951, had elaborated on that régime in 1980 through a law on the exploitation of the natural resources of the sea, re-establishing the balance developed in the practice of States and the deliberations of the Conference.

14. The Third Committee had made commendable efforts to put the finishing touches to the texts drawn up at preceding sessions, taking account of the recommendations made by the Drafting Committee and various delegations. His delegation supported the results of those efforts as reflected in documents A/CONF.62/C.3/L.34 and Add.1 and 2. However, the text should spell out more specifically the obligation to co-operate in the publication and dissemination of information and knowledge resulting from marine scientific research, and in particular in the transfer of that information and knowledge to the developing countries. It was important to stress the provisions in articles 275 and 276 concerning national and regional marine scientific and technical research centres, to which his Government accorded high priority, since it was convinced that they represented a useful mechanism for channelling scientific and technical assistance to the developing countries.

15. With regard to the problem of the settlement of disputes he supported the suggestions made in document A/CONF.62/L.59, although several of them, in particular those in paragraph 9, had not been given sufficient consideration. In particular, further consideration should be given to the suggestion made in paragraph 9 (a) that the annexes should have the same status as the convention itself and the provisions concerning compulsory conciliation should be incorporated in the convention.

16. With respect to the final clauses (see A/CONF.62/L.60) and general provisions (see A/CONF.62/L.58), Honduras supported the results obtained and welcomed the provision stipulating that 60 ratifications would be necessary for the convention to

enter into force. On the other hand, it still had reservations concerning article 305 on the relationship between the draft convention and the Conventions of 1958, and, in particular, concerning paragraph 6 of that article. Honduras, like many other countries, supported document GP/9 and was willing to endorse, in a spirit of compromise, the President's initial proposal on the peremptory nature of the principle of the common heritage of mankind. His delegation was not convinced that the new paragraph 6, as proposed, offered the best solution in such a delicate area, and would prefer the question to be re-examined. As for the other general provisions, it explicitly supported the three articles concerning good faith and abuse of rights, peaceful uses of the seas and disclosure of information, on the understanding that the last sentence in paragraph 2 formed an integral part of the global package. Lastly, it supported the new provision concerning archaeological and historical objects.

Mr. Osman (Egypt), Vice-President, took the Chair.

17. Mr. FALCÓN BRICEÑO, (Venezuela) said he wished to suggest some changes in document A/CONF.62/WP.10/Rev.2, which raised certain difficulties for his country. First, with regard to articles 15, 74 and 83 relating to the delimitation of maritime areas, he pointed out that, when ratifying the Geneva Conventions of 1958, Venezuela had made an express reservation in respect of articles 12 and 24 (paras. 2 and 3) of the Convention on the Territorial Sea and the Contiguous Zone¹ and article 6 of the Convention on the Continental Shelf,² in conformity with its position of principle that the delimitation of maritime areas between States with opposite or adjacent coasts should be effected by agreement between the parties in accordance with equitable principles, a theory which had gained ground in international law. His delegation was therefore opposed to the formula contained in article 15 for the delimitation of the territorial sea. In addition to the objections expressed by Venezuela and its sponsors of document NG7/10/Rev.2 with regard to articles 74 and 83, which were derived from the proposals of the chairman of negotiating group 7 (A/CONF.62/L.47),³ his delegation wished to point out that the new wording of paragraph 1 in those draft articles was ambiguous and should be made more precise in order to avoid disputes. His delegation was dissatisfied in particular with the reference in the first sentence of article 74, paragraph 1, to "international law" and with the expression in the second sentence "all circumstances prevailing in the area concerned", which could be interpreted in several ways and appeared to limit the factors which should be taken into account to purely geographical circumstances. The expression was without precedent in legal practice and theory and had not been examined by negotiating group 7. His delegation nevertheless hoped that the continuing consultations would result in a solution satisfactory to all the States concerned. However that might be, he continued to be of the opinion that agreement between the States concerned offered the best means of reaching equitable solutions in that field; experience had shown that judicial decisions or rulings of courts of arbitration often gave rise to delicate situations liable to jeopardize peace. With regard to disputes which might occur in that field, article 298, paragraph 1 (a) (ii), should be interpreted as meaning that, if negotiations between the parties conducted on the basis of the report of the Conciliation Commission did not result in an agreement, the States were in no way bound to consent to other settlement procedures. It should be clearly understood that the procedure established in article 298, paragraph 1 (a), was not applicable to disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, to disputes involving historic bays or titles if they had arisen prior to the entry into force of the convention or to disputes that necessarily involved the consideration of another unsettled dispute concerning sovereignty or other rights over con-

¹ United Nations, *Treaty Series*, vol. 516, No. 7477, p. 207.

² *Ibid.*, vol. 499, No. 7302, p. 313.

³ *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XIII (United Nations publication, Sales No. E.81.V.5).

tinental or insular land territory. To that end, his delegation proposed that such disputes should be mentioned in article 296. It attached the greatest importance to the question of delimitation and considered that a solution which did not take sufficient account of the vital interests involved would make it difficult, if not impossible, for a number of States to ratify the convention.

18. Turning to the régime of islands, he said that Venezuela had serious objections to the provision in article 121, paragraph 3, which established an exception to the general rule set out in paragraph 2 of that article. The retention of such a provision would institute discrimination between the continental and insular parts of the territory of a State. Furthermore, that exception created serious difficulties of interpretation. The term "rocks" was in neither the legal nor the scientific vocabulary and might refer to any island formation. Moreover, the two criteria which would determine the exceptional treatment were ambiguous, and very relative. For a variety of reasons, mostly economic, a number of islands which were formerly uninhabited were now inhabited and vice versa. If the provision was to be maintained in the final text, his delegation would interpret it as meaning that the capacity of an island to sustain human habitation referred not only to the abstract possibility of habitation, but also to the practical situation, since the continental or insular territory of a State could be developed to suit the interests of the State concerned. Similarly, Venezuela considered that the expression "economic life of their own" should be interpreted as covering not complete self-sufficiency, but the existence of national resources which could be exploited economically or the possibility of other uses. In those circumstances, the complete deletion of article 121, paragraph 3, from the third revision would, in his delegation's opinion, be the only way to solve such problems and avoid disputes.

19. In conclusion, his delegation continued to hold the view that reservations should be permitted in all areas which concerned the vital interests of the States parties.

20. Mr. LARES (Finland) welcomed the compromise which had been found for the problem of decision-making by the Council. However, in the text to be adopted for determining the composition of the Council account would have to be taken of the interests and policies of small and medium-sized industrialized countries. Similarly, his delegation had always stressed the need to recognize the needs and interests of the large group of landlocked and geographically disadvantaged States, to which Finland belonged. The preservation of freedom of navigation in the future convention was an essential part of the over-all package deal. The future convention would contain new legal régimes of transit passage in straits and of archipelagic sea lanes passage. In that connexion, he noted that, in accordance with article 35 (c), the legal régimes concerning passage in the Danish Straits and in the strait between the Åland Islands and Sweden, established by long-standing international conventions, would remain unchanged.

21. With regard to the régime of innocent passage in the territorial sea, the convention would be more specific than the 1958 Convention. In accordance with well-established international practice, applied also by the Finnish Government, coastal States had the right to require prior notification of warships and other government ships operated for non-commercial purposes wishing to exercise their right of innocent passage, a requirement which in no way affected the right in question.

22. His delegation had taken a close interest in the provisions concerning the protection and preservation of the marine environment. As a party to the first regional agreement of that type—the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area—Finland noted with satisfaction the provisions of the second revision of the negotiating text relating to all types and sources of marine pollution. However, those provisions would not be really effective until further national and international regulations had been adopted and his delegation attached particular importance to article 235, which States should start implementing immediately.

23. Turning to the question of the provisions on the settlement

of disputes relating to the interpretation or application of the convention, he regretted the provision for extensive exceptions to the principle of compulsory settlement procedures. He would have preferred the establishment of a system of compulsory settlement applicable to the different types of disputes and to the different sea areas, including the economic zone. Nevertheless, he recognized the difficulties involved in such an approach and was prepared to accept the results of the negotiations.

24. With regard to the work of the Drafting Committee and its various language groups, it was imperative that any changes proposed should be brought before the Conference for adoption before the third revision could be considered as a basic text.

25. Although most of the problems had now been solved, a few still remained and the Conference would have to deal with them at its next session; they included the question of participation in the Convention and the establishment of a preparatory commission and its composition and powers. His delegation was confident that those questions would be settled at the latest by the beginning of the next session, at which the Conference's main task would be to examine the third revision of the negotiating text in the light of the comments of the Drafting Committee.

26. In conclusion, he expressed the view that the guidelines which the Conference had adopted, namely, to take into account the interests of all and to adopt decisions by consensus, and which had required considerable patience on the part of all delegations offered the best guarantee of a lasting and viable result.

27. Mr. KOZYREV (Union of Soviet Socialist Republics) said that his delegation considered the results of the negotiations at the ninth session to be positive, particularly the compromise solutions to the problems which had exercised the First Committee (see A/CONF.62/C.1/L.28 and Add.1). A new formula, combining the consensus principle and a three-fourths or two-thirds majority according to the category of question discussed, had been adopted for decision-making. His delegation was not entirely satisfied with that situation but thought that the formula agreed on was well-balanced and that the introduction of any change might create a deadlock in the Conference. Consequently, having taken note of the position of the Group of 77 and of other groups of States, his delegation was prepared to support it. The formula was directly linked with the principles which had been agreed upon for determining the composition of the Council and were set forth in article 161, paragraph 1. His delegation would resolutely oppose any attempt to revise these compromise provisions relating to the composition of the Council and to its decision-making mechanism. Any attempt to modify the composition of the Council would in fact undermine the agreements which the Conference had reached on the issues dealt with by the First Committee and would consequently delay its work. To reopen the discussion on the composition of the Council would be tantamount to calling in question the entire package deal on matters assigned to the First Committee.

28. The other proposals made by the Chairman and other members of the First Committee were also part of a compromise solution, but his delegation did not consider that all those provisions, particularly the anti-monopoly clause, were satisfactory. Nevertheless, since the Group of 77 and other groups of States had welcomed that over-all solution, his delegation was prepared to endorse it if the package deal was not destroyed by the reopening of negotiations on the composition of the Council.

29. Turning to the problems entrusted to the Second Committee, he observed that the solutions it had reached (see A/CONF.62/L.51) were the result of concessions by many States. The Soviet Union had gained practically nothing from the establishment of 200-mile economic zones. Nevertheless, like many other delegations, his delegation was in no position to reopen discussions on those questions, which had already been the subject of long negotiations and had been settled on a compromise basis. It took note of the drafting amendments approved by the Second Committee and was prepared to agree to the inclusion in the third revision of all the texts drawn up by the Second Committee. The formula proposed by the chairman of negotiating

group 7 on delimitation criteria (see A/CONF.62/L.47) had not yet been adopted, but it appeared to accommodate to a certain extent the positions of all interested groups of countries and stood the best chance of adoption by consensus.

30. His delegation noted with satisfaction the positive results achieved by the Third Committee and thought that the drafting changes to Parts XII, XIII and XIV might be incorporated in the third revision. The Soviet Union was not completely satisfied with all those provisions, but since the conference was reaching the final stage of its work and Parts XII, XIII and XIV were the outcome of difficult and lengthy negotiations, it agreed not to propose any changes. Once again, those provisions were an integral part of the package deal.

31. As a result of negotiations at informal plenary meetings, draft general provisions and draft final clauses of the convention had been worked out. His delegation did not support all the components of the text agreed on but if it was acceptable to the other delegations, his delegation would, in the interests of consensus, not object to it. In so doing, his delegation did not, of course, relinquish its positions of principle.

32. A great step forward had clearly been taken during the ninth session of the Conference. That progress was due primarily to the fact that the Group of 77 and the socialist countries had again succeeded in finding a joint approach on questions of major importance at that stage of the Conference. The most important element of that approach, which was supported by other groups of States, was that all States must recognize the fundamental principle that discrimination against any socio-economic system or any group of States was inadmissible.

33. It was a matter of regret that the Conference had been unable to adopt the convention at its current session, but decisive progress had been made in that direction. The third revision would become, without any formal decision of the Conference, the basic text of a convention which would contribute to the strengthening of peace, security, co-operation and friendly relations among all nations.

34. Mr. EVENSEN (Norway) welcomed the fact that the negotiations on Part XI had been successful. The corresponding proposals and revisions submitted by the co-ordinators of the working group of 21 constituted a balanced package which should make it possible to reach an over-all agreement acceptable to all. With regard to the possible participation of the small and medium-sized industrialized countries in the Council, care must be taken to avoid calling in question the proposals concerning the decision-making process and the voting procedures of the Council in particular.

35. As set out in the second revision of the negotiating text, articles 74 and 83 relating to the delimitation of the exclusive economic zone between States with opposite or adjacent coasts should improve the prospects for consensus on that difficult issue and it did not seem necessary to amend them. The proposals relating to the final clauses, submitted in documents FC/21/Rev.1 and Add.1, should be included in the third revision of the negotiating text, even if some points might require further consideration or adjustment.

36. However, some issues were still outstanding, particularly those connected with the clause on the participation of the European Economic Community and perhaps of other integrated international organizations. The problems relating to the composition and mandate of the preparatory commission must also be solved urgently in view of the fact that the Conference was drawing to a close and that certain industrialized countries were in the course of enacting unilateral legislation. Such issues should perhaps be considered before the next session of the Conference in order to pave the way for their final settlement.

37. The Drafting Committee had also been left with a heavy burden of work since it had to make the results of its work available to all members before the final session of the Conference. It would therefore have to make considerable efforts, in conjunction with the delegations concerned, to prepare a draft text which could be signed the following summer in Caracas.

38. Mr. GOERNER (German Democratic Republic) welcomed the fact that the negotiations had been successful and that the proposed revisions improved the prospects of consensus. The proposals of the co-ordinators of the working group of 21 constituted a balanced package on which discussion must not be reopened. The German Democratic Republic had always held the view that, for the Council, decision-making mechanisms must be established in such a way as to exclude any discrimination against a particular socio-economic system or group of countries. It therefore supported article 161 of the informed composite negotiating text which provided that substantive decisions should be taken by a three-fourths majority, which implied the co-operation of all groups represented on the Council. His delegation had doubts concerning the division of questions into three categories with different voting procedures, as proposed by the working group of 21. It could, nevertheless, agree to that solution since provision had been made for the adoption of decisions by consensus on the most important questions and by a three-fourths majority on other questions of great importance. In fact, in that way, the legitimate rights and interests of all the socio-economic systems represented on the Council would be taken into consideration.

39. The anti-monopoly clause contained in annex III, articles 6 and 7, could have been improved. In particular, it might have contained more specific provisions relating to activities in the reserved areas. A further improvement of the text in favour of the consumers of raw materials would also be justified in respect of the resource policy of the Authority. But by and large the recommendations of the working group of 21 were judicious and should be included in the third revision of the text.

40. The Conference had also made great progress in the negotiations on the final clauses, which, by contributing to the preservation of the integrity and unity of the convention as a whole, would ensure the universal application of a uniform legal régime, the stability of the essential provisions of the convention and, at the same time, their adjustment in the light of future technological developments. The proposals submitted in documents FC/21/Rev.1 and Add.1 should therefore be included in the third revision. However, it would be desirable to stipulate that the entry into force of amendments not exclusively concerning activities on the sea-bed beyond the limits of national jurisdiction, as envisaged in article 309, paragraph 1, would require the consent of three quarters of the States parties to the convention. It seemed justifiable that amendments to a convention which would have an impact on the vital rights and interests of all States should be ratified by a very large majority of the States parties. With regard to the proposals on the general provisions submitted in document A/CONF.62/L.58, his delegation had no objection to their inclusion in the third revision, although, in its opinion, some of them were neither useful nor necessary.

41. It had been rightly stressed that for the success of the Conference it was essential not to reopen questions which had already been solved. The German Democratic Republic fully shared that view and therefore supported all measures which would guarantee that the compromise formulas devised after years of negotiations would not be touched.

42. At the end of the ninth session, agreement had been reached on all the essential provisions of the new convention. Still to be completed were the remaining final clauses, including provisions on the participation of national liberation movements in the convention and the regulations governing the preparatory commission of the international sea-bed Authority.

43. His delegation would spare no efforts, in co-operation with the other participants, to ensure that a new convention on the law of the sea regulating the utilization of the resources of the oceans and the preservation of the marine environment was signed in 1981, thus contributing to the consolidation of détente and world peace.

44. Mr. MAURICE (Madagascar) considered that the present text in no way constituted negotiated results but should be regarded as a sound basis for future negotiations. The view of his

delegation remained completely in accord with those expressed by the Organization of African Unity at Nairobi and Freetown. First, with regard to the powers and functions of the Assembly and the Council, there should be two organs not of equal status but each having clearly defined structural powers, the Council being the executive organ and the Assembly the supreme organ. Article 306, paragraph 3, relating to the procedure for amending the convention, was therefore unacceptable since it put the two organs on the same footing, both being called upon to "approve" proposed amendments. The voting procedure in the Council proposed in article 160, paragraph 2 (f), and article 162, paragraph 2 (n), was also unsatisfactory. In his delegation's view, it was a matter not of enumerating questions which required approval by a particular majority, but rather of demonstrating the political will to reach a decision, and not to block efforts at conciliation. In addition, his delegation could not support the provisional application of the rules and regulations adopted by the Council since that was likely to nullify the supremacy of the constitutional powers of the Assembly.

45. With regard to the review conference, his delegation, in conformity with the position of the Group of 77, considered that the international observance of a moratorium, both during the negotiations and during the review conference, was a token of the good faith of the parties and a guarantee to mankind against the monopolization of its common heritage. Although the financing of the Enterprise had not been given undue attention by the Conference, it must be remembered that acceptance of the so-called parallel system of exploitation was linked to the establishment of an Enterprise that was viable and operational at the technical and financial levels.

46. As to the negotiated package deal on the outstanding issues, particularly those referred to by the First Committee, his delegation thought that the present texts did not constitute the final outcome of negotiations but provided only a basis for future negotiations. One could not disregard the legitimate interests of coastal States at the time of exploitation of the exclusive economic zone or the effective transfer of technology, issues which the Organization of African Unity had already stressed. The problem of the delimitation of the exclusive economic zone remained to be solved and at the current stage of work the unacceptable formula in articles 74 and 83 of the second revision of the negotiating text was being used as a basis for discussion. Efforts in that area must therefore be continued.

47. His delegation welcomed, on the other hand, the adoption by consensus of the text relating to the peaceful uses of the seas, which constituted a praiseworthy effort towards the establishment of peace. It would also be desirable to establish the principle of prior authorization of the innocent passage of warships in the territorial sea and perhaps in the exclusive economic zone. The Conference should therefore endeavour to find a truly satisfactory solution to those ostensibly secondary problems. Improvements had been made to the initial text with regard to the question of the settlement of disputes, but those texts would not be final until work had been concluded.

Mr. Perišić (Yugoslavia), Vice-President, took the Chair.

48. Mr. SHEN Weiliang (China) expressed the hope that after it had been revised, the informal composite negotiating text would become the basic text of a draft convention on the law of the sea acceptable to all States. However, certain questions of substance had yet to be solved. First, with regard to the voting procedures in the Council, one should not lose sight of the fact that the Council was the executive organ of the authority, called upon to take important decisions in the interests of mankind as a whole, and that its voting procedures must therefore be democratic and practicable. His delegation had originally proposed that decisions on questions of substance should be taken by a two-thirds majority, but owing to the divergent views of delegations, the issue had remained unsolved. The co-ordinators of the working group of 21 now proposed a new version of article 161, paragraph 7, in which questions of substance were divided into three categories, with different voting procedures for each. Al-

though his delegation was not satisfied with that formula, it would not object if the formula was acceptable to most countries. However, it wished to point out that under the proposal there were 19 questions in subparagraph (c), which were to be decided by a three-fourths majority, but only 8 questions in subparagraph (b), to be decided by a two-thirds majority. In its view, the number of questions covered by subparagraph (c) should be reduced and the number of questions covered by subparagraph (b) should be increased. The question which of those two subparagraphs a particular question came under should also be decided by a two-thirds majority. Questions not clearly listed in the article or not specified in the relevant rules and regulations should be treated as coming under subparagraph (b).

49. With regard to innocent passage in the territorial sea, his delegation had already pointed out that the provisions of the second revision of the text did not make it clear that the régime applied only to non-military vessels. To safeguard the sovereignty and security of the coastal State, the delegations of his own and a number of other countries had submitted a proposal (C.2/ Informal Meeting/58) to the effect that a provision should be inserted in article 21 of the text stipulating that the coastal State had the right, in accordance with its laws and regulations, to require prior authorization or notification of the passage of foreign military vessels in its territorial sea. That proposal, which had won support of many countries, was in conformity with the generally recognized principles of international law according to which only non-military foreign vessels enjoyed the right of innocent passage in the territorial sea. In the case of military vessels, the coastal State naturally had the right to take the necessary steps to regulate such passage. The legislation of several countries, including China, prohibited the unauthorized entry into the territorial sea or air space by military vessels or foreign aircraft. The Conference should therefore take account of those provisions and make the necessary changes in the text.

50. The definition of the continental shelf contained in article 76 was based on the principle of natural prolongation, which accorded with the scientific concept of the geographical and geological definition of the continental shelf. It therefore fixed the outer limit of the continental shelf at 350 nautical miles from the baselines from which the breadth of the territorial sea was measured, or at 100 nautical miles from the 2,500-metre isobath. That provision was reasonable, as was that which fixed the outer edge of the continental margin of a State at 200 nautical miles, provided that that was without prejudice to the application of the principle of natural prolongation. However, since the geographical and geological features of the continental margin varied greatly, some degree of flexibility should be introduced into the definition. Accordingly, his delegation had proposed an amendment to that effect and hoped that it would be taken into consideration.

51. The question of the delimitation of the exclusive economic zone and of the continental shelf between States with opposite or adjacent coasts should be determined through negotiations between the parties concerned, in accordance with the principle of equity and taking into account all the relevant factors. The median or equidistance line was a method which could be adopted only when it was in conformity with the principle of equity generally recognized in international law and confirmed in many international documents and in international jurisprudence. In that sense, paragraph 1 of the existing articles 74 and 83 constituted a step backward in relation to the preceding version of the text. It would therefore be desirable to improve those provisions, which had not been endorsed by the majority of countries.

52. Articles 303 and 304 on reservations and exceptions, as proposed in documents FC/21/Rev.1 and Add.1, provided that no reservations or exceptions might be made to the convention unless expressly permitted by other articles, while article 304 on declarations and statements provided that a State party, at the time of signing, ratifying or acceding to the convention, might make declarations on the understanding that they did not possess the legal effect of reservations. Since there might be very few reservations expressly permitted by other articles and since what

were called exceptions were not reservations, the foregoing provisions were tantamount to preventing States parties from expressing reservations which would not be incompatible with the principles of the convention in respect of articles affecting their essential rights and vital interests. The provisions were therefore inappropriate. His delegation had repeatedly stressed that, as the new convention covered a wide range of complicated problems, it was impossible to take account of all the interests of the various States, even if the convention was adopted by consensus. In order that the convention might be accepted by as many countries as possible and enter into force at an early date, it was entirely proper to permit limited reservations while maintaining the essential integrity of the convention. Article 303, which was based only on an hypothesis, and was provisional, must be further discussed.

53. His delegation hoped that its comments would be taken into consideration in the revision of the text. It did not object in principle to the revised articles, which were the outcome of consultations, being included in the third revision of the text as a basis for further consultations. Like other delegations, it would do its utmost, in a spirit of co-operation, to bring the work of the Conference to a successful conclusion.

54. Mr. DREHER (Federal Republic of Germany) said that during the 125th meeting,² his delegation had already expressed its position as that of an industrialized State with various marine interests. With respect to Part XI of the text, the Federal Republic of Germany still felt that the private-side financing of the Enterprise was excessive. Furthermore, the general concept reflected in articles 150 and 151 on resource policy was too much oriented towards safeguarding the interests of land-based producers. Article 150, subparagraph (d), should therefore be amended if the newly-introduced market access clause was to be acceptable. Although his delegation was opposed to any form of production limitation and considered that a sufficiently high "floor" should at least be established so as not to discourage investors, it appreciated that some changes, in particular those made in article 150, subparagraph (h), and article 151, paragraph 1, took account of its views. Article 155 on the review system created difficulties vis-à-vis the Constitution of the Federal Republic of Germany. His country's Parliament reserved the right to endorse future substantive amendments to the convention, and the review conference should not jeopardize access to deep-sea mining by States and their nationals.

55. With respect to the voting procedure in the Council, major progress had been achieved, but the principle set forth in article 162, paragraph 2 (j), was still questionable, since everything would depend on the judgement of the experts in the legal and technical commission. It was most important, therefore, that safeguards should be incorporated in the text and in the rules and regulations so as to ensure impartiality in the Commission's proceedings.

56. With regard to the transfer of technology, there was some concern that the provisions relating to third States might lead to endless legal and practical difficulties. That was one of the main disadvantages of Part XI. His delegation maintained its opinion that the obligation to transfer technology to States went beyond the idea of a parallel system and could not be embodied in the convention. It could not therefore support annex III, article 5, paragraph 3 (e), even though its proposal to define the notion of "fair and reasonable terms and conditions" had been taken up.

57. On the question of annex III, article 9, his delegation again requested that developing and developed countries should be allowed to undertake joint ventures in the reserved area. That formula would enable the developing countries to participate at an early stage in the exploitation of deep-sea resources. His delegation had made detailed proposals for reducing the financial contributions proposed in annex III, article 13. It had proposed an alternative formula aimed at reducing by 50 per cent all payments to the Authority by contractors starting commercial seabed production before the year 2000. That "discount" would be granted for the first 10 years of production and would be fol-

lowed by a 25 per cent reduction for the remaining years of the contract.

58. With respect to Second Committee matters, innocent passage in the territorial sea by all ships was a fundamental right of the community of nations. His delegation therefore maintained its proposal that article 19, paragraph 2 (1), should be improved. Furthermore, the right to extend the territorial sea up to 12 nautical miles should not be exercised to the detriment of other States. A prerequisite for recognition of the coastal State's right to extend the territorial sea was the régime of transit passage through straits used for international navigation. Article 38 should be understood to mean that the right of transit passage was limited only where there was an equally convenient route from the standpoint of navigation and hydrographical characteristics, which included the economic aspects of shipping.

59. In the exclusive economic zone, coastal States would be granted resource-related rights and jurisdiction. All States would continue to enjoy the high-seas right of navigation and overflight, and all other lawful uses of the sea not under such jurisdiction. Those rights would be exercised for peaceful purposes, i.e. in accordance with the Charter of the United Nations. The delicate balance achieved in articles 56 and 58 included a reference to articles 88 to 115, which applied to the exclusive economic zone in so far as they were not incompatible with Part V. Nothing in that part was incompatible with article 89, which invalidated any claim of sovereignty over the high seas.

60. Freedom of transit for land-locked States through the territory of transit States should not infringe the sovereignty of the latter. His delegation therefore considered that, in accordance with article 125, paragraph 3, the rights and facilities provided for in Part X in no way infringed the sovereignty and legitimate interests of transit States. That should be stated clearly. The transit procedures were still to be agreed, in each case, between the transit State and the land-locked State. In the absence of such agreements, the transit of persons and goods through the territory of the Federal Republic of Germany was regulated only by national law, in particular with regard to means of transport.

61. With regard to Third Committee matters, his delegation regretted that the restrictive provisions of Part XIII ran the risk of hampering the development of marine scientific research. Article 246, paragraph 6, which limited the coastal State's discretionary power over the continental shelf beyond 200 miles to areas designated in accordance with the provisions of paragraph 6, was a minor improvement. It was in the general interest to promote marine scientific research and that should be taken into account in the interpretation and application of the text. Under the convention, the future of marine science would be assured only by co-operation and efforts by all States to promote marine scientific research.

62. The final clauses contained in documents FC/21/Rev.1 and Add.1 were on the whole acceptable, provided that the provisions of the convention not adopted by consensus remained open to reservations and that the rules, regulations and procedures drawn up by the Preparatory Commission applied provisionally. It was essential that the European Economic Community should become a party to the convention. Some further improvements still appeared to be desirable in respect of the *ad hoc* chambers for the settlement of disputes.

63. In conclusion, his delegation wished to submit the candidature of the city of Hamburg as the seat of the Law of the Sea Tribunal.

64. Mr. AL-WITRI (Iraq) said that the work of the present session had produced a text which, in addition to setting up a very complicated voting system, weakened the role of the Assembly and strengthened that of the Council. The new role of the Council would hamper decisions on such questions as the sharing of benefits derived from the Area and the resources of the continental shelf. The work of the Authority would be paralysed by the fact that decision-making powers would be limited to a minority of Council members. The consensus formula assumed unanimity and the exercise of the right of veto by each member. Iraq joined

the developing countries in opposing that formula, which had been one of the reasons for the failure of the League of Nations.

65. Turning to article 76, he said that the Arab countries had always opposed extending the continental shelf beyond 200 nautical miles. However, in accordance with their flexible approach, they were quite prepared to continue negotiations on the payments made to the Authority. In that connexion, the group of Arab States considered that article 82, paragraph 4, should mention, in addition to the least developed and land-locked States, the people who had not yet attained full independence, so that they too could share the proceeds of the exploitation of the continental shelf beyond 200 nautical miles.

66. On behalf of the group of Arab States, he requested that negotiations should be continued within the Second Committee. Turning to article 300, he said that the liberation movements recognized by the United Nations and the regional organizations, particularly the Palestine Liberation Organization, which was already attending all the sessions of the Conference, should also be allowed to accede to the convention. The cornerstone of the future convention was the principle that the sea-bed's resources were the common heritage of mankind, and therefore also of the peoples who had not yet attained independence: the text of the convention should therefore reflect that concept.

67. As the representative of a geographically-disadvantaged country he was of the view that the text did not take sufficient account of the right of land-locked and geographically-disadvantaged countries to participate in the exploitation of living resources. Furthermore, for the sake of uniformity, the expression "geographically-disadvantaged States" should be used in all relevant articles.

68. In his view articles 83 and 74 on the delimitation of the continental shelf and the exclusive economic zone as contained in the second revision of the negotiating text were incomplete. He supported the Irish proposal that they should be drafted in a more equitable manner.

69. Turning to the question of enclosed or semi-enclosed seas, his delegation considered that article 123 should be stricter and should also take into account freedom of passage in all sea lanes leading to straits. It rejected all unilateral legislation on that point and considered that the adoption of maritime legislation necessitated regional and international co-ordination.

70. Mr. LEUNG (Mauritius) said that his delegation had very strong reservations about the changes in the report of the co-ordinators of the working group of 21. It would like to see the principle of a moratorium reintroduced into the text of article 155 concerning the revolving conference. As to the proposed voting structure for the Council, it defied logical analysis and would render the system unworkable. His delegation opposed any mechanism remotely connected with the veto, weighted voting or chamber voting.

71. The position of the Group of 77 on that crucial matter had been seriously damaged without any corresponding gains. Consensus, whatever meaning was given to the word, implied a veto; he therefore hoped that the matter would be reconsidered.

72. On the transfer of technology, which was the subject of annex III, article 5, his delegation felt it was unfortunate that processing technology had been omitted from the definition of technology. It hoped that the collegium would remedy that omission in the new text it was to prepare, in accordance with the intention expressed by Mr. Nienga.

73. Turning to the problem of the relationship between the Enterprise and the Authority, he thought that the Enterprise should be endowed with sufficient autonomy to enable it to plan its operations with the necessary degree of flexibility, failing which its viability and the very existence of the parallel system might be jeopardized. As the amendments and additions made to article 5, paragraph 5, and article 7, paragraph 3, of annex IV were not desirable in that they were likely to hamper the operations of the Enterprise, he felt that they should be rejected.

74. His delegation welcomed the fact that article 151 now pro-

vided for a system of compensation or other forms of assistance in economic adjustment, including co-operation with specialized agencies and other international organizations, to help the developing land-based producer countries which suffered adverse effects as a result of sea-bed mining. However, his country could not support any system which would effectively impose a first charge on the revenues of the Authority. All countries should be able to participate, through the Authority, in the activities in the Area and the benefits accruing therefrom. The Authority must ensure that those benefits were fairly distributed among all States, since the benefits represented the common heritage of mankind. In the opinion of his delegation, it should be made clear that potential producers were not entitled to compensation under the system which was being devised. The compensation mechanisms must respond to existing situations.

75. On the question of marine scientific research, which was vital for developing coastal States, his delegation noted with satisfaction the resolution concerning a comprehensive plan to enhance the developing countries' capabilities in that area which had been adopted by the Intergovernmental Oceanographic Commission.

76. There was no doubt that the treaty which the Conference was endeavouring to produce would contain elements which would be intensely disliked by some States or groups of States. However, if the overall package was fair to all and harmed no one irreparably, then everyone could indeed work towards the attainment of the desired objective.

77. As far as the outstanding issues were concerned, particularly the questions of participation, the protection of investments over the interim period and the settlement of disputes, he was confident that they would be resolved to the satisfaction of everyone during the next round of negotiations.

78. Mr. COSTA (Sao Tome and Principe) said that the Conference was extremely important for his country as it formed part of the struggle to establish a new international economic order, which was to crystallize the legitimate aspirations of all peoples and mankind in the form of rules of conduct. In that connexion, his delegation protested against the recent enactment by the United States of national legislation on the commercial exploitation of the sea-bed. Such legislation was completely contrary to the principle of good faith which must govern the work of the Conference and prejudiced the chances of the convention being approved by consensus. The interests of a group of companies should not be allowed to override those of mankind as a whole, and his delegation unconditionally supported the position of the Group of 77 on that matter.

79. On the problem of delimitation, it was not clear who would be responsible for rendering an equitable decision in the event of a dispute; the attempt to find a definition of equity common to all countries might be an impossible task. His delegation therefore favoured the median or equidistance line as the criterion for the delimitation of the exclusive economic zone. A subjective principle should in no circumstances become a rule of international law. Articles 74 and 83 in the second revision of the negotiating text, in which the phrase "in conformity with international law" had been inserted, appeared to offer better prospects for a consensus.

80. Its exclusive economic zone was of vital importance to Sao Tome and Principe, and he regretted that the amendment to article 21 relating to the prior authorization of the coastal State for the innocent passage of warships in its territorial sea should still not have been reflected in the negotiating text.

81. In the opinion of his delegation, the report of the co-ordinators of the working group of 21 did not go far towards meeting the developing countries' aspirations. The moratorium clause had not been inserted in article 155, as the group of African States had wished; in its present form the transfer of technology offered the Enterprise no guarantee of effectiveness; the financing system of the Enterprise would be mainly of benefit to the industrialized countries, since the text did not guarantee its operational nature; and consensus, which was defined in article

161, paragraph 7 (e), as the absence of any formal objection, represented a form of veto.

82. Since the economic future of his country largely depended on the utilization of the resources of the oceans surrounding it, his delegation was very much concerned about the divergence between the industrialized and developing countries and hoped that urgent measures would be taken to strengthen the developing countries' scientific capacity and training of the expert personnel on which, in the final analysis, depended the implementation of the convention and its contribution towards the establishment of a new international economic order.

83. Mr. DIOP (Senegal) said he was pleased that the Conference seemed finally to be finding its way after six years of intensive and laborious negotiations on questions of substance. His delegation appreciated the positive results achieved concerning the territorial sea and exclusive economic zone, results which had superseded the 1958 Geneva Conventions and had since become part of State practice.

84. Concerning the negotiations on the delimitation of the maritime boundaries between States with opposite or adjacent coasts, he observed with regret that an acceptable solution had not been reached. Any delimitation must be agreed upon, must be carried out in accordance with the equitable principles and must take account of the relevant circumstances. In his opinion, the second revision of the negotiating text did not satisfy those conditions and its provisions relating to delimitation should in no circumstances be included in the third revision. On the other hand, he hoped that a solution would be found to the question of revenue-sharing, in order to complement the results already achieved on the definition of the continental shelf. He was also optimistic about the work of the Third Committee.

85. At their meeting in Freetown in June, the African heads of State had, in particular, affirmed the need to exclude any decision-making procedure based on a system of weighted or chamber voting or on a veto, and the importance which they attached to the complete transfer of technology without any time-restriction (see A/CONF.62/104). His delegation hoped that the Conference would bear in mind the legitimate concerns of a continent which, more than any other, needed technological input.

86. In that connexion, he was pleased that the difficult negotiations on articles 161 and 162 had been concluded thanks to the political will of all parties. In order to complete that work, efforts should now be made to define the concept of a potential producer State, in order to avoid leaving opportunities for abuse. In addition, it would be fair and equitable to consider the request by the small and medium-sized industrialized countries of western Europe to participate in the Council.

87. He reminded the Conference of the importance attached by Senegal, and the other African countries, to the provisions of annex III, article 5, and expressed the hope that the question of the definition of technology would be settled for good before the convention was adopted.

88. On the question of the review conference, which was dealt with in article 155, he considered that those provisions formed a good basis for negotiation. However, the provisional nature of the system of exploitation was one of the three conditions of acceptance of the parallel system, and consequently the moratorium, which provided the only means of ensuring the early success of the work of the review conference, should be restored by some means or other.

89. With regard to article 150 concerning policies relating to activities in the Area, Senegal was in favour of any solution which took into account the legitimate interests of developing countries that were land-based producers. In that connexion, it would be advisable to find, with the parties concerned, an acceptable compromise on questions of compensation and market access, which remained vital for those countries, without losing sight of the no less legitimate interests of the developing countries which were neither land-based producers nor sea-bed miners.

90. As to the outstanding issues, his delegation hoped that the spirit of compromise which had prevailed throughout the work of the current session would continue to prevail when those issues were considered at the following session.

91. It also sincerely hoped that the Drafting Committee would be able to complete successfully the task which it was so competently undertaking.

92. Mr. DE LACHARRIÈRE (France) said that at the session which was drawing to a close considerable progress had been made towards the fulfilment of the three tasks which constituted the overall mandate entrusted to the Conference.

93. The Conference's first task, which concerned the definition of a new law of the sea, consisted in confirming the results already achieved, that is to say, the general outline of the new law, as defined at previous sessions and already largely incorporated into positive law, and in supplementing them by similar agreement on certain relatively secondary points on which the Conference was still divided. In his opinion, the Geneva session had been more successful in preserving the achievements of the previous sessions with regard to everything that constituted the law of the sea, with the exception of the exploitation of the international area of the sea-bed, than in expanding them.

94. With respect to the second task of the Conference, namely, the problems involved in the exploitation of the resources of the international area, he thought that the Geneva session would occupy a prominent place in the studies which would be made by commentators on the international law of the sea, or even on international law in general, concerning the evolution of the institutions of the "common heritage of mankind". The breakthrough had occurred when the Conference had realized that the industrialized countries would not compromise, in respect of the decision-taking machinery within the Council, on the principle of an adequate safeguard for their interests. In their opinion, it had been a question of obtaining a safeguard rather than a privilege. The idea of a safeguard without privilege had been reflected from a technical standpoint in the procedure for the adoption by consensus of the most important or most sensitive decisions. In that connexion, his delegation was surprised that an attempt had been made to limit so narrowly the scope of a process which had been highly praised at the sixth Conference of Heads of State or Government of Non-Aligned Countries, held at Havana in September 1979.

95. Referring to annex III, his delegation wished to make it clear once again that it was pressing for the inclusion of a truly effective anti-monopoly clause, the details of which were given in the report of the co-ordinators.

96. The last category of problems to be resolved by the Conference included those which arose only because what was required was to define the new law, and also to formulate it in a convention (preamble clauses, general provisions, provisions on the settlement of disputes, final clauses). He considered that substantial work had been done in those areas.

97. In his opinion, the main system for the settlement of disputes constituted an equilibrium which it would be dangerous to call in question. Article 188, which provided for the establishment of special chambers to deal with disputes concerning Part XI, unquestionably introduced one of the advantages of arbitration, which consisted in enabling the parties to a dispute to participate in the appointment of the judges. In its present form, however, the negotiating text was still inadequate with regard to both the composition of the special chambers and the disputes that might be submitted to them. The final clauses were, on the whole, satisfactory despite the fact that some elements still had to be re-examined and that there was a need for a clause providing for the participation of the European Economic Community.

98. In the opinion of his delegation, it was essential that the French version of the future convention should be as accurate as possible. It was therefore important that the French language group and the Drafting Committee should be able to carry out the vital work of textual revision. The statement that the next session

of the Conference would be the last devoted to negotiations had for the first time some credibility. That was no empty praise, but was all the more deserved since the Conference had returned to the principle of consensus which had overshadowed its work at the outset. It had thus recognized that in the modern world no international relations could be acceptable between sovereign States and no rules could be valid for them unless they had been freely agreed to by the parties concerned.

99. Mr. AKINJIDE (Nigeria) said that the question of the future system for the exploration and exploitation of the Area was among those which had remained unresolved at the end of the first part of the ninth session in New York. Progress had been made on various other points, such as the definition of the continental shelf, the rules governing marine scientific research on the shelf and the 200-mile exclusive economic zone.

100. With regard to the exploitation of the Area, his Government had favoured the joint venture system of exploration and exploitation. In the end that system had not been accepted since the Conference had preferred the "parallel system". His delegation thought that with goodwill on the part of all concerned, the system adopted would work. With respect to the details of operation, it was his delegation's understanding that States parties to the convention would provide one half of the funds which the Enterprise would need for its first mining venture and would guarantee the loans contracted by it in order to obtain the other half. The Conference still had to decide whether that arrangement would suffice to make the Enterprise operational and how the initial shortfall would be financed if potential contributors were slow in ratifying the convention. Final agreement also had to be reached on the level of the taxes which contractors would pay to the Authority in respect of the proceeds of their operations.

101. In addition to financial support, the Enterprise would need technology. Simply ensuring that a third party contractor transferred technology to the Enterprise without imposing any obligation on the developed countries was unsatisfactory. The provisions on those two issues would have to be improved before they were acceptable to his delegation. Furthermore, training should be accorded priority in order to make the transfer of technology truly meaningful and the parallel system operative.

102. With regard to production policies, negotiations had sought to bridge the differences between countries which stood to benefit economically from larger and possibly cheaper supplies of minerals from the areas, and countries which wanted to protect their own land-based mining interests from the serious harm they would suffer as a result of the availability of rival sources of minerals. Article 151 of the negotiating text aimed at limiting sea-bed production to a level that would not harm land-based producers but would ensure an adequate supply to consumers. The production growth rate had been fixed at 3 per cent, of which 60 per cent would be for sea-bed resources and 40 per cent for land-based resources. A "safeguard clause" had also been introduced to protect land-based producers from a decline in sales during times of a sluggish market. That formula was unsatisfactory to developing countries which were land-based producers of minerals also found in the sea-bed. His Government had advocated that the growth rate should be reduced to 2 or 2.5 per cent and the safeguard clause reduced from 100 to 70 per cent. That position was supported by a large number of developing countries and some developed countries. The compensatory provisions of article 162, paragraph 2 (m), and article 173, paragraph 2 (c), were illusory and contained a promise which was inadequate to meet the legitimate concerns of the land-based producer developing countries, whose interests would be affected by the flooding of the market with production from the sea-bed.

103. The question of decision-making by the Council had also been the subject of controversy. The western European States had rejected the three-fourths majority formula. The two-thirds majority formula giving a right of veto to all geographical groups was unacceptable. His delegation could not support any formula that provided for a right of veto for any group of interests. The

new wording of article 161, paragraph 7, which would combine the use of the two-thirds majority, the three-fourths majority and consensus on certain well-defined issues, offered a much better solution than that contained in the second revision of the negotiating text. His delegation was able to support it in a spirit of compromise and as part of the package.

104. With regard to the review conference, his delegation regretted that article 155, paragraph 4, in the second revision, based on the provisions of paragraph 6 of the same article in document A/CONF.62/WP.10/Rev.1, no longer provided for a moratorium or any other effective means of control. It would be preferable to revert to the previous text.

105. It was common knowledge that Nigeria had, by Act No. 28 of 1978, established its exclusive economic zone. While most issues relating to the exclusive economic zone had been resolved, some delegations were pressing for changes in the existing provisions which, in the opinion of his Government, were satisfactory.

106. Despite lengthy negotiations, the Conference had been unable to reconcile the opposing views on the delimitation of the maritime boundaries of coastal States (arts. 74 and 83). Nigeria was in favour of the median or equidistance line principle but did not believe that the adoption of such a formula would rule out the possibility of agreement by the States concerned to make any changes in the formula that might be justified by circumstances. Nigeria had, in fact, embodied those principles in its legislation. Moreover, it rejected any compulsory adjudication on the settlement of disputes in that field, but it could accept compulsory conciliation machinery. Although it had not yet been possible to reach agreement, it seemed that the solution to the problem was in sight. It should certainly be resolved by the next session.

107. A complex legal definition had been devised to delimit the part of the sea-bed under national jurisdiction. However, some delegations challenged various aspects of that definition, claiming that it gave too much to coastal States with broad continental shelves and took away too much from the common heritage of mankind lying beneath the ocean. General agreement had been reached on the establishment of a commission on the limits of the continental shelf, but various questions of detail remained unresolved. Similarly, it would be necessary to determine the amount of the proceeds obtained by coastal States from exploitation carried out more than 200 miles off shore that they should share with the international community. The rights of coastal States in respect of archaeological and historical objects found on the continental shelf must also be defined. It would be recalled that Nigeria's position on that issue was that the breadth of the continental shelf should be coterminous with that of the exclusive economic zone; however, his delegation was prepared, in a spirit of compromise, to accept the existing principles which could almost be equated to the natural prolongation principle.

108. In a related field, a decision would also have to be taken on a proposal to make the innocent passage of warships in the 12-mile territorial area subject to prior authorization by, or notification to, the coastal State. In that connexion, Nigeria could endorse the relevant provisions of the second revision of the text as they stood at present.

109. The principle adopted on pollution and the preservation of the marine environment was generally satisfactory. General agreement had been reported on a consensus régime for foreign marine scientific research in the exclusive economic zone or on the continental shelf. His delegation was in favour of abandoning implied consent and welcomed the fact that the coastal State could withdraw its consent if research was used for an improper purpose. It also endorsed the idea that the coastal State whose territory was involved could participate in the research and share in the benefits of the data obtained therefrom.

110. With regard to the final clauses, there were still a number of very controversial matters to be resolved, such as the question of signature, the number of ratifications necessary for the entry into force of the convention, the time-lag between the last ratifi-

cation and entry into force, reservations, amendments and denunciation.

111. Mr. TIWARI (Singapore) observed that the most notable progress had been made in matters falling within the purview of the First Committee. The complicated question of decision-making in the Council of the Authority, which had long seemed insoluble, had been resolved. Improvements had also been made to the text on production policies and the transfer of technology. His delegation was in favour of incorporating in the third revision all the amendments suggested in document A/CONF.62/C.1/L.28/Add.1. The text, as revised, seemed to offer substantially improved prospects of consensus.

112. With regard to Second Committee matters, his delegation had repeatedly stressed the importance of drafting a definition of the continental shelf that was clear and easy to apply. It attached great importance to that question and therefore considered it absolutely essential—especially when the definition of the continental shelf was not only unclear but complicated—that the commission on the limits of the continental shelf should be composed in such a manner that its integrity was not open to question. Annex II of the second revision offered few guarantees in that regard, since it provided only that election to the commission should be on the basis of the principle of equitable geographical representation. That method of selection left open the possibility that the commission might be dominated by nationals of broad-margin States and their sympathizers. Annex II should therefore be modified in such a way as to ensure that relevant interest groups were fairly represented in the commission.

113. Other aspects of annex II were also unsatisfactory. For example, article 2, paragraph 5, provided that the State party which submitted the nomination of a member should defray his expenses. That provision could only act as a disincentive to nomination by countries which had no direct interest in continental shelves and would be likely to increase doubts concerning the integrity of the commission. His delegation therefore suggested that the expenses should be borne either by the broad-margin States or by the Authority.

114. Also with regard to Second Committee matters, his delegation supported the inclusion in the revised text of those parts of Informal Paper 14 to which there had been no objection. It also supported the Nepalese proposal on the common heritage fund. It was undeniable that under the proposed convention vast areas of ocean space and large amounts of resources would accrue to a small number of countries. More exactly, 10 countries would obtain more than half of all the exclusive economic zones in the world and only 1 of those 10 was a poor country. In view of the fact that, under traditional international law, all the wealth of the exclusive economic zones was common property or no one's property, it was to be hoped that the Conference would—in some small measure—improve that inequitable situation by adopting the common heritage fund proposal.

115. Referring to Third Committee matters, his delegation supported the incorporation of the changes proposed in documents A/CONF.62/C.3/L.34/Add.1 and 2, in respect of which no objection had been raised in the Committee. Those changes would improve the clarity of Parts XII, XIII and XIV.

116. With regard to the final clauses, general provisions and settlement of disputes, the President's skill and wisdom had made it possible to arrive at compromise formulas on most of the relevant articles and on the text relating to the rationalization of the conciliation provisions. His delegation supported the inclusion of those various provisions in the third revision. It wished, nevertheless, to stress, as it had already done at an informal meeting of the plenary Conference, that as a result of the addition of the word "exclusively" in article 306, paragraph 3 (see FC/21 and Add.1), and of its deletion from paragraph 1 of the same article, there was no amendment procedure for a large number of questions under the convention, i.e. those relating partly to

the Area and partly to another aspect of the convention. It would therefore be desirable to insert the word "exclusively" after the word "relating" in the first sentence of article 306, paragraph 1. If that change caused difficulties for some delegations, his delegation was prepared to accept any other amendment that might resolve the problem, which the Conference could not leave outstanding. The search for a compromise could not be used as an excuse for knowingly leaving lacunae in the text, since that could only lead to unnecessary difficulties. His delegation wished to thank the President, who had reflected those concerns in paragraph 6 of his report and had suggested that the matter required careful examination.

117. Mr. OSMAN (Egypt) expressed gratitude to all who had contributed to the drafting of the informal composite negotiating text. His delegation had participated in the negotiations in the First Committee which had given rise to the proposed amendments in document A/CONF.62/C.1/L.28/Add.1. These amendments supplemented the package deal and, it was to be hoped, would be acceptable to everyone.

118. His delegation nevertheless noted with concern that the draft text of the convention was still a long way from meeting the wishes of the developing countries. In particular, there was a certain imbalance between the powers of the Council and those of the Assembly: the new paragraph 2 of article 162 must be interpreted in the light of article 158, paragraph 4. The latter paragraph contained no suspensive provision, even though such a provision would have been beneficial to the world economy and would have assisted developing countries to adjust their positions. His delegation had proposed a new wording for article 158, paragraph 4, which, when taken in conjunction with articles 150 and 151, would have gone some way to meet the legitimate demands of the developing countries. It hoped that when the third revision was being prepared, that proposal would be taken into account.

119. His delegation would also like to see an improvement to annex III, article 5, which was not acceptable in its present form.

120. The new text concerning the decision-making procedures in the Council, while not entirely satisfactory, represented an improvement. His delegation felt that more work needed to be done on that question.

121. Further work was also needed on some other aspects of the negotiating text. With regard to the passage of warships in the territorial sea of coastal States, his delegation considered that prior notification was essential, as the sovereignty and security of the coastal States were involved and they must be able to take the necessary measures in the event of violation of the applicable rules. Certain States, supporting the informal document dated 20 March 1980, had called for negotiations on the matter but so far they had received no response: it was to be hoped that the problem would be solved in the near future. In particular, the right of the coastal State to exercise the same rights in the contiguous zone should be clarified. Authorization by the coastal State must also be required before the passage of nuclear ships or vessels carrying dangerous goods in the territorial sea of a coastal State could be allowed.

122. As to the delimitation of the exclusive economic zone and the continental shelf, his delegation considered that delimitation and the settlement of disputes should form an inseparable whole.

123. Some improvements had been made to the articles dealt with in the Third Committee, but his delegation nevertheless felt that the earlier text of article 263 had been better balanced and would like that article to be renegotiated. He reaffirmed his delegation's over-all position concerning marine scientific research, as provided for in Part XIII of the negotiating text. The guarantees provided for coastal States in the earlier text should be restored, in particular with regard to scientific research conducted on their behalf by other States.

124. His delegation appreciated the results of the work on the final clauses and the settlement of disputes. While hoping that the text could be made even more precise, his delegation was prepared, in a spirit of compromise, to endorse it as it stood.

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

125. Mr. DJALAL (Indonesia) welcomed the results so far achieved at the Conference but said that the proposed third revision of the text still contained wordings which were not fully satisfactory to his delegation.

126. As was well known, his country's interests in the Conference were manifold and included, *inter alia*, the legal régime of archipelagic States and that of straits used for international navigation, the rights of coastal States over the exclusive economic zone and the continental shelf, the protection of the economy of land-based producer States from the possible adverse effects of mining in the international sea-bed area, the problems of delimitation between States with opposite or adjacent coasts and many other issues still under discussion.

127. His delegation was happy to note that a consensus seemed to have been reached on draft articles relating to archipelagic States and straits used for international navigation. For more than three years those two legal régimes and many other issues debated in the Second and Third Committees had been considered as settled by the Conference. His delegation therefore fully supported the President's appeal that issues that had been considered settled should not be reopened for further discussion.

128. With regard to issues considered by the First Committee, Indonesia's basic position was dictated by the fact that it was a developing country, a member of the Group of 77 and a land-based mineral producer. While Indonesia supported the rational exploitation of the sea-bed resources by the Enterprise and by other entities for the benefit of mankind as a whole, its primary interest was to ensure that the economies of current and potential land-based mineral producers would not be adversely affected by activities in the sea-bed area beyond the limits of national jurisdiction. His delegation noted that the negotiations on that issue seemed to have produced some results which could be used as a basis for consensus.

129. On the question of the transfer of technology, his delegation believed that certain improvements had been made and hoped that others could still be made in order to strike a balance between the interests of the Enterprise and the developing countries, on the one hand, and the possessors of the technology and scientific knowledge, on the other.

130. Owing to its political overtones, the problem of voting in the Council was one of the most difficult aspects of the functioning of the Authority. In that respect, his delegation abided by the position of the Group of 77, which as a matter of principle, rejected the incorporation of any form of veto power in the decision-making procedure of the Council and therefore considered that decision-making on the basis of a two-thirds majority, as proposed by the Group of 77, was the most appropriate solution. His delegation would, however, welcome any reasonable compromise solution on that difficult issue. It regretted that one of the items requiring decision by consensus in the Council was the implementation of article 162, paragraph 2 (i), namely, the adoption of the necessary and appropriate measures to protect the developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price or volume of exported minerals as a consequence of the mining of the same minerals from the sea-bed area beyond the limits of national jurisdiction. His delegation felt that the consensus procedure on that matter would immobilize the Council when it came to take a decision to protect the developing countries. It was his delegation's understanding, however, that the inclusion of paragraph 2 (i) in the list of items to be decided by consensus by the Council should not in any way affect the implementation of article 151 on production policies relating to the international sea-bed area.

131. His delegation regretted the deletion of paragraph 3 (c) from annex III, article 6, relating to the approval of plans of work submitted by applicants. In particular, it regretted that under the provisions of the third revision, the approval of plans of work would be practically automatic, whereas in accordance with the former paragraph 3 (c) the Authority would not approve a plan of work if, as a result of such approval, the production limitation set in article 151 would be surpassed.

132. The delimitation of maritime boundaries between States with opposite or adjacent coasts was one of the most difficult issues before the Conference in that it attempted to establish general legal norms applicable to almost as many specific geographical situations as there were countries participating in the Conference. The latest compromise proposals contained in the second revision did not yet seem to command general acceptance and did not adequately reflect the principle of equidistance. His delegation hoped that serious efforts would continue to be made in order to reach an acceptable compromise formula before the end of the session. He reiterated his delegation's view, which was shared by many other delegations, that the boundary of the continental shelf and of the exclusive economic zone between States with opposite or adjacent coasts should not necessarily be the same since they were governed by two different legal régimes.

133. His delegation noted with appreciation the significant progress made by the Drafting Committee and expressed the hope that the self-restraint recently manifested in that Committee would continue to prevail in its future work, so that it should not be used as a vehicle for making substantive changes in a text which had been so carefully and painstakingly negotiated.

134. In conclusion, his delegation welcomed the progress made on the general provisions settlement of disputes and final clauses, and hoped that that progress would give the necessary impetus to the solution of the last remaining hard-core issue, namely, the delimitation of the territorial sea between States with opposite or adjacent coasts.

135. Mr. TORRAS DE LA LUZ (Cuba) said that, since the convention to be drawn up by the Conference would necessarily have to be based on mutual concessions, his delegation agreed to the incorporation of the text resulting from the negotiations in the First Committee into the third revision of the informal composite negotiating text.

136. As a country whose future staple export would be nickel, Cuba was particularly interested in the formula for limiting production from the Area and recognized that the solution provided for in articles 150 and 151 represented the only possible compromise which would take into account the various interests concerned. His delegation, however, shared the fears of certain cobalt-producing countries that the development of production in the Area might in a short time saturate the market for that metal. It therefore welcomed the new paragraph introduced into article 150 and the changes made in article 151, paragraph 4, in order to protect producer countries which were members of the Group of 77, and hoped that the collegium would try to strengthen those provisions even further. With regard to article 151, paragraph 4, he wished to make it clear that his delegation interpreted the measures referred to as relating only to article 162, paragraph 2 (m), and not to paragraph 2 (i) of that article.

137. Noting that the text of Part II of the second revision afforded greater protection to coastal States with regard to the territorial sea and contiguous zone than the 1958 Geneva Convention had done, his delegation hoped that the present text would be maintained unchanged.

138. Speaking on behalf of a country which had made concessions concerning the exclusive economic zone dealt with in Part V—for Cuba could by no means enjoy a zone of 200 nautical miles—his delegation was firmly opposed to any re-opening of the discussions on that part of the text.

139. As to the settlement of disputes, he reiterated his delegation's willingness to endorse the compulsory conciliation procedure, but not the procedures for compulsory settlement, unless the parties concerned agreed to such a course.

140. He reiterated his delegation's opposition to any legislation enacted by the United States of America or the Federal Republic of Germany which would confront the international sea-bed Authority, which the Conference was endeavouring to establish, with a situation which was likely to prejudice its activities from the very outset.

141. Lastly, he appealed to the Collegium, at a time when it

was preparing the third revision, to reflect the present general debate in an objective manner so that at the next session of the Conference the convention might be adopted.

142. Mr. NARAKOBI (Papua New Guinea) said that the results of the Conference so far achieved reflected the growing co-operation and interdependence of the world community and represented a great stride forward in human history.

143. However, with regard to the new proposals for Part XI and annexes III and IV (A/CONF.62/C.1/L.28/Add.1) to be incorporated in the third revision, his delegation had certain misgivings. Article 150, subparagraph (i), for example, did not afford sufficient protection to the markets of land-based metal producers and should be made clearer. Despite the good intentions expressed in paragraph 1 of article 151, paragraph 2 of that article was not satisfactory. In his delegation's view, the figure of 3 per cent for the rate of increase in nickel consumption was too high and, if taken in combination with the 60 per cent share of the future growth allowance and with provisions for individual nodule miners to increase production, the 3 per cent would provide no protection for existing land-based producers. There was a danger that, under the proposed terms, sea-bed miners would be able to respond to the vicissitudes of the nickel market more swiftly and at less cost than land-based producers. The 60 per cent share, along with the proviso contained in article 151, paragraph 2 (e), would add to that capability. When the third revision was being prepared, more attention should be given to the methods of production of other metals, particularly copper. Provision must be made for the future since, by the 1990s, there was likely to be direct competition between nodule miners and land-based producers, and unless the mechanism was tightly controlled, land-based mining activities would be jeopardized. His delegation therefore felt that there should be provision for consideration of the situation in the associated nodule metal markets at the time of authorization of nodule mining applications.

144. Turning to article 161, relating to the composition of the Council, he expressed the view that paragraph 1 (d) should make specific reference to the fact that the "special interests" of the developing States referred to were those of land-based mineral producers.

145. His delegation was not satisfied with the provisions regarding delimitation. It considered that heed should be taken of the views of at least 29 sovereign States in the revision of the composite text.

146. The question of innocent passage had still not been satisfactorily settled. His delegation's view was that prior authorization or notification, in the absence of bilateral arrangements, was a right of the coastal State which must be respected before warships could navigate in the territorial sea. In view of modern technological developments, it was all the more important that coastal States should secure that right.

147. In conclusion, he reserved his delegation's right to make a further statement on the package as a whole at a later date.

148. Mr. USHEWOKUNZE (Zimbabwe) expressed his delegation's appreciation for the considerable progress that had been made towards the formulation of a compromise text and its hope that all concerned would share its willingness to continue negotiations on the outstanding issues. Those issues included some that would affect the future economic well-being of his country, namely, the questions of access to mineral markets, production safeguards and compensation.

149. As a land-locked country heavily dependent on the export of minerals and metals to distant consumers, Zimbabwe was anxious that the convention should ensure that such commodities had equal access to markets whether they were mined on land or on the sea-bed. To that end, sea-bed minerals must be regarded in the truest sense as a common heritage of mankind, to be extracted by licensed operators from international territory beyond the territorial jurisdiction of any State, and must be treated as imports on entering national jurisdiction. Since article 150, subparagraph (i) in document A/CONF.62/C.1/L.28/Add.1 was silent

on that point, his delegation proposed that it should be amended to read:

"The Authority shall ensure that minerals and metals produced from the Area shall be regarded as imports for purposes of national legislation of all States Parties to this Convention and shall be accorded conditions of access to national markets no more favourable than the most favourable applied to similar minerals and metals from other sources."

150. With respect to production safeguards, article 151, paragraph 2 (b) (i), should be amended to impose a 10 per cent limit on sea-bed production during periods of low growth. That change would be consistent with the principle that his delegation regarded as implicit throughout article 151, namely that sea-bed and land-based producers should share not only the benefits of increases in consumption, but also the burdens of a recession. In keeping with the same principle, article 151 should be supplemented by a paragraph 2 (b) (iv) reading:

"Provided that in any year of the interim period the total sea-bed production of nickel, cobalt, copper and manganese permitted shall not result in the reduction of land-based production of the same minerals to a level below the average of the annual production level achieved in the immediately preceding five-year period for which data are available."

151. That provision would afford land-based producers the barest minimum of protection during the inevitable production cut-backs by preventing sea-bed producers from unfairly displacing them from traditional markets.

152. The provisions concerning compensation to be found in article 151, paragraph 4, failed to define the essential characteristics of the system of compensation itself or the majority to which a decision by the Economic Planning Commission to advise payment would be subject. Furthermore, the paragraph made compensation an alternative, rather than a complement, to other measures of economic adjustment and said nothing about the adequacy of compensation or the time-limit for its payment. The requirement in article 161, paragraph 7 (d), that decisions by the Council of the kind referred to in article 162, paragraph 2 (f), should be subject to consensus was unduly stringent. In that connexion, his delegation supported the amendment concerning consensus that had been submitted by the delegations of Zambia and Zaire, and further proposed that questions of substance arising under article 162, paragraph 2 (f), should be subject to the rule stipulated in article 161, paragraph 7 (b).

Mr. Amerasinghe resumed the Chair.

153. Mr. WAPENYI (Uganda), speaking as Chairman of the Group of 77, said that the members of the Group were prepared to accept, as the outcome of considerable efforts and as a basis for the further revision of the negotiating text by the collegium, the package deal which had now been devised and whose salient points were the sharing of benefits, production policies, the review conference, and, most important of all, decision-making mechanisms and transfer of technology. Their acceptance did not, however, preclude the expression by individual countries within the Group of reservations concerning specific parts of the package which they found unacceptable.

154. He reiterated the Group's concern about instances of unilateral action on deep-sea mining and its condemnation of the moves that had been made in that respect by the Government of the United States of America. If the Federal Republic of Germany had followed the United States' example, as had been rumoured, it too would stand condemned by the whole of mankind, with the exception of those States, such as the United Kingdom, France and Japan, whose legislative bodies were contemplating similar action. The Group of 77 urged all Governments to refrain from action of that nature and to bear in mind that the efforts to draft a comprehensive convention on the law of the sea were being made in the interests of international peace and security and of the promotion of co-operation and mutual understanding among nations. The Group reserved the right to take any appropriate measures to repudiate legislation that went against those

interests and to safeguard the resources of the international seabed area, which were the common heritage of mankind.

155. Continuing as the representative of Uganda, he emphasized the great hope that countries which, like his own, were geographically disadvantaged placed in the work of the Second Committee. In keeping with the 1974 Kampala Declaration,¹ countries like Uganda continued to hold the view that, in areas beyond the 12-mile territorial sea, coastal States should have not complete sovereignty, but only limited jurisdiction over the living resources of the zone up to 200 miles from their shores. While coastal States would have the lion's share in the exploitation of such living resources, that exploitation must be shared by the land-locked and geographically disadvantaged States of the region, as recommended in the declaration of 1973 by the Organization of African Unity² on the issues of the law of the sea. It was to promote the sharing of the living resources of the area he

¹ *Ibid.*, vol. III (United Nations publication, Sales No. E.75.V.5), document A/CONF.62/23.

² *Ibid.*, document A/CONF.62/33.

had mentioned and of the seas beyond the 200-mile limit that his delegation had proposed the establishment of a common heritage fund, the acceptance of which would represent a giant step towards protecting the interests of the poorest nations of the world.

156. With regard to the question of transit rights, his delegation believed that, rather than the third-party privileges which were available to all, the ships of land-locked nations should enjoy most-favoured-nation status when visiting the ports of coastal States.

157. Uganda shared the concern that had been expressed about the trend towards the awarding to consortia of unlimited powers to undertake sea-bed mining without thought for the damage that would cause to the interests of land-based mineral producers like itself. It was, therefore, participating in the efforts of present or potential land-based producers to devise appropriate safeguards for incorporation in the final treaty. Discussions concerning a compromise on that issue could be held in the interval before the next session of the Conference.

The meeting rose at 7.45 p.m.

136th meeting

Tuesday, 26 August 1980, at 10.30 a.m.

President. Mr. H. S. AMERASINGHE

General debate (continued)

1. Mr. SHARMA (Nepal) said that his delegation had voted with satisfaction the package deal concluded in the First Committee (see A/CONF.62/C.1/L.28 and Add. 1). It considered, however, that, in view of their insignificant benefits from the exploitation of the resources of the exclusive economic zone and the continental shelf, developing countries, and particularly the least developed and land-locked countries, should be exempted from payment of any contributions for the funding of the Enterprise. All delegations should be given some time in which to examine the implications of the package deal. It should be made clear whether or not article 140 favoured the least developed countries and what was meant by the term "non-discriminatory basis".

2. He reminded the Conference of the proposal for the establishment of a common heritage fund, originally introduced by Nepal. Its basic purpose was to ensure that a substantial portion of ocean mineral revenues was used to promote human welfare, principally by assisting developing nations, to promote world peace, to protect the marine environment, to foster the transfer of marine technology, to assist the relevant work of the United Nations and to help finance the Enterprise. Such a fund could provide as much as \$5 billion annually for development and other international purposes. The proposal would be a major step towards the attainment of the new international economic order and could make an important contribution to improving the general world situation. It would also help the Conference to reach agreement on other outstanding issues and had gained considerable support since its introduction. It was not intended as an attack on the exclusive economic zone; coastal States had a duty to contribute to the international community a portion of the mineral wealth they received under the convention. The sharing with other countries of mineral revenues from the exclusive economic zone was morally appropriate, since ocean resources had been regarded under traditional international law as common property.

3. His delegation did not consider that the exclusive economic zone had already become international law. The Group of 77 had deplored and condemned unilateral action with respect to the deep-sea floor and, in his delegation's view, such action in the off-shore area was also objectionable. The President of the Conference had requested nations to refrain from any unilateral

action while the Conference was in session, and had repeatedly stated that the negotiating text was not a negotiated text and that it had no legal standing. The common heritage fund proposal was in the national interest of every State represented at the Conference.

4. The special session of the General Assembly on development was meeting amid deep disappointment over the donor countries' contribution target of 1 per cent of their gross national product. An announcement that real progress was being made towards the establishment of a common heritage system would be the best news the Conference could give in the special session and would herald a new era in international politics. He therefore urged all delegations to support the proposal.

5. His delegation had consistently advocated that the economic zone should not extend beyond 200 miles and that the continental shelf should coincide with the economic zone. The tendency of some coastal States arbitrarily to extend the continental shelf beyond 200 miles was regrettable; it might diminish the scope and content of the common heritage of mankind, lead to serious conflict and endanger any hope of consensus in the Conference.

6. With regard to the settlement of disputes, the negotiating text should make it clear that some disputes were subject to compulsory jurisdiction while others were not and that some were subject to compulsory conciliation. It was inequitable that the Conciliation Commission should not be empowered to question the exercise by coastal States of their discretionary powers in determining the allowable fish catch and harvesting capacity or surplus.

7. In cancelling out the few rights accorded under customary international law, articles 69 and 70 were unsatisfactory and inequitable. The articles should be improved to accommodate the needs and interests of the land-locked and least developed countries.

8. It appeared that the concept of the economic zone was new to be extended to the high seas. Under the existing articles, the participation of the land-locked and geographically-disadvantaged countries was confined to the small portion of the fish stock known as the "surplus". These countries should be granted more equitable participation.

ANNEX 39

UN Diplomatic Conference, Plenary 136th session, 26 August 1980

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.136

136th Plenary meeting

Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume XIV (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Resumed Ninth Session)

interests and to safeguard the resources of the international seabed area, which were the common heritage of mankind.

155. Continuing as the representative of Uganda, he emphasized the great hope that countries which, like his own, were geographically disadvantaged placed in the work of the Second Committee. In keeping with the 1974 Kampala Declaration,¹ countries like Uganda continued to hold the view that, in areas beyond the 12-mile territorial sea, coastal States should have not complete sovereignty, but only limited jurisdiction over the living resources of the zone up to 200 miles from their shores. While coastal States would have the lion's share in the exploitation of such living resources, that exploitation must be shared by the land-locked and geographically disadvantaged States of the region, as recommended in the declaration of 1975 by the Organization of African Unity² on the issues of the law of the sea. It was to promote the sharing of the living resources of the area he

had mentioned and of the seas beyond the 200-mile limit that his delegation had proposed the establishment of a common heritage fund, the acceptance of which would represent a giant step towards protecting the interests of the poorest nations of the world.

156. With regard to the question of transit rights, his delegation believed that, rather than the third-party privileges which were available to all, the ships of land-locked nations should enjoy most favoured-nation status when visiting the ports of coastal States.

157. Uganda shared the concern that had been expressed about the trend towards the awarding to consortia of unlimited powers to undertake seabed mining without thought for the damage that would cause to the interests of land-based mineral producers like itself. It was therefore participating in the efforts of present or potential land-based producers to devise appropriate safeguards for incorporation in the final treaty. Discussions concerning a compromise on that issue could be held in the interval before the next session of the Conference.

The meeting rose at 7.45 p.m.

¹ *Ibid.*, vol. II (United Nations publication, Sales No. E.75.V.5), document A/CONF.62/23.

² *Ibid.*, document A/CONF.62/31.

136th meeting

Tuesday, 26 August 1980, at 10.30 a.m.

President: Mr. H. S. AMERASINGHE

General debate (continued)

1. Mr. SHARMA (Nepal) said that his delegation had noted with satisfaction the package deal concluded in the First Committee (see A/CONF.62/C.1/L.28 and Add. 1). It considered, however, that, in view of their insignificant benefits from the exploitation of the resources of the exclusive economic zone and the continental shelf, developing countries, and particularly the least developed and land-locked countries, should be exempted from payment of any contributions for the funding of the Enterprise. All delegations should be given some time in which to examine the implications of the package deal. It should be made clear whether or not article 140 favoured the least developed countries and what was meant by the term "non-discriminatory basis".

2. He reminded the Conference of the proposal for the establishment of a common heritage fund, originally introduced by Nepal. Its basic purpose was to ensure that a substantial portion of ocean mineral revenues was used to promote human welfare, principally by assisting developing nations, to promote world peace, to protect the marine environment, to foster the transfer of marine technology, to assist the relevant work of the United Nations and to help finance the Enterprise. Such a fund could provide as much as \$5 billion annually for development and other international purposes. The proposal would be a major step towards the attainment of the new international economic order and could make an important contribution to improving the general world situation. It would also help the Conference to reach agreement on other outstanding issues and had gained considerable support since its introduction. It was not intended as an attack on the exclusive economic zone: coastal States had a duty to contribute to the international community a portion of the mineral wealth they received under the convention. The sharing with other countries of mineral revenues from the exclusive economic zone was morally appropriate, since ocean resources had been regarded under traditional international law as common property.

3. His delegation did not consider that the exclusive economic zone had already become international law. The Group of 77 had deplored and condemned unilateral action with respect to the deep-sea floor and, in his delegation's view, such action in the off-shore area was also objectionable. The President of the Conference had requested nations to refrain from any unilateral

action while the Conference was in session, and had repeatedly stated that the negotiating text was not a negotiated text and that it had no legal standing. The common heritage fund proposal was in the national interest of every State represented at the Conference.

4. The special session of the General Assembly on development was meeting amid deep disappointment over the donor countries' contribution target of 1 per cent of their gross national product. An announcement that real progress was being made towards the establishment of a common heritage system would be the best news the Conference could give to the special session and would herald a new era in international politics. He therefore urged all delegations to support the proposal.

5. His delegation had consistently advocated that the economic zone should not extend beyond 200 miles and that the continental shelf should coincide with the economic zone. The tendency of some coastal States arbitrarily to extend the continental shelf beyond 200 miles was regrettable; it might diminish the scope and content of the common heritage of mankind, lead to serious conflict and endanger any hope of consensus in the Conference.

6. With regard to the settlement of disputes, the negotiating text should make it clear that some disputes were subject to compulsory jurisdiction while others were not and that some were subject to compulsory conciliation. It was inequitable that the Conciliation Commission should not be empowered to question the exercise by coastal States of their discretionary powers in determining the allowable fish catch and harvesting capacity or surplus.

7. In cancelling out the few rights accorded under customary international law, articles 69 and 70 were unsatisfactory and inequitable. The articles should be improved to accommodate the needs and interests of the land-locked and least developed countries.

8. It appeared that the concept of the economic zone was now to be extended to the high seas. Under the existing articles, the participation of the land-locked and geographically-disadvantaged countries was confined to the small portion of the fish stock known as the "surplus". Those countries should be granted more equitable participation.

9. His delegation urged the international community to show goodwill towards the land-locked States. The resources of the exclusive economic zone should be shared among mankind as a whole; any decision regarding their distribution should be taken by an international organization, and not unilaterally by coastal States. The "surplus" concept was a departure from existing international law.

10. In addition, improvements were required with regard to voting procedure and residual matters dealt with in the First Committee.

11. Mr. DORJI (Bhutan) said that the revisions in which the negotiations at the present session had resulted could serve as a generally acceptable package, but some provisions required further clarification to make them more widely acceptable. The phrase "on a non-discriminatory basis" in article 140, paragraph 2, might prevent the developing countries, particularly the least-developed among them, from receiving the special consideration they deserved. The linking of article 140 to article 160, paragraph 2 (f), and to article 162, paragraph 2 (n), also had serious implications for those States. Special consideration for the developing and least-developed States should not be subject to a consensus decision.

12. With regard to the composition of the Council, his delegation was concerned about the wording of article 161, paragraph 2 (a). The words "to a degree which is proportionate" could lead to representation of the land-locked and geographically-disadvantaged States in the Council incommensurate with their participation in the Assembly.

13. The proposed amendments could, on the whole, be used by the Collegium as a basis for a third revision of the negotiating text, taking into consideration the views expressed during the general debate. His delegation would like to see land-based producers both potential and actual, particularly in developing States, protected from the adverse effects of deep-sea mining.

14. As a land-locked and least-developed State, Bhutan could hardly feel that the negotiations had been concluded satisfactorily. While the second revision of the negotiating text (A/CONF.62/WP.10/Rev.2 and Corr.2-5) formed a good basis for negotiations, its articles should not be considered as negotiated articles. With regard to articles 69 and 70, for example, his delegation had been among those which had stated at the eighth session that the Nandan text was a good basis for negotiation, but no negotiations on it had since taken place in the Second Committee. His delegation understood that the negotiations would centre on the right of the land-locked and geographically-disadvantaged countries to share the surplus of the living resources of the exclusive economic zone, which was determined by the coastal States. Taking articles 69 and 70 in conjunction with article 296, however, it could be seen that the rights of the land-locked and geographically-disadvantaged States were practically meaningless. Those rights should be given more positive form. One possibility of doing so without interfering with the rights of the coastal States would be for the latter to take account of the recommendations of interregional, regional or international organizations such as the Food and Agriculture Organization of the United Nations in determining the surplus of living resources in their economic zones.

15. The distribution of ocean wealth as proposed by the Conference was not consistent with the objectives of the new international economic order. His delegation wished to co-sponsor the proposal for a common heritage fund introduced in negotiating group 6. In doing so, it considered that contributions to the fund should primarily be the obligation of developed and industrialized coastal States, with other States in a position to do so making contributions on a voluntary basis.

16. The general acceptance of the concept of a clearly-defined continental shelf in exchange for acceptable revenue-sharing had not been reflected appropriately in the second revision. There was an ambiguity in article 76, paragraph 6, which might be used by some coastal States to extend their continental shelf, in some cases as far as 600 miles. Clarification had been sought on

that provision in the past, but no satisfactory answer had been given by the States concerned. He referred, in particular, to the phrase "such as its plateaux, rises, caps, banks and spurs". Clarification was also required as to the precise definition of a natural component and its implications. The revenue-sharing formula in article 82 was also unsatisfactory to his delegation, which favoured the proposal in document NG6/6 of 10 April 1979 as being a more equitable element in the overall package relating to the continental shelf.

17. Provision should also be made in annex II, article 2, paragraph 1, for equitable representation by interested groups. The group of land-locked and geographically-disadvantaged States should be represented in the Commission on the limits of the continental shelf. His delegation failed to understand why, under paragraph 5 of the same article, those poorer developing countries should have to defray the expenses of any of their members serving on the Commission when the major benefits from the continental shelf would go to the coastal State. Such expenses should be borne by the international community, with major contributions from coastal States.

18. His delegation welcomed the fact that the predominant opinion of the Conference had been against any *ad hoc* reservations. Such reservations could nullify all the efforts made and make the package deal meaningless.

19. Consideration should be given to the need for the United Nations to assist developing countries in matters affecting the acceptance and implementation of the future convention, and his delegation welcomed the submission of the draft resolution on the matter.

20. The Conference should consider the inclusion of a special provision for concessions to the least-developed countries to defray any contributions they were obliged to make to the Authority. He urged the Conference to respond favourably to that request.

21. In all its doings the Conference must keep in mind the principle of the common heritage of mankind.

22. Mr. CALERO RODRIGUES (Brazil) said that the main purpose of the current debate was to provide guidance for a final substantive revision of the informal composite negotiating text. It was possible at the present stage to achieve only preliminary results on some questions. Decisions on the final clauses could not be taken until the final text of the convention was available, and some of the provisions concerning the settlement of disputes could likewise not yet be considered as final.

23. His delegation was convinced that the texts proposed for the general provisions, the settlement of disputes and the final clauses (A/CONF.62/L.58, 59 and 60) should be included in the third revision of the text, but he had serious doubts about the idea of including final clauses and general provisions under a single heading.

24. Of the extensive and detailed negotiations on outstanding issues conducted in the First Committee, those on the decision-making procedures of the Council were among the most significant. His delegation and others were not entirely happy with the wording of article 161, paragraph 7. However, there was now a genuine compromise proposal, which could be accepted despite its imperfections. While providing appropriate guarantees to safeguard all interests likely to be most affected by deep-sea mining, the proposal was also fully consistent with the principle of the sovereign equality of States, giving the same rights and responsibilities to all members of the Council.

25. His delegation welcomed the amendments to article 151, paragraph 2 (b) (iii), which made it clear that deep-sea mining could account for the totality of annual growth in world nickel consumption only when that growth was less than 1.8 per cent. With regard to paragraph 1 of the same article, the participation of the Authority in future commodity agreements would clearly relate to the production of the whole Area.

26. His delegation could also endorse the proposed changes in some of the provisions relating to the system of exploration and

exploitation. It was unfortunate that the Second Committee had been convened only briefly and very late in the second part of the session. It had been suggested that, if it had met more frequently, there would have been a risk of upsetting the careful balance achieved on some basic issues. However, the failure to hold meetings during the last stage of informal negotiations meant that the Committee had missed an invaluable opportunity of examining some sensitive issues still requiring consideration.

27. There were some imprecisions in, and omissions from, the text that could and should be corrected to preclude future misunderstandings. It would, for instance, be useful to stipulate more explicitly that the area beyond the 12-mile limit should not be used in a manner detrimental to the security of the coastal State.

28. Article 60, paragraph 1, should be simplified to make it clear that the exclusive rights of the coastal State covered all types of artificial islands, installations and structures. It should also be made clear that the existing provisions of article 58 could not be interpreted as permitting the execution of any military exercise by foreign vessels without notification to, and authorization by, the coastal State.

29. Another point which had received little attention was the apparent omission of any explicit reference to the enforcement rights of coastal States in areas under their jurisdiction in connexion with non-living resources. Article 73 referred to such rights only in respect of living resources; problems could not be disposed of simply by avoiding frank and open discussion at the informal stage. Discussion of the considerable number of important proposals still before the Second Committee might have eliminated the need for delegations to consider the possibility of exercising their right to present formal amendments at a later stage.

30. The Third Committee had met to consider a number of drafting changes proposed by its Chairman (see A/CONF.62/C.3/L.34 and Add.1 and 2). His delegation had welcomed the exercise as a useful means of dealing with some of the imperfections of Parts XII, XIII and XIV. Most of the imperfections were of a technical nature and could generally be corrected through drafting changes. The adjustments needed, however, often had a bearing on substance and therefore went beyond the field of competence of the Drafting Committee. His delegation regretted that it had not been possible for that Committee to tackle important issues in all instances. It welcomed the Chairman's statement that he was prepared to reconvene at an appropriate time.

31. Despite the various revisions of the informal composite negotiating text, the complexity of the problems involved called for further action. Article 263 was a typical example. In attempting to cover simultaneously the question of the liability of both coastal and researching States for measures taken in breach of the convention, paragraph 2 of that article was ambiguous.

32. In pointing out the usefulness of the changes suggested by the Third Committee and the need for a few further changes, his delegation welcomed the general concepts embodied in Parts XII, XIII and XIV. Recognition of the fact that a virtual monopoly of marine scientific research within a few States could not be perpetuated and the development of a full consent régime represented an accomplishment. He wished to repeat his delegation's understanding that article 246, paragraph 6, would not create a dual system for scientific research on the continental shelf, and that it confirmed the coastal State's sovereignty over the shelf, in the exercise of which the coastal State might waive some of its rights.

33. The exclusion of the exercise of discretion by the coastal State from all binding procedures of dispute settlement was an additional confirmation of the wider concept of the sovereign rights of States over the exclusive economic zone and the continental shelf.

34. The task of the Drafting Committee and its language groups in improving the text and harmonising the different language versions was not easy, particularly in view of the thin dividing-line between drafting changes and substantive changes. His delegation had therefore welcomed the drafting exercise in the Third Committee, and considered it essential that the Draft-

ing Committee's suggested changes should be carefully considered by the Conference in plenary meetings, the main committees and the informal conference meetings before being incorporated into the final text. That should be one of the preliminary tasks of the Conference when it reconvened.

35. Mr. CHAN YOURAN (Democratic Kampuchea), referring to the right to make reservations, said that his delegation hoped that the convention would be adopted by consensus. States parties to the convention should not, however, be denied their sovereign right under contemporary international law to enter reservations. As at present worded, the new article 303 in document FC/21/Rev.1/Add.1 did not appear to meet that legitimate concern, which his delegation and many others insisted should be recognized in the convention.

36. His delegation welcomed the fact that, in its general provisions, the convention clearly reaffirmed that, in the exercise of their rights and the fulfilment of their obligations, States parties should refrain from any threat or use of force against the territorial integrity or political independence of any State or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations.

37. As concerned the question of delimitation of the exclusive economic zone and the continental shelf, his delegation considered that, in the final analysis, it would be wise to keep to the provisions of articles 74 and 83 of the first revision of the text, which clearly defined the delimitation criteria on the basis of equitable principles. While awaiting agreement on final delimitation, the parties concerned should refrain from any activities that might prejudice such delimitation or the reciprocal interests of the parties.

38. Referring to the settlement of disputes, he said that, while attaching particular attention to recourse to the conciliation procedure referred to in documents SD/3 and Add.1, his delegation nevertheless maintained that, whatever settlement procedure was chosen by the parties, they should not be under the obligation to submit a dispute concerning delimitation of maritime areas to a settlement procedure that was unacceptable to them. That would be contrary to the principles and rules of contemporary international law. In all cases, parties to the convention had an obligation to settle their disputes by peaceful means, in accordance with the Charter of the United Nations. His delegation hoped that the parties could hold direct consultations and negotiations on the basis of respect for the principles of the Charter, equality and mutual advantage.

39. His delegation firmly supported the position of the many delegations which were opposed to the possible use by the parties of the opportunity to make claims on the sovereignty or other rights of a continental or island territory as a cover for political annexation and expansion by the stronger at the expense of the weaker.

40. During the general debate in New York, his delegation had drawn the attention of the Conference to the need to supplement the provisions of article 21 relating to innocent passage. What was required was to add a provision enabling the coastal State to adopt, in conformity with the provisions of the convention and the rules of international law, legislation and regulations applicable to innocent passage for the navigation of warships in territorial waters. In the interest of all concerned, the coastal State should have the right to require authorization or prior notification for the passage of warships through the territorial sea.

41. As to the signature of the convention, his Government wished to state that, as the only legitimate Government of the people of Democratic Kampuchea, it alone was entitled and qualified to conclude treaties, conventions or other international instruments or to accede to them in the name of Kampuchea. Therefore, with regard to both internal law in Kampuchea and international law, the treaties or other agreements signed illegally by the régime established in Phnom Penh by foreign armed forces, and in particular the so-called treaty of peace, friendship and co-operation of 18 January 1979 signed with the occupation authorities, were devoid of any legality and were therefore inap-

plicable to the people of Kampuchea or its Government. Such instruments, which sought to legalize aggression in Kampuchea and establish the law of the jungle in international relations, were contrary to the principles of the Charter of the United Nations and the rules of international law.

Mr. Ballah (Trinidad and Tobago), Vice-President, took the Chair.

42. Mr. MAKEKA (Lesotho) said that if his country, which was land-locked, was to use the seas and enjoy their benefits, it must first and foremost be assured of free access. Such right of transit was a *sine qua non* for its accession to the proposed convention. While his delegation welcomed the fact that that right was provided for in Part X of the second revision of the negotiating text, the relevant provisions were unfortunately no improvement on those of the 1965 Convention on Transit Trade of Land-locked States.¹ Aircraft were omitted from the list of means of transport in article 124 on the use of terms, even though reference was made to overflight and air routes in no less than 17 articles, including articles 38 and 87. Because of its highly mountainous topography, his country relied heavily on the use of aircraft for the transport of persons and goods.

43. In his delegation's view, pipelines and gaslines were a normal means of transport and there was no reason for treating them differently. All means of transport could be used only in agreement with the transit or access State. Aircraft, pipelines and gaslines should all appear among the means of transport defined in article 124.

44. His delegation did not believe that the negotiators of article 127, paragraph 2, intended the means of transport to be subjected to taxation by the transit or access State. The word "taxes" should therefore be deleted.

45. With regard to article 131, his delegation considered that the maritime ports referred to were those of third States and not of the access State, where ships flying the flag of a neighbouring land-locked State should enjoy the same treatment as those flying the flag of the access State or must otherwise enjoy most-favoured-nation treatment.

46. In giving coastal States jurisdiction over resources which hitherto belonged to all, the creation of an economic zone for a coastal State could be said to be an historic act by the Conference. Land-locked States could not physically extend their jurisdiction in that regard, and it was only fair that their rights should be accommodated in the new concept. The 1973 declaration by the Organization of African Unity² provided that nationals of land-locked States should have the same rights as nationals of coastal States in the exploration and exploitation of the living resources of the economic zone. Coastal States were now asking the land-locked States to stand idly by while they divided the oceans and their resources among themselves. Since the establishment of zones resulted in the land-locked countries being deprived of existing rights, it was only logical that their rights should be accommodated. Examination of article 69, which purported to provide for such accommodation and should be read in conjunction with articles 61, 62, 71, 72 and 296, showed that land-locked States had gained nothing in that regard. It was inequitable to restrict their rights to the surplus. No land-locked country could ever hope to have a harvesting capacity approaching that of a coastal State.

47. The rights of land-locked countries were further curtailed since they were limited to articles 61 and 62, which, while giving coastal States all possible rights, including the right to determine the allowable catch, harvesting capacity and surplus, did not require the rights and interests of the land-locked States to be taken into account. The latter's rights to the surplus were on a par with the rights of coastal States and it was unfair to subject the land-locked States to the conditions of article 62, paragraph

4. Nationals of such States should be treated as equals of those of coastal States or given preferential treatment.

48. Article 71 constituted a further restriction on the alleged rights of land-locked States, especially since such States represented the majority of the poorest among the poor countries. Their participation in the zones of the States which claimed to be dependent on fisheries could not affect those States adversely. Article 72 was completely irrational: to exclude the land-locked States from joint ventures was to exclude them from essential capital and technology, and thus from real participation. It was also unfair to restrict them in their disposal and use of the resources they had harvested.

49. Article 296, paragraph 3, was ambiguous and contradictory. It was designed to deny the existence of the rights referred to in article 69. It was legally incomprehensible to state that a right was available and to add that one party to a dispute arising from the exercise or non-exercise of that right should not be obliged to submit to a settlement of the dispute. The reference to "any dispute" was too sweeping and the paragraph should be deleted.

50. As far as the continental shelf was concerned, in view of the extension of the coastal State's jurisdiction beyond the 200-mile limit, the rate of contributions provided for in article 82 should be increased.

51. There was no provision in the second revision of the text to ensure that mankind received any benefits in real and practical terms. The proposal for the establishment of a common heritage fund was designed to provide such an assurance. It should be emphasized that all developing countries would benefit from the fund. No delegation had raised a substantive objection to the proposal, but it had repeatedly been stated that the idea was too late. It had recently become difficult to procure conference facilities for the relevant meetings, despite promises to the contrary. His delegation believed that the proposal still had a chance and welcomed constructive amendments to it.

52. His delegation welcomed the package deal in document A/CONF.62/C.1/L.28/Add.1, which could form a good basis for the third revision. However, the phrase "on a non-discriminatory basis" in article 140, paragraph 2, was not clear. His delegation suggested that the wording of article 82, paragraph 4, to the effect that particular account should be taken of the land-locked and the least-developed countries, should also be included in article 160, paragraph 2.

53. His delegation fully shared the concern of the land-based producers and potential producers of minerals, whose economies were bound to be affected adversely by deep-sea mining, and urged that negotiations on the subject should be continued and the proposals in question taken into account in the revised text.

54. Monsignor BRESSAN (Holy See) said that the Holy See considered the strengthening of article 136 extremely important, because whatever the legal régime governing the Area it must be managed in such a way as to benefit all mankind. The Church believed that mankind constituted a single family whose division into nations should not serve as a pretext for dissension but should rather be used as a means of furthering development. The joint management of the wealth of the sea-bed of the Area for the good of all, and particularly the poorest nations, was an example of universal solidarity.

55. His delegation had followed the discussions with interest and had sought through private contact to help draft articles which might be adopted by consensus. It had been struck by the number of delegations seeking a new international economic order based on ethical principles. Subordination to purely material interests would make it impossible to overcome the difficulties and excessive attachment to the concept of the supreme power of States must be abandoned. States had a sovereign responsibility, but they must respect the boundaries they had themselves recognized for an international Authority and the principles of universal solidarity. The Holy See had helped to form public opinion and guide the leaders of nations towards a universal view of the economic order. Such a global approach was necessary to over-

¹ United Nations, *Treaty Series*, vol. 599, No. 8641, p. 41.

² *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. III (United Nations publication, Sales No. E.75.V.5), document A/CONF.62/33.

come the remaining obstacles to the adoption and implementation of the convention, which could no longer be postponed. All participants welcomed the fact that the end of the negotiations was in sight but all wished to improve the informal composite negotiating text further. However, if questions upon which agreement had already been reached were reintroduced, the discussions would be uselessly prolonged and might end in failure. His delegation hoped that the spirit of collaboration which had dominated the Conference would continue to prevail in the execution of the agreements reached and their revision or amendment if necessary.

56. The viability and effectiveness of the Authority in serving the interests of mankind were of particular importance. A system must be established which would benefit all nations and individuals, meet world needs, contribute to the progress of the developing nations and encourage international co-operation. Efforts should be made to avoid jeopardizing States whose economy was largely dependent upon mining and attention must be paid to the environment and the conservation of resources for future generations. In addition, the rights to dignity and well-being of those working for the international community must be guaranteed.

57. Greater justice must be achieved among nations and peoples through a new international economic order. The Authority should not be set against States but should serve the peoples of the world. The international community had a duty to co-ordinate and encourage development in a spirit of justice and solidarity and to ensure that the least developed countries were given preferential treatment in the sharing of profits. That principle echoed the concept embodied in the Charter of the United Nations concerning the promotion of the economic and social advancement of all peoples, and social progress and better standards of life in larger freedoms.

58. Mr. LARSSON (Sweden) said that encouraging progress had been made during the current session and the new texts of Part XI and annexes III and IV provided a promising basis for consensus. However, his delegation felt that further negotiations were needed before the informal composite negotiating text became generally acceptable.

59. One of the outstanding hard-core issues had not even been negotiated, namely, the question of the composition of the Council referred to in article 161, paragraph 1. The present wording virtually excluded a vast group of small and medium-sized industrialized countries from representation on the Council during excessive periods of time, despite the fact that those countries would make considerable contributions to the financing of the Enterprise. His delegation was open to any suggestion which might remedy that situation, such as a slight increase in the membership of the Council. In working to find a solution, his delegation would be careful not to upset the balance established for the voting procedure in article 161, paragraph 7. The delegations which had argued that further negotiations would destroy the compromise reached appeared to wish to avoid a substantive discussion and their attitude ran counter to the atmosphere of compromise and consensus which had characterized the Conference. His delegation strongly urged that a foot-note should be added to article 161, paragraph 1, in revision 3 stating that further negotiations were needed to solve the problem for small and medium-sized industrialized countries.

60. His delegation was not entirely satisfied with the present wording of article 76, which defined the outer limit of the continental shelf. It attributed too large a portion of the sea-bed to coastal States, to the detriment of the international sea-bed area, thus depriving mankind of the extensive maritime space which should be part of its common heritage. A clear, simple and unambiguous formula should be found to define the outer limit of the continental shelf and article 76 did not satisfy that requirement. The text in the second revision on the delimitation of maritime areas between States with opposite or adjacent coasts constituted an appropriate basis for further negotiations with a view to reaching a final consensus. In that connexion, he drew attention to the link between the three elements in the delimitation

problem, namely, the delimitation criteria, the interim measures and settlement of disputes. In his delegation's view, it was extremely important that the system for the settlement of disputes under article 298, paragraph 1 (a), should cover all types of disputes, regardless of whether they arose before or after the convention entered into force.

61. His delegation could accept the articles on innocent passage through the territorial sea as they now stood. Sweden required prior notification from foreign warships and other government-owned vessels used for non-commercial purposes of their passage through the Swedish territorial sea; that requirement in no way affected their right to innocent passage through that sea. It was therefore his delegation's understanding that that requirement was compatible with the rules and principles of present international law and that the legal situation would not be changed by the entry into force of the new convention.

62. His delegation also endorsed the proposed new rules regarding passage through straits. He noted the exception from the transit passage régime contained in article 35, subparagraph (c). That exception was of great importance to Sweden since it would apply to the straits between Sweden and Denmark and the straits between Sweden and the Åland Islands.

63. For his Government, marine scientific research in the economic zone and on the continental shelf beyond 200 miles should be subject to only a few restrictions. The provisions in the second revision of the text did not fully reflect his delegation's basic views on that issue.

64. Lastly, his delegation was in general satisfied with the work carried out thus far on the settlement of disputes, the general provisions and the final clauses. In connexion with article 305, he referred to the relationship between the new convention on the law of the sea and the conventions relating to the laws of war and the law of neutrality, the latter being a field to which Sweden attached great importance. That question was also linked with the wider question of how the convention on the law of the sea was to operate in times of war for both belligerent and neutral States. It was questionable whether the provisions relating to the régime for the territorial sea, *inter alia*, could be fully applied in such a situation. It was his delegation's understanding that the rights and obligations resulting from the conventions on the laws on warfare and on neutrality, particularly the Hague Conventions of 1907, would not be affected by the new law of the sea.

65. Mr. SCOTLAND (Guyana) expressed his delegation's appreciation for the progress made during the current session. In his delegation's view, the most interesting developments had taken place in the First Committee, where States with strongly opposed interests had been able to present a text which all had found tolerable if not acceptable. His delegation saw that text as a negotiating text and would study it with a view to making constructive comments at the next session.

66. His delegation welcomed the improvements in the text of article 140, paragraph 2, concerning the provision for the sharing of benefits derived from activities in the Area on a non-discriminatory basis. It found the voting procedures of the Council over-complex and disquieting. Although only three items appeared to be subject to the consensus procedure, in fact a large number of items were involved: Article 162, paragraph 2 (v), subjected orders issued under the provision to the consensus procedure if they were to remain binding after 30 days, although such orders were initially decided upon by a three-fourths majority. Article 161, paragraph 7 (f) and (g), envisaged the consensus procedure for settling any issue or taking any decision which might arise under them.

67. The Conciliation Committee envisaged under article 161, paragraph 7 (e), would be required to set out the grounds on which a proposal was opposed if it failed to reconcile the differences impeding a consensus within the Council. The text was silent on the question of how the issue was to be resolved. Article 162, paragraph 2 (j), however, answered the question in relation to the approval of plans of work. That article was subject

not to any express majority in the Council, but to a separate procedure which ensured that, whether the plan of work was approved or not, it would pass the Council. If the Conciliation Committee failed to resolve the difficulty, the plan of work was deemed to have been approved by the Council unless the Council rejected it by consensus. The term "by consensus" had two meanings in that provision; firstly, in the absence of any formal objection, and secondly, notwithstanding the existence of a formal objection.

68. The special treatment for approval of plans of work continued in article 162, paragraph 2 (j) (i), under which, if the legal and technical commission recommended disapproval of a plan of work, the Council could, by a three-fourths majority, decide to approve the plan. The legal and technical commission was an expert professional body which must make recommendations that would leave no room for political judgements. It would operate in accordance with rules, regulations and procedures adopted by the Council by consensus, yet the Council could overrule its recommendations by a three-fourths majority. Such provisions appeared to have been designed to ensure that plans of work were approved whether or not approval was recommended.

69. His delegation regretted the deletion of the provision for a moratorium and hoped that it would be reincorporated in the third revision. The benefits to be derived by the developing countries from the transfer of technology (annex III, art. 3, para. 3 (e)) might not in fact materialize, given the likely economic situation of most developing countries during the estimated life-span of first-generation mine sites.

70. His delegation welcomed the evolution of the principle of the common heritage of mankind as part of customary international law.

71. On the question of delimitation, the presentation of the texts of articles 74 and 83 in the second revision had led to a very real effort by both interest groups to reach agreement. Consultations on that point were continuing and his delegation was satisfied that the present text formed a good basis for discussions and eventual consensus. However, in his delegation's view, interim measures and the settlement of disputes were inextricably linked with the criteria for delimitation.

72. His delegation supported the amendment to article 63, paragraph 2, contained in document C.2/Informal Meeting/54/Rev.1. There should be provision for the settlement of disputes over the fishing of stocks in the exclusive economic zone and an area beyond and adjacent to that zone if discussions between the coastal State and other States fishing for such stocks did not lead to agreement.

73. He expressed concern about article 246, paragraph 6, which introduced a dual régime for marine scientific research on the continental shelf. The provision suggested the existence of two continental shelves, one within 200 miles and the other beyond that limit.

74. Paragraph 2 of the transitional provisions appeared to require further attention. His delegation failed to see why the enjoyment of rights by the inhabitants of non-independent Territories should be subject to the resolution of any dispute over the sovereignty of the Territory in question. Whatever the outcome of a dispute, the rights of its inhabitants must be respected and no metropolitan or foreign power should infringe them. His delegation hoped to make suggestions to improve that provision at the tenth session. In the meantime it remained committed to participating in the achievement of a comprehensive treaty on the law of the sea.

Mr. Sharma (Nepal), Vice-President, took the Chair.

75. Mr. GHARBI (Morocco) said that, while the Conference had come closer to its goal during the second part of the ninth session, the negotiations had been somewhat selective and on occasion had begun late. His delegation had been guided in the negotiations by the political will to reach global agreement on all aspects of the law of the sea and had never rejected the consensus approach, provided that it took into account the national

interests of all States and the need for the more equitable sharing of world resources.

76. The compromise text proposed by the negotiating groups on issues dealt with by the First Committee constituted a step forward and proved the need for a third revision of the negotiating text. However, the negotiations had not reached the desired consensus on some provisions. His delegation welcomed the inclusion in article 161 of States which were potential producers of minerals, but felt that the article should go further and cover the group of countries which exported manpower. The human factor must not be ignored in the envisaged international production system.

77. The phrase "without prejudice to article 158, paragraph 4" should be inserted in article 162, paragraph 2, to avoid any misunderstanding about an encroachment by the Council on the competence of the Assembly of the Authority.

78. The principles governing production in articles 150 and 151 could constitute an acceptable compromise provided that access to markets for minerals derived from the Area took into account the possible losses resulting from transport costs for land-based minerals. The compensation system referred to in article 151, paragraph 4, should be precisely set out, providing guarantees to States which might be unfavourably affected by the exploitation of marine resources. Since article 162 endowed the legal and technical commission with broad and sometimes decisive powers, its composition should be carefully considered.

79. Negotiations must continue on the transfer of technology referred to annex III in order to define the concept of technology and the obligation to transfer technology. Annex IV should guarantee the administrative and financial autonomy of the Enterprise more clearly.

80. Considerable progress had been made in the negotiations on the final clauses but those clauses must be co-ordinated with the provisions in Part XI in particular, similarly, article 306 and the amendments to Part XI must be co-ordinated. The provisions on the Preparatory Commission should limit its mandate to the technical procedures for the implementation of Part XI, particularly those concerning meetings of the principal bodies, the relationship of the Authority with the host country, the establishment of dispute settlement bodies and the financing of the Enterprise.

81. A crucial stage had been reached in the negotiations and the progress made must be consolidated by introducing the necessary improvements. The principle of the common heritage of mankind must not be allowed to suffer from unilateral measures or restricted agreements, since it was the basis of the work of the Conference. The remaining difficulties on questions concerning areas of national jurisdiction were largely residual matters or matters of detail. That was the case with Part III, "straits used for international navigation"; the present text was the result of a compromise, but required further drafting changes. The criteria for the passage of ships and aircraft should be made more precise. Although there was no political control of passage and free passage was now an accepted principle, a laissez-faire policy must be avoided in view of the risks involved for international maritime and air transport and for coastal States. The obligations assumed by user States must be accompanied by adequate provisions concerning responsibility in order to preserve the legal balance of the special free passage régime for straits as compared with the high seas.

82. His delegation endorsed the proposals by Yugoslavia concerning article 36 (C.2/Informal Meeting/2/Rev.2) and by the Philippines concerning article 25 on the supervision of the innocent passage of warships through the territorial sea. It also supported the Canadian and Argentine proposals concerning article 63. However, the problems still posed by the outer limit of the continental shelf and the principles and criteria for delimitation of the exclusive economic zone or the continental shelf between States with opposite or adjacent coasts were particularly important and were a subject of serious concern for many delegations. The limits of the continental margin had been extended exces-

sively and without any basis in international law. Higher benefit-sharing rates should therefore be established so that the privileged States make an effective contribution to the common heritage fund. His delegation, like other members of the Arab group, maintained a formal reservation concerning article 82.

83. It was regrettable that the Conference had not yet managed to produce fundamental principles on the delimitation of the maritime areas between States with opposite or adjacent coasts. His delegation had consistently stated that international customary law should be taken into account. The rule of equity had always served to resolve disputes between States concerning delimitation on the basis of objective criteria arising from relevant factors. His delegation could not subscribe to the current wording of paragraph 1 of articles 74 and 83 since it was too ambiguous, vague and unlikely to lead to a consensus. Obviously a general clause alone would not solve bilateral problems, but a clear and honest formula must be found to safeguard the interests of all parties. Since the consultations on that subject had not yet produced any practical result, the wording of paragraph 1 of articles 74 and 83 should not be included in the third revision since it did not fulfil the conditions set out in document A/CONF.62/62.³ At the current stage of negotiations it would be better to avoid inserting any provision on the criteria and principles of delimitation in order to leave the way open for the drafting of a formula that was legally acceptable and likely to be approved by consensus.

84. He hoped that his comments would be helpful to the joint effort which was the best guarantee of the widest possible participation in the future convention on the law of the sea. His delegation would like accession to the convention to be open not only to States but also to the liberation movements which were recognized by the regional commissions and the United Nations and had participated as observers at the Conference for many years.

85. In conclusion, he hoped that the perseverance and patience shown over the years since the Caracas session, would be crowned with the success they deserved. It was essential to ensure that the future convention was coherent in all respects and in keeping with the competence of the Conference and the spirit of responsibility expected of it.

86. Mr. MONNIER (Switzerland) said that, although the consensus rule encouraged broad agreement and forced States to negotiate until their differences were eliminated, it should not have the effect of restricting negotiations to only a few States and excluding States which had shown their interest by taking part in the discussions. The way in which some negotiations had recently been conducted both in the plenary Conference and in small groups had prompted his delegation to make that remark, which had a bearing on the way in which the collective will of States attending the Conference was formed.

87. With regard to matters dealt with by the First Committee, his delegation welcomed the agreement reached on one of the most difficult questions, namely, the voting procedure in the Council of the Authority. However, the question of the composition of the Council, which was closely linked to the question of the voting procedure, could not be regarded as settled. In fact, the provisions of article 161, paragraph 1, of the second revision were far from satisfactory in that, to all intents and purposes, they deprived medium-sized industrialized countries of the possibility of sitting on the Council. The principle of rotation, referred to in article 161, paragraph 4, as desirable rather than mandatory would scarcely remedy the situation.

88. That situation was particularly unjust since those countries, unlike the larger industrialized countries, were called upon to contribute a substantial share to the financing of the Authority and the Enterprise, without being able to obtain any benefit either directly or indirectly from activities carried out in the Area. The situation could be remedied by providing for a limited and reasonable increase in the membership of the Council, as suggested in 1979 by several medium-sized industrialized coun-

tries and by the representative of the Group of 77. Since negotiations on the decision-making procedure had concluded, the question of the composition of the Council should be reopened. Obviously, discussions on that point should not upset the agreement reached on the voting procedure or the categories of interest defined in article 161, paragraph 1. His delegation supported the proposal by the representative of Sweden that the matter be referred to in a foot-note in the third revision.

89. With regard to the issues dealt with by the Second Committee, his delegation reiterated its reservations on the provisions of article 76 concerning the outer limits of the continental shelf. Although the new provisions represented an improvement, they extended the limit too far, thereby reducing the international Area considerably. In view of the unsatisfactory nature of the provisions of article 82 concerning payment and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles, the current solution left even more to be desired.

90. His delegation considered unjustified and inequitable the distinction made in article 69 between developed and developing land-locked States.

91. Turning to issues discussed in the Third Committee, his delegation regretted that, under the pretext of balancing the rights of land-locked and geographically-disadvantaged States against those of coastal States in the field of scientific research, article 254 as now worded removed all the substance from the few rights granted to land-locked and geographically-disadvantaged States. His delegation noted with considerable regret the refusal of coastal States, which constituted a majority in the Conference, to take into account the interests of States which were disadvantaged by their geographical situation. It would comment on the final clauses when the report referred to in the preliminary report of the President of the Conference (A/CONF.62/L.60) became available.

92. In conclusion, his delegation wished to stress the importance it attached to the work of the language groups of the Drafting Committee for the final version of the future convention. In view of the many shortcomings in the French version of the text and the various negotiating documents, great attention must continue to be given to that question.

93. Mr. DE LA GUARDIA (Argentina) expressed satisfaction at the progress being made by the Conference, and regret at the fact that two States had adopted unilateral legislation in open defiance of the principle enshrined in General Assembly resolution 2749 (XXV), which constituted, in the view of his country and of the great majority of countries, a rule of *jus cogens*.

94. With regard to the work in the First Committee, his delegation favoured the inclusion in the third revision of the proposals contained in document A/CONF.62/C.1/L.28/Add.1.

95. In order to save time, his delegation would submit its detailed observations in writing. Those observations would refer to the absolute need to maintain in the negotiated package the system of control of the production of sea-bed resources on that point; the provisions of article 151 constituted an absolute minimum for Argentina. His delegation welcomed the inclusion of the category of potential producers among the members of the Council under article 161, paragraph 1 (d).

96. Turning to questions before the Second Committee, his delegation opposed the inclusion in the second revision of the present paragraph 1 of articles 74 and 83 (see A/CONF.62/L.47), because the paragraph had not been approved either in the negotiations or in the plenary Conference. In addition, the reference made in articles 74 and 83 to international law was confused and lent itself to ambiguous interpretations. There were other unsatisfactory features in those texts. For example, the formula "taking account of all circumstances prevailing in the area concerned" was far from clear. Lastly, the median or equidistance line was presented in a manner which appeared to accord to it a greater importance than to other criteria for the delimitation of the exclusive economic zone or of the continental shelf between States with opposite or adjacent coasts. If the present para-

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

graph 1 of articles 74 and 83 were maintained in the third revision, the Conference would run a serious risk of disruption.

97. His delegation also found article 15 unacceptable and would withdraw its objection to it only if an acceptable solution was reached with regard to paragraph 1 of articles 74 and 83.

98. With regard to article 63, paragraph 2, his delegation, together with 14 other sponsors, had submitted a revision of the original proposal contained in document C.2/Informal Meeting/54/Rev.1. On that basis, a further rewording had been devised which had attracted the support of a large majority: its effect would be to bring article 63 into line with article 117, on the basis of the fact that article 63 referred to a special case of conservation of the resources of the high seas. He urged that that reformulation should be incorporated in the third revision. In that form, the protection of the living resources of the sea in the interests of all nations would be better ensured.

99. His delegation shared the concern of more than 30 other delegations at the fact that Part II, section 3, did not make explicit provision for the right of the coastal State to require prior authorization or notification for the innocent passage of foreign warships through its territorial sea, a right which was recognized by international law. That important question must be solved. His delegation wished to make it clear that any clarifications that might be introduced into the provisions on innocent passage would not affect in any way the legal status of passage through international straits.

100. On the question of the settlement of disputes, his delegation endorsed document SD/3, together with the amendments made by numerous delegations. It could not, however, support the foot-note in document SD/3/Add.1 which attempted to establish a non-existent connexion between the substantive negotiations on delimitation and the question of the settlement of disputes. His delegation had rejected, and rejected once more, the attempt to establish such a connexion.

101. As to the substance, his delegation welcomed the rearrangement made in Part XV. It wished to reiterate that article 298, paragraph 1 (a) (ii), was poorly drafted. On that point, his delegation had proposed that a cross-reference should be introduced in that subparagraph to article 298 *bis*, whose incorporation it still considered desirable. Even without such a cross-reference, however, the connexion between the two articles emerged clearly from the fact that if compulsory conciliation was unsuccessful, it would not be possible to resort to the procedures of compulsory jurisdiction in section 2 without the consent of the parties to the dispute: such was the meaning of the words "mutual consent" appearing in article 298, paragraph 1 (a) (ii).

102. As to the final clauses, his delegation would comment only on article 303, relating to reservations. Although his delegation did not agree with that article, it would not oppose its inclusion provided that the third revision included the foot-note contained in documents FC/21/Rev.1 and Add.1, to the effect that the article was based on the assumption that the convention would be approved by consensus and that it was, moreover, provisional, bearing in mind that certain questions had not yet been settled and might permit the formulation of reservations. Accordingly, he welcomed the indication contained in the President's report (A/CONF.62/L.60) that the foot-note in question would be retained.

103. Mr. STAVROPOULOS (Greece), commenting on matters before the First Committee, welcomed the substantial progress made during the present session and the package of amendments contained in document A/CONF.62/C.1/L.28/Add.1, and supported its inclusion in the third revision.

104. His delegation, however, wished to reserve its position on a number of points. On the question of the composition of the Council in article 161, paragraph 1, better arrangements should be made for the representation of small and medium-sized industrialized countries, as well as other States with special maritime interests. The provisions of the new paragraph 2 (c) of article 161 should also be reconsidered, since a practice which had proved successful in the United Nations might not

work in a universal convention of the proposed scope.

105. As to the financing of the Enterprise, despite the amendments introduced into the text, further elaboration was needed on the question of the contributions by the early beneficiary States as well as by those which would not enjoy short-term benefits.

106. With regard to matters within the purview of the Third Committee, the present texts appeared to him satisfactory, but some provisions in articles 246, 253 and 264 still fell short of the expectations of those who supported the "consent régime". Those provisions should not be interpreted as imposing a strict obligation upon coastal States to grant their consent for the conduct of marine scientific research in their economic zone in cases where their vital legitimate interests were at stake.

107. As to the general provisions, his delegation welcomed the adoption of an article providing for the protection of archaeological and historical objects found in the marine environment. It would have preferred a more far-reaching provision but in a spirit of compromise it would not oppose the text before the Conference, which it considered as an acceptable minimum.

108. Turning to the question of final clauses, his delegation found the present wording of article 303, which excluded all reservations, a very wise one. Any other solution would completely undermine the results of seven years of devoted work in the Conference. He therefore strongly urged that that important article should remain unchanged.

109. With regard to the work of the Drafting Committee, the appropriate procedure was being followed: Only purely drafting amendments were being dealt with by that Committee; in case of doubt, matters were referred to the appropriate main committee for a decision.

110. He strongly supported the statement made at the 135th meeting by the representative of Ecuador and believed that mixed archipelagos should have been covered by the provision on archipelagic States.

111. Turning to the subject of the delimitation of the continental shelf and the economic zone, which was of paramount importance to his country, he expressed regret that the discussions in negotiating group 7 had never taken the form of true and meaningful negotiations, notwithstanding the efforts of its Chairman. In those circumstances, the Chairman of that Group, in his final report, had concluded that the provisions on delimitation appearing in the first revision of the negotiating text could not be considered as a basis for consensus on the issue; he had gone on to suggest a new text indicating his own assessment of alternatives which might in time secure a consensus. A major innovation of that new text was the inclusion of a reference to international law as a basis for the conclusion of any delimitation agreement. Those suggestions by the Chairman of the group had been approved by the collegium and consultations had been initiated within a group consisting of 10 delegations representing each side. That was a positive development which proved the value of the text appearing in the second revision, since, for the first time, it had succeeded in bringing about genuine negotiations on the issue. It was true that no tangible results had yet been achieved but the negotiations had started and it was hoped on both sides that they would lead to consensus. He felt that results would be achieved when the other side realized that only a balanced solution could prove acceptable to all.

112. As for the other two elements of the delimitation problem, namely, the interim arrangements and the settlement of disputes, which together with the delimitation criteria constituted a package deal, his delegation considered them as not yet satisfactory. The provisions on interim arrangements as now drafted were no more than an expression of wishes. Since they lacked the clarity and automaticity of the median-line rule, they could well prove ineffective in handling the problems that could arise during the period of negotiations. Furthermore, the failure to establish a binding procedure for the settlement of delimitation disputes, while continuing to rely on the preponderance of "equitable principles", could not but delay the attainment of an agreement.

113. In conclusion, he expressed gratification at the exceptional progress made at the present session. Should the efforts on the question of delimitation not result in a solution within the few remaining days, he felt sure that the present consultations, preferably informal, could be resumed at the next session around the promising text of the second revision, which although not perfect, was the only one which had proved its value and contained possibilities for consensus.

114. Mr. RICHARDSON (United States of America) considered that the Conference should be proud of the results achieved at the present session as a result of the firm resolve of all delegations to complete substantive negotiations: for the first time since 1973 the substance of a new comprehensive treaty was close to completion.

115. While his delegation had difficulties with certain parts of document A/CONF.62/C.1/L.28/Add.1, it nevertheless believed that the texts contained therein should be included in the third revision as a package without any change.

116. It was obviously impossible for his delegation in the allotted time to comment on all points of interpretation. It should therefore not necessarily be deemed to agree with all the interpretations offered by other delegations. His own comments would be confined to the new texts.

117. His delegation continued to have reservations about the new texts on decision-making in the Council, but recognized that no other approach seemed likely to command general support. In connexion with decision-making, he wished to stress a number of very important points. First, in order to persuade contractors that they should begin investments in sea-bed mining, it was necessary to assure them that, if qualified, they would be given an opportunity to explore the mine-site and later apply for production authorization. Despite the improvements made in articles 163 and 165, better safeguards should be sought for the legitimate rights of duly-sponsored applicants during the contract approval process.

118. On the composition of the Council, his delegation and others strongly felt that it would be a serious mistake to reopen the issue of its size. The new formulation for decision-making was based on the present composition of the Council; its expansion would throw that new formulation out of balance and jeopardize the carefully constructed compromise. His delegation therefore strongly urged that that matter should be considered closed.

119. Turning to the new provision in article 162, paragraph 2 (c), on the subject of nominations, he expressed his delegation's understanding that that provision applied both to the special interest groups in categories (a), (b), (c) and (d) and to the regional groups in category (e) to be represented on the Council pursuant to article 161, paragraph 1.

120. The text produced by the informal plenary which specified that the rules, regulations and procedures drafted by the preparatory commission applied provisionally, pending action by the Authority, constituted an integral part of the package. Its deletion or substantial modification would prejudice all the results achieved in the First Committee.

121. With regard to the transfer of technology, annex III, article 5, paragraph 3 (e), did not in any way contribute to getting the Enterprise into operation or making it a sturdier body. That paragraph, however, raised a very sensitive issue for his Government since it had a bearing on the United States position in other negotiations. His Government would study that paragraph and its implications critically when considering signature of the convention. His delegation consequently remained committed to its deletion.

122. The results of the negotiations on resource policy were the culmination of long and arduous efforts to reach an accommodation between beneficiary sea-bed mining countries and land-based producers of sea-bed metals. Though some aspects of those texts were far from ideal his delegation recognized that on an overall basis they constituted a balance of opposing interests and should therefore be regarded as closed.

123. His delegation had believed that negotiations concerning quota/anti-monopoly had been concluded at the spring session in New York. It had agreed to further changes at the present session only to facilitate general acceptance of the final package. In his delegation's view, there was no room for further improvement.

124. As to preparatory investment protection, it was essential that the treaty should contain an adequate set of preparatory arrangements to facilitate the incorporation of existing sea-bed exploration activities into the treaty régime and to prepare for an early start of the Enterprise.

125. His delegation welcomed the great progress made by the informal plenary, which had successfully finished its work on the settlement of disputes and all but completed substantive work on final clauses and on general provisions. In connexion with the latter, he welcomed the inclusion of a clause originally proposed by Mexico prohibiting abuse of rights. He noted that the clause in question prohibited abuse of the provision on disclosure of information in breach of obligations under the convention.

126. His delegation hoped that the desire to preserve the integrity of the text and to enhance the prospects of ratification of the convention would continue to pervade the informal plenary when it came to deal with the issues of participation and the transitional provision.

127. His delegation regretted that it had not been possible to introduce a few minor clarifications in the Second and Third Committee texts that had been negotiated among interested States and hoped that that matter could be rectified quickly. It also regretted the unwillingness of some delegations to abandon demands for significant substantive changes that could upset the balance of the convention and harm its chances of general acceptance.

128. At the present session it had not been possible to give the Drafting Committee the necessary time to complete its difficult task; his delegation believed that that Committee's work must be completed before the start of the next session. It therefore recommended that the Conference should officially request that to be done and call for all necessary facilities to be made available for that purpose. Since virtually all versions of the informal composite negotiating text had been drafted in English, the Conference would no doubt wish to review article 313 of document FC/21/Rev.1 in the light of the further work of the Drafting Committee.

129. Mr. NDOTO (Kenya) congratulated the President and other officers on the substantial progress which had been achieved at the present session on a number of outstanding issues.

130. Most of those issues fell within the mandate of the First Committee and were reflected in document A/CONF.62/C.1/L.28/Add.1. A number of compromise solutions were embodied in the provisions contained in that document and his delegation wished to state at the outset that, together with other members of the Group of 77, it did not object to their inclusion in the third revision, which should offer greater prospects for reaching agreement.

131. At the same time, it wished to make some observations on certain issues contained in that document. On the question of voting procedures in the Council, it felt that the system envisaged was likely to prove cumbersome in practice. In that connexion, it wished to refer to what amounted in effect to two different results regarding the use of consensus to decide on matters of substance: under article 161, paragraph 7 (d), read in conjunction with subparagraph (e), the absence of consensus in the Council on matters of substance resulted in a negative decision, whereas under article 162, paragraph 2 (j), the Council was deemed to have approved plans of work even in the absence of consensus. In the latter case, a recommendation of the Legal and Technical Commission, a subordinate organ of the Council, would appear to be binding on the Council, which was an executive organ of the Authority. While there might be merit in making Council decisions on plans of work subject to a voting system separate from that envisaged for other matters of substance under article 161, paragraph 7, his delegation suggested that further consideration should be given to the possibility of granting the Assembly the

right to deliberate on any matter on which a negative decision of the Council might result in paralysing the implementation of the Convention. That formula would be in keeping with the meaning of article 160, which recognized the Assembly as the supreme organ of the Authority.

132. In order to simplify the proposed voting mechanism—which his delegation supported in principle—the present four-tier system provided for under article 161, paragraph 7 (a) to (d), could perhaps be replaced by a three-tier system by combining subparagraphs (b) and (c) so as to provide for decisions on matters of substance to be taken by a two-thirds majority, leaving subparagraphs (a) and (d) as now drafted. There would be a consequential amendment to article 161, paragraph 7 (g), so as to provide that a two-thirds majority would be required for deciding the category into which a particular question fell. The same remark applied to article 161, paragraph 7 (f), in cases where the rules, regulations or procedures had not specified the applicable category of decision-making.

133. Turning to the question of the transfer of technology to the Enterprise, he stressed that it was important for the Enterprise to be provided with the necessary technology, which for a long time to come would remain in the hands of the developed countries. For that reason, his delegation proposed that the period within which an operator undertook to transfer technology should be increased from 10 to 25 years. On that same question of transfer of technology, he criticized the exclusion of processing and marketing technology from the provisions of annex III, paragraph 8. In view of the novelty of the technology involved, an operator should be required to undertake to transfer technology relating to the processing and marketing of manganese nodules and other minerals to be recovered from the Area.

134. With respect to the periodicity established in article 155, paragraph 4, for the Review Conference, he found five years rather long and suggested that consideration should be given to reducing the interval to three years. His delegation also supported the restoration of the provision on a moratorium which had appeared in the first revision of the negotiating text.

135. Regarding production policies, he had difficulty with article 151, paragraph 2 (c), and saw no reason why a fixed figure of 38,000 tons of nickel should be used as a measure of the quantity of nickel to be reserved for production by the Enterprise. The provision should be formulated in a more flexible manner, for example on a percentage basis, in order to allow for a possible expansion of the activities of the Enterprise.

136. Turning to the issue relating to the delimitation of maritime boundaries between States with adjacent or opposite coasts, he was glad to see that negotiations were continuing. His delegation, however, continued to hold the view that delimitation of those boundaries should be effected in accordance with equitable principles.

137. In conclusion, he wished to reserve the right of his delegation at future meetings of the Conference to make further statements as appropriate, since he had not been able to cover all the desired ground owing to time limitations.

138. Mr. WARIOBA (United Republic of Tanzania) said that since most of the negotiations of the Conference had been conducted in informal sessions, sometimes in very small private groups, the resulting texts were far from self-explanatory. They could make sense only as a large package deal which was a combination of small package deals, all of which made sense in the light of understandings and assurances made during the informal negotiations.

139. There were many packages: one of them was reflected in Parts II to X, concerning which his delegation had serious problems that it would state in detail at some future time. At the present stage, it would mention only a few. First, the proposed definition of innocent passage did not strike the right balance between the interests of coastal States and other States. Secondly, his delegation was extremely unhappy with the definition of straits used for international navigation, and with the scope of the provisions thereon, which put undue emphasis on military

use by Super-Powers and were discriminatory in many respects. Similarly, the provisions on the exclusive economic zone impinged too much on the rights of the coastal State. As for the provisions on the high seas, they failed to put the right emphasis on international co-operation.

140. The second package consisted of Parts XII to XIV. Although the provisions of Part XII set forth the obligation of States to protect and preserve the marine environment, they still suffered from a lack of balance between the interests of the coastal and flag States, especially concerning enforcement powers. The powers acknowledged to coastal States were weak and had been encumbered by many exceptions in favour of flag States. Worse still, many safeguards had been added which seemed to protect shipping interests instead of the environment. On the controversial question of marine scientific research, great efforts had been made to accommodate the interests of coastal States and researching States, but once again the coastal States' interests had been sacrificed, particularly in the exclusive economic zone. Moreover, the texts maintained the anomalous distinction between pure and applied research. The balance had been upset even further by the introduction of disputes settlement machinery.

141. The Area and its resources were the common property of mankind, to be used for the benefit of all, especially the developing countries. Such was the only possible interpretation of the common heritage principle enshrined in General Assembly resolution 2749 (XXV). Unilateral action was nothing more than arrogant defiance of international law and world opinion. The whole purpose of the Conference with regard to the Area and its resources was to work out procedures for exploiting and equitably sharing its wealth.

142. The third package comprised Part XI and the relevant annexes. His delegation continued to maintain that the best way to guarantee equitable participation in the activities of the Area and in the distribution of its resources was through the Enterprise system. It had accepted the parallel system as a compromise but had serious reservations as to its success. Under that system, both the Enterprise and States (or State-sponsored entities) would participate in the exploitation of the resources of the Area for at least 20 years. However, whereas access to the Area by States and their entities was assured, the viability of the Enterprise was not. The provisions on the financing of the Enterprise and those on the transfer of technology were also inadequate. Third-party and processing technology, for example, were not guaranteed; the "open market" requirement made it more difficult for the Enterprise to acquire adequate technology. All those provisions suffered from having been based on data made available to the Conference by the industrialized States.

143. The exploitation of mineral resources from the Area was conditional upon ensuring that the economies of land-based producers, particularly in developed States, should not be harmed by over-production. The present text did not provide that guarantee at all.

144. He also wished to draw attention to the compromise reached on the structure, composition, powers and functions of the Authority. The first compromise in that matter had resulted in concentration of power in the Council—a body with a limited membership—rather than in the Assembly. His delegation had accepted that arrangement purely on grounds of efficiency but it did not consider the Council as of equal importance to, let alone more important than, the Assembly, which was the supreme organ of the Authority.

145. The second important compromise related to the composition of the Council and its decision-making procedure. In order to protect themselves, the industrial States had secured over-representation on the Council and the introduction of a system of decision-making which was potentially capable of causing paralysis.

146. The parallel system had been presented as an interim one, to last for 20 years: if it did not work, a new system might come into operation. His delegation had insisted that, at the end of that

period, the Enterprise system should automatically be introduced, but it had been prevailed upon not to prejudge what system should be favoured at that stage. On that basis, his delegation had urged that neither the parallel system nor the Enterprise system should prevail, but that the review conference should decide on the adoption of one system or the other. Before such a decision, therefore, there should be a moratorium on exploitation. That formula had not been accepted by the industrialized States and, in the text now before the Conference, it was proposed that the review conference should take the decision by a two-thirds majority and await ratification of that decision by two-thirds of the parties to the convention.

147. The text of Part XI contained many details based on assumptions as to the nature of the industry of sea-bed mining but the amendment procedure was very complicated. The Group of 77 had consistently advised against entrenching details which might later prove to be impracticable. It had nevertheless conceded the inclusion of those details in order to demonstrate its earnest desire to arrive at a universally accepted convention.

148. Despite his delegation's reservations on some of the packages, it was prepared to interpret the present text in the light of the undertakings, assurances and understandings agreed on during the negotiations. They included the establishment of a fair balance between the interests of States and the promotion of international co-operation.

149. During the negotiations, the assurance had repeatedly been given that the parallel system would work and that the Enterprise would obtain the capital it needed, at least for one project in order to establish its viability and attract capital from the open market; also, that the Enterprise would receive technology and that sea-bed mining would not affect land-based production. It was on those understandings that his delegation, mindful of the immense efforts which had gone into the drafting of the text, was prepared to consider that text as a basis for the final round of negotiations.

150. Mr. MARTYNENKO (Ukrainian Soviet Socialist Republic), referring to questions within the competence of the First Committee, said that significant progress had been made at the current session, including progress on the important political question of decision-making machinery within the Council, a matter on which the possibility of concluding a convention was heavily dependent. His delegation remained firmly of the opinion that the machinery in question must be based on the principles of equality and mutually beneficial co-operation between the different socio-economic systems and the main groups of States represented in the Council. It had thought the best means of settling the question to be that proposed in article 161, paragraph 7, of the second revision, but had also been prepared to endorse a requirement for only a two-thirds majority. It found the proposal that had ultimately been made by the working group of 21 in

document A/CONF.62/C.1/L.28/Add.1 far from satisfactory, for it introduced three elements into decision-making and divided questions of substance into three categories. But, in the interests of compromise and of a package solution of the outstanding issues, his delegation would go along with that proposal and with the provision now suggested with respect to financing, including the financing of the Enterprise. It considered the provisions of article 151, concerning the delicate problem of a limit to sea-bed production, to represent a balanced compromise.

151. While the texts proposed as a result of the negotiations within the Second Committee were not perfect, a delicate balance had been found between the differing positions that had been expressed. The provisions on the delimitation of economic zones and of the continental shelf that had been included in the second revision as the result of negotiations within negotiating group 7 during the first part of the Conference's ninth session offered the best chance of reaching a consensus.

152. The Third Committee, too, had been successful in its work at the current session. In the view of his delegation, the drafting changes proposed by the Chairman of that Committee in documents A/CONF.62/C.3/L.34/Add.1 and 2 could be included in their entirety in the next revision.

153. His delegation's views on general provisions were well known. However, in view of the spirit of compromise that had been demonstrated by other delegations in the negotiations on the subject, it would not oppose the wording that was now proposed for that section. With regard to the settlement of disputes, his delegation was prepared to support the suggestions made by the President of the Conference on conciliation provisions in documents SD/3 and Add.1, subject to the incorporation of the changes that had been accepted during the informal plenary meetings. Nor would it oppose the suggestions made by the President in his note on final clauses (FC/21/Rev.1 and Add.1), although it was not satisfied with all the articles in question.

154. The task of the Conference, at its next session, must be to build on the agreements—often on difficult questions—that had been reached at the present session by concentrating on those issues that had yet to be resolved. In that connexion, it was disturbing to see the attempts of some delegations to reopen questions, such as that of the composition of the Council, which had already been settled. His delegation was categorically opposed to such attempts, and to the proposal to insert a foot-note to article 161, paragraph 1, which was a matter that required further discussion. To seek to review already established provisions, such as articles 21 and 63 and the articles on the régime of the high seas, might bring the long and patient work of the Conference to nought and represented an infringement of the sovereign rights of many States, especially those that were land-locked or geographically disadvantaged.

The meeting rose at 1.15 p.m.

137th meeting

Tuesday, 26 August 1980, at 3.25 p.m.

President: Mr. H. S. AMERASINGHE

General debate (continued)

1. Mr. FARIVAR (Iran), reiterating his country's position of principle on certain questions which, in his opinion, remained outstanding or had not yet been satisfactorily resolved, said that the right of innocent passage through the territorial sea of a State should not be accorded to warships, which could not be assimilated to merchant ships, and that the passage of such ships should be subject to prior authorization by the coastal State. In that connexion, the only concession which his delegation was prepared to make concerned the part of the territorial sea that comprised a

strait used for international navigation and constituted the obligatory route for transit passage between two parts of the high seas. But even in that case, the passage of warships should take place with due respect for the sovereignty of the State bordering the strait. Similarly, his delegation opposed the inclusion of the right and freedom of overflight in the area of the territorial sea in Part III of the negotiating text, since the air space over that portion of the territory of the coastal State was, according to international law, subject to the sovereignty of that State.

2. Concerning delimitation of the exclusive economic zone and

ANNEX 40

UN Diplomatic Conference, Plenary 139th session, 27 August 1980

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.139

139th Plenary meeting

Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume XIV (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Resumed Ninth Session)

view that the laying of pipelines should take place only with the consent of the coastal State.

151. With regard to the important question of the delimitation of maritime zones between neighbouring countries, his delegation had stated that it did not find the proposal embodied in articles 74 and 83 in the second revision entirely satisfactory. Those texts might, however, provide the basis for a consensus in the search for a balanced solution. Other delegations did not agree with that opinion and his delegation would accordingly have found it natural and logical to continue the work in negotiating group 7. Since that had not been possible, his delegation had accepted a procedure for consultations within the so-called Group of 20. Those consultations had proved useful and had enabled both sides to clarify their position further. His delegation had stressed the importance it attached to the reference to international law now contained in the text, and the importance of maintaining the link between the delimitation criteria, provisional arrangements and dispute settlement had also been emphasized. Even though the consultations had not as yet established a basis for final conclusions, there was now a much better understanding of the problems involved and, in his view, delegations and government authorities would now have to consider the outcome of those consultations.

152. The inclusion of the final clauses in the third revision represented an important step forward in the process of finalizing the convention. In general, his delegation found the clauses in their present form acceptable. As a member of the European Economic Community, his country attached great importance to the inclusion in the final clauses of a provision which would enable the Community to become a contracting party to the future convention. Regarding the legal background and the need for such a clause, he referred to the statement by the representative of the Netherlands.

153. Mr. ALBAHARNA (Bahrain) thanked the President and the Chairmen of the committees for their efforts in amending the second revision of the negotiating text to make it more acceptable. However, despite amendments and improvements, the text still lacked many provisions desired by developing countries and Arab States, including Bahrain.

154. First, regarding the Area his delegation was in favour of a two-thirds majority for all decisions on substantive issues. It would have preferred the Assembly to be given basic powers regarding activities and investments in the Area, but in order to facilitate matters and in a spirit of compromise, it had agreed to the suggestions and solutions contained in document A/CONF.62/C.1/L.28/Add.1, which reflected majority views, subject to the following reservations. Article 141, paragraph 2, in so far as it related to article 160, which limited the right of the Assembly to distribute the financial returns and economic benefits resulting from activities in the Area should not have given the Authority powers regarding the equitable sharing of the benefits of the Area. Those powers should have been given to the Assembly because decisions of the Council on that matter were taken by consensus.

155. Secondly, the second revision did not pay sufficient attention to land-locked and geographically-disadvantaged countries. Articles 69 and 70 were limited to the sharing of the surplus of living resources, the restrictions laid down in those articles and in articles 61 and 62 should be lifted. He would like to see the text amended in a more balanced way so that coastal and geographically-disadvantaged countries had a fairer share of resources. Article 70 should contain a definition of geographically-disadvantaged countries so as to include countries which could not obtain an economic zone of reasonable size.

156. Thirdly, regarding article 76 on the continental shelf, his country was not agreeable to extending the limit beyond 200 miles from the baseline because extension at the expense of the high seas did not offer a compromise solution. His country and the group of Arab States had tried to co-operate with other countries on that point but they had met with no response. In connexion with article 82, his country had also shown a willingness to negotiate earnings from the exploitation by coastal States of the non-living resources of the continental shelf beyond 200 nautical miles. It considered that the rates of payment should be increased so that, in accordance with article 140, paragraph 2, the peoples of non-independent territories would be among those benefiting from the distribution of the resources of that zone of the high seas, which was part of the common heritage of mankind.

157. Fourthly, regarding article 45, he endorsed the suggestion made by many delegations that coastal States should be empowered to introduce laws and regulations which would give them the right to refuse warships passage through their territorial waters.

158. Fifthly, he agreed with the claims of the developing and geographically-disadvantaged countries for the right of effective participation with the coastal State in marine scientific research. Article 254 did not reflect such participation in a balanced way, and paragraph 4 could be deleted.

159. Sixthly, his delegation considered that the settlement of disputes concerning the sharing of living resources in the economic zone and the delimitation of sea boundaries should be compulsory. Article 298 should therefore be deleted.

160. Seventhly, the convention should establish the right of accession not only of States, but also of territories which had not achieved full independence in accordance with General Assembly resolution 1514 (XV) and of national liberation movements recognized by the United Nations and the regional intergovernmental organizations concerned.

161. Eighthly, regarding reservations and exceptions, he considered that article 303, paragraph 1, should apply only to provisions of the Convention adopted by consensus and that States should be allowed to enter reservations on other provisions of special importance, without contravening the basic purposes and principles of the convention.

162. Lastly, no conclusions had been reached on articles 74 and 83, and he hoped that compromise solutions would be found.

The meeting rose at 11.30 p.m.

139th meeting

Wednesday, 27 August 1980, at 9.55 a.m.

President: Mr. H. S. AMERASINGHE

General debate (continued)

1. Mr. NUÑEZ ARIAS (Dominican Republic) expressed concern at the harmful consequences which could result from the application of the provisions of articles 150 and 151. As a land-based producer, for which nickel represented 11 per cent of its export earnings, his country shared the views of such countries

as Canada, the Philippines, Zambia, Zaire, Zimbabwe and Nigeria, which had stressed the need to seek fair and appropriate solutions in that matter.

2. His delegation found satisfactory the provisions in articles 74 and 83 on the delimitation of the exclusive economic zone and the continental shelf. Similarly, his delegation supported the present text of article 121 concerning islands.

3. Lastly, his delegation supported the proposed provisions which would establish a priority right for the State finding objects of archaeological or historical value on the continental shelf or in the exclusive economic zone.
4. In conclusion, he expressed the hope that the work of the Conference would be completed at its next session in 1981.
5. Mr. NAKAGAWA (Japan) said that the First Committee's main achievement had been to devise new decision-making machinery for the Council. His delegation supported that new machinery and the allocation of various substantive items to each of the categories in the three-tier system. In that connexion, he stressed that any enlargement of the membership of the Council would endanger the delicate balance upon which that formula was based and urged the Conference to desist from attempting such an enlargement.
6. The substantive changes in the text contained in document A/CONF.62/C.1/L.28/Add.1 represented a balanced compromise but his delegation still had reservations on some of the issues involved. First, on the subject of production limitation, it did not believe that the 3 per cent floor was sufficient to attract prospective contractors to deep-sea mining, especially at the initial stage of the interim period. As for the new provision in article 150, subparagraph (f) concerning the conditions of access to markets, it was clearly an issue related to international trade and should be left to some international agreement other than the convention under discussion.
7. With regard to the transfer of technology, his delegation found it difficult to endorse the provision concerning technology owned by a third party; that system was unlikely to work smoothly and could have the effect of discouraging the active participation of private enterprise in deep-sea mining. In addition, his delegation still regarded annex III, article 5, paragraph 3 (e), as unsuitable for inclusion in the convention.
8. With regard to financial arrangements, his delegation felt that the figures of 2 per cent and 4 per cent for the production charges imposed an unduly heavy burden on contractors. As to the financing of the Enterprise, he reiterated his delegation's desire that the amount of contributions should be specified in some manner at the time of signing the convention.
9. Turning to the issues before the Second Committee, he said that although his delegation was not fully satisfied with the delimitation criteria proposed, it believed that the provisions thereon should be retained in the third revision. His Government supported Part III and in this connexion understood that no alteration of existing patterns of activity in and around Japan was necessary or contemplated. Regarding article 63, his delegation opposed any proposal which would result in the restriction of the freedom of the high seas. It believed that any arrangement for the conservation of stocks within and beyond the exclusive economic zone should be based on the voluntary agreement of the parties concerned.
10. With regard to article 65 on marine mammals, it was his delegation's understanding that the measures regarding the conservation, management and study of cetaceans in the exclusive economic zone would not necessarily be taken simultaneously with regard to all the various stocks of cetaceans, but would be taken on a stock-by-stock basis when such measures were found to be desirable as a result of consultations among the States concerned.
11. Despite some reservations, his delegation supported the inclusion in the third revision of the contents of the various reports resulting from the current negotiations.
12. Mr. YIMER (Ethiopia) expressed satisfaction at the results achieved during the present session. The end of the Conference appeared to be in sight, largely because of the satisfactory results achieved in the First Committee.
13. Perhaps the most controversial issue discussed in that Committee had been decision-making in the Council and his delegation welcomed the breakthrough in the negotiations on that point. It was convinced that success in that area would advance the prospects of consensus on other still unresolved issues.
14. His delegation believed that the over-all package on First Committee matters contained in the report of the co-ordinators of the working group of 21 (A/CONF.62/C.1/L.28 and Add.1) could go into the third revision, although some aspects of the voting mechanism in the Council, in particular those relating to consensus, might need re-examination.
15. Like the vast majority of the participants in the Conference, he was seriously concerned about recent developments regarding unilateral legislation on sea-bed mining. On that point, his delegation fully subscribed to the position of the Group of 77 but would nevertheless like to place on record its objection to such unilateral acts, which were bound to hinder the progress of the Conference.
16. Turning to Second Committee matters, he wished to single out the still unresolved issue of delimitation of maritime boundaries between States with adjacent or opposite coasts. His delegation was satisfied with the criteria set forth in articles 74 and 83 in their original form and in the first revision of the negotiating text. Although it still preferred those formulations, it could endorse the reformulation contained in the second revision (A/CONF.62/W.P.10/Rev.2 and Corr.2-5). As to the settlement of disputes relating to that issue, his delegation reiterated that it could not accept the obligation to submit to a compulsory procedure. His delegation could not imagine a comprehensive convention on the law of the sea without rules on criteria for delimitation and it earnestly hoped that a generally acceptable formula would be found as soon as possible.
17. With regard to matters before the Third Committee, which had been the most successful of the committees, his delegation felt that the extremely delicate compromise on Parts XII, XIII and XIV should be maintained.
18. His delegation attached considerable significance to article 82 on payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles. In its view, the rates of contribution therein specified were much too low.
19. On the régime of islands and enclosed or semi-enclosed seas, his delegation endorsed the provisions of articles 121 and 122, although it was still of the view that articles 122 and 123 were unnecessary. It was his understanding that article 123 on the co-operation of States bordering enclosed or semi-enclosed seas did not purport to impose strict legal obligations on those States. Any other construction would be totally unacceptable to his delegation.
20. He commended the exhaustive work of the informal plenary conference on the settlement of disputes (A/CONF.62/L.59), final clauses (A/CONF.62/L.60) and general provisions (A/CONF.62/L.58). In view of the controversial nature of certain issues relating to the final clauses, it was gratifying to note that consensus had been achieved on a number of points. He expressed support for the provision prohibiting reservations to the convention with certain exceptions. An important convention like the convention on the law of the sea should not be disturbed by unbridled reservations.
21. On the question of the settlement of disputes, his delegation supported the structure of Part X. As to the substance of the matter, his delegation attached special significance to article 298, in particular paragraph (a) (ii), which provided that submission of disputes to compulsory settlement procedure would take place by mutual consent of the parties. His delegation also considered article 298 *bis* a useful affirmation of the principle of settlement of disputes by mutual consent.
22. In conclusion, he felt that the present session had been a success and expressed the hope that the third revision would serve as a basis for the conclusion of the work of the Conference.
23. Mrs. RODRIGUES (Mozambique) said that the Conference constituted a step towards peace, since it was aimed at adopting a legal instrument which entailed the total rejection of any action based on force; it also heralded the implementation of a new order to govern the oceans, guided by the principles of justice and equity.

24. Following the proclamation of its independence, the People's Republic of Mozambique had declared a 12-mile territorial sea and a 200-mile exclusive economic zone. The purpose of that measure had been to protect the legitimate interests of her country's people, for whom the existing marine resources were important for national development and economic reconstruction. Her country had nevertheless refrained from taking any measures on a certain number of controversial issues in view of the negotiations taking place at the present Conference.

25. The importance attached by Africa to the present stage of the negotiations and to the future convention was well reflected in the declaration adopted at Freetown (A/CONF.62/104) and in other relevant declarations or resolutions by the Organization of African Unity. One of the most important points in those declarations was the rejection of any voting system in the Council based on the principle of a veto, on collective voting or on weighted voting. The most recent formula on voting procedure put forward by the co-ordinators of the Group of 21 could possibly result in inefficiency. The consensus formula in the new proposal could in fact be extended in the future to issues other than those referred to in article 161, paragraph 7 (d). For that reason, her delegation could not endorse it and believed that the text should be improved. Article 162 her delegation could endorse as a compromise text.

26. The transfer of technology remained one of the conditions for acceptance of the parallel system as a provisional arrangement. The definition of technology should cover the technology for processing minerals as well and there should be no time-limit for the purpose of transfer.

27. The imposition of a moratorium would certainly make it possible to accelerate the work of the review conference. She accordingly suggested that the Collegium should make provision for a moratorium in the third revision.

28. It was essential that the system of exploration and exploitation to be introduced should not widen the gap separating the industrialized from the developing countries. Accordingly, the exploration of the common heritage of mankind should not harm land-based producers. A practical and fair system of compensation should not constitute a heavy burden on the revenues of the Authority.

29. Turning to Second Committee matters, her delegation considered that in the exclusive economic zone the coastal State should exercise sovereign rights over natural resources. Regarding the important question of the limitation of maritime boundaries, her delegation's position was that any delimitation should be effected through negotiations. Although that matter would be the subject of further discussions, she was convinced that the solution should be found by applying principles of justice and equity. Accordingly, the equidistance or median line constituted one of the methods conducive to equitable solutions.

30. Her delegation did not accept compulsory arbitration for conflicts arising from delimitation. In its view, in all such cases it was of the utmost importance that the parties should refrain from taking any step which might jeopardize the negotiations.

31. As to Third Committee matters, her delegation regarded marine scientific research as of paramount importance for mankind as a whole. However, it could not accept the idea of freedom of research on the continental shelf.

32. To sum up, her delegation considered the compromise texts contained in documents A/CONF.62/C.1/L.28 and Add.1 as a substantial improvement for future negotiations. The outstanding issues should be the subject of further discussion so that solutions could be found for them.

33. In conclusion, she expressed the hope that the assurances given by the United States regarding unilateral legislation would be honoured and that other States would refrain from adopting such legislation on the exploration and exploitation of the deep-sea bed.

34. Mr. CALDEIRA MARQUES (Cape Verde) expressed the hope that, within the shortest possible time, the Conference

would formulate a convention on the law of the sea for the whole of the international community and not a series of small conventions for a few countries alone. Clearly, the future convention could not be perfect but it was better to have the convention that was feasible in the present circumstances rather than nothing at all or a series of mini-conventions.

35. His delegation had doubts regarding the soundness of the solution embodied in article 161, paragraph 7 (d), because unfortunately, when there was a conflict of interest, it was always difficult to arrive at a consensus. His delegation, however, hoped that practice, based on good faith and a genuine political will to ensure the progress of the Authority, would in due course provide just solutions which took into account the interests of the developing countries and thereby allayed their fears.

36. With regard to the status of the exclusive economic zone, his delegation hoped that there would no longer be any contradiction between the relevant articles in Part V and those in Part XII once the third revision was issued.

37. His delegation supported, as it had always done, the proposal made by the delegation of Ecuador concerning oceanic archipelagos (C.2/Informal Meeting/47). It welcomed the endorsement by the Conference of the principle of the protection of archaeological objects.

38. Referring to the whole package of delimitation criteria, interim measures and settlement of disputes, his delegation considered that delimitation must obey objective and well-defined criteria. It was, however, prepared to accept the compromise formula contained in the second revision of the negotiating text.

39. With regard to the innocent passage of foreign warships through the territorial sea, his delegation believed that such passage must be notified in advance to the coastal State, as indicated by existing international practice.

40. On the question of the conservation of fish stocks under the provisions of article 63, his delegation believed that those provisions must be strengthened in every possible way in order to prevent any uncontrolled and selfish depletion of stocks.

41. His delegation supported the Yugoslav proposal on the subject of straits (C.2/Informal Meeting/2/Rev.2) and the Romanian proposal regarding article 70 (C.2/Informal Meeting/51).

42. He expressed the hope that duly recognized national liberation movements would be permitted to become parties to the convention.

43. Lastly, he wished to draw attention to the efforts being made by the Portuguese-language countries to produce a Portuguese version of the informal composite negotiating text which might in due course become an official document.

44. Mr. GÓMEZ ROBLEDO (Mexico) welcomed the approval by consensus of his delegation's proposal for the inclusion of a clause relating to good faith and the abuse of rights. His delegation had always believed in the need for such a clause in order to balance the rights, powers and freedom accorded to the various parties concerned under the convention. Another constructive innovation in the same chapter of general provisions was the introduction of the concept of *jus cogens* as applied to the basic rule of the common heritage of mankind embodied in article 136. That position was irreversible and he could not conceive of its being derogated from in any way or its being the subject of an agreement to the contrary.

45. Turning to First Committee matters, he expressed the hope that the parallel system of exploitation of the resources of the Area would constitute the most appropriate means of ensuring for humanity the optimum utilization and protection of its common heritage. The review conference would provide an excellent opportunity of ascertaining whether that had been the case, and of taking appropriate measures. Unfortunately, some unsatisfactory provisions on the question of the transfer of technology included in the text enabled contractors to evade their obligation of transferring technology whenever they had acquired it on onerous terms. In addition, his delegation considered that the definition of technology should include the processing stage.

46. With regard to the final clauses, his delegation found satisfactory the compromise texts proposed by the group of legal experts on final clauses and urged that they should be included in the third revision.

47. While his delegation thus found adequate the draft articles contained in documents FC/21/Rev.1 and Add.1, it wished to put forward some constructive suggestions. First, with regard to article 303, he urged that the reference to "exceptions" should be dropped; there was no basis for treating exceptions as legally on a par with reservations. The use of that term introduced an unnecessary element of confusion.

48. His delegation felt that although the prohibition of reservations constituted a limitation of the sovereignty of States, it was necessary to assert the political will of those same States which, precisely in the exercise of their sovereignty, wished to ensure the uniformity of application, and universal observance, of the new international law of the sea.

49. In the same context, his delegation regretted the deletion from article 310 (on denunciation) of the original provision which enabled States to become parties to the convention for a minimum period of five years from its entry into force. It was his delegation's belief that that type of provision would have attracted a greater number of ratifications and accessions to the convention.

50. On the question of the settlement of disputes, the maximum concession acceptable to his delegation was the acceptance of compulsory conciliation in respect of specific types of dispute. His delegation therefore welcomed the rearrangement of Part XV, with its threefold structure: first, voluntary procedures; secondly, compulsory dispute settlement procedures entailing a binding decision; and thirdly, limitations and optional exceptions.

51. He now wished to turn to a matter which his delegation considered of vital importance, namely the character of the text that would emerge from the current session. That text was a body of legal rules which constituted an important contribution to the maintenance of peace, justice and progress in the world. In that context, his delegation welcomed the fact that the negotiations which had taken place, combined with the practice of an ever-increasing number of States, had consolidated the existence and content of the legal concept of the exclusive economic zone.

52. After its arduous and prolonged work over so many years, the Conference could be considered as having completed all the stages of negotiation specified in the 54th meeting of the Bureau. His delegation accordingly believed that the third revision must now be considered not as a "negotiating" text but rather as a "negotiated" text, which was of a very different political character. He was not so much concerned with the title to be given to the document as with the fact that delegations and Governments should acknowledge its negotiated character, except, of course, for those provisions which were still to be negotiated at the next session and which the plenary Conference should enumerate clearly, in order to avoid any subsequent discussion of the subject.

53. The negotiated text contained a large number of compromise formulae which represented a delicate balance. It should be borne in mind that acceptable solutions had been found for certain topics which only three weeks before had seemed non-negotiable. It was therefore appropriate to strengthen those solutions rather than give the impression that they were still capable of being changed with regard to substance.

54. His country reiterated its view that the United States legislation of 28 June 1980 in the matter of licences for the unilateral conduct of activities in the international area constituted a violation of international law because it contravened the principle of the common heritage of mankind. He expressed regret at the fact that such legislation should have been enacted precisely at a time when it had the effect of exerting undesirable pressures upon the Conference at the most critical stage of the negotiations.

55. Mr. PASQUIER (Nicaragua) said that he shared the views

of the many delegations which had strongly condemned all unilateral measures for the appropriation of the sea-bed. The principle of the common heritage of mankind enshrined in General Assembly resolution 2749 (XXV) stemmed from the collective international conscience. Moreover, in accordance with that principle it was incumbent upon the developing countries to make efforts to participate in oceanographic technology. In that context, the convention should provide, as a corollary of international democracy, for the transfer of technology, for scientific co-operation and for the dissemination of the results of submarine research. Oceanographic technology should be regarded as an integral part of the heritage of mankind, since it was capable of bringing about a redistribution of economic power.

56. His delegation was satisfied with the proposed scheme for the settlement of disputes; the system of compulsory conciliation constituted a well-balanced solution.

57. With regard to the reservations clause (art. 303), his delegation had made known its position at the appropriate time: it wished to reaffirm at the present stage that, in its view, reservations could basically be prohibited only when all the parties were in agreement on all questions. That assertion logically led to consideration of the meaning and scope of consensus; for consensus to be viable, it was necessary to start from the premise that the present Conference should try not to consolidate allegedly established positions, but rather to introduce a new order which would benefit all countries in an equal manner.

58. His delegation was completely dissatisfied with the terms of paragraph 1 of articles 74 and 83. Like the other sponsors of document NG7/10/Rev.2, it believed that those provisions contained irregularities of substance and of form. With regard to substance, they were at variance with the opinions of the highest legal authorities and with the relevant case-law. With regard to form, they were not in order because they had been incorporated in the second revision without having been genuinely negotiated. For those reasons, his delegation could not support their inclusion in the third revision simply in the form in which they stood in the second revision. The paragraphs in question should be left blank in the third revision because at the present stage they were not the subject of consensus.

59. Lastly, international conscience recognized that peoples constituted authentic subjects of contemporary international law. Accordingly, his delegation supported the accession to the convention of national liberation movements. It was natural for his delegation to take that stand since its Government of national reconstruction had emerged precisely from such a movement.

60. Mr. AL-SUWEIDI (United Arab Emirates) thanked the President and the chairmen of the main committees for their devoted efforts. Those efforts would result in a comprehensive convention which would serve as the basis for a new international legal order for the benefit of mankind as a whole and would implement the principle of the common heritage of mankind enshrined in General Assembly resolution 2749 (XXV). That development could be regarded as a major step forward in the progress of contemporary international law, the effects of which would be felt both now and in the future.

61. With regard to the matters before the First Committee, his delegation was gratified at the tangible progress achieved on a number of thorny issues, progress which was bound to have positive effects. On the issue of the powers of the organs of the Authority, he found that the present proposal gave unduly broad powers to the Council. In his delegation's view, the new powers to be conferred on the Council should not encroach upon the competence of the Assembly. It was essential to strike a balance between the powers of those two organs.

62. Despite those doubts, his delegation was nevertheless prepared to support the proposed new system, which had been endorsed by the Group of 77. It was prepared to leave article 140 as it stood, particularly the provision on special treatment in the interests of developing countries, of Territories which had not yet acceded to independence, and of other non-self-governing Territories within the meaning of General Assembly resolution 1514 (XV) and subsequent relevant resolutions.

63. On Second Committee matters, his delegation endorsed the proposal contained in document C.2/Informal Meeting/58 to add to article 21 a new subparagraph setting forth the right of the coastal State to require prior authorization or notification before the innocent passage of foreign warships through its territorial sea. The same requirement would apply to all foreign nuclear-powered ships and to ships carrying nuclear materials or dangerous or potentially harmful cargoes.

64. Regarding the provisions on the continental shelf, the representative of Iraq had already stated (135th meeting) the views of the group of Arab States including the United Arab Emirates and the objection of those States to any extension of a coastal State's continental shelf beyond 200 miles. He expressed the hope that negotiations on that subject would continue and that they would result in a consensus.

65. On the delimitation question dealt with in articles 74 and 83 of the second revision, his delegation's position was made clear in document NG7/2/Rev.2. He wished to endorse the arguments already put forward by other sponsors of the proposal contained in that document. At the same time, he believed that the present text of those articles on delimitation—which were the outcome of prolonged negotiations—provided the best available basis on which to work towards a consensus.

66. In that connexion, he stressed the great improvement resulting from the introduction into those articles of a reference to international law—an improvement which would make it possible to strike a balance between the different views that had been expressed on delimitation and on the criteria on which it must be based. Accordingly, his delegation strongly urged that the reference to international law should be maintained in the third revision.

67. The criteria for the delimitation of maritime boundaries between States with opposite or adjacent coasts, the question of interim measures and the provisions on the settlement of disputes constituted three interrelated questions which must be dealt with as a single package. That point had been stressed by the Chairman of negotiating group 7 in his final report at the end of the previous session.¹ The proposals contained in document NG7/2/Rev.2 on delimitation criteria, settlement of disputes and interim measures, respectively, were in line with that approach.

68. The principle of equity—advocated by some as a criterion for delimitation—could not be applied by itself. Disagreement was bound to arise on the interpretation of such a criterion and the parties concerned would have to resort to the settlement of disputes procedure or to third-party determination in order to apply it.

69. He urged that in article 298 a reference should be introduced to the right of every party to recourse to the procedures set forth in Part XV, section 2, if conciliation attempts failed or if it became clear that one of the parties refused conciliation. A provision of that kind would avoid the perpetuation of a dispute in cases where one of the parties was unco-operative and in effect rejected the application of the dispute-settlement procedures embodied in the convention.

70. His delegation also endorsed the suggestion that the dispute-settlement procedures should apply to all disputes and not only to those arising after the entry into force of the convention.

71. The consultations which had taken place on so many issues among regional groups and the Group of 77 had produced constructive results on important questions. He sincerely hoped that those negotiations would lead to a consensus and produce the necessary improvements in the provisions of the second/revision.

72. He expressed his appreciation of the President's strenuous efforts with regard to the final clauses, the general provisions and the provisions on the settlement of disputes. He supported the

suggested articles on those questions, articles which were the outcome of fruitful co-operation among all the participants concerned.

73. That being said, he wished to stress that it was absolutely essential to redraft article 300 of the second revision in such a manner as to specify the right of liberation movements, especially the Palestine Liberation Organization,² to accede to the convention pursuant to article 140.

74. Mr. FREER-JIMÉNEZ (Costa Rica) welcomed the incorporation into the negotiating text of the provisions concerning the principle of the utilization of the sea for peaceful purposes which had been sponsored by his delegation, together with those of Peru and other countries. Similarly, he welcomed the incorporation of the principle of good faith with regard to the performance of rights and obligations under the convention, and the recognition of the *jus cogens* character of the rules governing the common heritage of mankind. His delegation considered all those principles as basic and as constituting cornerstones of the new law of the sea.

75. With regard to the final clauses, Costa Rica—which was a party to three of the Geneva Conventions of 1958 on the law of the sea—had reservations regarding the text of article 305: his delegation could not accept the idea that, in respect of States which did not ratify the present convention, the 1958 Conventions should apply, regardless of the fact that the legal régime which now governed the territorial sea, the economic zone and the continental shelf formed part of customary international law and was already binding upon all States, regardless of whether or not they were parties to the 1958 Convention or to the present convention.

76. Turning to First Committee matters, his delegation considered that the text submitted by the co-ordinators for Part XI and annexes III and IV provided the best possible basis for reaching a consensus. Although his delegation could suggest certain improvements, it preferred to support that text because it realized that it was the result of difficult negotiations.

77. With regard to Second Committee matters, his delegation had been glad to sponsor an amendment to article 63 (C.2/Informal Meeting/54/Rev.1). It was not the intention of the coastal States to extend their jurisdiction beyond 200 miles—as they had sometimes been wrongly accused of doing—but those States were concerned about overfishing in the adjacent areas of the high seas, a practice which was harmful to the interests of all States whose nationals fished in those areas. The provision in question was simply an application of the principle already embodied in article 117, which imposed upon States the obligation to adopt measures for the conservation of the living resources of the high seas.

78. The fact that it had not been possible to reach a consensus on the question of the delimitation of maritime boundaries of States with opposite or adjacent coasts should be a matter of serious concern for the international community. It was essential to devise a text based on clearly defined and objective criteria. In his view, the concept of equity should serve to correct the defects of unfair delimitation which might result from the application of other principles, but that equity could not constitute the only—or the main—criterion of delimitation because, by its very nature, equity was a purely formal principle which must be associated with other geographical elements in order to yield a practical solution. So long, however, as no better formula could be found, his delegation would continue to support the wording suggested by the Chairman of negotiating group 7 for articles 74 and 83.

79. He welcomed the completion of the work of the Third Committee and expressed the hope that with a few drafting changes the provisions produced by that Committee could be incorporated in the third revision.

80. Mr. NANDAN (Fiji) said that the negotiations held throughout the past years had established that the international community was concerned just as much with the problems of big States as with the problems of small States. States with extensive

¹ Official Records of the Third United Nations Conference on the Law of the Sea, vol. XIII (United Nations publication, Sales No. E81.V.5.), document A/Conf. 62/L.47.

coastlines, transit States, States with navigational interests, land-based mineral producers and prospective sea-bed miners. The emerging draft treaty showed that every interest had been taken into account, if not fully satisfied.

81. His delegation welcomed the fact that the integrity of the legal régime of islands, which was of particular interest to the countries of the South Pacific region, had been largely maintained. The integrity of oceanic islands had not been subordinated to the problems of islands having a special situation that might have some bearing on the question of delimitation of boundaries.

82. His delegation was pleased that the Conference had finally accepted the concept of archipelagic States—a concept which until now had been denied its legitimate place in international law. The entrenchment of that concept in the draft convention reflected appreciation of the fact that groups of oceanic islands had an important economic, social and political interrelationship with the waters that surrounded them. His Government had already given legal force to that concept by enacting laws which were consistent with the negotiating text before the Conference.

83. Turning to the work done during the current session, he observed that the session had been one of the most productive. The First Committee had resolved the difficult question of decision-making in the Council of the Authority. The new compromise proposal on the question of voting in the Council contained in article 171, paragraph 7, appeared to enjoy widespread support. The three-tier voting system was an interesting innovation. The proposal that, in the highest tier, decisions should be adopted by consensus offered the only possible compromise solution.

84. Some delegations had criticized the consensus procedure as equivalent to a veto system. He did not believe that criticism to be justified. The traditional veto was a system of voting in which power was given to a few nations to defeat any substantive proposal by casting a negative vote. The consensus procedure was completely different: it envisaged no voting and was based upon a philosophy deeply rooted in many cultures in the third world, such as those of the Indian sub-continent, Indonesia and the South Pacific. Under that philosophy, people were encouraged to take account of one another's views and interests and to accommodate one another's needs. In his own country and in the South Pacific, it was called the "Pacific way".

85. In the Second Committee, the texts produced at the previous session had been further consolidated and the only improvements still possible would be in the articles dealing with delimitation of boundaries, provided, of course, that there was general agreement, especially among the parties most concerned.

86. The texts produced by the Third Committee also contained further improvements.

87. Important progress had also been achieved with regard to the final clauses, general provisions and settlement of disputes. While his delegation could endorse the outcome of the negotiations on those matters, it found the requirement of 60 ratifications to bring the convention into force undesirable if the new régime of the oceans was to enter into force as soon as possible. That new order had taken over 10 years to negotiate and its entry into force should not be unduly delayed.

88. Notwithstanding those observations, his delegation supported the inclusion in the third revision of all the improvements proposed by the chairmen and co-ordinators. Furthermore, in order to mark the important progress made at the present session, his delegation urged that the new text should be styled "draft convention" with a footnote to indicate that it remained an informal text.

89. He now wished to turn to an important matter which the Conference had not yet discussed or resolved: that of the site of the headquarters of the International Sea-Bed Authority. He wished to reiterate his Government's offer to provide headquarters facilities for the Authority in Fiji, which was close to the area in which most sea-bed mining would take place. At the previous session, it had been agreed that the Conference would de-

cide on that matter by a vote at the appropriate time. Now that most of the substantive questions before the Conference were nearing conclusion, his delegation would be pleased to know when the Conference would take up that matter.

90. Lastly, he wished to draw attention to the proposals made by his delegation and a number of other delegations for the purpose of enabling certain countries in the South Pacific, which had become self-governing under United Nations auspices and had considerable maritime zones, to become parties to the new convention.

91. Mr. BACH BAOUAB (Tunisia) said that his delegation welcomed the interest shown in the needs of the developing countries, which should be taken fully into account.

92. Despite the difficult issues before it, the First Committee had produced constructive results in reconciling divergent interests in a way that satisfied most parties. His delegation wished to comment on some of the articles dealt with in the report of the co-ordinators of the working group of 21 to the First Committee so that its comments could be taken into account by the Collegium in taking a final decision on the amendments to be introduced into the third revision.

93. It would have been preferable to group all the provisions under which questions were to be decided by consensus in article 161, paragraph 7, rather than to single out only three such provisions. It seemed doubtful whether the consensus system was ideal for the administration and exploitation of the common heritage of mankind.

94. With regard to article 162, paragraph 2 (j), his delegation would find it difficult to accept any proposal that gave a greater measure of competence to the Council than to the Assembly. He therefore urged that the additions to that paragraph and other relevant paragraphs should be deleted or amended so that they could not be interpreted in that way.

95. In connexion with annex III, he referred to the decisions taken by the Organization of African Unity at Freetown (see A/CONF.62/104) and emphasized the need for clear provisions on the transfer of technology. Steps should be taken to prevent any contractor from shirking his responsibilities in that respect on the pretext that such transfer would be too costly. The transfer of technology, which should apply to all phases of mineral extraction, particularly processing, was a *sine qua non* for the acceptance of a bilateral system. The additional funds should be made available to enable the activities concerned to be undertaken immediately upon the entry into force of the convention.

96. The Second Committee had made no new proposals during the session. It was regrettable that no negotiations had taken place with regard to the continental shelf and its extension beyond the 200-mile limit. His delegation wished to renew its proposal for the holding of such negotiations.

97. It welcomed the generally-acceptable solutions that had been reached, sometimes by consensus, during informal negotiations on the settlement of disputes, final clauses and general provisions, and could agree that the provisions agreed on should be included in the third revision. Referring to the discussions that had taken place concerning the *jus cogens* rule, he said that the principle of the common heritage of mankind was a rule of international law and should therefore be incorporated both in the convention and in unilateral legislation on the exploitation of the Area.

98. On the question of the final clauses, it was regrettable that no final decision had been taken concerning the accession of liberation movements. That question should receive early attention to enable peoples subjected to domination to exercise their right to participate in the common heritage of mankind, as they would have been able to do if they had not been subjected to illegal domination.

99. In view of the progress that had been made, consideration should now be given to methods of application with a view to early entry into force. The United Nations and its Secretariat would have a predominant role to play in that connexion. The at-

tention of the General Assembly should be drawn to the importance of that issue so that the relevant services could be provided to the developing countries.

100. Mr. GUEHI (Ivory Coast) said that the results achieved at the current session offered improved prospects of consensus and the conclusion of the draft convention had been brought closer. His delegation, which had attended the Conference from its inception, attached great importance to the work of the Conference as a means of contributing to a new, more just and more equitable international economic order. The Conference's results during the past few years had been constructive and were being embodied in the domestic legislation of most participating States. The 12-mile limit for the territorial sea and the 200-mile limit for the exclusive economic zone were incorporated in the domestic legislation of the Ivory Coast.

101. His country viewed the law of the sea as a factor of development in all possible fields. The work on final clauses, general provisions and settlement of disputes carried out in the informal plenary conference should be reflected in the third revision. The results were encouraging and formed a sound basis for negotiation. His delegation, however, had difficulties with some provisions in the text drawn up by the co-ordinators of the First Committee, difficulties which should be ironed out at a later stage. First, in connexion with the review conference, his delegation opposed the elimination of the moratorium, which should be re-instated in the third revision. Secondly, the provision on the transfer of technology was unsatisfactory in its present form. Such transfer should concern not only mining technology but also technology for transport, treatment and processing. It must be an integrated operation of unlimited duration. Thirdly, the protection of land-based producers against market infiltration by minerals from the Area was of major importance. A superprofit tax system applicable to contractors should be devised to compensate for the losses suffered by land-based producers as a result of marine production. A distinction should be drawn in that respect between developing-country producers and industrialized-country producers, with a view to applying a fair system of compensation. Article 151, paragraph 4, should be revised to take that suggestion into account.

102. Fourthly, on the question of decision-making by the Council, the consensus procedure provided for in article 161, paragraph 7 (e), was disturbing. In accordance with the resolution adopted by the Organization of African Unity, at Freetown, his delegation wished to reiterate its disagreement with the veto system. The consensus method introduced into the decision-making process was nothing but a disguised veto and could render the Council ineffectual. The prescribed majority procedure therefore appeared to be the best solution.

103. As far as the work of the Second Committee was concerned, the delimitation of the maritime boundaries of States with adjacent or opposite coasts should be agreed between the parties and should be based on the principle of equity, taking account of all the relevant factors. His delegation was convinced that that principle was in the common interest of all who wished to have matters settled equitably without sacrificing their individual interests.

104. On Third Committee matters, his delegation welcomed the fact that the basic negotiations had been completed.

105. His delegation urged States to refrain from adopting unilateral legislation, in order to avoid jeopardizing the convention. It was confident that the reassuring words spoken by some delegations on the subject would have equally reassuring effects for the international community.

Mr. Arias Schreiber (Peru), Vice-President, took the Chair.

106. Mr. PAPADOPOULOS (Cyprus) said that his Government remained firmly committed to the goal of restructuring the law of the sea and exploiting the common heritage of mankind for the benefit of all; the first step towards the goal had been taken in 1967. As an island State, Cyprus was particularly sensitive to the régime of islands and enclosed or semi-enclosed seas.

Whereas the article on the régime of islands offered a minimum solution acceptable to his delegation, the inclusion in the second revision of the negotiating text of the article on enclosed or semi-enclosed seas raised some problems, and his delegation would like Part IX to be deleted from the text for reasons already explained.

107. His delegation welcomed the progress achieved during the current session and, in particular, the developments which had led to the consensus on First Committee matters, as reflected in the package of amendments (A/CONF.62/C.1/L.28 and Add.1). The agreement reached in that respect had served as a catalyst for other hard-core issues before the Conference. All who had worked to bring about that agreement had shown admirable political will, wisdom and courage. His delegation would support the inclusion of the package in the third revision.

108. It also viewed the proposed text for the third revision as a satisfactory compromise as far as Third Committee matters were concerned. It found the general provisions largely acceptable and welcomed, in particular, the acceptance by the Conference of the Greek proposal concerning archaeological and historical objects. The provisions on final clauses (A/CONF.62/L.60) were also largely acceptable to his delegation.

109. It did not, in principle, favour any exceptions or reservations, and believed that they should be kept to a minimum and enumerated in the convention. It agreed with the main thrust of article 303, but would like to see the word "exceptions" deleted.

110. In the light of the explanation given in paragraphs 9 and 10 of document FC/21/Rev.1, his delegation considered that some confusion would be dispelled if exceptions were placed in article 304, as proposed by the representative of Colombia. Article 305 was acceptable as it stood and should be included in the final text.

111. His delegation attached considerable importance to the question of the delimitation of the maritime zones between States with opposite or adjacent coasts, and associated itself with other delegations which considered that the existing text of the third revision offered substantially improved prospects of consensus. Its merit lay in the fact that it had for the first time brought together the two opposing groups, which had conducted their consultations on the basis of that text with a view to reconciling their divergent views. That development reflected a desire on both sides for a viable compromise that would command wide-ranging support. While a new consensus might emerge at the next session, the third revision meanwhile remained the text of the Conference. He emphasized the close connexion between delimitation criteria, interim measures and settlement of disputes. His delegation's final position on the subject would depend on the package deal agreed on those matters; its consistent position on settlement of disputes had favoured compulsory third-party adjudication, entailing a binding decision not only on delimitation matters but also on all other disputes arising from the interpretation or application of the convention.

112. Mr. ENKHSALKHAN (Mongolia) welcomed the recent progress towards the formulation and adoption by consensus of a comprehensive convention. The package that had emerged had been the result of intensive negotiations held among delegations in a spirit of political will, compromise and mutual accommodation.

113. The new three-tier approach to decision-making, proposed by the First Committee, was a compromise that could not claim to give full satisfaction to all delegations. It nevertheless represented a constructive step towards a solution to the important issue of decision-making procedures by excluding the possibility of unilateral advantage for certain groups of States in the Council, or of discrimination against groups representing different socio-economic systems and geographical regional groups. His delegation could endorse the formula contained in article 161, paragraph 7, for incorporation in the new revision.

114. It should be borne in mind that the formula had not been presented in isolation but as part of an over-all package compris-

ing other important mini-packages on such matters as the composition and competence of the Council, the system of exploration and exploitation of the Area, the production policies of the Authority and the financial arrangements. The entire package should be preserved as an organic unit, since any attempt to alter any of its elements would reopen issues, disturb the balance and destroy the package. His delegation could not support the view of some States that the agreed composition of the Council should be altered.

115. If other delegations could support all the other component elements of the First Committee package, his delegation could too, although it would have preferred to see some improvements in annex III, and specifically in articles 5, 6 and 7 on the transfer of technology and the anti-monopoly clause.

116. Second Committee matters as a whole raised no major difficulties for his delegation. Most of the vital issues had been successfully negotiated and an equitable solution had been found for them. As a land-locked country, however, Mongolia had some difficulties with some provisions of the convention relating to the rights of land-locked and geographically-disadvantaged States to the living resources of the exclusive economic zone of coastal States. It would have liked to see some improvements in certain articles of the present text to take account of the legitimate rights of land-locked and geographically-disadvantaged States, particularly in view of the fact that a large part of the high seas to be known as the exclusive economic zone was to be subject to a specific legal régime heavily favouring some coastal States. In a spirit of compromise, however, his delegation would refrain from pressing for the reopening of the debate on the present provisions of the negotiating text, despite their imperfections. It expected other delegations to exercise similar self-restraint.

117. His delegation was strongly opposed to the attempts of some coastal States to extend their jurisdiction into the high seas on various pretexts, thus infringing the freedom of the high seas. It viewed such action as an attempt to change the balance of the fair and fragile compromise that had been painstakingly negotiated over the past years. It had a similar objection to the attempt of some coastal States to amend the agreed text of article 21, paragraph 1, on the laws and regulations of coastal States relating to innocent passage for all vessels. Any attempt to alter that text would set the Conference back many years and lead to unnecessary dissension.

118. On Third Committee matters, his delegation had noted with satisfaction the successful conclusion of the negotiations on Parts XII, XIII and XIV of the second revision.

119. His delegation could endorse the final provisions as a whole. It welcomed the fact that the overwhelming majority of delegations were against the idea of reservations except for those explicitly allowed by the convention itself. That was one of the major achievements of the session, since reservations would be contrary to the two main principles on which the convention was to be based: consensus and the package deal. His delegation would have no objection to the inclusion in the new revision of the proposed package that had emerged during the current session.

120. His delegation fully supported the statements made by the developing and socialist States against illegal unilateral legislation adopted by certain States in breach of the fundamental principle of the common heritage of mankind proclaimed by the General Assembly in resolution 2749 (XXV). It hoped that the impetus given to the Conference at its ninth session would lead to the early adoption of a comprehensive convention that could contribute to the maintenance and strengthening of international peace and security, the establishment of a new international economic order and justice for all.

121. Mr. DEMBELE (Mali), referring to article 69 concerning the rights of land-locked States in the exclusive economic zone, said that those States should have the right to participate on an equitable basis in the exploitation of the biological resources of the exclusive economic zone, and not on the basis of an appropriate part of the surplus.

122. As far as the problem of delimitation was concerned, his delegation would have been satisfied with any solution that might have been found by a group established for the purpose. Since no such solution had been found, however, it maintained its support for the principle of equity. It consequently found it impossible to support the wording of articles 74 and 83 in the second revision. Nor could it support the vague definition of the continental shelf given in article 76, which it viewed with deep concern. It did not consider that efforts to reach a compromise on that question had been exhausted.

123. The problem of payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles (art. 82) could be solved satisfactorily only when a reasonable solution to the question of the continental shelf had been found. His delegation hoped that the idea of a common heritage fund would be favourably received and would be included in the convention.

124. Part X on the right of access of land-locked States to and from the sea and freedom of transit remained a most vital question for his delegation. While its provisions were not entirely satisfactory, any attempt to amend the present provisions would influence his country's attitude to the future convention.

125. His delegation was concerned about several points in document A/CONF.62/C.1/L.28/Add.1, which embodied the results of the negotiations that had just been held. First, article 151 did not favour land-based developing-country producers. Negotiations on that point were required. Secondly, the moratorium requested by a large number of developing countries had been completely disregarded in article 155 concerning the review conference. Thirdly, in article 161 concerning decision-making by the Council, the three-fourths majority had been extended to all key questions. That approach was unsatisfactory to his delegation. Lastly, annex III, article 5, concerning the transfer of technology failed to take account of the concern of the developing countries for the inclusion of the extraction, transport and processing of minerals and training of personnel.

126. His delegation welcomed the progress made in the work of the Third Committee. That work could, however, have been further enhanced by a slight improvement in favour of the land-locked countries in article 254.

127. At the first part of the session his delegation had expressed concern about the provisions of annex II, article 2, paragraph 5, concerning the Commission on the Limits of the Continental Shelf;² those provisions systematically excluded the land-locked and developing countries from the Commission.

128. Mr. ANGONI (Albania) said that the main concern of the Conference on drafting the new convention on the law of the sea was to include clear and unequivocal legal standards to safeguard the rights and interests of sovereign States, particularly with regard to questions directly connected with their independence and national sovereignty. One such question was that of delimitation of territorial waters and the régime governing such waters. That was a sovereign right of States, and his delegation supported the view that each coastal State had the right to delimit its own territorial waters up to a reasonable width, according to the particular geographical, biological, social and economic conditions, and taking account of national sovereignty, its economic interests, the interests of other coastal States and international navigation.

129. Another question for which no just or equitable solution had been found in the second revision of the negotiating text was that of innocent passage. His delegation was certainly not opposed to the principle of free navigation in territorial waters and in straits by merchant ships when it took place in conformity with the legislation and regulations in force in the coastal State and when it did not prejudice the national sovereignty of that State. To extend the application of that concept to warships, however, would constitute a flagrant violation of the well-known principle of international law which recognized the full sover-

² *Ibid.*, 128th meeting.

eignty of coastal States over territorial waters and the superjacent airspace. It was essential for the new convention to make a clear distinction between merchant ships and warships, with an express provision to the effect that the passage of warships in the territorial waters of coastal States could take place only after prior authorization and in strict compliance with the laws and regulations of the coastal State.

130. His delegation maintained the view that the régime of enclosed or semi-enclosed seas and of straits linking such seas together or with other seas or oceans should be established by coastal States without any discrimination or limitation for peaceful countries. On the basis of that position of principle, which had been favourably received by the majority of States participating in the Conference, his delegation was opposed to any amendment of article 36 as it appeared in the text. There could be no automatic right of free passage for all ships or aircraft through straits leading to enclosed or semi-enclosed seas, which were seas of destination and as such could not be used for transit purposes. That was an unquestionable principle recognized in international maritime law. To seek to draw a parallel between enclosed and semi-enclosed areas, on the one hand, and the high seas, on the other, would be to reverse a principle of international maritime law. Questions relating to the régime of enclosed and semi-enclosed seas, and to passage through straits leading to such seas, should be solved through negotiations between the coastal States concerned; that view too had received substantial support in the Conference. His delegation also supported the Romanian proposal with regard to article 70 (C.2/Informal Meeting/51).

131. Article 303 violated the sovereign rights of States and was therefore inadmissible. His delegation strongly supported the principle of reservations as providing a safeguard for the national interests of all States parties.

132. His delegation also had reservations with respect to Part XV, section 2, which based all procedures on obligatory jurisdiction; that constituted a limitation of the sovereign rights of States. It was essential to have the agreement of all parties to any dispute in order to bring that dispute before a court or to arbitration.

133. With regard to First Committee matters, some of the articles as worded in the second revision failed to provide a guarantee of equal rights for all States. His delegation supported the just demands of the overwhelming majority of developing countries with regard to questions relating to the competence and operation of the Council and the Enterprise, voting rights, the production and sale of commodities and other maritime products, the transfer of technology, etc. It was opposed to any manoeuvres by industrialized countries, particularly the major Powers, designed to secure privileged positions for themselves. A typical example was the unilateral legislation recently promulgated by the United States and designed to promote United States industry in the exploitation of deep-sea mineral resources. His delegation strongly condemned that act by the United States Government, which not only sought to seize wealth that belonged to mankind as a whole, but also gave proof that it did not hesitate to violate universally-accepted international norms in order to secure its imperialist ends. He wished to reiterate that the new convention must establish equal rights for all States, taking account first and foremost of the interests of their independent economic and political development.

134. Mr. RATTRAY (Jamaica) said that an assessment of the work of the Conference could not simply be made in terms of national interest. The search for global agreement had been characterized by the sacrifice of a measure of nationalism to internationalism. That had been a painful process particularly for developing countries, but it was often essential for idealism to come to terms with reality. It was impossible to solve all the problems of future generations; the present challenge was to make a good beginning.

135. In evaluating the second revision of the negotiating text and the results of the negotiations that had been conducted, it

was essential to bear in mind that the mandate of the Conference was to produce a comprehensive convention on all issues concerning the law of the sea, taking into account their interrelated nature and the need to arrive at an acceptable package of proposals. It was necessary, in the search for general agreement, to determine the acceptability of the package as a whole, rather than to pass punctilious judgement on its individual constituent elements.

136. With regard to the First Committee package, and in particular the proposals in the report of the co-ordinators of the working group of 21, debts should be balanced against credits. On the credit side, there had been considerable improvement in the provisions regarding transfer of technology, particularly in annex III, article 5, paragraph 3 (c), which related to the undertaking by the operator to acquire a legally binding and enforceable right to transfer third-party technology to the Enterprise, and annex III, article 5, paragraph 7, regarding the period during which the obligation to transfer technology might be invoked. It was still necessary to ensure that the guarantees in respect of the transfer of technology would be adequate to serve the basic purpose of promoting a viable Enterprise on a continuing basis as an essential element of the parallel system.

137. A further point on the credit side was the recognition that the concept of the benefit of mankind as a whole must extend to the peoples who had not yet obtained independence or other self-governing status, as provided for in article 140.

138. The three-tier approach to the decision-making mechanisms of the Council was an attempt to reconcile the principle of the sovereign equality of all States with the reality of interests to be accommodated in matters affected by decisions of the Council. While it was possible to disagree with the internal allocation of some subjects to certain categories, the will of the international community to liberate itself from domination by the powerful had indisputably been asserted.

139. There were benefits and drawbacks in the streamlined parallel system. On the one hand, the right of access of qualified applicants was now largely automatic, and subject only to production authorization. On the other hand, the Enterprise was yet to be fully guaranteed the resources necessary to exploit its first mine site. The surest guarantee would be that of extensive ratification, particularly by the industrialized countries, which would be the major contributors. The problem of a possible shortfall posed a real threat to the implementation of the parallel system. The fact that the solution of the problem was to depend on a consensus decision of the Assembly might be an unnecessarily high price to pay for a system that was based on the assumption that the operations of the Enterprise would begin at the same time as those of States and State-sponsored entities. The appropriateness of the consensus régime should be re-examined at the next session.

140. In keeping with the decision of the Group of 77, his delegation would have no objection to the incorporation of the package proposals of the working group of 21 in the third revision of the text.

141. With regard to the work of the Second Committee, the concept of an exclusive economic zone was possibly the most important development in the law of the sea relating to the limits of national jurisdiction since the 1945 Truman declaration on the continental shelf. His delegation had participated actively in the formulation of an agreement that sought to balance the rights and duties of the State within the exclusive economic zone against the corresponding rights and duties of other States and of the international community.

142. The right of a coastal State to establish an economic zone and the rights and duties of other States within the zone were now generally accepted. Articles 69 and 70 were important in that respect. His delegation hoped that an acceptable solution could be found to the problem of geographically-disadvantaged States in regions and subregions poor in living resources.

143. His delegation regretted that agreement had not yet been reached on the vital and sensitive issue of the delimitation of the

exclusive economic zone or continental shelf between States with opposite or adjacent coasts. It was, however, encouraging to note that negotiations among the most interested parties were continuing. His delegation was confident that a generally acceptable agreement would emerge from such negotiations.

144. While it could accept the coastal State's sovereign rights over the continental shelf in an area beyond 200 miles in which the coastal State would share the revenue from its exploitation with the Authority, his delegation felt that the percentage contribution by coastal States to the Authority could be greater than that provided for in article 82.

145. Turning to the general provisions relating to the Area and its resources, the common heritage of mankind and *jus cogens*, he said that the single most important development in the general law of the sea during the current century was indisputably the 1970 United Nations Declaration of Principles (resolution 2749(XXV)), which established that the area beyond national jurisdiction constituted the common heritage of mankind. His delegation had three points to make concerning the principle of the common heritage of mankind: firstly, the 1970 Declaration was declaratory of general international law; secondly, the principle of the common heritage of mankind was a rule of customary international law; and thirdly, the principle of the common heritage of mankind constituted *jus cogens*, i.e. a peremptory norm of general international law from which no derogation was permitted and which could consequently be modified only by a subsequent norm of general international law having the same character.

146. It was the task of the Conference to give effect to that important principle. It was a matter of deep regret to his delegation that the Conference had not yet been able to state clearly and unequivocally that the principle of the common heritage of mankind constituted *jus cogens*.

147. The original Chilean proposal on the subject was preferable to the compromise formula which, while merely prohibiting amendments to article 136, was to become a paragraph of the article on the final clauses on the relationship to other conventions and international agreements. Under the doctrine of *jus cogens*, not only treaties which were in breach of a peremptory norm, but also unilateral acts which contravened such a norm, were illegal, null and void. Unilateral action in relation to the Area and its resources was destructive and subversive of the principle of the common heritage of mankind. It was regrettable that some States had taken such action, particularly when the Conference was on the verge of success.

148. The general provision that a State party was not obliged to supply information the disclosure of which was contrary to the essential interests of security was open to abuse. His delegation wished to sound a note of caution in that respect, despite the understanding (see A/CONF.62/L.58) that the provision was not intended to detract from the obligations under the present convention concerning the transfer of technology and marine scientific research or the obligations concerning the settlement of disputes relating to those matters. The exclusive reference to those particular obligations might be interpreted as meaning that the provision could detract from obligations not mentioned in the understanding.

149. Although substantial progress had been made at the current session, a number of matters remained to be solved and a number of adjustments would have to be made in order to preserve the delicate balance necessary to maintain the integrity of the package. There was no perfect solution in the world of compromise. If the next session was to succeed, it must be accepted that the type of negotiations conducted in the past on hard-core issues could not be perpetuated. The developing countries had made major concessions in arriving at the compromise package, and the time had come for the industrialized countries to make a final gesture.

150. His delegation was confident that the widespread support for Jamaica as the site of the international sea-bed Authority would also be expressed in the final communication in the form

of a decision of the Conference, in accordance with the procedure adopted during the first part of the Conference.

Mr. Djalal (Indonesia), Vice-President, took the Chair.

151. Mr. HAHM (Republic of Korea) said, with regard to First Committee matters, that his delegation welcomed the new compromise formula on decision-making procedures in the Council based on the three-tier voting system, as set out in the proposals by the co-ordinators of working group 21. He commended the spirit of compromise shown by all delegations in achieving a breakthrough on a problem that was crucial to the success of the Conference. The consensus method as a working rule applicable to particularly sensitive issues seemed to offer a reasonable basis for compromise and balanced the interests of the States and groups of States concerned. However, safeguard measures must still be devised in order to ensure that the consensus mechanism was not used to paralyze the functioning of the Council.

152. His delegation had remained silent during discussions on the composition of the Council at the current session, hoping that the negotiations between land-based producer countries and industrialized countries would be successful. Although the results of the negotiations failed to give sufficient importance to the interests of developing consumer countries that were heavily dependent on imported mineral resources, his delegation would not obstruct a consensus on the issue by insisting on that point.

153. His delegation expressed satisfaction with the adjustment made to article 155, paragraph 4. The addition of the words "changing or modifying" clarified the scope of the amendment to the system of exploration and exploitation.

154. As a member of the Group of 77, his delegation attached great importance to the question of transfer of technology and shared the Group's view that it should be made compulsory not only for the operator but also for the supplier of technology, so that the Enterprise could become a viable entity in every respect. It was encouraging to note that the new version of annex III, article 5, contained an improved formula which could provide a basis for consensus.

155. His delegation was in favour of incorporating all the amendments contained in document A/CONF.62/C.1/L.28/Add.1.

156. Turning to Second Committee matters, he said that, in the light of the impasse on the issue of delimitation of the exclusive economic zone and continental shelf, his delegation felt that the formula contained in articles 74 and 83 of the second revision of the negotiating text was a feasible compromise which could reconcile opposing interests.

157. Another point of vital interest to his delegation was the question of the passage of warships through the territorial sea. His country had already enacted a law requiring prior notification of the passage of foreign warships through its territorial sea because it considered such a requirement to be consistent with the innocent passage régime formulated in the second revision. Article 21 entitled the coastal State to make laws and regulations in conformity not only with the provisions of the convention but also with other rules of international law.

158. His delegation supported the changes in the final clauses reflected in document FC/21/Rev.1/Add.1. He welcomed the fact that the foot-note had been retained in article 303, making it clear that acceptance of the article on reservations and exceptions was conditional upon the adoption of the convention by consensus.

159. His delegation had no objection to the general provisions in document A/CONF.62/L.58, but wished to place on record the fact that the provision designed to protect archaeological objects and objects of historical value should not prejudice the rights of coastal States to such objects located in the sea-bed and subsoil of the continental shelf.

160. The second part of the ninth session constituted a watershed in the progress towards a successful outcome, and with the resolution of most of the outstanding issues he looked forward to the successful conclusion of the Conference in 1981. He hoped that the pending issues would be resolved in the spirit of compro-

mise and mutual accommodation which had prevailed during the current session.

161. Mr. ARIAS SCHREIBER (Peru) said that the proposals submitted by the First Committee were the result of an effort to achieve a compromise between interest groups with previously insoluble differences. His delegation welcomed the fact that both the veto procedure and weighted voting had been eliminated from the decision-making procedures in the Council. Although his delegation would have preferred a two-thirds majority for all substantive questions, it had proved impossible to find a generally acceptable formula for the most sensitive items other than consensus, to which his delegation had objected for practical reasons. He welcomed the reference to recourse to conciliation in article 161, since it would encourage negotiation and discourage abuse of the consensus procedure. That procedure appeared excessive for decisions taken under article 162, paragraph 2 (f), concerning the protection of the interests of land-based producer countries. It was his delegation's understanding that it would not be necessary to have recourse to that paragraph in order to apply the measures in article 151. Furthermore, while the wording of articles 150 and 151 was far from ideal, his delegation trusted that the measures on production control would make it possible to counter the adverse economic effects for the developing countries. On the understanding that the new proposals formed part of an inseparable whole, his delegation supported their inclusion in the third revision as a better basis for reaching a consensus. The Conference would have an opportunity at the tenth session to consider the outstanding issues dealt with by the First Committee, including the membership of the Council, in the light of the final clauses. In order to ensure the success of the negotiations, States must take care to act in good faith, avoiding unilateral action in the Area, since such action would be invalid and could lead to a serious confrontation which would be prejudicial to the interests of mankind as a whole. Neither the Conference nor the international community would accept a fait accompli.

162. He welcomed the inclusion of an article in the general provisions prohibiting the use of force or any other action that was incompatible with the principles of international law incorporated in the Charter of the United Nations. However, that general provision must be supplemented by others, as had been suggested on many occasions.

163. At the end of the eighth session in New York, his delegation had expressed regret at the lack of a suitable procedure for negotiations in the Second Committee on certain items on which consensus had not been reached, such as the passage of warships in the territorial sea and other provisions concerning the exclusive economic zone and the high seas. Unfortunately, despite requests by several delegations, the situation had not changed at the current session. There were still problems which must be resolved by negotiation or by formal amendments which might be put to a vote in the Conference. Some delegations seemed to think that a final solution had been found on issues on which they themselves had reached agreement and they refused to consider the difficulties expressed by other delegations, as if the latter had no right to participate in a consensus. Such an approach was unreasonable and extremely dangerous for the Conference.

164. Where a specific agreement on the delimitation of the territorial sea, exclusive economic zone and continental shelf between States with opposite or adjacent coasts did not exist or where there were no special circumstances or historic rights recognized by the parties, the median line should as a general rule be used, as suggested in the second revision, since it was the most likely method of achieving an equitable solution.

165. His delegation considered that negotiations on matters dealt with by the Third Committee had ended and that only minor adjustments were now needed to certain provisions which were still causing difficulty.

166. The final clauses introduced by the President reflected the result of a compromise which appeared generally acceptable, but agreement must be reached on the question of reservations and exceptions and the participation of bodies which were not States,

including intergovernmental subregional organizations concerned with matters covered by the convention. There were other questions outstanding, such as the membership and functions of the Preparatory Commission, and the work of the Drafting Committee to harmonize the various language versions of the text and improve the style, without changing the substance.

167. Sooner or later the Conference would have to consider the follow-up to its work. The Secretary-General would be requested to assist the developing countries in strengthening their capacity to exercise their rights and in fulfilling their obligations under the future convention. It would also be necessary to co-ordinate the activities of the competent United Nations agencies and organizations so as to ensure uniform implementation of the convention in their work. To those ends, the Conference should recommend that the General Assembly adopt measures of co-operation and assistance in accordance with the means available to the United Nations.

168. His country's new Government would consider the text as a whole in due course and would express its views on it at the next session. The negotiating text was not a final version and was subject to amendment by participating States in accordance with the rules of procedure of the Conference. His delegation trusted that the convention would be adopted by consensus, but that would depend, in the last analysis, on the attitude of other delegations in seeking a reasonable solution to the few outstanding problems.

Mr. Akinjide (Nigeria), Vice-President, took the Chair.

169. Mr. SAKER (Syrian Arab Republic) welcomed the progress made during the current session. His delegation had no objection to articles 160 and 162 on the composition of the Council, voting procedures and the powers and functions attributed to the Council, although Article 162, paragraph 7(c), could have been made more precise by transferring some of the questions covered therein to subparagraph (b), thereby ensuring that most decisions were taken by a two-thirds majority.

170. With regard to article 140 on the sharing of benefits, he felt that making the benefits accruing to peoples who had not yet gained full independence dependent on a recommendation by consensus in the Council would have the effect of paralysing the activities provided for in that article. The decision should have been left to the Assembly or be subject to a two-thirds majority. Article 162, paragraph 2 (j), was part of the comprehensive package, but his delegation would have preferred plans of action to be referred to the Council and not to the Legal and Technical Commission.

171. In his delegation's view the text of paragraph 1 of articles 74 and 83 of the second revision should not be included in the new revision, because, according to the principles adopted by the International Court of Justice, the median line would not necessarily provide a just solution.

172. The continental shelf should not be extended too far since that would reduce the common heritage of mankind. His delegation agreed to a 200-mile limit to the continental shelf but felt that flexibility should be maintained, provided the payments and contributions for exploitation of the continental shelf beyond that limit were increased. Article 82, paragraph 4, should be amended to enable peoples who had not yet achieved independence to benefit from the contributions payable for exploitation beyond the 200-mile limit.

173. His delegation supported the proposal (C.2/Informal Meeting/58) for the introduction of a new subparagraph (b) in article 21, paragraph 1, which would make the passage of warships through the territorial sea subject to prior notice and authorization. He was surprised that the current session had not given sufficient attention to that important subject.

174. His delegation had two reservations concerning the final clauses. First, accession should be open to the national liberation organizations recognized by the United Nations and regional organizations if the former organizations were not to be deprived of their rights under the convention. Secondly, reservations should

be allowed in respect of those articles which had implications for the sovereignty of States and their vital continental and marine interests. Paragraph 2 of the transitional arrangements should be amended to allow non-independent peoples to enjoy their rights.

175. His delegation was adamantly opposed to unilateral legislation concerning the exploration or exploitation of the common heritage of mankind, and objected to any bilateral arrangements which might affect the rights of a third party, such as the Washington agreement and the Camp David agreement, which violated the rights of Arab States.

176. In his delegation's view, the current text did not give sufficient importance to the geographical, economic and political disadvantages of certain countries and should be amended accordingly. Lastly, Annex III, article 5, on the transfer of technology did not meet the aspirations of the developing countries. The transfer of technology should cover all areas of work by the Enterprise, particularly those involving industrialization.

177. Mr. VERHAEGEN (Belgium) welcomed the progress made during the current session, but regretted that his delegation had been unable to participate sufficiently in the consultations, which had frequently been too restricted.

178. His delegation was concerned about the consequences of the proposal for the limitation of production in article 150, paragraph 2 in document A/CONF.62/C.1/L.28/Add.1, because it might compromise the entire exploration and exploitation system devised by the Conference over the years. The production control formula which would benefit only 20 or so countries, both industrialized and developing, of the 160 members of the international community would make it possible to exploit from 5 to 14 ocean mine sites during the first 25 years of application of the convention. Many national Parliaments might be reluctant to ratify a convention which provided for the creation of a universal international body if its only task was to organize and control the activities of some dozen mine sites, particularly since the financial contribution required of States in the text were very high.

179. He was pleased to note that the drafting of some subparagraphs of article 150 had been improved, but subparagraph (d) needed further revision. His delegation could not accept the idea that the production of minerals derived from the Area would merely supplement land-based production. Both marine and land-based minerals should be treated on the same footing.

180. His delegation welcomed the fact that agreement had been reached on the decision-making procedures in the Council as set out in article 161. However, the membership of the Council must be amended to make it more representative. The argument advanced by the medium-sized industrial States was understandable and their views deserved attention.

181. His delegation had already stated on numerous occasions that it supported the transfer of technology to the Enterprise under fair marketing conditions, but the articles in annex III on the subject were not entirely satisfactory. Caution should always be exercised with regard to financial assessments prior to industrial investment, in view of the margin of error and industrial and marketing risks involved. However, Belgian experts had concluded that the companies concerned would be unable to continue their activities for the exploitation of marine mineral resources if they were subjected to the financial constraints imposed in annex III, article 13. Perhaps other experts had arrived at more optimistic conclusions, but even if they were right, the financial obligations to the Authority must not discourage from that new field of activity serious applicants who had already proved their technical ability to exploit the sea-bed. The level of payments to the Authority should be revised taking that point into account, and the charges referred to in the above-mentioned article should be reduced.

182. The funding of the Enterprise would be considered as the price to be paid in order to benefit from the advantages offered by the convention. His delegation did not wish to commit itself at the present stage, but it could not agree to the idea that States should be requested to provide a blank cheque for the financing of the Enterprise; that was precisely what annex IV, article 11,

proposed, since it did not stipulate the amount of contributions which States might be called upon to pay to the Enterprise. That again might cause the national bodies responsible for ratifying the convention to hesitate. The problem would not be solved by entrusting the preparatory commission with the job of fixing the amount since the commission's proposals were subject to approval by the Council and the Assembly of the Authority. Thus, since the Council and the Assembly could be established only after ratification by a sufficiently large number of States, a vicious circle might be created which could compromise the future of the convention.

183. His delegation was not against publication of a third revision of the negotiating text but could not agree that such a text would be the final text of the convention. The third revision should still be subject to amendment either during the next negotiating session or through a more formal amendment procedure.

184. In the absence of a clause enabling the European Economic Community to become a party to the convention, signature of the convention by Belgium would not be binding upon his country in respect of matters within the competence of the Community.

185. Lastly, his delegation was relying upon the French Language Group of the Drafting Committee to produce a satisfactory French version of the convention.

186. Mr. OMAR (Libyan Arab Jamahiriya) said that the sponsors of document NG7/10/Rev.2 on the delimitation of maritime boundaries between States with adjacent or opposite coasts had indicated that they could not accept the wording of paragraphs 1 of articles 74 and 83 in the second revision, since it was not the result of negotiations and had not met with the broad support which might establish the basis for a consensus, as provided for in document A/CONF.62/62.¹ Furthermore, most delegations felt that the text was ambiguous since it used an unusual term, namely, "circumstances prevailing". Considerable efforts had been made to achieve a clear formula that would command wider support. The two interest groups had eventually been able to initiate useful consultations but they had not yet resulted in the drafting of a text. In view of the importance of the matter, his delegation hoped that continued efforts would be made to eliminate the remaining difficulties facing the Conference.

187. He supported the informal proposal in document C.2/Informal Meeting/58 concerning the inclusion of a new subparagraph in article 21, paragraph 1, requiring warships to obtain prior authorization before entering the territorial sea. Such a provision was important for the security of all States, particularly smaller States. It had been evident from the general debate that the proposal was widely supported by the Conference and his delegation hoped that it would be included in the third revision or that there would be a further opportunity for negotiation on that point.

188. His delegation's basic position on the decision-making procedures in the Council was the same as that expressed by the Organization of African Unity, namely, it rejected the system of veto, unanimity or weighted voting. It was not certain that the voting system set out in article 161, paragraph 7, would be effective in facilitating the work of the Council. Nineteen items were subject to a three-fourths majority while only eight were subject to a two-thirds majority, and his delegation considered that situation unbalanced. Furthermore, article 161, paragraph 7 (g), had no governing criteria and its application might lead to arbitrary decisions since any member of the Council could exaggerate the majority needed for a specific issue.

189. The provision in annex III, article 5, on the transfer of technology did not meet the aspirations of the developing countries in supporting the role of the Enterprise. The text should be considerably improved and technology must be understood to cover processing technology as well.

190. Annex IV, article 11, on the financing of the Enterprise

¹ *Ibid.*, vol. X (United Nations publication, Sales No. E.79.V.4).

was, in his delegation's view, inequitable. The industrialized countries, particularly those most advanced in the exploration and exploitation of the sea-bed beyond the 200-mile limit, should contribute a larger share to the financing of the Enterprise. The present wording of article 76 was prejudicial to the common heritage of mankind and his delegation regretted the negative response to the view expressed by the group of Arab States; even though that view had gained support in the Conference. He endorsed the Iraqi delegation's request that negotiations should be continued on that subject in the Second Committee. His delegation supported the statement by the Group of 77 denouncing the unilateral legislation enacted by the United States for the exploitation of the sea-bed beyond its national jurisdiction. The Conference should, in his delegation's view, issue a statement denouncing any unilateral action which prejudiced the common heritage of mankind.

191. The participation of the national liberation movements in the convention was an important issue, and their accession was considered as an application of the principle of the common heritage of mankind. His delegation hoped that a provision could be included to that effect in the third revision.

192. In conclusion, although his delegation had expressed some dissatisfaction with certain aspects of the text, it welcomed the progress which had already been achieved, and hoped that the international community would be able to devise a just and legal régime for the seas which took into account the problems and aspirations of the developing countries.

193. Mr. CHARRY SAMPER (Colombia) said that his country was among the developing countries which were attempting to defend their interests as actual and potential producers of land-based minerals. Articles 150 and 151 were of fundamental interest to his country, which would begin mass production of nickel in 1982, and was a potential producer of copper, cobalt and manganese. Colombia would face stiffer competition as a result of the entry of marine minerals on the market. The developing countries were dependent to a large extent on investments and technology from the more developed countries for the exploitation of their mineral resources, but in the future priority would probably be given by the developed countries to marine nodules. Obviously, it was difficult to satisfy all States with general formulas, but his delegation had tried to obtain safeguards which would cover all land-based developing-country producers, such as the provision on access to markets and limitation of production. He felt that an additional clause should be included on access to markets to protect land-based developing-country producers against discriminatory economic, commercial and financial practices. The machinery and provisions to protect and assist developing countries in connexion with the adverse economic effects of marine production should be improved and implemented, particularly with regard to certain African countries such as Zambia, Zaire, Zimbabwe and Gabon, and the interests of the small and medium-sized countries in Latin America and Asia should also be taken into account. It was his delegation's understanding that decisions taken under article 162, paragraph 2 (f), concerned the protection of developing countries against the adverse economic effects referred to in article 151. Such decisions should be taken by a two-thirds majority in the Council so that there would be no doubt that it was the Assembly which would decide on the system of compensation referred to in article 151, paragraph 4.

194. His delegation considered that one of the most positive aspects of the package was the inclusion of States which were potential producers of the minerals to be derived from the area under Article 161, paragraph 1 (d), so that they could defend their interests in respect of marine and sea-bed mining.

195. He would have preferred a voting system for the Council based on a prescribed majority rather than the system adopted, which was as yet untried and on which the fate of the institutions established would depend. Rotation of the members of the Council should be guaranteed by pragmatic arrangements within the various groups. Having made those clarifications, his delegation

was prepared to endorse inclusion in the third revision of the package negotiated by the First Committee.

196. The various texts from the Second Committee appeared to be balanced and it would be dangerous to reopen discussions on issues on which consensus had been reached following very difficult negotiations. If some issues were raised again, Colombia would in turn have to insist on various points on which, in its view, an entirely satisfactory solution had not been found. It would therefore be preferable not to reopen the discussion in order to maintain the balance achieved.

197. With regard to the Third Committee, his delegation welcomed the results obtained on Parts XII, XIII and XIV, which offered better responsibilities for consensus. However, several of the provisions of the new text should be harmonized: for example the foot-note to article 254 should be brought into line with articles 69 and 70, and articles 264, 265 and 296.

198. At the eighth session his delegation had expressed support for the inclusion in the second revision of the proposals of the Chairman of negotiating group 7 on criteria for delimitation, interim measures and the settlement of disputes. During the current session, his delegation had played an active part in the discussions and contacts with the delegations most concerned and had concluded that the current text was the most likely to lead to a consensus, particularly since the reference to international law in the heading was a meeting-point for opposing views. It could not be said that there were two clearly defined camps, those for a new order and those against. International law covered the rules, principles, customs and practices of States which had evolved gradually and the convention must reflect that fact. The recent discussions among the 20 countries most concerned had brought out various points that were important to his delegation. The inclusion of the so-called equitable principles gave rise to problems and there was no consensus on that definition and no provision was made for a third party to settle any dispute. In stipulating that delimitation must be achieved through agreement between the parties rather than a compulsory solution, the text left the parties to their own devices, and their subjective interpretation of a just solution might well lead to a further dispute.

199. Without an arbitrator or binding decisions by a third party, the application of equitable principles to delimitation might lead to solutions that were far from just. His delegation felt that the current text should be maintained since there was no justification for its amendment and no other valid proposal had resulted from the negotiations. His delegation had made every effort to improve the text on two conditions, firstly, that the three elements—delimitation criteria, interim measures and settlement of disputes—should continue to be considered as a package; and secondly, that a serious effort should be made to produce a clear and balanced text, bearing in mind that revision 2 represented not the position of a group of countries which defended the principle of the median or equidistance line, but a compromise reached with the participation of all States, including neutral countries or countries not directly involved. A compromise aimed at securing another consensus could be achieved through negotiations based on the second revision, but there could be no bargaining on the compromise thus reached, which should be maintained in the third revision.

200. His delegation would support the incorporation of the general clauses and final clauses; it had expressed its views during the discussion of those clauses and, depending on the text which appeared in the third revision, some aspects might require further discussion in the plenary Conference. He referred in particular to an improved formula for compulsory recourse to conciliation within the delimitation package. His delegation found the current wording of the clause on reservations acceptable; limited reservations should be allowed in respect of specific articles and his delegation agreed with the statement in document A/CONF.62/L.60 that it should be clearly understood that article 303 did not permit exceptions by any State party to optional exceptions made by any other State party under article 298, paragraph 1 (a), and that

that text did not permit of reservations to exceptions or exceptions to reservations.

201. Lastly, the convention should include a generic text authorizing the participation of bodies such as the European Economic Community, the Andean Group and any existing or future

regional groups under two conditions: firstly, that they did not prejudice the purpose of the convention; and secondly that no special advantages contrary to the provisions of the convention were created for them or any of their member States.

The meeting rose at 1.10 p.m.

140th meeting

Wednesday, 27 August 1980, at 8.45 p.m.

Participants: Mr. P. S. AMERSON (Chair)

General debate (continued)

1. Mr. NORDBLUND (Lithuania) welcomed the agreement of the project chairman on the current agenda and approved any attempt to ensure better working conditions in the secretariat and beyond. With respect to professional policies, he thought it to be important to avoid widening the gap between developed and potential developed producers in the developing countries. The provisions concerning compensation should be made more objective and more realistic. The Group of 77 thought that it would be developing more practical systems and giving practical force to the provisions of article 136, paragraph 4, in that connection. Argentina affirmed its solidarity with the broader peoples of Zambia, Haiti and Zimbabwe.

2. With regard to the revised convention, it was unfortunate that the new clause had been defined without being consulted by other pavilions intended to ensure respect for the principle of the common heritage of mankind. It was to the provisions agreed to by the Group of 77, a fairly simple addition had been made for the composition of the Council and the voting system. However, the delegation was not satisfied with the institutionalization of consensus. In its opinion, article 16, paragraph 1, should be more flexible with respect to the required majority, and it should be specified that the Assembly would have clear supremacy over the Council.

3. The clause concerning transfer of technology should be improved in the spirit of the resolution adopted by the Organization of African States at Freetown (AFROSTAT/1979). It should be made clearer and should compel States parties to transfer technology without any time limit. Argentina firmly supported the principle of the common heritage of mankind, which must also apply to peoples who had not yet attained independence.

4. Mr. AL-ATTIA (Qatar), referring to the question of decision-making procedure in the Council, said that the member countries of the Group of 77 and the group of Arab States opposed the right of veto, which had the effect of paralyzing activities. Decisions concerning the sharing of interests should be taken by consensus. As for payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles, the words "and of peoples who have not yet attained independence" should be added at the end of article 32, paragraph 4. Article 70 should also be reworded to enable countries with special geographical characteristics to derive greater benefit from the living resources of the sea.

5. With regard to participation in the convention, national liberation organizations recognized by the United Nations, in particular the Palestine Liberation Organization, and the intergovernmental regional organizations, should be allowed to accede to it. In the past, provision of the project instrument, the basic principle of the common heritage of mankind as *ius cogens* was the cornerstone of the future convention. The delegation welcomed the results achieved by consensus and hoped that the Conference would continue its work in the same spirit of confidence.

6. Mr. DIFRANKOVY (Czechia) said that his delegation was closely following the work of the Conference, and especially the

work which directly concerned landlocked developing countries such as the Niger and related to the provisions on the right of transit and transit trade. He said that the objectives of the Group of the sea by landlocked and semi-landlocked States had been achieved and that the Group of 77 and the Group of Arab States were working in many respects, but not without difficulties. They would attempt to make the solution of these questions which was made with the aim of further development of the transit trade and related activities. The Niger endorsed the principle of the common heritage of mankind adopted without objection by the international community in its Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Seabed beyond the Limits of National Jurisdiction (United Nations Resolution 2749 (XIV)), and therefore welcomed the proposal of article 136 in the negotiating text (AG/CONF.82/CONF.2 and Conf.2-10). It would nevertheless be desirable to supplement that provision by recognizing that the concept of the common heritage of mankind was a general principle of international law and a norm of *ius cogens* in accordance with the principles suggested by Law and the instrument proposed by the Philippines.

7. In view of its importance to this principle and to its contribution as a basic element of the new international economic order, the Niger was especially concerned about the amendments by certain States of unilateral legislation on the exploitation of marine resources. All the countries participating in the Conference, in particular the industrialized countries, must refrain from following that example, which would jeopardize all the efforts made since the beginning of the Conference. On the other hand, it would be very desirable to create a common heritage fund, such a measure would contribute to efforts to restrict transnational economic relations and would help to reduce the gap separating the rich from the poor countries.

8. It had already been emphasized that the bulk of sea-bed resources were situated in the waters of economic zones of coastal States, in other words, within the 200-nautical-mile limit. It therefore seemed to be logical for the common heritage fund to draw solely on resources derived from the exploitation of the area beyond this limit. The coastal States should withdraw their objections to the idea of establishing such a fund. In order for it to be put into effect by a series of an appropriate provision in the draft convention.

9. It was unfortunate that the Second Committee had held badly and inefficiently during that session and had reported group 6, which was responsible for questions relating to the definition of the continental shelf and payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles (para. 76 and 82), had not yet, apparently in order to avoid jeopardizing the delicate balance that had been achieved. His delegation was not satisfied with the handling of those two articles and would like them to be improved at the next session.

10. In the opinion of his delegation, the final consensus achieved represented a significant result, which it would not try to undo. Nevertheless, it should be recalled that in their declara-

ANNEX 41

Note from East Africa Department dated 29 September 1980

Minute
24/8
Mr. Ralsen

Mem cel

(WB)

CONFIDENTIAL

Do in the propose

PS/Mr Luce

to inform the Mauritian
Govt. of our view on
this topic?

CHAGOS ARCHIPELAGO: FISHING AND MINERAL RIGHTS

1-1/2 of 7

1. I am sorry you have not received an earlier reply to your minute of 28 August enquiring whether we are now in a position to clarify to the Mauritian Government our view of their fishing and mineral rights in the Chagos Archipelago. These and related matters arising from Sir S Ramgoolam's visit have involved some research.

2. In the negotiations in 1965 to elicit Mauritian Ministers' consent to the 'excision' of the Chagos islands, the following terms relating to fishing and mineral rights were agreed:

'that the British Government would use their Good Offices with the US Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as is practicable:

- (a) navigational and meteorological facilities;
- (b) fishing rights;
- (c) use of air strip for emergency landing and for refuelling civil planes without disembarkation of passengers.'

and 'that the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to the Mauritius Government.'

3. In 1969 the Commissioner of the British Indian Ocean Territory established a 12 mile fishing zone around the islands of the Chagos Archipelago. The Mauritians were informed that their traditional fishing rights within this zone would be upheld, and Section 4 of the BIOT Fisheries Limits Ordinance, Ordinance No 2 of 1971 empowers the Commissioner to designate the Mauritians as traditional fishermen. Section 4 reads:

'for the purpose of enabling fishing traditionally carried on in any area within the contiguous zone by foreign fishing boats to be continued, the Commissioner may by order designate any country outside the Territory and the area in which and descriptions of fish or marine product for which fishing boats registered in that country may fish.'

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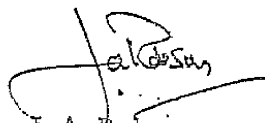
The legal position has not altered. However, as far as we are aware, the Mauritians have only one boat suitable for fishing in the waters of the Chagos Archipelago (the round-trip is 2,700 miles with no possibility of refuelling at Diego Garcia) and have made little use of their rights. The question of issuing licences to fishing boats of other countries to fish in Chagos waters, in order to raise revenue, has not arisen.

4. As regards mineral rights, the wording of the terms of the 1965 Agreement ('the benefit of') is intended to give latitude for cash payments rather than implying the possibility of giving the Mauritius Government an actual foothold in any mineral exploitation of the area. Our position was made clear to the Mauritians at the time. During a debate in the Mauritius Legislative Assembly on 21 December, 1965, a Government spokesman said that 'The British Government has no intention of allowing prospecting for minerals while the islands are being used for defence purposes.' Sir S Ramgoolam has in the past asked that we and the Americans relax our ban on exploration for minerals in the Chagos Archipelago. We have refused and for as long as the area is set aside for defence purposes, the Americans and ourselves will no doubt continue to do so.

5. Mr Luce has seen the response to the enquiry under which the Mauritian Ministers agreed to the 'excision' of the Chagos Islands, and the establishment of a defence and communications facility on Diego Garcia. A paper covering this and the matters raised in this minute have been sent to our High Commissioner in Port Louis for comments. We will then review how and how much of this should be conveyed to the Mauritians.

6. The other issue raised by Sir H Walter was use of Mauritius labour on Diego. We have consulted the Americans and I attach a copy of Mr Pakenham's letter of 16 September covering the State Department's comments. The Americans will 'encourage' the use of Mauritius labour but would leave this to the contractors. I believe we would be wise to do the same. We are in a dilemma. We undertook to use our good offices to secure the use of labour and materials from Mauritius; but we can rely on the MMM, if no other, to ensure that any labour includes some Ilois. Once there, they might well claim the right, as an indigenous inhabitant to remain on expiry of that contract.

29 September, 1980


J. A. Robson

East African Department

cc

Mr Day

CONFIDENTIAL

ANNEX 42

The British Indian Ocean Territory (Amendment) Order 1981 (S.I. 1981/9500)



THE BRITISH INDIAN OCEAN TERRITORY (AMENDMENT)
ORDER 1981

At the Court at Buckingham Palace

THE 24th DAY OF NOVEMBER 1981

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

Her Majesty, by virtue and in exercise of the powers in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered as follows:—

Citation and Commencement

1.—(1) This Order may be cited as the British Indian Ocean Territory (Amendment) Order 1981 and shall be construed as one with the British Indian Ocean Territory Order 1976(a) (hereinafter referred to as “the principal Order”), and this Order and the principal Order may be cited together as the British Indian Ocean Territory Orders 1976 and 1981.

(2) This Order shall come into operation on such date as the Commissioner by notice in the Official Gazette of the Territory shall appoint.

Appointment of Commissioner

2. Paragraph (1) of section 4 of the principal Order is revoked and replaced by the following—

“(1) There shall be a Commissioner for the Territory who shall be appointed by Her Majesty by instructions given through a Secretary of State and shall hold office during Her Majesty’s pleasure”.

Powers of Supreme Court

3. The following new section is inserted immediately after section 11 of the principal Order:—

“Power of Supreme Court to exercise certain jurisdictions outside the Territory.

11A.—(1) The Supreme Court established under this Order (hereinafter referred to as ‘the Supreme Court’) may, in accordance with any directions issued from time to time by the Chief Justice of that Court (hereinafter

(a) S.I. 1976/893.

referred to as 'the Chief Justice'), sit in the United Kingdom for the purpose of hearing an appeal or application, if, but only if, the parties to the appeal or, as the case may be, the parties to be heard on the application have agreed to its being heard in the United Kingdom.

(2) Subject to any law made under section 9 of this Order, the Chief Justice may make rules of Court for the purpose of regulating the practice and procedure of the Supreme Court with respect to appeals or applications heard in the United Kingdom.

(3) The Supreme Court may exercise when outside the Territory any powers of revision of criminal proceedings in the Magistrates' Court of the Territory conferred on it by any law made under section 9 of this Order''.

N. E. Leigh

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order amends the British Indian Ocean Territory Order 1976 by making new provision for the appointment of the Commissioner for the British Indian Ocean Territory, and by permitting the Supreme Court of the Territory—

- (a) with the consent of the parties to hear appeals or applications in the United Kingdom;
- (b) to exercise its revisional jurisdiction over criminal proceedings in the Magistrates' Court when outside the Territory.

ANNEX 43

Debate in Mauritius' Legislative Assembly of 6 July 1982

Mr. A. Choolun
 Mr. P. A. Canabady
 Mr. E. J. Soule
 Mr. A. A. Asgarally
 Mr. K. Gungoosingsh
 Dr. D. Ramjathan
 Mr. C. Daby
 The Minister of Youth & Sports
 The Minister for the Arts and of Cultural Affairs
 & Leisure
 The Minister for Rodrigues & the Outer Islands
 The Minister of Local Government
 The Minister of Housing, Lands & the Environment
 The Minister of Labour & Industrial Relations
 The Minister of Works
 The Minister for Employment and of Social
 Security & National Solidarity
 The Minister of Economic Planning & Development
 The Attorney-General & Minister for Women's
 Rights and Family Affairs
 The Minister of Energy and Communications
 The Minister of Health
 The Minister of Education
 The Minister of Agriculture, Fisheries & Natural
 Resources
 The Minister of External Affairs, Tourism &
 Emigration
 The Minister of Commerce, Industry, Prices &
 Consumer Protection
 The Minister of Finance
 The Minister of Information & Co-operatives
 The Prime Minister
 Mr. Speaker

TOTAL : AYES 63 — NOES NIL

(5.15 p.m.)

THE LABOUR (AMENDMENT) BILL (No. III of 1982)

Order for second reading read.

The Prime Minister : Mr. Speaker, Sir, I beg to move that the Labour (Amendment) Bill (No. III of 1982) be read a second time.

As indicated in the explanatory memorandum the object of this Bill is to amend the Labour Act so as to enable a compensation to be paid to persons whose appointment is terminated under section 92 or 113 of the Constitution.

As hon. Members are aware the Labour Act provides for the payment of a seve-

rance allowance based on the period of continuous employment where such employment is terminated by the employer. The Bill before the House does not provide for such severance allowance or gratuity but for the grant of a compensation equivalent to one month's salary if the person has served for less than three years and to three months' salary if he has served for three years or more.

It also provides that if the person whose appointment is terminated held a public office or an office in a statutory body immediately before he was appointed, then he shall be entitled to resume his former office if such office is vacant. If it is not vacant the person shall be considered to have retired on the ground of abolition of that office.

The Bill is a very simple one and, as has been said, it makes provision for compensation on the ground of vacation of office, as has been provided for under the Constitution which has just been amended.

Therefore, Mr. Speaker, Sir, I think there is no difficulty about this Bill. It is only a consequence of what we have just done, and I commend the Bill to the House.

Mr. Boodhoo rose and seconded.

Question put and agreed to.

Bill read a second time and committed.

THE INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL (No. IV of 1982)

Order for Second Reading read.

The Attorney-General and Minister for Women's Rights and Family Affairs (Mrs. Ciffrà) : Mr. Speaker, Sir, I move that

the Interpretation and General Clauses (Amendment) Bill (No. IV of 1982) be now read a *second* time.

This Bill, Sir, is brief but its implications are important. This Bill seeks to amend the Interpretation and General Clauses Act, regarding the definition of "State of Mauritius" or "Mauritius". The Chagos Archipelago, including Diego Garcia, has not been specifically included in that definition and is left to be inferred from the phrase "and any other Island comprised in the State of Mauritius". The Chagos Archipelago is Mauritian territory and in order to assert our sovereignty over the Archipelago, it is imperative that it should be expressly included in the definition of "Mauritius" and not left to be inferred from an *omnibus* clause.

With these remarks, Sir, I commend the Bill to the House.

The Prime Minister *rose and seconded*.

(3.25 p.m.)

Mr. M. Duloos (First Member for Grand'Baie and Poudre d'Or): Mr. Speaker, Sir, we welcome this amendment, but there is one thing which is worrying me right now and I had the opportunity of just consulting with some Ministers about this point; perhaps at Committee Stage, we can come back to it, after consultation with the Parquet, with the Attorney-General's Office, because we remember well that, in 1980, a vote was taken in this House while defining the State of Mauritius and Tromelin was then inserted in the definition — Diego Garcia was not included in the definition. There was a outcry on the side of the Opposition. We wanted that the Chagos Archipelago, especially Diego Garcia, be included. There were many of our Friends

on this side, who held the same view. We wanted that this be included; and then there was also somebody who is not present — our Friend, hon. Jacques Bizlall — who stood violently against the fact that Diego Garcia was not being included. Our Friend hon. Bizlall is not present in the House, but most of us who were in the Opposition then, are present and we are a bit worried. We are asking ourselves whether we should not go back to the time when a vote was taken in this House concerning Diego Garcia, the Chagos Archipelago? Because this Parliament positively voted against the Chagos Archipelago — that is Diego Garcia — being included in the definition of Mauritius. Formerly, Tromelin and the Chagos Archipelago, including Diego Garcia, were not included in the definition. Then, in June 1980, there was a Bill to amend the Interpretation and General Clauses Act, whereby a vote was taken — Tromelin was included in the definition and a vote was taken against the inclusion of Chagos Archipelago, including Diego Garcia. So, I am just wondering whether Mauritius, tomorrow, will not be in an awkward position! If we go to the time prior to June 1980, there is no problem. Prior to June, 1980, in the definition section, certain islands were cited and there was "and other islands included in the State of Mauritius". And "other islands" meaning that that "other islands", would have included Tromelin, would have included the Chagos Archipelago, that is Diego Garcia. But then a vote was taken in this House on Diego Garcia itself, on the Chagos Archipelago. Now I am asking myself whether, to-morrow in an international forum, in the course of negotiations with the other parties concerned, the other countries concerned — be it Great Britain or otherwise — we are not going to find ourselves in a difficult

position — a sort of vacuum from June 1980 up to this date — whereby, Diego Garcia was positively voted out of the definition of the territories of Mauritius? So, to be on the safe side, if I may suggest to Government to backdate this definition of the State of Mauritius to the date prior to when Act 18 of 1980 was implemented, in order not to find ourselves in a difficult situation later. So, we can have a Clause — which could be considered at Committee Stage — stating that this would have effect retrospectively as from the date prior to the coming into force of Act 18 of 1980.

(5.30 p.m.)

The Prime Minister: Mr. Speaker, Sir, this amendment is, in fact, a very simple one and, at first sight, one would not be tempted to make much comment on it. But, if we go back to the recent past history of Mauritius, we will realise the importance that this bit of legislation is going to have. As you are aware, Mr. Speaker, what we are doing to-day is really a patriotic act, when we consider that those who were in power in the past have betrayed the interest of this country. We know the effect that this piece of legislation is going to have, whereas, when an amendment was made in the past, the Government then in power, contested and rejected the amendment that was suggested to their proposition that, the Chagos Archipelago, including Diego Garcia, ought to have been introduced in the definition of the Mauritian territory.

We know in what circumstances the British Indian Ocean Territory was created, at a time when Mauritius was still a colony of the United Kingdom. When this country was in the process of negotiating its independence, it was, as a matter of fact, used as a bargaining power. The stand of the United Kingdom Go-

vernment then was that this part of our Mauritian territory should be done away with and we know the purposes for which this part of our territory is being used today. The Government — if I may call it so because we were still under the colonial rule — those persons who were then in the Legislative Council (or Assembly, as it was called, I am not so sure), who were supposed to represent the people of this country — to facilitate the process of independence, had foregone that part of the territory and it seemed that they accepted that the British Indian Ocean Territory be created.

Mr. Speaker, we know that there is a lot of confusion as to what exactly took place and, in fact, the Mauritian public has never been aware of what happened. What is a pity is the subsequent conduct of those who were in power in this country after independence was achieved. They never asserted our sovereignty. They went as far as I have said a moment ago when an amendment was introduced to define the Mauritian territory — as almost saying and admitting that that part of the world did not form part of the Mauritian territory and that the legitimate country that had the right of sovereignty on Diego and the Chagos Islands — that had been excised from the Mauritian territory — was the United Kingdom. All that we can say today is that this is the past but the qualification, to be very moderate, that I can give is that it was a betrayal on the part of those persons. Today, at the first given opportunity, we are rectifying the wrong that had been done. It is a solemn moment, today, when we have come before this House with this Amendment and to make it known to the world that whatever has been done in the past, we, as a legitimate Government of this country, repudiate that.

As we have done in the past when we were, what is often known as an Opposition *extra-parlementaire* and then as the legal Opposition of this country, in this House, we have throughout made our position known — not only to the world, but to countries which are directly concerned, such as the United Kingdom and the United States — what is our stand in so far as Chagos and Diego are concerned and what is our policy in-so-far as the Indian Ocean is concerned. As far as this piece of legislation is concerned, it is simply giving the sanctity of our stand throughout, and, I, personally, believe that it is a heroic moment, today. Thank you, Sir.

(5.35 p.m.)

The Minister of Finance (Mr. P. Bérenger): M. le président, nous avons discuté plutôt, cet après-midi, les amendements que nous avons apportés à la Constitution de Maurice pour garantir, en autres choses, que les élections générales se tiendraient tous les cinq ans. Plusieurs membres de cette Assemblée se sont mis debout pour constater qu'il s'agissait d'un geste historique, d'un amendement d'une portée historique. M. le président, l'amendement que nous discutons, maintenant, est très court: sept mots. Mais ce petit amendement de sept mots n'en représente pas moins un geste tout aussi historique que celui que cette Assemblée vient de faire, il y a peine quelques heures de cela.

Vous n'étiez pas là, M. le président, il y a deux ans de cela, en juin 1980, lorsque nous étions dans l'opposition, mais assis à la même place, et qu'en face de nous, les ministres d'alors entre autres, Sir Harold Walter se sont mis debout pour rejeter l'amendement proposé par le

Leader de l'Opposition d'alors — aujourd'hui, heureusement pour le pays, Premier ministre — en utilisant des mots je cite de mémoire, je me souviens de Sir Harold, debout, disant: "*There is no getting away from it, Diego Garcia is part of British territory.*" On dit souvent que la vengeance est un plat qui se mange froid, mais l'histoire nous pardonnera — à travers l'amendement que nous avons apporté il y a quelques heures de cela, au sujet de la démocratie des élections générales et au sujet de l'amendement que nous apportons maintenant — d'agir d'une façon qui montre que, dans le cas qui nous intéresse, la vengeance est une loi qui se passe à chaud à la première occasion. Il y a deux ans de cela, nous avons fait un *walk-out* — les députés du MMM et ceux du PSM et, nous savons que si les députés de l'OPR avaient été présents, eux-aussi se seraient joints à ce *walk-out* de patriotes — en tant que patriotes; à la première occasion, aujourd'hui nous accomplissons un deuxième geste historique pour, dans la loi au moins, refaire l'unité territoriale de notre état. Le geste légal que nous allons faire, aujourd'hui, M. le président, sera suivi de gestes politiques et diplomatiques sur lesquels je ne vais pas m'étendre; mais, vous savez déjà que le Gouvernement a décidé de nommer une petite équipe de deux fonctionnaires, à plein temps: un légiste et un documentaliste, pour préparer le dossier en profondeur. Vous savez aussi que le Gouvernement a décidé de proposer un *Select Committee* pour entendre tous les témoignages requis, recueillir tous les documents nécessaires, pour compléter le dossier Diégo Garcia et Chagos avant de décider si, oui ou non, nous irons de l'avant à la Cour Internationale de Justice ou ailleurs. Mais, dans l'intervalle, la visite de Madame Gandhi, dans quelques jours à Maurice se situera, et dépassera ce simple aspect des choses: cette lutte

pour refaire — cette fois, non seulement dans la loi mais dans les faits — l'unité territoriale de notre pays.

This piece of legislation is not aimed at the United Kingdom or at the United States, Mr. Speaker. But, if this piece of legislation is not aimed at them, it must be said that we do aim at getting back the Chagos — as we are getting used to saying, we mean business. Et nous souhaitons, après ce geste légal d'une portée historique que nous allons accomplir aujourd'hui — que, du côté de la Grande Bretagne comme du côté des Etats Unis, une fois notre devoir légal accompli, ils sachent entendre la voix d'une Ile Maurice nouvelle qui n'a pas l'intention de marchander l'unité de son territoire national, ni de marchander sa dignité nationale. Il y a quelques minutes à peine, lorsque nous avons voté sur les amendements à la Constitution consolidant la démocratie à Maurice, nous avons tous eu le plaisir et la fierté, en tant que Mauriciens, de constater un vote unanime de cette Chambre, en l'absence des deux députés du PMSD. Je tends la main à nos collègues, les deux *backbenchers* de l'Opposition ici présents, afin que ce deuxième geste légal de portée historique que nous allons faire dans quelques minutes — lorsque nous allons refaire légalement l'unité territoriale de notre pays — que ce soit, M. le président, une deuxième fois en cette journée historique, par un vote unanime que cette Chambre accomplisse son devoir une deuxième fois.

Merci, M. le président.

(5.40 p.m.)

The Minister of Commerce, Industry Prices and Consumer Protection (Mr. K. Bhayat) : Mr. Speaker, Sir, I join with my Colleague, the hon. Minister of

Finance, in the appeal that he has made to the two Members of the PAN. I recall that, when the original amendment which is today being amended, came before this House in 1980, the debates went on well after midnight, and those who were in the House then, will remember that, even in the ranks of the then Labour Party, which was in power, there was a wide spread feeling among their backbenchers — and also, I felt, among some of their junior Ministers — that the present Prime Minister, who was then Leader of the Opposition, was right in proposing this amendment to include the Chagos Archipelago and Diego Garcia in the definition of the "State of Mauritius". But then, it would seem that the three-line whip had its effect and, much against their will, the then backbenchers of the Labour Party voted against the amendment proposed by the then Leader of the Opposition — which provoked a walk-out by us, I remember it was at two or three in the morning. As I said, I join with my Colleague, the hon. Minister of Finance, in appealing to the two Members of the PAN present here today, in spite of many things, to join with us and to make this vote unanimous. But I will add something : unlike the amendment to the Constitution, there probably and almost certainly will be no division on this vote. Therefore, I will appeal to them if they agree with this amendment, to let their voice ring out loud and clear when they will say "aye" along with us to this amendment.

Thank you, Sir.

(5.45 p.m.)

The Minister for Rodrigues and Outer Islands (Mr. L. S. Clair) : M. le président, je voudrais me joindre à mes collègues pour dire comment nous avons

toujours affirmé que l'île Maurice a une grande richesse: ce sont ses îles. Ces îles, c'est une richesse dans cet océan indien, et on s'est rendu compte que, dans le passé, certain *leader* politique a voulu même démembrer ce territoire et que l'ancien régime n'a pas réagi devant ce genre de déclaration. Nous avons toujours, nous à Rodrigues, prôné une intégration des îles à la nation mauricienne et au territoire mauricien. Cette intégration est nécessaire aujourd'hui pour la protection de la paix dans l'océan indien et pour la protection des habitants de ces îles qu'on néglige souvent. Les habitants de Diégo Garcia ont été chassés de leur pays natal. Il y a les habitants d'Agalega qui, aujourd'hui, ont besoin encore de notre protection parce que demain, si nous n'affirmons pas notre souveraineté sur ces îles, nous risquons de créer une explosion dans l'océan indien. C'est pourquoi aujourd'hui je me joins à mes collègues pour demander à vous tous ici de voter pour cet amendement. Nous avons une richesse, et cette richesse c'est nous-mêmes, ce sont les îles, les habitants qui doivent être égaux à nous. Notre territoire est grand, notre cœur aussi doit être grand. Et notre cœur doit aller beaucoup plus loin: préserver la paix dans l'océan indien afin que, vraiment — comme nous l'avons dit tout-à-l'heure en ce qui concerne un exemple de démocratie au monde entier nous aussi, demain, nous puissions donner un exemple dans cet océan indien: le désir d'une vraie paix à l'île Maurice, dans l'océan indien et dans le monde entier. C'est aussi une joie pour nous de donner notre soutien à cet amendement, M. le président, et je souhaite de tout cœur, que nous qui sommes ici, puissions avoir une fierté d'avoir un tel territoire, de posséder un tel territoire dans l'océan indien et, justement de consolider ce territoire pour le bien-être de

notre nation et pour le bien-être du monde entier.

Merci, M. le président.

(5.48 p.m.)

The Minister of External Affairs, Tourism and Emigration (Mr. J. C. De L'Estac): Je voudrais, au préalable, M. le président, féliciter le ministre des îles qui vient de faire, à cette Chambre, son *maiden speech*; et, il est heureux que l'occasion qui se présente à lui est, précisément, sur une question qui intéresse l'ensemble du patrimoine mauricien. Je voudrais ne pas rater, également, l'occasion historique de ces débats à la Chambre aujourd'hui pour apporter ma contribution en soulignant qu'il y a une succession d'événements qui démontrent la volonté de ce Gouvernement de défendre à la fois son patrimoine national et le bien-être de tous les habitants de nos îles; puisque, d'une part, l'Assemblée législative votera tout-à-l'heure l'élargissement de ce patrimoine et, d'autre part, demain, au nom du Gouvernement, j'aurai personnellement le privilège de signer l'accord conclu avec le Gouvernement britannique qui doit, enfin, permettre aux expulsés de Diégo Garcia de commencer à vivre dans des conditions meilleures — c'est, en tout cas, ce que nous souhaitons tous. Nous avons hésité, pendant quelques semaines, avant de conclure cet accord puisque nous voulions nous assurer tout-à-fait que la signature de cet accord ne porte préjudice à nos revendications légitimes de souveraineté sur l'île de Diégo Garcia. Il est heureux qu'avant la signature de l'accord, qui est prévue pour demain, l'occasion nous soit donnée de démontrer de manière solennelle la teneur légale de notre revendication de cette île. Nous ne pouvons pas, non plus, ne pas lier, à ce geste patriotique de cette nouvelle Assem-

blée, le problème plus fondamental aussi de la situation et de la sécurité de nos peuples des îles en ce qui concerne Diégo Garcia. Dans les mois qui viennent nous serons appelés, à partir de ce premier geste, à défendre farouchement la politique de non-alignement que nous avons proposée et que nous continuerons à défendre. Je peux dire tout-de-suite, puisque je les sens venir, que les pressions sur le nouveau Gouvernement ne manqueront pas pour l'amener à modifier ou à nuancer ses positions sur les engagements qui ont été pris pour lutter, avec les moyens qui sont à notre disposition et qui ne sont pas négligeables, en faveur du non-alignement dans notre région et, compte tenu des menaces qui pèsent sur les habitants de nos îles, mais aussi sur l'ensemble des pays riverains de l'océan indien. C'est pourquoi je voudrais profiter de cette occasion solennelle pour dire, qu'en plus de cet acte de patriotisme, c'est aussi un acte de solidarité internationale, c'est aussi une contribution que l'île Maurice a le devoir d'apporter pour la défense de la paix et la sécurité des peuples dans le monde. Merci, M. le président.

(Applause)

(6.03 p.m.)

Mr. A. Gayan (First Member for Curepipe & Midlands): Mr. Speaker, Sir, the 6th of July will go down in the history of Mauritius as the day on which the whole of the territory of Mauritius became one. This piece of legislation, although being very short, is a step to re-unite the whole of the territory which falls within the jurisdiction of the State of Mauritius. The State of Mauritius has, for too long, been deprived of one bit which should have fallen within its jurisdiction right after independence. And, it is strange that, when we have a Consti-

tution which is the supreme law of our land, that Constitution does not contain a definition of Mauritius. May be, on some other occasion, the opportunity will come when we may include the definition of the State of Mauritius in the Constitution of Mauritius. But be that as it may, this piece of legislation is not just a piece of legislation. It will be followed tomorrow, as the Minister of External Affairs, Tourism & Emigration has just said, by an agreement which will be signed between the U.K. Government and our own Government regarding the *Hoie*; and it comes at a happy time because it will clearly indicate to the whole world that Diego Garcia and the Chagos Archipelago have always formed part of the State of Mauritius. In this connection, I have been given to understand that this piece of legislation will be back-dated to 1974; it would deem to have come into operation then. But, apart from the legal re-unification of our territory, this must be followed by the agreement to-morrow, and also by some other things. I am thinking specially of the maritime charts which have been promised for so long, and which have not yet been published; and whenever the maritime charts are published, they must take into account that the Chagos Archipelago is fully part of Mauritius, and that the charts reflect the whole exclusive economic zone which will come within the jurisdiction of Mauritius, and also the continental shelf — because we may start exploiting the resources which fall within our jurisdiction.

Having said that, Mr. Speaker, Sir, I am happy to associate myself with this piece of legislation, and it is with a great sense of pride that we all Mauritians can go to sleep to-night knowing full well that at long last, our territory has become one. Thank you, Sir.

(6.04 p.m.)

Mr. S. Ramdahan (Second Member for Beau Bassin & Petite Rivière): Mr. speaker, Sir, the *Ilots* are numerous in our constituency and in Mauritius, and they are here mainly because they have been chased out of the land where they were born. What we are doing to-day is, in fact, to give to every Mauritian, whether born on this land or in our remote islands, a place under their own sun, and I am happy to associate myself with my other Friends in this House in congratulating the Prime Minister for his initiative in bringing this piece of legislation before Parliament to-day, this amendment to the Constitution which was so very badly needed. Our motherland has been dismembered, and for far too long she has been bleeding, and there have been people who have been feeding on the carcass of our bleeding dismembered Mauritius. It was high time that we, in Mauritius, showed the spirit that was necessary in order to include Diego Garcia in the definition of the State of Mauritius as such. As far as I know, the United Nations had, in 1960, voted a resolution to the fact that no empirical power has the right to dismember any colony before granting it its independence. Diego Garcia was used as a piece of blackmail, as a shameful piece of international blackmail, to deprive us of a land that was rightfully ours. So, what we are doing to-day, Mr. Speaker, Sir, is to restore the faith of the Mauritian people in the willingness of this Government, not only to restore confidence in the democracy for which we have been fighting for so long, but it is also an act of faith in our three Friends, Hon. Harish Boodhoo, Gungoosingh and Dr. Beedassy and other Members of the Opposition who have for so long been fighting to have Diego Garcia returned to Mauritius. With this amendment now,

giving us the power to have Diego Garcia back, within our fold, I hope that the strength of this Government will have doubled, and that our fight at the international Court of Hague at a later stage will have been given an added impetus. I am sure that we are not alone in Mauritius in the fight to demilitarise the Indian Ocean, and by so doing we will be ensuring peace, not only in this part of the world but we will also have been showing our interest in the peace movement throughout the world. With our association with the 77 non-aligned countries backing us, I see no reason why to-morrow this will not give us reason to fight back for the recuperation of Diego Garcia. We are a very small island, we don't have the military power to fight off America, we don't have the military power to fight the great nations and to keep them out of our part of the Indian Ocean; but we have the moral right and the moral strength, and we have the backing of the Free World who are fighting to maintain peace on this earth, and I will say: "Long live Mauritius with Diego Garcia among our midst". Thank you, Sir.

(6.07 p.m.)

Dr. S. Peerthum (Second Member for La Caverne & Phoenix): Mr. Speaker, Sir, in 1965, with the creation of the E.I.O.T. a new colony was created. It was an unprecedented event in contemporary history. The Government in power at that time did not put up the least resistance to what I call an insult to colonial people fighting for their liberation. On the contrary, there was what we have qualified time and again as a shameful deal by those who were in power with the metropolitan country, incidentally the United Kingdom. That was done by dismembering, in contravention of international laws, the territorial integrity of

the Seychelles and Mauritius. All along, we have been asking for elucidation of the whole mystery behind that shameful deal. I said a while ago that it was an unprecedented event. It is only when we have come to this House, in an unprecedented manner, by an unprecedented victory, that we are able, to day, to remedy the wrong that was done to our country in 1963. After saying that, Mr. Speaker, Sir, I would like to add that we are not only establishing the unity of our territory today. There is another dimension to what we are doing today. In the course of the electoral campaign, Mr. Speaker, Sir, we have been telling the people of this country that we will make this country such a place where every Mauritian will be proud to call himself a Mauritian. In Mauritius, Sir, psychologically, our countrymen had, at some stage, started suffering from a kind of inferiority complex because they lived in a tiny country, that they lived in a small country. Now, by adding that new territorial dimension to our territory, we are making Mauritius, a mini-state, into a medium size state, into a medium size country. If we are taking into consideration the convention of the law of the Sea Conference of the United Nations and if we are to add the 200-mile economic zone surrounding the Chagos Archipelago, we are certain that, in future, Mauritians will be able to feel big and will stop suffering from that inferiority complex of being the inhabitants of a tiny island lost in the Indian Ocean. With that, Sir, we will be fulfilling one of the big promises that we made to the people of this country during the last electoral campaign.

(6.08 p.m.)

Mrs. Cziffra : Sir, I thank all the hon. Members for their contribution to the debate on this Bill. In fact, I forgot to do

it earlier but it is better late than never. I also congratulate the hon. Ministers and Members who have made their maiden speeches today — although none of them are maids — but that is a debate which I shall pursue in another forum.

Sir, a point which has been raised which I think is important to come back to, is the point which my hon. Friend, the First Member from Grand Baie and Poudre d'Or, raised. He suggested, once again, for the same reason that he did earlier on concerning the amendment on the Constitution, that we should be careful and not give way to interpretation which might, later on, put us in a difficult position, perhaps even in an international forum. Now, I have been advised that, concerning the Interpretation Act, in fact, every thing is retroactive. But for the avoidance of doubt, once more, I think there is no problem, we can have an amendment and I shall propose an amendment at Committee Stage. But the problem that existed is that I personally wanted to make it retroactive to the original Act which was passed in 1974. If I do that, then the problem of Tromelin will crop up, because Tromelin was only included in 1980. So, this is only to explain that I shall also move to include Tromelin retroactively to 1974, so that we don't have any problems. I think, Sir, after all that has been said concerning the national integrity of Mauritius, it would be a sad day, today, Sir, if there was only one voice which went against this Bill. Thank you, Sir.

Question put and agreed to.

Bill read a second time and committed.

(6.10 p.m.)

The Constitution of Mauritius (Amendment) Bill (No. II of 1982).

COMMITTEE STAGE

(The Chairman of Committees in the Chair)

Clauses 1 to 3 ordered to stand part of the Bill.

Clause 4 (Section 59 of the Constitution amended).

Motion made and question proposed: "that the clause stand part of the Bill".

The Prime Minister : In Section 59(b), I move that the following punctuation, words and figures be added after the final word "General" :

"and in the proviso by deleting the figure '20' and by replacing it by the figure '18'."

It concerns the number of Ministers — instead of 20 it is going to be 18.

Amendment agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Clauses 5 and 6 ordered to stand part of the Bill.

Clause 7 — Section 92 of the Constitution amended.

Motion made and question proposed: "that the clause stand part of the Bill".

The Prime Minister : I shall move that section 92 (1) (b) be amended, as circulated, i.e. that the words "except in the case of the appointed member of the Judicial and Legal Service Commission" be added before the words "may be", in the first line.

There will be another amendment under (1A), to delete the fullstop at the

end after the word "prescribed" and add the following: "under the Labour Act and he shall not be entitled to any other damages or compensation under any other law whatsoever".

I will move for another amendment in 7 (1) (b) : to delete the words "cease to perform the functions of" and substitute therefor "vacate", so that it will read "may be required to vacate his office at any time after a general election held after the appointment".

Amendments agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

Clause 8 — Section 113 of the Constitution repealed and replaced.

Motion made and question proposed: "that the clause stand part of the Bill".

The Prime Minister : In subsection (4), I shall move first to add before the word "Minister" that there will be "The Prime Minister or Deputy Prime Minister or any other Minister"; and also in the fourth line after the word "him" to add "or with his approval".

And in subsection (5) to remove the stop after the word "prescribed", and here again to add as we have done before "under the Labour Act and shall not be entitled to any other damages or compensation under any other law whatsoever".

Amendments agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

Clauses 9 to 11 ordered to stand part of the Bill.

Clause 12 (Transitional provisions)

Motion made and question proposed:
"that the clause stand part of the Bill".

The Prime Minister : Mr. Chairman, I would like to move to delete the full stop at the end and after 'prescribed', and to add the following : "under the Labour Act and no damages or other compensation shall be payable under any other law whatsoever".

Amendment agreed to.

Clause 12, as amended, ordered to stand part of the Bill.

Schedule ordered to stand part of the Bill.

The title and the enacting clause were agreed to.

The Bill, as amended, was agreed to.

The Labour (Amendment) Bill (No. III of 1982) was considered and agreed to.

THE INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL (No. IV of 1982)

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3 (Section 2 of the principal Act amended).

Motion made and question proposed:
"that the clause stand part of the Bill".

Mrs. Ciffra : Sir, I move that in this Clause in the third line the word "Tromelin" be added before the initial word "and"; and in the same line that the word and punctuation "Tromelin,"

be added after the word "by" before "Cargados Carajos".

Amendment agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

New Clause

Mrs. Ciffra : Sir, I move that a new Clause be added to this Bill as Clause 4, to read as follows :

"This Act shall be deemed to have come into force with effect from 13th July 1974".

and the title "Commencement" be inserted in the margin.

New Clause 4 brought up and read a first time.

Mrs. Ciffra : Sir, I move that new clause 4 be read a second time.

Question put and agreed to.

New Clause 4 read a second time and ordered to stand part of the Bill.

The title and the enacting clause were agreed to.

The Bill, as amended, was agreed to.

On the Assembly resuming with Mr. Speaker in the Chair, the Deputy Speaker reported accordingly.

Third Reading

THE CONSTITUTION OF MAURITIUS (AMENDMENT) BILL (No. II of 1982)

The Prime Minister : Sir, I move that the Constitution of Mauritius (Amendment) Bill (No. II of 1982) be read a third time and passed.

Mr. Gungoosingh : Sir, I beg to move for a division.

On question put, the House divided

DIVISION No. 2 of 1982

AYES

Mrs. France Roussery
Mr. M. Glover
Mr. M. Uichanah
Mr. R. Soobadar
Mr. A. C. F. Salisse
Mr. K. Routhio
Mr. L. Ramsahok
Mr. S. B. P. Ramdahan
Mr. S. C. Poonith
Mr. S. Peerthum
Mr. A. Parsuraman
Mr. T. Padarath
Mr. K. Offman
Mr. J. Nundulalee
Miss N. A. Navarre
Mr. M. Molaye
Mr. L. S. Michel
Mr. S. Maudarbecos
Mr. B. Mahadoo
Mr. S. Latchmeernaraidoo
Mr. R. Lechun
Mr. N. A. Q. Lee Cheong Lem
Mr. L. P. Lafrance
Mr. M. A. Lacle
Mr. B. A. Khodabux
Mr. S. Jawaher
Mr. D. Gungah
Mr. J. Goburdhun
Mr. S. Goodoory
Mr. D. Gokhool
Mr. O. Gendoo
Mr. A. Gavan
Mr. D. G. Fokeer
Mr. J. R. Finette
Mr. R. Dyalah
Mr. M. Dulloo
Mr. A. Choolun
Mr. F. A. Canabady
Mr. E. J. Bouille
Mr. A. A. Asgarally
Mr. K. Gungoosingh
Dr. D. Ramjuttun
Mr. C. Daby
The Minister of Youth & Sports
The Minister for the Arts and of Cultural Affairs & Leisure
The Minister for Rodrigues & the Outer Islands
The Minister of Local Government
The Minister of Housing, Lands & the Environment
The Minister of Labour & Industrial Relations
The Minister of Works

The Minister for Employment and of Social Security & National Solidarity
The Minister of Economic Planning & Development
The Attorney-General & Minister for Women's Rights and Family Affairs
The Minister of Energy and Communications
The Minister of Health
The Minister of Education
The Minister of Agriculture, Fisheries & Natural Resources
The Minister of External Affairs, Tourism & Emigration
The Minister of Commerce, Industry, Prices & Consumer Protection
The Minister of Finance
The Minister of Information & Co-operatives
The Prime Minister
Mr. Speaker

TOTAL : 63

Ayes : 63 Noes : Nil

Third Reading

On motion made and seconded, the following Bills were read the third time and passed :

(a) The Labour (Amendment) Bill (No III of 1982)

(b) The Interpretation and General Clauses (Amendment) Bill (No IV of 1982)

ADJOURNMENT

(6 44 p.m.)

The Prime Minister : Sir, I move that this Assembly do now adjourn to Tuesday, 13th July, 1982, at 11 30 a.m.

Mr. Boodhoo rose and seconded.

At 6.45 p.m. the Assembly was, on its rising, adjourned to Tuesday, 13th July, 1982, at 11.30 a.m.

ANNEX 44

UN Diplomatic Conference, Plenary 164th session, 1 April 1982

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.164

164th 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)

to be adopted by consensus, although his delegation believed that all signatories of the final act must be entitled to participate fully in the work of the Preparatory Commission and that the expenses of that Commission should not be borne by the regular budget of the United Nations.

78. Despite the fact that there had practically been no discussion on the difficult question of Part XI of the draft convention, document W/G.21/Informal Paper 21 and Add.1 contained valuable suggestions which might lead to a compromise. Spain, a member of the group of medium-sized industrialized countries, was deeply concerned at the failure so far to take its situation into account. While classified as a developed country according to the generally accepted criteria, it lacked the technical and financial resources of the major industrialized Powers but was nevertheless expected to make a substantial contribution to the entry into operation of the parallel system without receiving commensurate compensation. It had made great sacrifices in the course of the protracted negotiations but had received little in return. On the other hand, the very fact that the convention would be world-wide in scope and guarantee peace, security and universality was sufficient justification for its adoption.

79. His delegation was particularly concerned with the problem of the membership of the Council. Medium-sized industrialized countries were also at a disadvantage in other respects, for instance in the reservation of a series of areas for activities conducted under the auspices of the Authority through the Enterprise or in association with developing States. The convention should not rule out the possibility of medium-sized industrialized countries participating in such associations with the Enterprise.

80. Document A/CONF.62/L.86 in the question of participation in the convention provided an appropriate basis for a consensus, even though he had reservations with regard to paragraph (d) of the text proposed in annex 1 for article 305. He also had a difficulty with the text proposed in annex III for a draft resolution, particularly with paragraph 2. Naturally those objections did not relate to the replacement of the tran-

sitional provision in the draft convention by a resolution but were confined to the text of the resolution itself. On the other hand, he believed that the report by the Chairman of the Second Committee (A/CONF.62/L.87), particularly paragraphs 6 to 8, accurately reflected the informal discussions of that Committee. His delegation had no objection in particular to the incorporation of the proposal submitted by the United Kingdom on article 40, paragraph 3 (C.2/Informal Meeting/56). As to the proposals relating to articles 123, 62 and 21, the position of his delegation remained unchanged, since, while it could understand the concern expressed over article 21, it found the text of the draft convention acceptable as it stood.

81. As he had already indicated in the Second Committee, his delegation had a few changes to make to the views it had expressed in document A/CONF.62/WS/12 of 26 August 1980,³ regarding matters pertaining to the terms of reference of that Committee. Firstly, it wished to withdraw its statements regarding the delimitation of maritime spaces in articles 74, 83 and 298, paragraph 1 (a), which it now accepted in a spirit of compromise with a view to facilitating a final consensus. It also accepted article 304 as incorporated in Part XVI which would at least remove some of the difficulties still remaining in connection with article 42, paragraph 5. However, his delegation wished to maintain its comments regarding Part III of the draft convention, its position with regard to straits used for international navigation was well known. In a spirit of compromise it had agreed at the fourth session held in New York in 1976 that maritime navigation should be subject to a new transit passage regime but it still had considerable difficulty with article 39, paragraph 3 (a), and with article 42, paragraph 1. It also maintained its reservations regarding articles 721, paragraph 1, and 233. All the reasons for those objections had already been given in the statement referred to earlier.

The meeting rose at 9.55 p.m.

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

164th meeting

Thursday, 1 April 1982, at 10.05 a.m.

President: Mr. I. H. MWANANG'ONZE (Zambia)

Discussion of results of consultations and negotiations (*continued*)

1. Mr. BALETA (Albania) said that many democratic and progressive countries had come to the Conference with the hope and intention of drafting and adopting a convention which would defend, consolidate and develop the democratic principles of international law, as well as new progressive norms of the law of the sea which would safeguard the sovereign rights and legitimate interests of all States, particularly small countries, which were increasingly threatened by the aggressive policy and intrigues of the super-Powers and the imperialist Powers. Unfortunately, despite the major, positive results that had been achieved, the draft convention as it stood did not offer a just solution to some of the most important problems. There were still a number of serious weaknesses and shortcomings which had to be rectified. Some provisions had not been adequately discussed, others had been incorporated without the approval of the

overwhelming majority, and some created situations unacceptable to many delegations.

2. For example, the problem of the breadth of the territorial sea had not been resolved in full accord with the recognized principles of international law or with the practice hitherto followed by sovereign States. His country had always upheld the principle of international law which enshrined the right of every State to determine the breadth of its own territorial sea. In laying down laws on the breadth of the territorial sea, the defence and national security interests of the coastal States must be paramount, especially at a time when peace- and freedom-loving countries were increasingly exposed to the aggressive activities of imperialism and to the tremendous threats posed by the military fleets of the United States, the Soviet Union and the aggressive military blocs. That was consistent with the position taken at Caracas; the establishment of the breadth of the territorial sea up to a limit not exceeding 12 nautical miles was therefore unjust.

3. Likewise, his delegation continued to oppose the idea that warships should have the same right of innocent passage through the territorial sea as merchant vessels. The relevant articles had to be modified and improved, so that article 17 would clearly distinguish between warships and merchant vessels. Provisions to ban entry into and passage through the territorial sea of the warships of another State, unless it had requested and obtained the prior authorization of the coastal State, were absolutely essential. Regrettably, in the course of the Conference, the just and reasonable position taken on that subject by a large number of countries had always met with obstructionism on the part of the imperialist super-Powers, which had resorted to manoeuvring and pressures of all kinds to prevent the inclusion in the draft convention of more precise provisions on innocent passage. The text as it stood seriously undermined the sovereign rights and national security of the coastal States. There was every reason therefore to resist pressure from the super-Powers and their groundless assertions that any addition or amendment to article 21 could bring down the whole edifice of the future convention. His delegation would certainly continue to support the demand for the necessary amendments to article 21.

4. He reiterated support for the view that the definition of the régime governing enclosed or semi-enclosed seas and the straits connecting them to the open seas should be principally a matter for the States bordering those enclosed or semi-enclosed seas, and should encompass all aspects of maritime activities, without discriminating against the legitimate rights and interests of other countries or impeding the navigation of merchant vessels. No activity involving warships belonging to countries other than the States bordering the enclosed or semi-enclosed seas should be allowed in those seas except in accordance with the rules laid down by all the bordering States. Unfortunately, Part IX of the draft convention did not meet those legitimate concerns.

5. His delegation objected to article 309 as currently worded. Sovereign States should not be denied the right to make reservations at the time of signature, ratification or accession to the convention; the matter should be governed by long-standing international practice in treaty matters.

6. The provisions giving mandatory jurisdiction to international bodies in the settlement of disputes between States were unsatisfactory. His delegation would prefer the well-tried principle that any dispute between States could only be referred to an international legal body with the prior agreement of the parties in dispute.

7. Lastly, he reiterated support for the right of national liberation movements to become parties to the convention.

8. Mr. DASHTSEREN (Mongolia) said that his delegation shared the view that the draft convention as it stood could serve as a good basis for the adoption of a truly viable and generally acceptable convention, particularly in the light of the balanced package that had emerged on such issues as the Preparatory Commission, participation and rules to govern preparatory investment in pioneer activities relating to polymetallic nodules. The proposals contained in documents A/CONF.62/C.1/L.30 and A/CONF.62/L.86 were generally acceptable, if not in all respects. For example, his delegation would have preferred a formula by which an international organization would be authorized to sign the future convention only when all its member States had done so. It would also have preferred to grant national liberation movements full rights to participate in the convention, although, in a spirit of accommodation and co-operation, it could support the President's five-point compromise in paragraph 16 of his report.

9. On the subject of the establishment of the Preparatory Commission, the text in document A/CONF.62/C.1/L.30 was a substantial improvement on the earlier version

(WG.21/Informal Paper 17). While some of the provisions of the draft resolution raised minor difficulties, it could well meet the criteria established in document A/CONF.62/62¹ and thus be adopted along with the convention.

10. The adoption of the new text of the draft resolution governing preparatory investment in pioneer activities relating to polymetallic nodules (A/CONF.62/C.1/L.30, annex II) would also be possible: the clear definitions it contained provided adequate assurances to States that had voiced concern about the possible monopolization of enormous areas of the sea-bed by a handful of consortia.

11. The report of the Chairman of the Second Committee (A/CONF.62/L.87) again clearly demonstrated that no substantial changes could be made without upsetting the delicately balanced compromise on Second Committee issues.

12. The provisions relating directly to the rights and benefits of land-locked States were not entirely satisfactory to his country, but it was prepared to accommodate its own interests and expectations with those of the international community as a whole. In return, it expected all other participants, without exception, to act in the same spirit of goodwill, co-operation and mutual accommodation, and to conduct serious negotiations with genuine statesmanship. In that regard, he fully shared the views expressed by the Chairman of the First Committee at the 157th plenary meeting.

13. Convinced that there was a real prospect of adopting the convention by consensus at the conclusion of the current session, his delegation pledged its full co-operation in all efforts to bring the work of the Conference to a fruitful conclusion, even if it had to be done through the highly undesirable procedure of a vote.

14. Mr. EL GHARBI (Morocco) said that, during the last critical phase of its work, the Conference should be guided, above all, by the need to ensure the greatest good for the greatest number.

15. Part XI of the draft convention already bore the stamp of a carefully balanced compromise reflecting the position consistently upheld by his delegation and by the Group of 77 as a whole. The President's proposals on preparatory investment took a similar line, endeavouring to take into consideration the various interests without damaging the basic legal framework of the draft convention. His ingenious solution, in the form of a draft resolution, would ensure compliance with the basic law of treaties. However, its very title restricted its scope, yet failed to clarify the legal consequences of such a restriction. The draft resolution (A/CONF.62/C.1/L.30, annex II) would therefore have to be harmonized with the body of the draft convention in order to avoid any contradiction or ambiguity. Both would gain from linking the draft resolution to the definition of the resources of the Area given in article 133, unless expressly restricted to the case of polymetallic nodules.

16. Paragraph 8 (a) raised serious problems because in no case could the final resolution governing preparatory investment encroach upon the powers and competence of the Authority. The legal effect of the internationally guaranteed status of the pioneer investors would be limited to the period prior to the entry into force of the convention. That should not, however, prevent the Conference from recommending that the competent organs should take account in their decisions of the status accorded to the pioneer investors.

17. Consequential amendments to paragraphs 13 and 14 of the draft resolution would be required, although they should not detract from the formal guarantees offered.

18. As a land-based producer of most of the mineral resources mentioned in article 133, especially those contained

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).

in polymetallic nodules, his country was highly sensitive to the adverse effect unbridled, large-scale exploitation of the seabed could have on the world economy, especially on the already fragile economies of the developing countries most closely concerned. While it would be in no one's interest to render the common heritage of mankind economically sterile, the opening up of the world's economic space could not take place in the *laissez-faire* manner of another epoch. In that spirit, it would be neither desirable nor appropriate to go back on the cut-off date of 1 January 1983 mentioned in paragraph 1 (a) of annex II to document A/CONF.62/C.1/L.30. As for the problem of compensation, he was convinced that a fair and workable solution could be found on which it would be possible to reach consensus. The negotiations on the Preparatory Commission had advanced at the current session and the President's latest draft defined both the specific character and mandate of that body. The guarantees proposed for pioneer investors would obviously involve a broadening of the competence of the Preparatory Commission, which during the transitional period preceding the entry into force of the convention would inevitably play the role of guardian of the common heritage, with all that that implied for the future signatories of the convention in terms of their rights, obligations and responsibilities under the law of treaties. Where the Council was concerned, his delegation urged more careful consideration of the proposals on articles 161, 164 and 165 resubmitted by Portugal, which his delegation had decided to sponsor.

19. Negotiations on participation had been more difficult but, like the Group of 77 as a whole, his delegation believed that, with some refinements, the President's proposals would prove generally acceptable. The participation of international organizations could certainly ensure a more effective system, provided that that could be reconciled with the primacy of the commitments undertaken by sovereign States in the framework of multilateral treaty-making. As far as participation of national liberation movements was concerned, his delegation remained firmly in support of the fullest possible participation for those recognized movements which had been invited to send representatives to the Conference. Their legitimate international status should be reflected in the texts ultimately adopted.

20. Where Second Committee issues were concerned, the most serious problems had been overcome at previous sessions; yet concerns of a purely bilateral nature continued to overshadow the search for a consensus in the multilateral context. Nevertheless, specific situations would somehow have to be taken into account in order not to do violence to the consent of the most seriously affected States. Despite the consensus reached on virtually all the major issues, the package of Parts I to X was still not firmly secured. The crucial issues which had long remained pending must be taken seriously in the spirit that had inspired the gentleman's agreement.

21. He deplored the systematic and indefensible refusal to negotiate on the proposals concerning article 21 despite the broad support that they enjoyed, and the fact that the principle of *jus communicandi* was no longer at stake, and on the Peruvian proposal on article 56 (C.2/Informal Meeting/67) and on the rearrangement of the articles in Part VII, section 1 (C.2/Informal Meeting/68); such a refusal was unacceptable.

22. Mrs. TNANI (Tunisia), commenting on various points that had been raised in the past few days, as well as on the draft convention as a whole, said that the draft resolution on the Preparatory Commission (A/CONF.62/C.1/L.30, annex I), though far from totally acceptable, provided a valid basis on which to build. Her delegation fully supported the proposals made by the Chairman of the Group of 77 on that subject; it likewise shared the Group's approach to the draft resolution on preparatory investment (*ibid.*, annex II), which it believed could be improved by avoiding any reference to the

automatic granting of contracts to pioneer investors by the Authority, leaving the delimitation of the sectors to be exploited to the Preparatory Commission, introducing the idea that the exploitation of resources other than polymetallic nodules should not take place until appropriate regulations had been approved by the International Sea-Bed Authority, and reconsidering paragraphs 13 and 14.

23. The President's proposals on participation (A/CONF.62/L.86) could form the basis for a compromise, but should be improved by entitling the liberation movements to sign the final act and the convention and by annexing the draft resolution on the transitional provisions to the final act of the Conference. The proposals relating to the participation of non-State entities, particularly international organizations, were generally acceptable.

24. The solutions set forth in the draft convention on Second Committee issues represented a compromise which could well be threatened if any fundamental changes were made. Any proposal to improve the text should therefore be confined to clarification or precision, as was the case with the proposal contained in document C.2/Informal Meeting/66. Where the right of innocent passage of warships through the territorial sea was concerned, any compromise which brought the varying points of view together would enjoy the support of her delegation. Her delegation's interpretation of the term "coastal States" in article 70, paragraph 5, was that, in that context, it could only refer to the developed coastal States.

25. Her delegation would consider any improvement which would facilitate the adoption of the draft convention by consensus.

26. Mr. JESUS (Cape Verde) said that the overwhelming majority of States were clearly determined to have a convention on the law of the sea at the end of April 1982. His delegation would prefer the convention to be adopted by consensus but if the United States and a few other industrialized countries insisted on their proposed amendments, his delegation would join the majority in adopting the convention by vote. He felt that the draft convention protected the interests of all States, and, in particular, those countries which were questioning the provisions of Part XI, in the negotiation of which they had played a major role.

27. Turning to the report on First Committee matters, he said that the draft resolution on the Preparatory Commission was a balanced compromise. He supported the proposal contained in paragraph 11 that the Commission should meet at the seat of the Authority, considering the financial commitments already undertaken by the host country to make the necessary facilities available.

28. With regard to the draft resolution governing preparatory investment in pioneer activities, his delegation considered the proposal to be a framework in which the preparatory investment protection régime could be established. There were, however, some improvements which would have to be made if consensus were to be obtained. The resolution should cover all resources of the Area, as provided for in article 133. Therefore, his delegation would prefer the title contained in the similar document submitted by the Group of 77, "Draft resolution governing preparatory investments in the sea-bed area" (TPIC/3). He felt that paragraph 7 (b) would have to be altered so that pioneer investors should be required to invest a great deal more than \$1 million per annum. The last sentence of paragraph 8 (a) should be deleted so that the Authority could consider freely applications made by a pioneer investor for a plan of work. Paragraph 10 (b), establishing the flag of convenience, was not quite acceptable to his delegation since it could endanger and frustrate the objectives behind the establishment of the preparatory investment protection régime. Paragraph 13 should be clarified in order to rule out any apparent contradiction.

29. As for Second Committee matters, his delegation was deeply concerned about the question of innocent passage of foreign warships through the territorial sea. There had never been any exhaustive negotiations on article 21 and the large number of delegations affected had long been asking for negotiations with the maritime Powers opposing the proposal contained in document C.2/Informal Meeting/58/Rev.1. He regretted that, during the consultations on the question, those delegations opposing the proposal had not displayed the necessary flexibility to engage in a compromise solution. International practice required prior authorization for the innocent passage of warships through the territorial sea and even some countries opposing the proposal imposed it under their own national legislation. His country could not accept the indiscriminate exercise of the right of innocent passage of foreign warships through its territorial sea and archipelagic waters. Although his delegation interpreted the current wording of article 21, in conjunction with article 19, as permitting the coastal State to legislate with regard to prior authorization, he urged the President to undertake further consultations on the issue in order to obtain a consensus.

30. The proposal contained in document C.2/Informal Meeting/58/Rev.1, of which his delegation was a sponsor, improved article 63, paragraph 2, and did not endanger the delicate balance of the text.

31. With regard to delimitation, his delegation considered that, although the text of articles 74 and 83 did not contain the draft which it would have liked, it considered the question to be settled and therefore would not accept any change or reservations on articles 15, 74 and 83.

32. With regard to the participation of national liberation movements, he said that the President's proposal (A/CONF.62/L.86, para. 16) was a positive approach. His delegation still believed, however, that national liberation movements recognized by regional organizations and the United Nations which were participating in the Conference as observers should be entitled to become parties to the convention.

33. As for the participation of international organizations, he agreed with the President's proposal in the sense that there was a common understanding that international organizations should become parties to the convention. However, in the particular case of the European Economic Community, the proposal raised a number of difficulties with regard to the juridical possibilities of preventing an international organization from implementing the convention in a way that would benefit a State member which was not a party to it. With regard to article 2 of the proposed annex IX (*ibid.*, annex I), he asked whether, in the case of the European Economic Community, it was juridically possible for only some of its members to transfer competence. It was his understanding that the competence transferred or to be transferred to the European Economic Community must have been agreed upon by all its States members and not by only some of them. Non-signatory States could not transfer competence they did not possess. With regard to article 4, paragraph 7, of the President's proposal, he wondered what rules would actually be applied by the Court of Justice of the European Economic Community in the event of a violation of the principle of non-discrimination contained in article 7 of the Treaty of Rome² by which the Community was established. He wondered whether it would feel bound by article 4, paragraph 7, of the proposal or by the laws of the Community. Similarly, in the case of a company belonging to the citizens of a State member of the European Economic Community not a party to the convention and whose registered office was within the Community, he wondered which rule would be applied—article 4, paragraph 5, of the President's proposal or article 58 of the Treaty of Rome, which stated that companies or firms

formed in accordance with the law of a member State and having their registered office, central administration or principal place of business within the Community should be treated in the same way as natural persons who were nationals of member States. Another difficulty seemed to arise from the application of the law of the sea convention within the European Economic Community. According to his interpretation of articles 189 and 191 of the Treaty of Rome, for the convention to enter into force in the Community, it had to be published in the Official Journal and would be binding in all member States. Given those articles, he questioned the value and effectiveness of article 4, paragraph 3, of the proposal. His delegation would join in efforts to reach a compromise on the question, on the understanding that the European Economic Community would agree to alter its laws to bring them into line with the convention.

34. His delegation felt the transitional provision should be retained within the draft convention. The article was derived from the right to self-determination of peoples recognized by international law, mentioned in the United Nations Charter and elaborated upon in a number of General Assembly resolutions. He questioned the value of the draft resolution contained in annex III of A/CONF.62/L.86, since there were already General Assembly declarations on the matter. While supporting the retention of the transitional provision in the convention itself with the wording given to it by the proposal submitted by the Group of 77 under the title "Article 304 bis—territories under foreign occupation or colonial domination", his delegation proposed, in keeping with Article 73 of the Charter, the following wording for article 304 bis, paragraph 1: "In the case of territory whose people have not attained either full independence or some other self-governing status recognized by the United Nations Trust Territory, or a territory administered by the United Nations, the rights recognized or established by this convention shall be exercised exclusively for their benefit."

35. Mr. HOUFFANÉ (Djibouti) said that, as far as virtually all the outstanding issues were concerned, his delegation supported the position of the Group of 77, which had made many concessions in a spirit of conciliation so that a universal convention might be adopted at the end of the current session. He endorsed the statement made by the Chairman of the Group of 77 regarding the Preparatory Commission, preparatory investment protection and participation in the convention (158th and 159th meetings).

36. His delegation was deeply concerned about innocent passage of warships in territorial waters and felt it was essential for the draft convention to include measures on the subject. His delegation therefore supported the content of document C.2/Informal Meeting/58/Rev.1, dated 19 March 1982, which would complement article 21 as it stood. He requested the Chairman to take the necessary steps to find a suitable solution.

37. With regard to the letter of the Chairman of the Third Committee (A/CONF.62/L.88), he felt that suggestions should be transmitted to the Drafting Committee if they did not have implications on the question of funds.

38. He considered that national liberation movements recognized by the United Nations and regional international organizations should accede to and sign the convention.

39. In conclusion, his delegation expressed the wish that a convention on the law of the sea would be adopted at the end of the current session.

40. Mr. MAHIOU (Algeria) said that the common heritage of mankind could be exploited only by an international régime accepted by the international community as a whole and, therefore, any unilateral action on the issue should be firmly rejected. It was up to the Conference to work out that régime and it should therefore finish the work entrusted to it

² United Nations, *Treaty Series*, vol. 294, No. 4300, p. 11.

and adopt a convention. He stressed that the wishes of the peoples in the developing countries, which had displayed a flexibility sometimes lacking in others, had not been fully satisfied. However, a difficult and delicate compromise had been reached and one could only deplore and reject manoeuvres or proposals to limit the democratic element of the future bodies of the Authority. Naturally, the legitimate interests of States must be taken into account and reasonable and practical solutions must be sought. That did not, however, mean that the existing inequalities should be perpetuated or made worse by allowing a tiny minority of States, possibly even one State, to neutralize or control any decision-making process.

41. The proposals on the Preparatory Commission seemed to be a good framework for achieving a consensus. There was, however, a certain ambiguity still surrounding the nature and the legal implications of the Commission's actions. As it moved from being simply a preparatory body towards a sort of provisional one, the Commission required special attention and any action it took could have implications which were difficult to assess at the current stage.

42. The draft resolution on preparatory investment needed further clarification and improvement on a number of points such as the nationality of investors, the size of sites and the implications for the power of the future Authority. Above all, hasty and provisional decisions should be prevented from becoming *faits accomplis* with which the Authority would be confronted; nor should improper privileges be accepted under the cloak of preparatory investment protection.

43. His delegation attached great importance to the participation of national liberation movements. Since one of the major innovations of the draft convention was, according to article 141, to take account of the benefit of mankind as a whole, it was logical and quite legitimate to ensure complete participation on the part of national liberation movements recognized by the international community as the authentic representatives of their people. That objective could only be achieved if participation was dealt with in the body of the convention and if it was applied to all organs provided for by the Conference. Furthermore, national liberation movements should sign both the final act and the convention.

44. The compromise reached on articles 74 and 83 was a decisive step forward to achieve consensus within the Conference. The effect of the reference to international law as referred to in article 38 of the Statute of the International Court of Justice was to give pre-eminence to the principles of equity, something which was logical and natural in order to achieve the "equitable solution" expressly mentioned in articles 74 and 83 of the draft convention.

45. Given that the search for equity was at the root of the Conference, it was regrettable that the régime of islands resulted, in certain cases, in a situation which was not equitable. By giving all islands the same maritime space and advantages, without taking account of the harmful effects on the delimitation of sea borders with neighbouring States, article 121 ran contrary to the general spirit of the draft convention. A distinction should be made between islands which were not affected by delimitation agreements and those which were. He stressed the contradiction in claiming equity in cases of delimitation *per se* while excluding it in the case of certain islands which created unacceptable distortions, particularly in narrow or semi-enclosed seas. He felt the Conference had been wrong to separate delimitation and the régime of islands, which were really two aspects of the same problem.

46. Turning to article 76 on the definition of the continental shelf, he said that it was one of the few provisions which justified the introduction of reservations in the draft convention. Certain special interests had received better treatment than others, with a small group of coastal States obtaining an

improper extension of the continental shelf beyond the limits of the exclusive economic zone, while certain legitimate demands of a larger group of land-locked or geographically disadvantaged States had been obstinately refused. He questioned the appropriateness and the technical merit of the definition of the continental shelf, which created more problems than it solved. The system of contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles did not help promote an acceptable outcome.

47. The régime of innocent passage under article 21 should be improved to take into account the security and sovereignty of the States concerned.

48. He noted that the time had come to harmonize the terminology of the various parts of the convention by generalizing the use of the term "geographically disadvantaged States", which perfectly expressed the situation of a large number of States. His delegation approved the proposals aimed at improving the drafting of various provisions which came under the Third Committee.

49. The reference in the draft convention to the interests of developing States would be fully meaningful only if those States had real guarantees of technology transfer and effective protection for those who were land-based producers of minerals. The establishment of a compensation fund was a just and reasonable demand which should be met.

50. In conclusion, he said that, while the best outcome of the Conference would be the adoption of the convention by consensus, it being understood that reservations could be made with regard to certain provisions which did not concern the common heritage of mankind, the participating States should, in the absence of consensus, use their vote provided for in the rules of procedure to establish a new and equitable economic and legal order governing the seas and oceans.

51. Mr. PARK (Republic of Korea) said that, although some provisions had yet to be approved and modified, the current draft convention as a whole reflected the best possible compromise that could have been achieved. He hoped that all participating States would demonstrate a new spirit of compromise and accommodation for the successful conclusion of the Conference so that mankind as a whole might benefit from the new legal order governing the oceans.

52. With regard to document A/CONF.62/C.1/L.30, his delegation shared the view expressed by the Chairman of the Group of 77. He was gratified that the suggested compromise was fully compatible with the framework of Part XI of the draft convention, which had already been negotiated as a part of the package, although some provisions on preparatory investment protection seemed to require further elaboration.

53. As for participation in the convention, he supported the compromise proposal of the President in paragraph 16 of document A/CONF.62/L.86 on the understanding that the provisions concerning national liberation movements recognized by the United Nations and regional international organizations should be significantly improved.

54. With regard to the part of the draft convention dealing with sea-bed mining, he felt that the provision of Part XI and its related annexes, as they stood, struck a reasonable balance between the different interest groups of countries while embodying the fundamental principle of benefiting mankind as a whole. It would therefore be unrealistic to expect major changes in the basic system of sea-bed mining. His delegation was, however, concerned over the production policy. Due consideration should be given to the need for a stable supply of minerals at the lowest possible price, given the ever-increasing demand for natural resources, so that sea-bed mining might not be discouraged unnecessarily.

55. His delegation was also concerned about the composition of the Council. It felt that some developing countries which were heavily dependent upon the import of natural

resources for their economic development should be given the opportunity to represent their interests in the Council. The present provisions of article 161 did not seem to meet the needs of such countries. He supported the idea of increasing the number of seats in the Council for developing countries which were major importers of minerals or for the States to be elected on the basis of the principle of equitable geographical distribution.

56. Turning to Second Committee matters, he agreed with the assessment of the Chairman that there was a real consensus on the need to preserve the fundamental elements of the convention which were within the competence of the Second Committee. The Chairman had been right to exempt a few issues from the category of "satisfactory compromise". He felt that a system of prior notification should be adopted with respect to the innocent passage of warships through the territorial sea since such a system would meet the various preoccupations on the question, and thus offer the best possible formula for a consensus.

57. His delegation was not in favour of any proposals for further strengthening the rights of coastal States since it felt that those rights were fully secured and protected under the current provisions.

58. In conclusion, he stressed the need to adopt the convention by consensus within the current session.

59. Mrs. MAUALA (Samoa) said that her delegation strongly supported the text of proposed article 305 (A/CONF.62/L.86, annex I). In particular, it felt that subparagraphs (b), (c) and (d) satisfactorily represented the substantive interests of Samoa's South Pacific island neighbours. It was of great concern to her delegation that those subparagraphs should be included in the final text.

60. Participation was vital to small Pacific island entities, which, in many cases, depended for their whole well-being on their marine resources.

61. Mrs. TAVIRA (Angola) said that any régime governing the seas was crucial to world peace and security. The Conference had before it the laboriously negotiated text of a draft convention which was the result of repeated major concessions by the developing countries. Hence, Angola regretted the attitude of the United States, followed by certain industrialized countries, the only aim of which was to satisfy the unilateral interests of the transitional companies by radically changing Part XI of the draft convention. The provisions relating to production limitation, transfer of technology, the decision-making procedures of the Council and the role of the Assembly could not be changed without jeopardizing the survival of a number of underdeveloped countries as viable States. The economic sacrifices demanded of them would under the circumstances become too great to bear.

62. Angola attached great importance to the admission of national liberation movements as full parties to the convention. The developed countries had made a great effort to justify the participation of the Common Market in the convention and, if that position were accepted, they would have to revise their point of view with regard to the liberation movements. Recognition of the national liberation movements by regional organizations and by the United Nations meant *ipso facto* their recognition by the international community under universally acceptable norms of international law.

63. Consequently, her delegation regarded the participation of liberation movements and intergovernmental organizations as one whole with both categories becoming parties to the convention. Her delegation understood that international organizations should not accede to the convention unless their members had previously become parties. However, it was prepared to work around the present proposals contained in document A/CONF.62/L.86, in order to reach an agreement that was in the interest of both candidates for participation.

64. For the defence of the interests of peoples under colonial domination, it was necessary to include transitional provisions in the convention.

65. With regard to article 21 concerning innocent passage, her delegation considered it necessary, because of the requirements of State security, that warships using their right of innocent passage should give prior notice to the coastal States. Her delegation wished to be assured that coastal States would be protected by the machinery provided for in article 21, which, in fact, recognized the right of the coastal State to adopt laws and regulations in accordance with its security needs. With the improvements to articles 21 and 63 proposed by Argentina and other delegations, her delegation would have no difficulty in accepting Part II as it stood.

66. With regard to the question of preparatory investment, her delegation, while preferring the counterproposal of the Group of 77, accepted the proposal of the President (A/CONF.62/C.1/L.30, annex II), as a basis in which the changes proposed by the Group of 77 would be incorporated. It accepted also the draft resolution on the Preparatory Commission (*ibid.*, annex I) with the changes made in subparagraph 5 (e), which would protect the interest of land-based producers.

67. Guided by the principle that the Area was the common heritage of mankind and by the principle of the interdependence of States, her delegation appreciated the effort made to arrive at that draft resolution as a valid basis for a consensus. She hoped that the few reticent delegations would rally to the prevailing desire to complete the work of the Conference at the current session and adopt the final act. Otherwise, her delegation would accept the adoption of the text by voting, so that the convention could be adopted, as proposed, in September at Caracas.

68. Mr. MALONE (United States of America) said that the United States sought a universally accepted multilateral treaty on the law of the sea which met the six objectives outlined by President Reagan on 29 January 1982. It was prepared to explore every method of achieving that goal, and if, with the help of its colleagues at the Conference, it was successful, President Reagan was committed to seek early ratification of the resulting treaties. His delegation had specific comments and suggestions on the text proposed regarding the outstanding issues: the Preparatory Commission, preparatory investment protection and participation, and also on a number of issues relating to Part XI of the draft convention.

69. The proposals in document A/CONF.62/C.1/L.30, annexes I and II, would entrust the Preparatory Commission with powers and functions affecting vital national economic and security interests in access to deep sea-bed mineral resources. The Preparatory Commission would draft rules and regulations for deep sea-bed mining and would implement a system for preparatory investment protection. Those functions corresponded to the central functions of the Council which affected access to sea-bed mineral resources by States and their nationals. His delegation believed that annex I of document A/CONF.62/C.1/L.30 should be improved and proposed that the resolution on the Preparatory Commission should contain the following measures:

(a) All signatories to the final act would elect the members.

(b) The Conference would elect the members of an executive committee in accordance with article 161, with the proviso that the election should include the seven States which accounted for the largest proportion of assessments based upon the scale used for the regular budget of the United Nations.

(c) The Preparatory Commission would function in accordance with that resolution but would not take decisions until the 36 members of the Committee had signed the convention.

(d) If after six months not all elected Committee members had signed the Convention, the seats of such non-signatories would be declared vacant.

(e) As a general rule, Preparatory Commission decisions would be taken in accordance with article 161. However, it might be necessary to make certain adjustments to article 161 in the light of the decisions required by the resolutions proposed in document A/CONF.62/C.1/L.30.

70. He noted that the report of the co-ordinators of the working group of 21 (A/CONF.62/C.1/L.30) indicated that the resolutions on the Preparatory Commission and on preparatory investment protection would necessitate consequential changes in the provisions of Part XI, such as article 308, paragraph 4, in order to ensure that the registration of pioneer investments, the allocation of pioneer areas to them and the priorities established would be binding on the Authority upon the entry into force of the convention.

71. The proposed resolution in document A/CONF.62/C.1/L.30 on preparatory investments represented a step forward in the work on that issue. Annex II of that document established a system which required that certifying States of pioneer investors should ensure that any overlapping claims were resolved prior to the time that applications were made. The Preparatory Commission would register applicants as pioneer investors and allocate pioneer areas to them once certifying States had notified it that any necessary conflict resolution process had been completed. His delegation welcomed that simple and effective approach to the problem of resolving overlapping claims among existing pioneer investors and took note of the wide support in the Conference for that approach.

72. He noted also that annex II of document A/CONF.62/C.1/L.30 adopted objective criteria for identifying pioneer investors, requiring an expenditure of \$30 million, of which less than 10 per cent was spent on activities related to the location, surveying and evaluation of a pioneer area. The size of a pioneer area was limited to 150,000 square kilometres, thus allowing pioneer investors to determine the site of an area for which they would apply, provided that the pioneer area did not exceed 150,000 square kilometres.

73. Annex II of A/CONF.62/C.1/L.30 provided that registered pioneer investors should have the exclusive right to carry out pioneer activities in the pioneer area from the date of registration. It also provided that, upon the entry into force of the convention, the Authority should approve plans of work for exploration and exploitation for pioneer investors certified by the Preparatory Commission to be in compliance with the provisions of the resolution. It provided further that pioneer investors who altered their nationality and sponsorship should retain all rights and priorities conferred under the resolution. Thus, a pioneer investor whose certifying State failed to ratify the convention after entry into force maintained his rights by obtaining the sponsorship of a State party within six months.

74. While the foregoing provisions of annex II of document A/CONF.62/C.1/L.30 dealt with many of the elements necessary to protect existing investments in deep sea-bed mining, his delegation found annex II of that document to be lacking in other respects.

75. First, there was consensus during the informal negotiations that the primary purpose of a provision on preparatory investment protection was to provide site-specific recognition and rights to engage in activities for existing investors whose continued work depended on the early recognition of their exclusive rights in a specific area. A provision that did not give clear priority to those pioneer investors who had deposited the relevant co-ordinates with their national authorities prior to 24 April 1982 would be deficient. The resolution should distinguish between the rights and priorities accorded to current site-specific pioneer investors and those accorded to later pioneer investors who had made or who would make

substantial investments prior to the entry into force of the convention.

76. In order to resolve that problem in the draft resolution, he proposed that subparagraphs 5 (a) and (b) of annex II should be recast in accordance with the text contained in his circulated written statement.

77. Secondly, the United States did not agree with the inclusion in the convention of a limitation on sea-bed mineral production. Accordingly, it did not believe that it should be incorporated in a provision on pioneer activities.

78. Thirdly, as had already been explained, pioneer investors who had made substantial site-specific investments required certainty that their exclusive rights to a mine site could not be revoked or abridged. But fundamental objectives would be undercut by any provision which terminated pioneer investor rights if the convention had not entered into force by a certain date. Accordingly, his delegation concurred with other speakers who had supported the deletion of paragraph 14 of annex II.

79. Fourthly, any data required to be turned over to the Preparatory Commission should be guaranteed protection for confidentiality of proprietary information.

80. Fifthly, his delegation considered that paragraph 12 of annex II created unwarranted and unnecessary burdens on pioneer investors in order to assist the Enterprise. That problem would be remedied by inserting, in the introduction of paragraph 12, the words "certifying States, co-operating as appropriate with" before the phrase "any registered pioneer investor shall:".

81. Sixthly, his delegation believed that subparagraph 7 (a) was improper and that the requirements of subparagraph 7 (b) bore no realistic relationship to the practicalities of mining company activities. His circulated statement contained the necessary changes proposed.

82. Seventhly, a further necessary consequential change in Part XI to implement that resolution was a provision requiring that the rules, regulations and procedures of the Authority, in so far as they applied to pioneer investors, should not impose significant new economic burdens which would have the effect of preventing a pioneer investor from continuing on a viable economic basis.

83. Eighthly, he understood that some delegations intended to make a proposal for the commencement of commercial exploitation in 1988, if the convention had not entered into force by then. Such proposals would be consistent with United States policies, and his delegation could support them.

84. There were a number of drafting difficulties relating to annex II which he assumed could be clarified and redrafted on the basis of further consultations on that resolution.

85. Successful resolution of the issues of preparatory investments and the Preparatory Commission could be the start of a successful effort to deal with the problems of the text of Part XI and related annexes. There should be no illusion that it would be the conclusion of such a process.

86. With regard to the report of the Chairman of the First Committee to the Conference concerning the request of several African delegations that article 160 of the convention should be changed (A/CONF.62/L.91, para. 17) to provide that the Assembly should establish a compensation fund to deal with the adverse impacts of sea-bed mineral production on developing land-based producers, which would take into account the results of studies to be conducted by the Preparatory Commission, his delegation would be willing to explore methods for establishing a system of adjustment assistance which would replace the production limit set forth in article 151 of the draft convention.

87. His delegation took no position on the proposals (WG.21/Informal Paper 19) regarding the composition of the

Council sponsored by a group of smaller industrialized countries pending consideration of the issues raised by the United States concerning representation on the Council for the largest financial contributors.

88. His delegation did not consider appropriate the proposal contained in Informal Paper 20 of the working group of 21 relating to unfair economic practices.

89. With regard to participation, his delegation appreciated the President's efforts to find a solution to that difficult problem. His delegation had, however, some concerns with his proposals (A/CONF.62/L.86, annexes I to III), and hoped that the President would take them into consideration. They were set forth in his circulated statement.

90. The United States was opposed to returning the transitional provision to the body of the convention and felt that the issue involved could be best dealt with in the form of a separate resolution.

91. The report of the Chairman of the Second Committee (A/CONF.62/L.87) indicated that there was widespread agreement that the proper and delicate balance that had been achieved within the Second Committee package must be preserved. He referred delegates to his circulated statement for details.

92. With regard to the letter of the Chairman of the Third Committee (A/CONF.62/L.88), his delegation had certain changes which it felt desirable in that connection. Other matters therein could be handled by the Drafting Committee.

93. The Conference had afforded his delegation an opportunity to raise its concerns regarding certain aspects of Part XI of the draft convention. It had not yet had an opportunity to explore solutions to them which met the objectives set forth by President Reagan on 29 January 1982. His delegation was anxious to begin substantive negotiations and awaited the President's guidance as to how to proceed.

94. In the President's report to the plenary at the 157th meeting, the President and the Chairman of the First Committee had referred to a series of proposals put forward by the group of 11 heads of delegations acting in personal capacities. Those proposals addressed many of the issues raised by President Reagan on 29 January 1982 and offered suggestions relating to the following matters of concern to his Government: the approval of contracts; production policies, including the question of limitations and adjustment assistance; the question of the election of the Council of the seven largest contributors; decision-making; the question of the adoption of amendments to the convention arising from the Review Conference; the powers of the Assembly and Council—the separation of powers; transfer of privately owned technology; and the adoption of rules and regulations on minerals other than polymetallic nodules.

95. On several of those matters, the proposals focused on narrow aspects of broader United States concern. With respect to production policies, they might not presently be sufficiently broad to allow negotiations relating to the production limitation or adjustment assistance. The proposal on decision-making addressed only the question of approval of the budget of the Authority, without reference to other important problems in the decision-making system.

96. The proposals did not seem to contemplate discussion of the relationship of creditors to the Enterprise, an issue on which further consultations would be helpful. The proposals did not deal with the technical financial terms of contracts or the question of benefits for peoples who had not achieved self-governing status.

97. His delegation greatly appreciated the work of the group of 11 and hoped that, with the clarifications and additions which he had suggested, they could serve as a basis of the continued work of the Conference. His delegation was prepared to participate in any forum which the President

believed was suitable for further negotiations and would expend every effort to achieve the common objective of a universally accepted convention adopted by consensus at the current session. If the Conference succeeded in attaining that goal, the United States would be prepared to expend every effort to fulfil President Reagan's commitment to seek early ratification of the convention on the law of the sea.

98. Mr. BEESLEY (Canada) said that, while he would concentrate on the three major agenda items, he felt it appropriate to place his statement in a broader context, owing to his delegation's concern at the apparently widespread belief outside the actual Conference that the Conference was all about sea-bed mining and little else. That was a very dangerous misconception.

99. In a major foreign policy address at the thirty-sixth session of the General Assembly on 21 September 1981,³ the Secretary of State for External Affairs of Canada had emphasized that the Conference was not merely an attempt to codify technical rules of law but a resource conference, a food conference, an environmental conference, a marine science conference, an energy conference, a conservation conference, an economic conference, a maritime boundary delimitation conference, a territorial limitation and jurisdictional conference, a transportation, communications and freedom of navigation conference—a conference which regulated all the uses of the ocean by humanity. More importantly, it provided for the peaceful settlement of disputes concerning the oceans and was a conference dedicated to the rule of law among nations.

100. He stressed that it was not a conference which should be looked on from the narrow perspective of sea-bed mining, important though it was. Decisions based on that kind of tunnel vision view of the draft convention would inevitably be misguided and imbalanced.

101. In that same statement, the Secretary of State had said that, in the general attempt to advance the rule of law at the Third United Nations Conference on the Law of the Sea, he wished to associate himself with the statement made by the Secretary-General at the opening of the tenth session of the Conference on 9 March 1981.⁴ The Secretary-General had said that, apart from the achievement of the specific objectives of that Conference, he attached the highest importance to the impact which its success might have in strengthening the role of the United Nations in finding viable solutions to great global issues. The Secretary of State had said further that the Conference ranked in importance with the San Francisco Conference which had founded the United Nations itself. It represented an extremely important element in the North-South dialogue and had significant implications for peaceful East-West relations. It touched on the interests of every State, great or small, rich or poor, coastal or land-locked. The achievement of a universal agreement on a law of the sea convention was fundamental to world peace and security.

102. The compromise proposal on the Preparatory Commission contained in annex II of document A/CONF.62/C.1/L.30 was acceptable to his delegation. Utilizing the rules of procedure of the Conference as a basis for the Commission's rules of procedure was also a reasonable compromise. He was pleased that the Commission had been given the important task of studying the problems encountered by developing land-based producers most seriously affected by sea-bed mining.

103. With regard to the proposals of the President on participation contained in document A/CONF.62/L.86, there were few issues of greater difficulty or of more significance to the pol-

³ See *Official Records of the General Assembly, Thirty-sixth Session, Plenary meetings*, 6th meeting, para. 29.

⁴ 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), 142nd plenary meeting.

itical acceptability of the draft convention. He complimented the President on his success in surmounting yet another seemingly insoluble problem. The suggestions with regard to the participation of international organizations and national liberation movements were generally acceptable to his delegation.

104. Any régime governing investments in sea-bed mining made prior to the entry into force of the convention constituted a major concession to the pioneer sea-bed-mining States and must therefore meet two major objectives. First, from the point of view of the sea-bed miners, it must provide the pioneer investor with certainty that his investment would be recognized and provide the basis for the issuance of a production authorization when his plan of work with respect to a mine site had been approved. Secondly, from the point of view of the Group of 77 and many other States, it must be brought squarely within the framework of the policies and provisions of the draft convention dealing with the development of resources of the area, since otherwise it would defeat the convention that it was intended to complement. It was essential to ensure that all pioneer investors were treated in the same manner and that the text did not accidentally introduce any elements of discrimination between them. For example, the definition of the expression "pioneer investor" contained in article 1 (a) stated in part that a pioneer investor, to be recognized as such, must have spent "no less than 10 per cent of that amount in the location, surveying and evaluation of a specific portion of the Area". It was the understanding of his delegation that the words "a significant portion of the Area" did not refer to a single potential mine site or even two mine sites, for the operator and the Enterprise, but that they might be interpreted as including a broader "Area" or even separate "Areas" which, taken together, could be considered as constituting a "specific portion of the Area". Companies, including Canadian companies, which had expended substantial sums in vital pioneering technological development activities carried out over extensive regions of the area beyond national jurisdiction should not be penalized because they did not jump the gun by staking out individual mine sites well before any authorization by the Conference to do so.

105. There was an alarming rumour which had spread through the Conference during the past few days to the effect that certain States intended to sign the "mini-treaty" in May 1982. A mere boundary agreement, going no further and published in the United Nations Treaty Series, would not raise serious problems, but his delegation's information, which it hoped would prove to be incorrect, was that at least one State had decided to press ahead with the mini-treaty without one word changed. He warned against the very serious consequences of any such action.

106. The production policies enshrined in articles 150 and 151 were clearly designed to encourage deep-sea mining, while at the same time phasing in deep sea-bed mining in the interest of lessening the inevitable disruptive effects of established patterns of land-based production and marketing. That provision had never been intended as a rigid control mechanism designed to stifle or prevent sea-bed production. The deletion of the production formula from the draft convention would seriously affect Canada's view of the convention and could raise serious doubts about Canada becoming a party to the convention in such event.

107. His delegation had sponsored, together with the Australian delegation, a proposal to introduce in the draft convention a provision to the effect that States parties should avoid unfair economic practices in the production, processing, transport and marketing of minerals and commodities derived from the resources of the Area. His delegation was puzzled by the fact that the staunchest opposition to that proposal came from the group of States which loudly professed their attachment to the free market philosophy. It was time to seek a resolution on the subject.

108. With regard to straddling stocks, there was a proposal by 45 delegations for a necessary change to article 63, paragraph 2,

which he hoped would be incorporated in the final text of the convention.

109. With regard to laws and regulations of the coastal State relating to innocent passage, his delegation viewed with concern the proposal (C.2/Informal Meeting/58/Rev.1) by some nations to introduce a substantive change to article 21. Such a change could be a conference-breaker for maritime Powers and their allies.

110. On the other side of the coin, the debate on that article had also indicated how sharply views varied on what constituted customary international law. A definitive view could only come through a universally accepted convention, and any major maritime State which might be seriously considering remaining outside of the convention should recognize that a global United Nations convention on the law of the sea would be their only guarantee of protecting freedom of navigation. He would return to that point.

111. Speaking as Chairman of the Drafting Committee, he expressed appreciation to the Chairman of the Third Committee for the drafting suggestions contained in his letter to the plenary (A/CONF.62/L.88). His proposals were under consideration by the Drafting Committee.

112. The Conference was seeking to balance the interests of all and not just to make the rich richer and the poor poorer. The Conference was nearing the point of the balance of interests which could produce a consensus, and his delegation supported efforts to that end.

113. Mr. ADIO (Nigeria) said that, more than any other international instrument, the draft convention on the law of the sea furthered the goal of peace and happiness for all people.

114. He took note of the concern expressed by the Chairman of the Drafting Committee in his report (A/CONF.62/L.89) that its work was impeded by the absence of many delegations. Unfortunately Nigeria, as a developing country, did not have sufficient resources to participate in the work of that Committee.

115. Nigeria was satisfied with the drafting amendments suggested by the Chairman of the Third Committee in the document he had submitted (A/CONF.62/L.88) and with the suggested deferral of certain matters of a drafting nature.

116. Nigeria agreed that, as maintained by the Chairman of the Second Committee in his report (A/CONF.62/L.87), the fundamental elements of the Parts of the draft convention within the competence of the Second Committee must be preserved, although that did not exclude the possibility of introducing changes further on in the session that would facilitate wider participation in the draft convention. Nigeria also agreed that the only proposal of those made during the three informal meetings of the Second Committee which met the requirements established in document A/CONF.62/62¹ was that submitted by the United Kingdom concerning article 60, paragraph 3 (C.2/Informal Meeting/66). Regarding the proposal to amend article 21, Nigeria supported the position that prior notification and authorization should be required for the innocent passage of warships through the territorial sea.

117. Regarding the report of the President on the question of participation in the Convention (A/CONF.62/L.86), Nigeria believed that national liberation movements should be full parties to the convention and not merely observers; and that the transitional provision, discussed in paragraph 19 of the report, should remain as part of the convention rather than be made a resolution of the Conference. A related issue not mentioned in the report was the question of the deletion of the original rule 62 of the Rules of Procedure of the Conference. The original rule 62 would have permitted the participation of Namibia, and the question that now arose was whether Namibia could participate fully in the Conference and its organs. Although Nigeria objected to annex II of the

President's report for the reasons stated, annexes I and III were satisfactory.

118. Regarding the report on the three outstanding issues still before the Conference, contained in document A/CONF.62/C.1/L.30, the text of the draft resolution on the establishment of the Preparatory Commission contained in annex I was on the whole satisfactory, particularly since it made provision in paragraph 5 (i) for the Preparatory Commission to undertake studies on the problems of developing land-based producers whose economies would be seriously affected by sea-bed mining, and since it provided in paragraph 8 for the early entry into effective operation of the Enterprise. The reference to the venue of the Preparatory Commission in paragraph 11, however, should no longer be made conditional since Jamaica had said that facilities were available.

119. With regard to the treatment of preparatory investments, Nigeria agreed with the Cuban delegation that it constituted a recognition of unilateral legislation. The developing countries had decided to pay the price on the question of preparatory investments because they wanted a universal draft convention. Their concessions showed the good faith of the Group of 77. Most of the concepts in the draft convention were very far from the original basic position of the developing countries as expressed in the declaration of principles and the moratorium. An objective observer, noting how the Group of 77 had made every possible concession, would say that the draft convention, even without the provisions for protection of preparatory investments, benefited the industrialized countries more than the developing countries. Nigeria supported the addition of a new subparagraph (f) to article 171 of the draft convention dealing with the question of compensation to land-based producers. The merits of the draft resolution governing preparatory investment contained in annex II of report A/CONF.62/C.1/L.30 lay in paragraphs 1 (a), 3, 4, 6, 8, 9, 10 and 12. The other paragraphs needed to be improved. Nigeria was particularly impressed with paragraph 1 (a), because it provided for a cut-off period and thus regulated the number of those who would qualify as pioneers, and because it was consistent with the principles of production limitation and production authorization for which the Group of African States stood.

120. The revised text of the draft convention (A/CONF.62/L.78)⁵ had been adopted by consensus at the 153rd meeting⁵ at the conclusion of the tenth session of the Conference by all, including the United States. At the eleventh session, the United States had submitted proposals for changes in the so-called "Green Book" which were too extreme for negotiation, and the counterproposals by the group of 12 had not met with United States approval. Nigeria appealed to the United States and the other industrialized countries to save the convention by relaxing their positions and reducing their demands.

121. Mr. ZEGERS (Chile) said that before the draft convention could be adopted at the end of the session, the three pending questions would have to be resolved and renewed and imaginative efforts made to ensure its endorsement by all.

122. The proposals contained in document A/CONF.62/C.1/L.30 relating to the Preparatory Commission and the treatment of preparatory investments provided an acceptable basis for agreement on the remaining issues in conflict. The procedures for dealing with preparatory investments should be compatible with the draft convention and therefore limited to exploration alone. In view of the existing moratorium, commercial exploitation should not begin before the convention entered into force. His delegation had some doubts on the

vagueness of paragraph 13, and on paragraph 10 (b) which authorized pioneer investors to alter their sponsorship. Should the proposals in the two draft resolutions contained in document A/CONF.62/C.1/L.30 be incorporated by consensus in the draft convention, it should be understood by all that an important step will have been taken towards a universally acceptable draft convention.

123. The fundamental elements of the draft convention must be preserved and there should at the same time be the possibility of changes permitting the participation of the countries most crucial to its effectiveness. Among the unalterable pillars of the draft convention were the concept of the common heritage of mankind, with all the consequences it entailed; the parallel system and the other basics of the sea-bed régime; and the production policies defined in the draft convention to permit and further the development of sea-bed mining without seriously affecting the interests of land-based producers sharing in the common heritage.

124. Chile endorsed the positions taken by the President in his report on the question of participation in the convention (A/CONF.62/L.86), and believed that particular consideration should be given to the drafting changes recommended in document A/CONF.62/L.88, and to the important work still being done by the Drafting Committee.

125. The reports of the Chairman of the Second Committee (A/CONF.62/L.87) and of the Chairman of the Third Committee (A/CONF.62/L.88) indicated that virtually no changes were needed in the basic text, with the exception of the new wording proposed for article 60, paragraph 3, and the proposed amendments to articles 212 and 216. No other changes at that late stage of the Conference seemed to be in order and it was likely that if they were submitted as amendments they would not receive the support required by the rules of procedure.

126. The eight-year process of negotiation by consensus had had the advantage of crystallizing what constituted customary law or custom in the process of formulation together with what could become treaty law. Given the character of the negotiations, it was necessary to observe the letter and the spirit of the final clauses which admitted no reservations or exceptions to the convention, thus safeguarding the solidity and permanence of the law it established, as well as the requisite unity and harmony of its provisions. Consequently, article 309 should remain intact and the footnote regarding pending questions should now be eliminated.

127. Disputes over sea and ocean rights should be settled in strict accordance with international law, as established in the draft convention and in treaties binding on the parties. The question of the settlement of disputes was inextricably linked to the substantive part of the draft convention and it would be difficult, again, to introduce any changes on that question at the present late stage. The provisions regarding settlement of disputes unquestionably marked a step forward in the progressive development of international law, even though it had not been possible to agree on a universally binding system which must be the objective of the international community if justice and peace were to be attained.

128. The pivotal point of the new law of the sea was, in all probability, the concept of the exclusive economic zone extending up to 200 miles, to which his country was unalterably bound since it had been the first ever to declare the concept in July 1947. Its *sui generis* legal character, distinct from both the territorial sea and the high seas, had been specific in the draft convention, which clearly recognized the sovereign rights of the coastal State over all economic activities within a distance of 200 miles, without prejudice to freedom of navigation and overflight.

129. Possessing a single strait used for international navigation, the Straits of Magellan, Chile was particularly interested

⁵ 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).

in the part of the draft convention governing straits, which made explicit the interconnection between the geographical factor of direct and useful communication between parts of the high seas and the factor of habitual use.

130. The set of norms on delimitation of ocean spaces—which included substantive provisions, the question of the settlement of disputes and the preclusion of reservations or exceptions—constituted a delicate balance, achieved after exhaustive negotiations. Even though those norms had been accepted with difficulty by all, and only as a result of compromise, they had elicited a high degree of consensus and, for the good of the draft convention, should not be changed.

131. The draft convention before the Conference was a valuable and generally acceptable document, and his delegation was confident that it would be adopted by consensus at that session.

132. Mr. AL-KINDI (Oman) said that his delegation wished to express its views on matters of interest to coastal States, particularly those relating to their security. It endorsed the view that the fundamental elements of the package needed to be preserved and that proposals should not be made to upset them, just as proposals which would facilitate the process of adoption of the convention by the greatest possible number of States should not be blocked.

133. Serious consideration should be given to the question of innocent passage of warships through territorial waters. Oman had co-sponsored the proposal contained in document C.2/Informal Meeting/58/Rev.1, which would amend the text of article 21 of the draft convention to include the requirement that warships should obtain prior authorization for navigation through the territorial sea. Such a requirement was necessary to ensure that the right of innocent passage would not adversely affect the security of coastal States, especially the smaller ones such as Oman, and also to avoid any possible disputes over interpretation which smaller States could not afford. Such a clarifying provision would not and was not intended to interfere with the legitimate exercise of the right of passage, already guaranteed in the current version of article 21. His delegation considered the question vital, and therefore consultations on it should continue. Article 21 as it now stood did not enjoy the support of the large majority of the members of the Conference, as required by the rules in

document A/CONF.62/62.¹ His delegation was ready to consider any proposal which would take into account the security considerations of the coastal States. An acceptable solution to that issue would greatly facilitate the ultimate adoption of the convention.

134. On previous occasions his delegation had expressed its reservations on certain provisions of the draft convention: on articles 34 to 43 concerning the passage of all ships through straits used for international navigation, since they did not take into account the security interests of the coastal States concerned; on articles 74 and 83, since they failed to lay down criteria for the delimitation of the exclusive economic zone and the continental shelf between States with opposite or adjacent coasts; and on article 309 which failed to provide a solution satisfactory to a large number of delegates and would stand in the way of universal acceptance of the draft convention.

135. As it had indicated earlier, his delegation supported the amendment proposed by the United Kingdom to article 60, paragraph 3 (C.2/Informal Meeting/66).

136. His delegation also concurred with the position taken by the Chairman of the Group of 77 on pending questions and on possible textual changes that could be made. On the question of participation in the convention, Oman still supported full participation by the national liberation movements recognized by the United Nations and by regional organizations, and felt that there was time to make the additions to the text proposed by some members of the Group of 77. Oman would have preferred that participation by intergovernmental organizations should be subject to commitment to the convention by all members of such organizations, to avoid any possible conflicts of interest between such organizations and their members on the one hand and the organizations and the international community on the other.

137. The Conference should adhere strictly to its programme of work so that the draft convention could be adopted at the end of the session. There was an obvious need to establish order in the oceans of the world, and a multilateral convention would go a long way towards achieving that goal.

The meeting rose at 12.55 p.m.

165th meeting

Thursday, 1 April 1982, at 9 p.m.

President: Mr. Z. PERIŠIĆ (Yugoslavia)

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

1. Mr. ANDERSEN (Iceland) said that his delegation was ready to support the approaches taken in the report of the President on the question of participation in the convention (A/CONF.62/L.86), and in the report of the co-ordinators of the working group of 21 (A/CONF.62/C.1/L.30) regarding the Preparatory Commission and the treatment of preparatory investments.

2. The Conference had been much criticized for taking so long to complete its work. Some of that criticism was due to a misunderstanding of the difficulties caused both by the complexity of the subject-matter and by the fact that there had been no voting. The effort to reach agreement by consensus

had from the beginning presented formidable obstacles. Accordingly, he wished to stress for once the Conference's positive accomplishments.

3. As far as the matters dealt with by the Second Committee were concerned, a package solution was in being that enjoyed the support of the overwhelming majority of the international community. It embraced the sovereign rights of coastal States over the resources of the exclusive economic zone of 200 miles and of the continental shelf even beyond that distance in certain circumstances. A small number of further adjustments had been proposed which had gained considerable support. In that connection, his delegation was still in favour of the proposal contained in document C.2/Informal Meeting/54/Rev.1, regarding the so-called straddling stocks (art. 63, para. 2), and of the proposal of the United Kingdom concerning ar-

ANNEX 45

UN Diplomatic Conference, Plenary 182nd meeting, 30 April 1982

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.182

182nd 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)

8. The PRESIDENT said that he had to inform the Group of 77 and all other members of the Conference that he had prior to the meeting received a letter from the head of the United States delegation, which read as follows: "In view of the outstanding difficulties we have with the emerging package, I respectfully request that it be put to a recorded vote by roll call."

9. Mr. de SOTO (Peru) said that, in the light of that letter, he took it that there would be no alternative to the adoption of the convention by vote. Invoking rule 31 of the rules of procedure, he asked the President to adjourn the meeting in order to allow the Group of 77 time to hold further discussions before the next meeting of the Conference.

10. Mr. BEESLEY (Canada) said that the countries known as the group of 11 had tried in document A/CONF.62/L.104 to provide a basis for discussion which might lead to a consensus. Even at so late a stage, he wished to commend the proposals contained in that document to the United States and the Group of 77.

11. Mr. ROSENNE (Israel) said that in view of the latest turn of events, notably the letter from the head of the United States delegation, he wished to inform the Conference that when the time came his delegation would probably request a separate recorded vote on draft resolution IV.

12. Mr. MALONE (United States of America) said that he had listened with interest to the Canadian representative and thought that the proposals to which he had referred should receive careful consideration.

13. The PRESIDENT said that he wished that the United States and other delegations had taken a more favourable attitude to the work of the group of 11 a few weeks earlier, when he and the Chairman of the First Committee had tried in vain to encourage negotiations based on document A/CONF.62/L.104. Appealing to the Group of 77 to complete its discussions before the appointed time for the next meeting, he proposed that the meeting should be adjourned.

It was so decided.

14. Mr. de SOTO (Peru) said that the Group of 77 had no wish to delay the Conference's final decision. The hour had struck, and, as the President had said in his statement on the previous day, the Conference had a rendezvous with history. With reference to the statements he had just heard, he said that it was probably too late to revive the possibility of saving what was perhaps already beyond salvation by the introduction of loopholes or subtle innuendoes.

The meeting rose at 12.10 p.m.

182nd meeting

Friday, 30 April 1982, at 3.20 p.m.

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

Report of the President in accordance with rule 37 of the rules of procedure (concluded)

Report of the President on informal consultations conducted on 27 and 28 April (concluded)

1. The PRESIDENT proposed that the two items, which related to the amendments to the draft convention proposed in documents A/CONF.62/L.132 should be considered together.

It was so decided

2. Mr. ROSENNE (Israel), speaking on a point of order, asked that a separate vote should be taken on draft resolution IV contained in annex I in document A/CONF.62/L.132.

3. The PRESIDENT said that it had been decided that all the proposals in the documents he had mentioned should be considered together.

4. Mr. ROSENNE (Israel), speaking on a point of order, said that, on the instructions of his Government, he had to appeal, in accordance with rule 25 of the rules of procedure of the Conference, against the ruling announced by the President.

5. Mr. KOZYREV (Union of Soviet Socialist Republics), raising a point of order, asked for an explanation, before the appeal against the President's ruling was put to the vote, of why the President had included in his proposals paragraphs on which agreement had not yet been reached, particularly annex IV, paragraph 1 (a), and annex V of document A/CONF.62/L.132. The status of that document was not, in his view, the same as that of others submitted on the basis of prior agreement.

6. Mr. de SOTO (Peru), speaking on a point of order on behalf of the Group of 77, said that the two questions before the Conference—Israel's appeal against the President's ruling and the inclusion of document A/CONF.62/L.132 among the proposals to be submitted for decision by the Conference—would have to be dealt with separately.

At the request of the representative of Israel, a recorded vote was taken on his appeal under rule 25 of the rules of procedure.

In favour: Israel.

Against: Afghanistan, Albania, Algeria, Angola, Argentina, Australia, Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Benin, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Congo, Cuba, Cyprus, Czechoslovakia, Democratic Kampuchea, Democratic People's Republic of Korea, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Finland, France, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Italy, Holy See, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Libyan Arab Jamahiriya, Liechtenstein, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritius, Mexico, Monaco, Mongolia, Morocco, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San

Marino, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Singapore, Somalia, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.

Abstaining: Austria, Turkey.

The appeal by Israel was rejected by 143 votes to 1, with 2 abstentions.¹

7. The PRESIDENT announced that his ruling that no separate votes would be taken would apply in all cases.

8. Mr. ROSENNE (Israel) said, in explanation of vote, that history had shown that at times even a minority of one could be in the right. His delegation had invariably opposed the granting of any rights to the so-called Palestine Liberation Organization. It also objected to the provisions of articles 140, 156, 160, 162 and 319 of the draft convention and believed that the right course would have been to have each of those provisions voted on separately. It had, however, decided to express its objections in formal statements. Annex I of document A/CONF.62/L.132 had no bearing on the Law of the Sea and dealt with a political matter extraneous to the Conference.

9. The PRESIDENT asked the representative of Israel to refrain from referring to the substance of annex I until such time as the President's recommendations on the proposals in the addenda to his reports were put before the Conference.

10. Mr. KOZYREV (Union of Soviet Socialist Republics) asked when amendments to documents A/CONF.62/L.132 and L.141 could be submitted; there had as yet been no opportunity to do so.

11. The PRESIDENT pointed out that the Conference had instructed him to do everything possible to achieve general agreement and, to that end, to submit any necessary proposals. As a result of the intensive negotiations, in which the Soviet delegation had participated, he had submitted to the Conference the proposals in documents A/CONF.62/L.132 and L.141. In his view, those proposals should be incorporated in documents A/CONF.62/L.78, L.93 and L.94 with a view to reaching general agreement.

12. Mr. KOZYREV (Union of Soviet Socialist Republics) asked whether document A/CONF.62/L.132 was in the same situation as documents A/CONF.62/L.78, L.93 and L.94.

13. The PRESIDENT replied that document A/CONF.62/L.132 would be in the same situation as the others when delegations decided to incorporate it in them. If there were no objections, he would take it that the Conference decided to incorporate the proposals in documents A/CONF.62/L.132 and L.141, and in documents A/CONF.62/L.78,² L.93 and L.94.

It was so decided.

14. Mr. KIRCA (Turkey) explained that he had abstained in the vote against the President's ruling because he believed that the various elements of the draft convention should have been taken up and voted on separately. In any event, if draft resolution IV contained in annex I of document

A/CONF.62/L.132 had been put to a separate vote, his delegation would have voted in favour.

15. Mr. KOZYREV (Union of Soviet Socialist Republics), speaking in explanation of his vote, recalled that the Soviet delegation had consistently opposed draft resolution II concerning preparatory investments, the text of which had not been discussed at the plenary meeting. If draft resolution II had been put to a separate vote, his delegation would have voted against it.

Reports of the Chairman of the Drafting Committee

16. Mr. BEESLEY (Canada), speaking as Chairman of the Drafting Committee, said that, during the second part of the eleventh session of the Conference, the Drafting Committee had continued its discussion of the text of the draft convention article by article. During that period, the language groups of the Drafting Committee had held 293 meetings, the co-ordinators of the language groups 17 meetings and the Drafting Committee six meetings. From 2 April onwards, the Drafting Committee had given priority to the discussion of documents A/CONF.62/L.93 and L.94 and had submitted recommendations on draft resolutions I and III and articles 60, 156, 164, 194, 201, 204, 207, 209, 211, 212, 213, 214, 216, 217, 222, 242, 305, 306, 307, 308 and 319 (A/CONF.62/L.142/Add.1).

17. The co-ordinators of the language groups had submitted various proposals concerning articles 1, 2, 3 and 4 of annex III of the draft convention. The language groups had submitted proposals on all parts of the convention so that the co-ordinators and the Drafting Committee could discuss them at the next session. It should be noted that the work of the Drafting Committee, and especially that of the co-ordinators, had been impeded by the lack of services during the last three weeks of the Conference.

18. He recommended that the Drafting Committee should meet for five weeks, from 12 July to 13 August, with a possible extension until 20 August. The proposed calendar appeared in document A/CONF.62/L.142. With regard to the venue of the Committee, while the majority of the participants in the Committee would prefer Geneva, he suggested that the Conference should decide on the matter once the Convention was adopted. He also trusted that all delegations and all co-ordinators of the language groups who had participated in the Drafting Committee's work would continue to do so. It was certainly in the interest of all that the convention should be well drafted.

19. With regard to the reference to the Free and Hanseatic City of Hamburg in the convention as the seat of the International Tribunal for the Law of the Sea, he announced that it had been agreed to postpone consideration of the matter until the following session of the Drafting Committee. Finally, he introduced his report on the recommendations of the Drafting Committee appearing in document A/CONF.62/L.147. At an informal plenary meeting, held on 16 April 1982, the Committee's recommendations set forth in document A/CONF.62/L.93 and L.94, which contained approximately 800 proposals, had been discussed. The Drafting Committee's recommendations, adopted at the informal plenary meeting, held on 16 April 1982, appeared in document A/CONF.62/L.142/Add.1.

Adoption of the draft convention and draft resolutions I-IV

20. Mr. de SOTO (Peru), speaking as Chairman of the Group of 77, said firstly that, in spite of the apparent ease with which the decision had been taken to incorporate in documents A/CONF.62/L.78, L.93 and L.94 the proposals made by the President in documents A/CONF.62/L.132 and L.141 and the fact that the Conference had raised no objec-

¹ The delegation of Saudi Arabia subsequently informed the Secretariat that it had intended to vote against the appeal.

² 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).

tions to those proposals, the decision to agree to their incorporation in the package now before the Conference had been an extremely painful one for the Group of 77. In 1980, the Group had believed that agreement had been reached on the basis of what was essentially a compromise proposal, yet it had been forced to make two further series of unilateral and basically unreciprocated concessions, some of which concerned fundamental aspects of the régime governing the sea-bed and the ocean floor beyond the limits of national jurisdiction. The Group of 77 had accepted the Chairman's recommendations in order to secure the adoption of the convention and the accompanying draft resolutions by consensus and had deeply regretted the fact that one delegation had deemed it indispensable to request that the package be put to a vote. It was the Group's hope and conviction, however, that the convention, which constituted an inextricable web of compromises in which, as the Secretary-General had observed in his opening statement, no delegation came out the winner, was the best possible basis for the juridical order of the oceans.

21. That package of proposals was not an ideal instrument for any State. For the Group of 77, it had been especially difficult to accept the proposal on the protection of preparatory investments. In the opinion of many members of the Group of 77, that proposal might, in its present format, constitute a derogation from and in any case a postponement of the implementation of the régime and the system conceived for the exploitation of the sea-bed and ocean floor. That system had itself already constituted a compromise formula which was quite far from the Group's preferences, yet the Group had accepted it in an effort at compromise and a spirit of pragmatism. The Group of 77 saw no political bias in that formula and did not believe that preference was being given to one system over another. It accepted it so that general agreement, and the universal, generally agreed-upon treaty referred to in the 1970 Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction³ might be achieved.

22. He wished to appeal to the industrialized Western countries to rally unanimously to that agreement and to recognize in it the fact that the Conference was about to adopt the best possible solution for all the problems of the oceans. He also wished to address an appeal to the Soviet Union and the socialist countries of Eastern Europe that had had some difficulties of principle with some aspects of draft resolution II on preparatory investments. At the same time, he wished to point out that the Group of 77 also had doubts, which he had just expressed, about that resolution and that some, and possibly many, members of the Group sympathized with the basic objection formulated by the Soviet Union with regard to the provisions of paragraph I (a) of the draft resolution.

23. The most important point, however, was the obligation that all States that were sponsoring activities or whose nationals were to be pioneer investors must ratify the convention. Therein lay the comprehensive agreement that was to permit the basic solution of ocean problems. The Group of 77 believed that, with the adoption of the régime of protection for preparatory investments, the problems that had preoccupied the industrialized countries that had found it necessary to adopt unilateral legislation regarding the sea-bed and ocean floor, and to enter into negotiations with a view to concluding agreements whereby such legislation would be mutually recognized, could be regarded as having been overcome from the practical as well as the juridical standpoints. The Group of 77 had stated its position on all such unilateral legislation on various occasions and in various forums and hoped that, with the agreements that the Conference was about to adopt, it would not be necessary to adopt further unilateral legislation and it would be possible to allay the fears of those countries that wished to exploit the sea-bed and ocean floor.

³ General Assembly resolution 2749 (XXV).

24. He hoped that the sea-bed régime set forth in the convention would be able to protect all States and to co-ordinate and rationalize all activities so that it could be implemented in conformity with the principle that the sea-bed and ocean floor constituted the common heritage of mankind.

25. Mr. TORRAS de la LUZ (Cuba) proposed that, in view of its importance, the statement by the Chairman of the Group of 77 should be reproduced *in extenso* in the summary record.

It was so decided.

26. Mr. MALONE (United States of America) requested a recorded vote on the draft convention and the related draft resolutions.

27. The PRESIDENT said that he regretted that the representative of the United States had made the request. The subject of the recorded vote would be the following group of provisions:

(a) The draft convention (A/CONF.62/L.78, as amended by documents A/CONF.62/L.93, L.132, annexes I, II, III and V, L.137 and L.141).

(b) Draft resolution I establishing the Preparatory Commission for the International Sea-Bed Authority and the International Tribunal for the Law of the Sea (A/CONF.62/L.94, as amended by annex III, para. 2, of document A/CONF.62/L.132 and document A/CONF.62/L.137, para. 2);

(c) Draft resolution II governing preparatory investment in pioneer activities relating to polymetallic nodules (A/CONF.62/L.132, annex IV, as amended by document A/CONF.62/L.141);

(d) Draft resolution III (A/CONF.62/L.94); and

(e) Draft resolution IV concerning national liberation movements (A/CONF.62/L.132, annex I).

To those documents should be added the recommendations of the Drafting Committee adopted at informal plenary meetings (A/CONF.62/L.85/Add.1-9 and L.142/Add.1).

28. Mr. LUCIO PAREDES (Ecuador) said that his delegation would not take part in the vote.

At the request of the representative of the United States of America, a recorded vote was taken on the draft United Nations Convention on the Law of the Sea and draft resolutions I-IV.

In favour: Afghanistan, Algeria, Angola, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Benin, Bhutan, Bolivia, Botswana, Brazil, Burma, Burundi, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Cuba, Cyprus, Democratic Kampuchea, Democratic People's Republic of Korea, Democratic Yemen, Denmark, Djibouti, Dominican Republic, Egypt, El Salvador, Ethiopia, Fiji, Finland, France, Gabon, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Iceland, India, Indonesia, Iran, Iraq, Ireland, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Libyan Arab Jamahiriya, Liechtenstein, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Morocco, Mozambique, Namibia, Nepal, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Portugal, Qatar, Republic of Korea, Romania, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Somalia, Sri Lanka, Sudan, Suriname, Swaziland, Sweden,

Switzerland, Syrian Arab Republic, Togo, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, United Republic of Cameroon, United Republic of Tanzania, Upper Volta, Uruguay, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.

Against: Israel, Turkey, United States of America, Venezuela.

Abstaining: Belgium, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, German Democratic Republic, Germany, Federal Republic of, Hungary, Italy, Luxembourg, Mongolia, Netherlands, Poland, Spain, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland.

The United Nations Convention on the Law of the Sea and resolutions I-IV of the Conference were adopted by 130 votes to 4, with 17 abstentions.⁴

Mr. Hayes (Ireland), Vice-President, took the Chair.

29. Mr. LUCIO PAREDES (Ecuador) said that in his communication dated 13 April 1982 (A/CONF.62/L.128) he had informed the President of the Conference that his delegation would not join in the consensus for the adoption of the draft convention on the law of the sea. Throughout the Conference negotiations, his delegation had unswervingly defended the rights which his country possessed and exercised fully in both the continental part of its 200-mile territorial sea and in the Galapagos archipelago.

30. Relying on the principle of national sovereignty, his delegation could not countenance any difference being made with regard to legal status, and in the case of islands, wished to place on record that the definition of maritime spaces laid down by the convention with respect to archipelagic States placed archipelagos which formed part of the territory of a State in an unacceptable position.

31. Furthermore, article 64, which established a régime to govern the optimum conservation and utilization of highly migratory species, unequivocally made all the pertinent provisions of Part V of the convention applicable to those species, since it was obvious that there was no difference whatever in the content and scope of the sovereign rights which a coastal State exercised over all natural resources, living or non-living, whatever their habits, occurring in the water, on the sea-bed or in the subsoil thereof up to a distance of 200 miles.

32. As a member of the Permanent Commission on the South Pacific, which derived from the 1952 Santiago Declaration,⁵ his country, together with Colombia, Chile and Peru, had on 28 April 1982 addressed a letter to the President of the Conference, which had been distributed as document A/CONF.62/L.143.

33. Mr. BALETA (Albania), after recalling that the Albanian Government's position had been clearly reflected in the official documents of the Conference, said that, although the international community had adopted a convention and in spite of the positive results achieved thanks to the efforts of a considerable number of progressive countries, a number of important political, legal, military, economic and ecological questions remained without a genuine or fair solution.

34. His delegation must reaffirm the principle of international law whereby every sovereign State could determine the breadth of its territorial sea in accordance with its defense requirements, taking into account the geographical, biological and oceanographic conditions of the region and without prejudice to the interests of international navigation and neigh-

bouring States. In conformity with that principle, Albania had established by law a territorial sea 15 nautical miles broad and was determined to defend its sovereignty and interests in that area and in the airspace above it.

35. His delegation must state again that the right of innocent passage did not apply to warships, which could not benefit from the passage régime in the same way as merchant vessels. The warships of a State had no right to pass through the territorial sea of another State without prior consent of the latter. In that respect, the text of the Convention violated the sovereign rights of the coastal States. It was essential to bear in mind the danger which the so-called innocent passage of warships presented in current geopolitical conditions, in which the two super-Powers, the United States and the Soviet Union, had deployed war fleets and installed military, naval and air bases in all the seas and oceans. The passage of such fleets was always objectionable, threatening and aggressive. The two super-Powers and the military blocs had used every possible method to impose their position on the Conference in order to have a free hand and to justify the aggressive movements of warships.

36. Furthermore, the provisions of the Convention were unjust in that States that might wish to become parties to it were deprived of the right to enter reservations.

37. The principle of the common heritage of mankind had suffered grave impairment through the establishment of the parallel system. Part XI and related annexes, and in particular draft resolution II contained in annex IV of document A/CONF.62/L.132, concerning preparatory investment protection, contained provisions that would allow the two imperialist super-Powers and a very small group of capitalist industrial Powers, together with a handful of transnational corporations, to monopolize the immense resources of the sea-bed and benefit therefrom to the detriment of mankind as a whole.

38. The efforts made by the overwhelming majority of the participants in the Conference had not been sufficient to achieve just solutions to various questions because of all kinds of manoeuvres and pressures on the part of the super-Powers and the imperialist Powers. In defending their interests, the United States, the Soviet Union and others had gone so far as to pass legislation and prepare "mini treaties" concerning sea-bed mining. For a long time the United States had obstructed the work of the Conference, and it had maintained until the end its negative attitude. As a result of all those obstacles, the Convention suffered from shortcomings and loopholes, in view of which his delegation had not participated in the voting on it.

39. Mr. MALONE (United States of America) recalled that, three months earlier, President Reagan had stated that many of the provisions of the draft convention concerning navigation, overflight, the continental shelf, marine research, the marine environment, and other areas were basically constructive and in the interest of the international community. At the same time, President Reagan had announced that the United States had serious problems with elements of the deep sea-bed mining provisions and would seek changes to fulfil six broad objectives that would make the treaty acceptable to the United States. The United States Government had reached that conclusion after a comprehensive, year-long review covering all aspects of the draft convention. His delegation had come to the current session willing to work and negotiate with other delegations to find mutually acceptable solutions and had proposed a set of amendments that would have satisfied its objectives yet provided a fair and balanced system to promote the development of deep sea-bed resources. In a spirit of conciliation, it had later revised its proposed amendments to take into account views expressed by other delegations.

40. Three misconceptions had arisen about United States motivations. The first misconception had been that the United

⁴ The delegation of Liberia subsequently informed the Secretariat that it had intended to abstain in the vote.

⁵ See *Yearbook of the International Law Commission, 1956*, vol. I.

States was seeking essentially to nullify the basic bargain reflected in the draft convention. In fact, even if all the changes proposed by the United States had been accepted, there would still have been an international regulatory system for the deep sea-bed and an international mining entity. There had been no desire to destroy that system at all; rather the intention had been to structure it in a way that would best serve the interests of all nations by enhancing sea-bed resource development.

41. The second misconception had been that the primary interest of the United States in the deep sea-bed régime related to protecting a few United States business interests. That was a drastic misjudgement of the United States motivation and its commitment to certain principles. Finally, a widespread view which was also false was that the United States would in the end accept an unsatisfactory deep sea-bed régime because of the navigation provisions that served other national interests. On the contrary, the United States had consistently maintained that every part of the convention must be satisfactory.

42. His delegation had come to the current session determined to work with others to reach improvements that would accord with its objectives and ensure a viable sea-bed mining régime. Unfortunately, hopes that that task would be concluded successfully and an acceptable outcome reached had not been realized. Although modest improvements had been made in the draft convention, there had been an unyielding refusal on the part of some delegations to engage in real negotiations on most of the major concerns reflected in the amendments proposed by the United States and co-sponsored by Belgium, France, the Federal Republic of Germany, Italy, Japan and the United Kingdom. The compromise proposals put forward by other delegations had unfortunately not succeeded either.

43. It was important to make clear how far the Conference had fallen short of the objectives of the United States. First, the sea-bed mining provisions would deter the development of deep sea-bed mineral resources; such development was in the interest of all countries and especially of the developing countries. By denying the play of basic economic forces in the market-place, the Convention would create yet another barrier to rational economic development. Second, while there had been improvements to ensure access to deep sea-bed minerals for existing miners, the United States did not believe that the access necessary in the future to promote the economic development of those resources had been assured. At the same time, a system of privileges would be established for the Enterprise that would discriminate against private and national miners. Third, the decision-making process established in the deep sea-bed régime did not give a proportionate voice to the countries most affected by the decisions and would thus not fairly reflect and effectively protect their interests. Fourth, the Convention would allow amendments to come into force for a State without its consent, which was clearly incompatible with United States processes for incurring treaty obligations. Moreover, after having made substantial investments in deep sea-bed mining, the choice of either accepting an amendment at some future time or being forced to withdraw from the Convention entirely was not acceptable. Lastly, the deep sea-bed régime continued to pose serious problems for the United States by creating precedents that were inappropriate; the provisions on mandatory transfer of technology, potential distribution of benefits to national liberation movements and production limitations posed key problems for the United States Congress.

44. Consequently, although other provisions of the Convention were generally acceptable, the inescapable conclusion was that the Convention in its existing form did not fully satisfy any of the objectives of the United States with regard to the deep sea-bed régime. His delegation had therefore been

forced to vote against the convention and would have to report to his Government that its efforts to achieve an acceptable régime had not been successful.

45. Many delegations had come to the negotiations with different perspectives and diverse interests, and there were even differences of opinion on the meaning of the concept of the common heritage of mankind and the consequences flowing therefrom. Despite those differences, his delegation had held to the conviction that negotiation and compromise could produce a convention serving the interests of all States. Unfortunately, the Convention in its current form did not meet those standards. It would not bring more orderly and productive uses of the deep sea-bed to reality and it would not serve the broader goal of bringing the developed and developing countries closer together.

46. Mr. NAKAGAWA (Japan) said that his country had had certain difficulties in accepting the package proposal put to the vote, especially the changes introduced by the President with regard to Part XI and the annexes thereto. Although the change in article 155 was certainly an amelioration, the change introduced in paragraph 9 (a) of resolution II on preparatory investment (A/CONF.62/L.132) would have the result of making the already congested list of authorization applicants even more congested. In his delegation's view, the "deal" was in fact a concession added to another concession. Furthermore, his delegation was greatly disappointed by the fact that no improvement had been made in the provisions relating to the mandatory transfer of technology owned by a third party.

47. The President had rightly pointed out that Part XI was not the only part of the Convention; the other provisions constituted either the codification of existing rules of international law to be applied to the various aspects of the utilization of the sea or rules that would regulate the new problems facing the international community. Such codification and law-making were already overdue and if no convention on the law of the sea was adopted, not only would the efforts made during the past 10 years be wasted, but the international community would have to cope with increasing disorder and anarchy with regard to problems relating to the sea. It was from that broader point of view that his country had voted for the proposed package deal, despite its serious misgivings with regard to Part XI and the related annexes.

48. His country regretted that, despite the strenuous efforts of all participants, it had not been possible to adopt a universally acceptable convention by consensus, a situation which introduced an element of uncertainty with regard to the Convention's effectiveness. His Government would continue to study the situation before making a final decision as to the signature and ratification of the Convention.

49. Mr. BOUCHER (Argentina) said he deeply regretted that it had been necessary to adopt the Convention by taking a vote, although he was sure the fact that an overwhelming majority of States had voted in favour of the Convention would lead the Governments which had not done so to think the matter over and would encourage them to sign and subsequently ratify the Convention. If a separate vote had been taken on the various draft resolutions, Argentina would have voted against paragraph 2 of draft resolution II contained in annex IV of document A/CONF.62/L.132.

50. He reiterated the position set forth by his delegation at the 161st plenary meeting of the Conference to the effect that the transitional provision in the draft convention incorporated in a balanced manner norms of contemporary law that were in keeping with United Nations actions aimed at eliminating all traces of colonialism through the effective application of the principles of territorial integrity and self-determination. That provision appropriately approached the problem in the context of the new law of the sea, with a view to preventing

the Powers which controlled colonial or occupied territories from exercising any rights that might consolidate such unlawful situations. It was regrettable that that provision had not been retained.

51. Mgr. LEBEAUPIN (Holy See) expressed regret that the Conference had been obliged to take a vote, since he believed that consensus was the best way of adopting a decision concerning the way in which the common heritage of mankind should be administered. Since it had not been possible to reach agreement among all members of the international community, his delegation, in accordance with the principles which had governed its actions at all stages of the Conference, had decided not to participate in the voting.

52. Throughout the sessions of the Conference, his delegation's main concern had been that the international community should adopt not merely a logical and valuable text, but a set of provisions to ensure peaceful and equitable relations. The text just adopted would have to demonstrate its self-consistency and its ability to satisfy the requirements of international relations and the moral imperatives of a community progressing towards peace and justice. He reaffirmed the need for the international community to be guided in its actions by prudence, good sense and the grand ideals of the common good. Although there were many who would certainly have welcomed the adoption of a different text, it was to be hoped that, once the text was implemented, it would become obvious that a legal instrument was necessary for the creation of a world of respect for the rights and obligations of States, justice for those most in distress and universal enjoyment of resources.

53. Mr. MONNIER (Switzerland) said that his delegation had voted in favour of the draft convention and its annexes, despite its reservations concerning several of their provisions. He had in mind article 161, which, as currently drafted, would in practice deny many medium-sized industrialized States the opportunity to sit on the Council of the Authority, and annex III, article 5, concerning the mandatory transfer of technology to the Enterprise and to third States. That provision could in no way be considered a precedent in the ongoing negotiations in other forums on the question of the transfer of technology.

54. If Switzerland, nevertheless, was able to vote in favour of the draft convention, it would be because the many concessions on which the Convention was based reflected the fact that the vast majority of participating States wanted order, not anarchy, to reign on the oceans. Prompted by its respect for the rule of law in all spheres of international relations, his delegation had supported the Convention despite its imperfections and shortcomings.

55. Mr. KIRCA (Turkey) said that his delegation had explained on various occasions, as at the 160th plenary meeting of the Conference, the difficulties it had with some of the provisions of the draft convention, which could jeopardize Turkey's vital and legitimate interests.

56. Nevertheless, Turkey had done its utmost, until the very last minute, to secure a universally acceptable draft convention. In document A/CONF.62/L.120, it had proposed the deletion of article 309 from the text of the draft convention, with a view to accommodating those countries which wanted to become parties to the Convention while at the same time safeguarding their specific vital interests. Had that amendment been adopted, the draft convention would have enjoyed universal acceptance. Although that amendment and some others had been supported by a significant number of delegations, they had been unjustifiably rejected by a majority seeking to preserve intact the delicate balance that was unrealistically assumed to exist in the draft convention. For that reason and for the reasons explained at previous meetings and in order to make clear Turkey's determination to safeguard vital interests, his delegation had voted against the adoption of the draft convention.

57. Mr. JUNG (Federal Republic of Germany) said that his delegation had felt compelled to abstain in the voting, because it continued to hold the view that negotiations should and could have been pursued further in order to achieve a better balanced result.

58. His delegation had continuously emphasized its serious concerns and grievances. It had elaborated its position in document A/CONF.62/WS.16.⁶ It was particularly disappointed at the treatment received by the proposals it had submitted with other delegations concerning Part XI. There had been no opportunity for thorough discussions and proper negotiations regarding those proposals. The Convention and the other texts would have to be studied carefully. In its attitude towards those texts, the Federal Republic of Germany would take into consideration the attitude of other countries. At any rate, the position taken by his delegation at the current meeting in no way prejudged the question of future signature and ratification.

59. Miss DEVER (Belgium) said that her delegation had hoped, up to the very last minute, that it would be possible to secure a universally acceptable draft convention. However, after examining the text as it stood, it had decided that it could not vote in favour. That should come as no surprise to those who had followed the arguments consistently put forward by Belgium during the Conference. In the 14 years spent on the reform of the legal régime of the sea, Belgium had sought to ensure that the Convention reflected a just balance of the interests of all negotiating States. Unfortunately, that balance was not reflected in the text that had been put to the vote.

60. The provisions relating to the reform of the conventional law of the sea, pollution control and marine scientific research could be regarded as genuine compromise texts based on the positions of the negotiating States. That was not true, however, of the provisions regarding the exploration and exploitation of the mineral resources of the sea-bed. Such provisions were of fundamental importance to Belgium, for Belgian industry had taken risks in participating in an absolutely new sphere of activity. It was therefore normal to expect the conditions for the conduct of operations to be just and equitable. At the current session, her delegation had stated that Belgium was anxious to ensure that the composition of the organs established for the exploitation of the sea-bed provided for the equitable representation of countries such as Belgium, that the decision-making process took into account the interests of all groups of States, that the review procedure for the Convention did not unilaterally call in question the very basis of the system established by the Convention, and that the provisions relating to the transfer of technology took into account what was actually possible. The draft that had been put to the vote failed to accommodate those concerns.

61. Her delegation had hoped that, in the final days of the session, it would have been possible to find the compromise solutions necessary for a consensus. It was regrettable that so much time had been wasted on the discussion of Part XI of the Convention and the problem concerning the protection of preparatory investments; to her mind, that was a false problem. It was also regrettable that, because of the lack of flexibility, due regard had not been paid to the interests of the industrialized countries, although they had made major concessions in order to meet the concerns of the developing countries.

62. It was feared that the results of the implementation of Part XI of the Convention would be the opposite of what the General Assembly had sought to achieve in adopting the Declaration of Principles Governing the Sea-Bed and the

⁶See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XIV (United Nations publication, Sales No. E.82.V.2).

Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction in 1970.³ The approved régime might completely discourage investments for effective exploitation of the sea-bed in the interests of the developing countries, particularly the most disadvantaged, and the industrialized countries. The latter needed raw materials in order to maintain the level of economic and social development they had attained and in order to contribute to the development of other countries.

63. Mr. MARINESCU (Romania) said that his delegation had voted in favour of the draft convention, which included provisions concerning access to the fishery resources of economic zones, thus giving expression to the need to promote international co-operation in that respect. However, the right of access to those resources granted to countries with special geographical characteristics did not take sufficiently into account the situation of countries like Romania which were in regions or subregions that were poor in fishery resources and, for that reason, needed access to the fishery resources of the economic zones of other regions or subregions.

64. He hoped that that specific situation of Romania would be taken into account both in bilateral fishing agreements and in those of the international agencies competent in the matter. The Convention provided that the delimitation of the continental shelf should be effected between the parties concerned in order to achieve an equitable solution. The criteria and principles for delimitation laid down in the Convention constituted a general framework which would have to be applied on the basis of international law, legal precedents and the practice of States, and consideration must be given to all relevant factors, especially the fact that small unpopulated islands with no economic life of their own should not in any way affect the maritime space of coastal States.

65. With regard to the passage of foreign warships through the territorial sea, his delegation considered that the solution set out in the statement made by the President of the Conference at the 176th meeting on 26 April 1982, concerning the amendment contained in document A/CONF.62/L.117, reflected the spirit of co-operation of the 30 sponsoring States, representing a population of approximately 1.5 billion, with a view to arriving at a Convention that was in conformity with the principles of national independence and sovereignty and with protection of the security of all States.

66. In accordance with that statement, the agreement which had been reached should be understood to be without prejudice to the right of coastal States to adopt measures designed to safeguard their security interests. His delegation hoped that the solution would be applied in good faith, since the credibility of the Convention was at stake.

67. His delegation had always championed the sovereign right of States to make reservations and declarations in connection with multilateral international treaties and considered that, in accordance with the Vienna Convention on the Law of Treaties,⁴ a State retained that right when it became a party to a multilateral treaty.

68. With regard to the international sea-bed Area, his delegation wished to reaffirm that resolution II, concerning preparatory investment, should be implemented in a manner compatible with General Assembly resolution 2749 (XXV) of 17 December 1970 and with Part XI of the Convention. In keeping with its profound commitment to the concept of the common heritage of mankind, proclaimed by the General Assembly and elaborated in the Convention, Romania considered it essential that the implementation of the relevant provisions of the Convention and the resolution on preliminary investment should not impair that heritage and should

ensure that it was exploited for the benefit of all countries, particularly the developing countries. Romania could not, therefore, agree to any measure that was at variance with the fundamental principles governing the common heritage of mankind and its exploration and exploitation for the benefit of all countries.

69. His delegation regretted that, despite the concessions made by the majority of the participants in the Conference, it had not been possible to adopt the Convention by consensus.

70. Mr. ZEGERS (Chile) emphasized that universal recognition of the rights of sovereignty and jurisdiction of the coastal State within the 200-mile limit under the draft convention constituted a vital achievement for the States members of the Permanent Commission of the South Pacific, in accordance with the basic objectives laid down in the 1952 Declaration of Santiago.⁵ Those States had addressed to the President of the Conference a letter on the subject, dated 28 April. On the question of straits used for international navigation, his delegation reaffirmed the position stated at the Conference (164th meeting) and in its letter of 7 April to the President of the Conference (A/CONF.62/WS/19). Where maritime space and other aspects of the Convention were concerned, his delegation would also draw attention to the considerations it had advanced at the 164th meeting on 1 April.

71. His delegation wished to recall that the co-ordinators of the Drafting Committee of the Conference had agreed that the mistranslation in the Spanish text of article 37, which was not in conformity with the negotiated text, should be corrected; he requested the Drafting Committee to rectify the error as soon as possible.

72. The Convention was a significant milestone in the development of international law applicable to the settlement of disputes. The relevant provisions should be considered to form an important part of the Convention, closely linked to its substantive provisions. The Preparatory Commission must give priority to the adoption of rules, regulations and procedures to govern the exploration and exploitation of resources of the Area other than polymetallic nodules, in order to give effect to the Declaration of Principles contained in General Assembly resolution 2749 (XXV) and to the provisions of article 151 of the Convention. Lastly, his delegation regretted that the Conference had not been able to achieve a general agreement by consensus, despite the exhaustive efforts to arrive at one, and it hoped that those States which had been unable to support the Convention would become parties to it.

73. Mr. PINTO (Portugal) said that his delegation had voted in favour of the draft convention for the reasons given in previous statements, and in a spirit of collaboration with the international community. However, it wished to place on record its disagreement with some aspects of the Convention, and in particular with the provisions of Part XI relating to the composition of the Council, which in its view were discriminatory. He noted, for example, the treatment accorded to countries with a low or medium level of industrialization and to countries of heavy emigration. It was also a cause of great concern to his delegation that the Convention made no provision whatever for giving valid and impartial legal protection for future workers in the international sea-bed Area.

74. Mr. ROSENNE (Israel) said that his delegation had voted against the adoption of the draft convention together with the related resolutions which, as far as draft resolution IV was concerned, it did not regard as constituting an integral whole. His delegation could not accept any provision which would give any standing whatsoever to the so-called Palestine Liberation Organization. It would submit its comments and reservations in writing within the next few days.

75. Mr. CHAYET (France) said that his delegation had voted in favour of the draft convention because of its positive

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

elements, particularly the régime for the protection of preparatory investment, and the constructive contribution which it represented in connection with the North-South dialogue. His delegation's affirmative vote did not, of course, prejudice in any way the position to be adopted by the Government of France on the question of signing the Convention.

76. Although the draft convention was satisfactory in many respects—for instance, with regard to territorial waters, exclusive economic zones, the continental shelf, the legal régime of straits and pollution—Part XI, concerning exploration and exploitation of the international sea-bed Area, had serious drawbacks. His delegation hoped that Part XI could be reviewed in order to reach wider agreement and give the future Authority real prospects of success.

77. Mr. AGUILAR (Venezuela) recalled that he had had the honour to serve as Chairman of the First Committee of the General Assembly at its twenty-fifth session, which had adopted resolution 2750 C (XXV), convening the Third United Nations Conference on the Law of the Sea, and resolution 2749 (XXV), containing the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction. He had subsequently had the honour of representing Venezuela in the preparatory work of the Conference and at the 11 sessions of the Conference itself; it was therefore understandable that he regretted having had to vote against a draft convention which, with the exception of very few articles, was acceptable to Venezuela.

78. Venezuela would have preferred that the decision should be taken without a vote and that delegations like his own, which could not join in a consensus, should be allowed formally to record their reservations or objections. Venezuela's negative vote clearly and unequivocally placed on record that, since under article 309 of the draft convention reservations were not permitted, Venezuela could not accept articles 15, 74, 83 and 121, paragraph 3, in so far as those provisions applied to the delimitation of maritime and underwater areas between States with opposite or adjacent coasts.

79. In its statements at the 158th and 168th meetings on 30 March and 15 April respectively, and in its letter of 24 April 1982 to the President of the Conference (A/CONF.62/L.134), his delegation had stated the reasons why it could not accept those articles, to which should be added article 309.

80. His delegation particularly regretted that it had been unable to go along with the delegations belonging to the Group of 77, whose position on Part XI and related annexes it fully shared.

81. Mr. KASEMSRI (Thailand) recalled that in several previous statements concerning the régime of the exclusive economic zone, his delegation had observed that under the Convention Thailand would stand to lose many of the benefits and freedoms which it had hitherto enjoyed. Its fishing industry would be adversely affected to a very considerable extent by the relevant provisions of the Convention, to the detriment of a large sector of its population. Furthermore, Thailand had difficulties with the provisions relating to the delimitation of maritime zones between opposite and adjacent States.

82. It was apparent, therefore, that several provisions of the Convention would operate to the disadvantage of Thailand in areas vital to its interests.

83. As the Conference had proceeded, his delegation had endeavoured to defer to the interests and aspirations of the international community, and particularly of the developing countries, in the hope of facilitating the work of the Conference and the adoption of the draft convention by consensus. Since the draft had been put to the vote as an integral whole, Thailand had been obliged to abstain from voting pending a closer scrutiny of the text, but that did not preclude the possi-

bility that it might decide to become a party to the Convention at a later stage.

84. Mr. BOS (Netherlands) said that his delegation had always striven for a convention on the law of the sea that would be generally acceptable and could be adopted by consensus. A convention that would not be adhered to by the majority of countries, including the major ones, would not provide an adequate solution to the problems facing the world in the decades ahead, and he observed with the greatest regret and concern that the draft convention before the Conference did not meet those requirements. In the course of the Conference, his delegation had joined in the consensus that had seemed to be emerging although, like virtually every other delegation, it had had doubts concerning some of the solutions found. Unfortunately, a consensus had been impossible with respect to a very important part of the Convention, that relating to the régime of the international Area. Without the participation of the major countries of the world, the elaborate system set up in Part XI of the Convention for the exploitation of the resources of the international Area would not function as envisaged.

85. His country would have preferred to continue the search for generally acceptable solutions in order to implement the concept that the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction were the common heritage of mankind.

86. Although the other parts of the Convention constituted an important accomplishment, it must be acknowledged that the text had been drafted as an integrate whole. That being so, his country, in consultation with other countries, would carefully consider the question of signing the Convention.

87. Mr. ARIAS SCHREIBER (Peru) said that, in his Government's view, the draft convention on the law of the sea reconciled, to the greatest extent possible, the basic interests of the international community regarding the utilization of the various zones of the ocean space as an instrument of peace, security, development, well-being and co-operation.

88. In a written statement dated 4 April 1980 (A/CONF.62/WS.6),⁸ his delegation had referred to the positions held by his country since the preparatory stage of the Conference, to the progress made up to that time with regard to the establishment of a more just order for the exploitation of the sea and the questions to which a satisfactory solution had not yet been found; similarly, in a statement made to the 139th plenary meeting of the Conference on 27 August 1980,⁶ it had referred to the progress made and the criteria which Peru felt should be used to delimit the territorial sea, the exclusive economic zone and the continental shelf between neighbouring States; those two statements should be taken as constituting the framework for Peru's position.

89. The universal recognition of the coastal State's rights of sovereignty and jurisdiction within the 200 mile limit was a great achievement for the countries that were members of the Permanent Commission for the Exploitation and Conservation of the Maritime Resources of the South Pacific. The régime established for administering the Area and the resources of the sea-bed beyond the limits of national jurisdiction as the common heritage of mankind was likewise of fundamental importance. Although the texts agreed upon did not fully satisfy all the initial aspirations, they paved the way for joint action by the industrialized countries and the developing countries with a view to utilizing the immeasurable wealth in question. Peru had played a very active part in the formulation and negotiation of that régime, because of its interest as a land producer of minerals whose uncontrolled exploitation in the sea would have serious effects on its economy.

⁸See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XIII (United Nations publication, Sales No. E.81.V.5).

90. On the other hand, the provisions of the draft convention concerning the territorial sea and the exclusive economic zone and their relation to air space affected Peru's juridical and constitutional norms, and he therefore wished to state that he had voted in favour of the draft convention *ad referendum* and on condition that the conflict involving those norms could be resolved in accordance with the procedures laid down in the constitution of Peru.

91. Mr. KOZYREV (Union of Soviet Socialist Republics) said that although the text of the draft convention did not take into account the interests of all States, it did not harm any of them and represented a balanced and satisfactory compromise formula based on the principle of the sovereign equality of all States.

92. At the 174th, 177th and 179th meetings, held on 23, 28 and 29 April, his delegation had explained in detail its reservations regarding paragraph 1 (a) of draft resolution II on preparatory investment in annex IV of document A/CONF.62/L.132, which in its view created a situation of political discrimination against the Soviet Union. Although he realized that the proposals put forward on that subject were the result of great efforts, he could not accept a text which discriminated against his country.

93. Throughout the Conference, his country had acted on the assumption that it was necessary to establish a legal régime for the sea-bed that would further international co-operation, facilitate the exploitation of sea-bed resources for peaceful purposes and take the interests of all countries into account. The instrument to be adopted within that framework should promote the establishment of a just and equitable new international economic order that took into account the interests and needs of all mankind, paying special attention to the developing countries and the least-developed countries. His delegation had supposed that recognition would be given to the principle that all mineral resources situated beyond national jurisdiction constituted the common heritage of mankind, and had urged all States to take those observations into account, for not all the countries that could promote the application of the Convention's objectives were prepared to co-operate with the international community, as one delegation had previously stated clearly and concisely.

94. He regretted that the Group of 77 had not heeded his words. His delegation would, of course, continue to study the situation with a view to considering whether his country might become a party to the Convention, but for the reasons he had given it had been obliged to abstain from voting.

95. Lastly, he regretted that during the last days of the Conference amendments had been introduced which created a situation of political discrimination against his country and had prevented it from voting in favour of the draft convention and its annexes which, in general, it considered acceptable.

96. Mr. MORSHED (Bangladesh) said that, in voting in favour of the draft convention on the law of the sea, his country had been mindful of the President's recommendation that the various texts should be considered part of an integral whole. His delegation had approached the work of the Conference in a spirit of goodwill and accommodation, and solidarity with the Group of 77.

97. His delegation wished to reiterate its position with regard to the drawing of base lines from which areas of maritime jurisdiction were measured, which was set forth in document A/CONF.62/L.140. Its vote in favour of adopting the Convention should be read in the light of that position.

98. Mr. LACLETA MUNÓZ (Spain) said that his country's interests had not been duly taken into account in the formulation of the final compromise solution. After many years of effort, his delegation had been forced to submit a series of amendments contained in document A/CONF.62/L.109, to various articles of the convention and another amendment to

draft resolution III, which had either been withdrawn in a last effort at compromise or had been put to the vote. Since those amendments, to which his Government attached great importance, had not been incorporated into the text, it would not have been surprising if his delegation had voted against the draft.

99. However, his Government, aware of the political and historical importance of the final moments of the Conference, had simply abstained, because it considered that its position on a question of great importance, which affected it very directly, had not been properly reflected in the text of Part III of the draft convention and more particularly in articles 38, 39, 41 and 42. His country's position in that respect was set forth in document A/CONF.62/L.136. Furthermore, his Government could not accept the text of resolution III as a whole and objected in particular to paragraph 2 thereof.

100. Lastly, his Government considered that, at least with regard to the questions he had mentioned, the texts approved by the Conference did not constitute a codification or expression of customary law.

101. Mr. POWELL-JONES (United Kingdom) said that it had long been a major objective of the United Kingdom that the Conference should end with the adoption by consensus of a convention which had obtained general agreement.

102. During the current session and indeed throughout 1981 the United Kingdom had been particularly concerned that sufficient flexibility should be shown on all sides to make possible agreement on outstanding issues and on other problems, particularly concerning Part XI, which were a cause of concern to certain delegations.

103. It was a matter of great regret that those objectives had proved unattainable. The adoption of a convention without consensus was not the outcome for which the United Kingdom had worked and hoped. The United Kingdom had therefore been obliged to abstain in the vote.

104. Mr. CALERO RODRIGUES (Brazil) said that the affirmative vote of his delegation on the draft convention on the law of the sea and draft resolutions I to IV, in conformity with the position taken by the Group of 77, was without prejudice to the decision to be taken by the Brazilian Government on the question of the signing of the Convention.

105. Mr. VARVESI (Italy) said that his delegation had always hoped that, after long years of negotiation, the Conference could adopt by consensus a convention acceptable to all participants and it regretted that despite all the efforts made, it had been necessary to take a vote.

106. At the 178th meeting, on 28 April, his delegation had repeated its request that its proposals concerning Part XI should continue to be the subject of negotiations; the Conference, however, had not agreed. His delegation had accordingly been compelled to abstain, and the draft convention would be subjected to thorough and exhaustive review by his Government.

107. Mr. Cissé (Mali) said that the United Nations Convention on the Law of the Sea, in favour of which his delegation had voted, would mark the beginning of a new era characterized by the implementation of unprecedented legal provisions, with the basic elements for a more humane evolution of the collective destiny of all peoples. For the first time in history, universal willingness had been manifested to share among all peoples of the world their common heritage. The political and legal elements of a promising future had been defined, and that might well point to a fundamental change in the thinking that had brought about an obsolete, unjust, contradictory and deeply unbalanced world.

108. Moreover, it had to be borne in mind that every human achievement could be improved and developed. The lacunae and shortcomings of the text would be overcome with time. The main thing was that the concept that the interests of all

people were interdependent had been sanctioned by rules the infringement of which would adversely affect everyone.

109. Mr. ENKHTSAIKHAN (Mongolia) said that his delegation had fully supported the President's reports and proposals in annexes I, II, III and V of documents A/CONF.62/L.132 and L.141.

110. With regard to annex IV of document A/CONF.62/L.132, containing draft resolution II on preparatory investment in pioneer activities relating to polymetallic nodules, he had heard no convincing argument to the effect that paragraph 1 (a) (ii) did not discriminate against the States referred to in paragraph 1 (a) (i) and (iii). Each of the States referred to in the latter two subparagraphs had to sign the Convention before its State enterprise or natural or juridical person could qualify as a pioneer investor, whereas not all the States mentioned in paragraph 1 (a) (ii) would be required to sign the Convention in order to allow their consortia to qualify as pioneer investors. His delegation had taken note of the President's explanation that the formulation of article 1 (a) had been the result of a trade-off between the Group of 77 and some industrialized countries and that the concession made by the Group of 77 in paragraph 1 (a) (ii) was more than compensated by the industrialized countries through the provisions of paragraph 8 (c), whereby no plan of work for exploration and exploitation would be approved for any of the entities referred to in paragraph 1 (a) (ii) unless all the States whose natural or juridical persons made up those entities were parties to the Convention. Although he considered paragraph 8 (c) as an important improvement of the text of the resolution, the strong objections of many delegations, among them the Soviet Union delegation, persisted with regard to paragraph 1 (a). Those objections were well founded and reasonable inasmuch as the formulation of article 1 (a) was both legally and politically discriminatory, a fact that had been confirmed by the reply of the Legal Counsel to the inquiry on the subject made by the Soviet Union delegation.

111. Paragraph 1 (a) discriminated against countries that had adopted the socialist socio-economic system which, by its content, was much closer to the ideal of the common heritage of mankind, since it was designed for the benefit of society as a whole. When it was borne in mind that the entities mentioned in subparagraph (ii) were private companies whose benefits and profits were obviously not shared with the rest of society or with the Governments concerned, the common heritage would clearly benefit primarily those entities while their countries of origin would not be bound by the provisions of the Convention.

112. If the principle of non-discrimination meant, in law, treating equals as equals, private consortia and States should not be put on the same level. If there had to be any discrimination or differentiation, it should be in favour of sovereign States and not of private entities. It was States that would be the prime channels through which peoples would be benefiting from the common heritage of mankind. Consequently the Conference should pursue first of all the benefit of all States, irrespective of the social and economic systems, even on the issue of preparatory investment in pioneer activities.

113. For the foregoing reasons, if draft resolution II (A/CONF.62/L.132, annex IV) had been the subject of a separate vote, his delegation would have voted against it. However, since the vote had covered the draft convention as a whole, his delegation, on the basis of its position of principle, had been compelled, with deep regret, to abstain. His delegation considered that the provisions of the draft convention as a whole were fairly balanced and acceptable and would have preferred them to be adopted by consensus.

114. The fact that his delegation had abstained in the vote did not mean in any way that it denied for its country or other

members of the international community the enormous economic, political and other benefits offered by the Convention.

115. Mr. OMAR (Libyan Arab Jamahiriya) said that his country's position with regard to both preparatory investment in pioneer activities relating to polymetallic nodules and the proposed amendments to Part XI of the draft convention had been clearly set out in document A/CONF.62/L.131.

116. In an earlier statement his delegation had clearly explained its position that the sea-bed and ocean floor and the subsoil thereof outside national jurisdiction and their resources were the common heritage of mankind; their exploration and exploitation should benefit all mankind, irrespective of the geographical position of the State concerned. Consequently, it rejected the idea that a small group of States should enjoy special benefits and was opposed to any parallel system in relation to the international Area.

117. His delegation had voted in favour of the draft convention and the related resolutions, in conformity with the position of the Group of 77, in order to join in an agreement which was in the interests of peace and of equity for all the world's peoples. The Convention as a whole contained many positive elements which offset the difficulties that some of its provisions created for his country.

118. His delegation heartily welcomed the fact that after years of efforts the international community had been able to adopt a convention which, it hoped, would contribute to a just and equitable international economic order.

119. Mr. CHARRY SAMPER (Colombia) said that the Convention adopted codified the law which would govern the seas and oceans according to a single comprehensive concept whereby all the relevant problems were inseparably linked, concerned the whole international community and should be settled in that spirit.

120. Colombia, as a member of the Permanent Commission of the South Pacific, reiterated the terms of the letter submitted jointly with the delegations of Chile, Ecuador and Peru on 28 April (A/CONF.62/L.143). Universal recognition of the rights of sovereignty and jurisdiction of the coastal State within the 200-mile limit was a fundamental achievement of the countries members of that Commission in line with the basic objectives set forth in the Santiago Declaration of 1952.⁵ Those objectives had been incorporated in the United Nations Convention on the Law of the Sea, the adoption of which was a historic act of the highest importance, strengthening the role of the United Nations in the world.

121. Mr. SHEN Weiliang (China) said that the overwhelming majority of the participating countries and, in particular, the developing countries had made enormous efforts to formulate a new convention on the law of the sea acceptable to all countries. Nevertheless, the recent adoption of the draft convention was only a first step towards the establishment of a new legal order of the sea because there were still imperfections and even serious defects in a number of its provisions. It was necessary for the developing countries to continue their effort to safeguard the purposes and principles of the Convention and to defend the legitimate rights and interests of their countries. With regard to the international sea-bed régime, the draft resolution on preparatory investment had accommodated too many of the demands of a few industrialized Powers, and the implementation of resolution II, contained in annex IV of document A/CONF.62/L.132, should be in conformity with the provisions of the Convention. Moreover, in order to safeguard the principle of the common heritage of mankind and the provisions of the Convention, it should be borne in mind that any unilateral legislation in respect of the deep-sea mining was null and void.

122. With regard to the question of the régime of the passage of warships through the territorial sea, the sponsors of

document A/CONF.62/L.117, heeding the President's appeal for consensus and taking into account the President's interpretative statement on that issue, had not pressed for a vote on their amendment. He reiterated that the provisions governing innocent passage through the territorial sea did not prejudice the right of the coastal State to require prior authorization or notification for the passage of foreign warships through the territorial sea in accordance with its laws and regulations.

123. Mr. KAMANDA wa KAMANDA (Zaire) explained that his delegation's affirmative vote should be interpreted as recognition of the efforts made to establish a law of the sea which would safeguard the legitimate interests of all countries, in particular, the developing countries. It was unfortunate that the power relationships prevailing during the last stage of negotiations, characterized by the defense of narrow interests by certain States, had shaken the foundations of the new law and it had not been possible for the Convention to be adopted by consensus. In any event, his delegation supported the concept of the common heritage of mankind which would help to establish a new international economic order.

124. His delegation had duly submitted amendments (A/CONF.62/L.107) to the provisions concerning the biological resources of the exclusive economic zone (articles 62, 69, 70 and 71 of the Convention) and he recalled that, when withdrawing them, it had announced that their content reflected the interpretation placed on those articles by Zaire. It had also submitted an amendment to article 157 in order to fill some gaps in the text and, in particular, to specify the planning powers vested in the Authority under article 150. Zaire would submit a written statement setting forth in detail the questions concerning which, in its opinion, its legitimate interests had not been taken into account.

125. Mr. YATIM (Malaysia) explained that, while aware that the Convention did not fully meet the requirements of all parties owing to the need for concessions in order to arrive at a generally acceptable text, his delegation had voted in favour of its adoption.

126. He referred to the letter, dated 29 April 1982, addressed to the President of the Conference on behalf of the delegations of Indonesia, Singapore and Malaysia (A/CONF.62/L.145). Attached to that letter was a statement on an understanding relating to article 233 of the draft convention and its application to the Straits of Malacca and Singapore. The understanding was the outcome of consultations held between the coastal States bordering the Straits of Malacca and Singapore and the States which were the major users of those straits. He recalled that, in recent years, the Straits of Malacca and Singapore had been the scene of many maritime accidents owing mainly to the narrowness of the Singapore Straits and the shallow waters in some areas. In response to the letter of his delegation, the delegations of the States which were major users of the Straits of Malacca and Singapore had addressed to the President of the Conference letters (A/CONF.62/L.145/Add.1-8) confirming the contents of document A/CONF.62/L.145.

The speaker read out the text of the statement relating to article 233 of the draft convention on the law of the sea in its application to the Straits of Malacca and Singapore.

127. Mr. KOROMA (Sierra Leone) appealed to all delegations that, after careful reflection, they join in the new international legal order represented by the draft convention. With the adoption of the Convention, the United Nations had become truly universal since, in addition to dealing with matters terrestrial, the Organization was now to deal also with activities in and on the oceans. Like the United Nations, the Convention would continue to evolve and deserved every possible support so that it could serve as an instrument of peace and as international machinery for the promotion of the economic and social advancement of all peoples.

128. His delegation had serious reservations regarding some of the provisions of the Convention. For instance, Sierra Leone advocated a territorial sea of 200 miles for which the Convention did not provide. It was also unhappy with resolution II governing preparatory investment and was opposed to the veto principle written into the Convention contrary to the Organization of African Unity declaration on the law of the sea.⁹ His delegation had none the less voted in favour of the Convention in a spirit of compromise and appealed to other nations not to isolate themselves from the new universal régime of the sea.

129. Mr. GOERNER (German Democratic Republic) pledged his country's full support to the United Nations Convention on the Law of the Sea and to resolutions I, III and IV which were the result of lengthy and intensive negotiations and took into account the rights and interests of all States and peoples.

130. According to its preamble, the Convention would "contribute to the strengthening of peace, security, co-operation and friendly relations among all nations in conformity with the principles of justice and equal rights and promote the economic and social advancement of all peoples of the world, in accordance with the Purposes and Principles of the United Nations as set forth in its Charter". The fact that for the first time in history there had been a successful attempt to regulate within a general framework and in accordance with the principles of international law all human activities related to the peaceful uses of the oceans and their resources showed that, even in difficult situations, it was possible to open up new fields for co-operation among States in the interests of international peace and security. The Convention just adopted was aimed at ensuring freedom of navigation, efficient utilization of marine resources, conservation of the marine environment and other uses of the sea for the benefit of all peoples.

131. The positive assessment that could be made of the Convention was not applicable, however, to resolution II on preparatory investment which had been drafted in response to the demand of various Western States which wished to accommodate the interests of a number of multinational corporations. His delegation reiterated its serious reservations with regard to paragraph 1 of resolution II which clearly discriminated against the Soviet Union and other States. His delegation therefore supported firmly the position of the Soviet Union in that connection and would have voted against resolution II had it been put to a separate vote.

132. In those circumstances, it was with deep regret that the delegation of the German Democratic Republic had had to abstain in the vote on the Convention as a whole.

133. Mr. MOMTAZ (Iran) said that his delegation, in a spirit of compromise and co-operation with the international community, had voted in favour of the United Nations Convention on the Law of the Sea. None the less, the text thus adopted continued to create difficulties for Iran. That was the case with regard to the provisions of the innocent passage of warships through the territorial sea and the provisions on Parts VIII and X of the Convention. His delegation also had serious reservations regarding resolution II on preparatory investment.

134. Mr. KRYSOSIK (Poland) recalled that Poland had participated actively in the lengthy negotiations on the Convention and therefore deeply regretted the fact that it had not been able to vote in favour of it.

135. Poland would have accepted the Convention as a package, together with the related resolutions, had it not been for the fact that resolution II on preparatory investment in pioneer activities contained in annex IV of document A/CONF.62/L.132 contained formulations that discriminated

⁹*Ibid.*, vol. XV, document A/CONF.62/104.

against the socialist States and was thus contradictory to its interests. It was solely for that reason that his delegation had been unable to support the draft convention as a whole and had abstained in the vote on it.

136. His delegation none the less wished to emphasize that it accepted and supported the other parts of the Convention which was a major achievement contributing to international peace and security and mutually beneficial co-operation among States.

137. Mr. LUPINACCI (Uruguay) said that his delegation viewed the verdict of the overwhelming majority of the international community in adopting the United Nations Convention on the Law of the Sea as an historic event of fundamental importance for the establishment of a comprehensive legal order applicable to maritime spaces. His delegation deeply regretted the fact that it had not been possible to adopt the Convention by consensus and hoped that those delegations which, because of certain specific points, had not been able to vote for it would be able to overcome their difficulties. No attitude adopted at the current session would in any case definitively prejudice the issue of the signature and ratification of the Convention.

138. The recognition of the right of sovereignty of the coastal State over its exclusive economic zone and continental shelf for all economic purposes and its exclusive jurisdiction with regard to scientific research, conservation of the marine environment and the establishment of artificial islands, installations and structures, strengthened the validity of those institutions of international law of the sea. Similarly, the establishment of a régime and an international authority for the sea-bed area beyond the limits of national jurisdiction and of a comprehensive system for the settlement of disputes were major achievements. The instrument adopted did not contain an ideal formula reflecting fully the common good of the international community and satisfactory to each and every State. It would none the less benefit all States and the international community as a whole. Moreover, in times which were fraught with difficulties for coexistence among nations, the Convention represented a major step along the road to international co-operation and the consolidation of international law and in the search for international justice and peace.

139. Mr. MHLANGA (Zambia) said that his delegation, which had participated enthusiastically in the adoption of the 1970 Declaration of principles on the sea-bed and ocean floor,³ had not voted with the same enthusiasm in favour of the draft convention on the law of the sea.

140. Zambia was a land-based producer of minerals which would also be extracted from the sea-bed, a situation which was most likely to have an adverse effect on its economy. In order to avoid such an effect, Zambia had sought to amend the sea-bed production policy and had suggested the inclusion in the draft convention of a formula relating to cobalt and nickel, a suggestion that had not been accepted. It had also suggested the establishment of a compensation fund, a suggestion which again had not been fully accepted. Instead, there was the provision which postponed the establishment of such a fund. He hoped that the weak provision included in the text of the Convention would in fact result in the establishment of the much-needed compensation fund, with appropriate powers for performing its functions effectively.

141. As a land-locked country, Zambia was also interested in securing rights of access to and from the sea and to a share in the natural resources of the sea. With regard to the right of access, the Convention contained provisions which might mistakenly be interpreted by some as being dependent on the negotiation of bilateral agreements. He hoped that, when States came to apply those provisions, they would recognize that their intention was to secure that right. With regard to the right to the natural resources of the sea, his delegation was not

happy with the provisions relating to the régime of the continental shelf and the exclusive economic zone contained in Parts V and VI of the Convention and had therefore worked for the establishment of régimes which would be regional in character and would not operate to the exclusion of land-locked States, a position based on objective data contained in document A/AC.138/87 according to which, for instance, if the limits of national jurisdiction were to be 200 nautical miles, 87 per cent of hydrocarbon reserves would belong solely to coastal States and the common heritage of mankind would be left with only 13 per cent. The adopted text provided for that limit, however, when it referred to the economic zone and went even further when it referred to the continental shelf.

142. Zambia had none the less voted in favour of the draft convention as a whole because it contained some positive elements and because the alternative might have been lawlessness on the seas.

143. Mr. UL-HAQUE (Pakistan) said that the adoption of the United Nations Convention on the Law of the Sea represented a historic landmark in the efforts of the international community to consolidate the rules that were to govern the seas. It was none the less regrettable that, despite the tremendous efforts and numerous unilateral concessions made by the developing countries, it had not been possible to adopt the Convention by consensus. He hoped that those delegations which had not voted in favour of the Convention would reconsider their position and join with the international community so that the nature and application of the Convention might be genuinely universal.

144. Although Pakistan had voted in favour of the Convention, his Government's position regarding certain articles had not changed. For instance, Pakistan believed that the right of passage of warships should be exercised in accordance with the domestic legislation of States through whose territorial waters such ships were to pass. In its view, the Convention protected that right and coastal States could demand prior notification or authorization for the innocent passage of warships through their territorial waters. His delegation also believed that the right of access and freedom of transit of land-locked countries would impinge on the sovereignty of coastal States and was therefore unacceptable. At the same time, freedom of transit accorded to land-locked countries would continue to be governed by bilateral agreements between those States and coastal States.

145. Mr. PRANDLER (Hungary) said that his delegation greatly regretted the fact that it had had to abstain during the voting on the draft convention. It nevertheless believed that the Convention as a whole was acceptable, including Part X concerning right of access to and from the sea and the freedom of transit, and that the major elements of the Convention constituted a generally acceptable legal régime.

146. If a separate vote had been taken on resolution II concerning preparatory investment protection in annex IV of document A/CONF.62/L.132, his delegation would have voted for the Convention as a whole, while expressing its strong reservations on the discriminatory treatment accorded to various groups of States in that resolution.

147. His delegation also wished to place on record its readiness to study most carefully the text of the Convention adopted in order to recommend to its Government the most appropriate measures to be taken in the future.

148. Mr. SHASH (Egypt) said that, because it had hoped that so many years of efforts would culminate in success, Egypt had voted in favour of the draft convention, even though it was not satisfied with all of the provisions. His Government would study the texts adopted in detail and in the light of its interests. His delegation had wanted the question of reservations to be governed by the Vienna Convention on the

Law of Treaties⁷; although that view had not prevailed, article 310 allowed Governments to make statements in relation to their national legislation.

149. In compliance with the request of the President of the Conference, his delegation had not pressed for the adoption of its amendment concerning security in the territorial sea (A/CONF.62/L.117). Egypt observed the principle of sovereignty over the territorial sea and would study the Convention's relevant provisions, keeping in mind its internal law and international law in general.

150. His delegation recalled that its position on the Convention's various provisions had been reflected during the discussions at the Conference and within the group of African States and the Group of 77, in which Egypt had rallied to the common position. Even though it had hoped that the Convention could have been adopted by consensus, Egypt believed that a general legal system applicable to all seas would be developed.

Mr. KOH (Singapore) resumed the Chair.

151. Mr. YANKOV (Bulgaria) said that his delegation deeply regretted not having been able to vote in favour of the package which had been before the Conference. It had been unable to accept one of the provisions of a draft resolution in an annex of document A/CONF.62/L.132, which had been submitted too late for the contents to be examined thoroughly. The question of preparatory investment protection and the related question of the definition of pioneer activities had preoccupied the Conference for a long time, diverting it from the consideration of the text of the Convention itself. All possible concessions had been made to satisfy certain demands, and that had led to a highly dangerous situation consisting in an attempt to establish a régime not merely parallel but even alternative to the one provided for in the Convention.

152. For that reason, Bulgaria had abstained during the voting, not because of the content of the documents or the fundamental principles governing the law of the sea, but because of a specific text and a given provision which allowed for discriminatory treatment of States and left loopholes for the possible beneficiaries of the régime. That was unacceptable at a time when the sovereignty of States and respect for differing social and economic systems had achieved general recognition.

153. If a separate vote had been taken on the various documents, his delegation would have voted in favour of the draft convention and of draft resolutions I, III and IV. Bulgaria reaffirmed the commitment for the new law of the sea which it had manifested from the start of the Conference. It had always believed in the need for a just and rational régime governing the uses of the seas and their resources. The Convention which had been adopted was a balanced set of rules without precedent in international law. It not only solved problems of the present but was also oriented towards the future.

154. In conclusion, he wished to record that his Government would carefully examine the results of the session in order to determine its final position.

155. Mr. CARIAS (Honduras) recalled that his delegation had participated actively at all stages of the Conference and welcomed the contribution that the Conference had made to the establishment of a just and peaceful order for the uses of the seas and of their resources.

156. The fact that the Convention had not been adopted by consensus was regrettable in view of its historical importance and its relationship to the new international economic order, which was reflected in the incorporation of new legal institutions, such as the exclusive economic zone and the Area of the

sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction.

157. Mr. SHIN (Republic of Korea) said that, although some articles of the Convention did not fully correspond to the interests of his Government, his delegation had voted in favour of the Convention, taking into account the aspirations of most delegations, including the members of the Group of 77.

158. Mr. TARCICI (Yemen) recalled that, as explained in the statement read out by the President at the 176th meeting on 26 April, his delegation had agreed not to press the amendment contained in document A/CONF.62/L.117 concerning innocent passage of warships through the territorial sea. In that statement, the rights of coastal States to adopt measures to safeguard their security interests, in accordance with articles 19 and 25 of the Convention, were reaffirmed.

159. His delegation regarded the President's statement as a reference and, although not entirely satisfied with the text of the Convention, had voted in favour of it in a spirit of compromise.

160. Mr. BEESLEY (Canada) said he was convinced that the Convention which had been adopted was one of the greatest achievements in the history of the United Nations. He shared the feeling of regret that it had been necessary to resort to a vote and that the text which had been adopted did not have the support of the great Powers. It was to be hoped that, in the future, those who had had reservations would understand that the Convention was of decisive importance for their own interests and would carefully examine not only the sea-bed mining provisions or other specific provisions, but also the provisions of the Convention as a whole.

161. For once, lawyers had not played the role that they were generally accused of playing: order had not been turned into chaos, but rather order had been created out of chaos. Even though 14 years had been required, the results justified the time that had been spent. Many potentially dangerous jurisdictional problems, from the breadth of the territorial sea to such new questions as jurisdiction beyond the territorial sea with respect to fishing, marine scientific research and other activities, had been resolved. Furthermore, entirely new concepts had been created, the most important of which was clearly the common heritage of mankind. In that connection, he commended Professor Arvid Pardo, who had been the driving force behind the joint enterprise notion. What had once been an ideal had taken concrete form in legal concepts which would ultimately become law.

162. The exclusive economic zone represented one of the Conference's greatest compromises. The initial divergence of views had been great and, as in the case of other compromises, reciprocal concessions had been made to accommodate various interests, so that perhaps no State had achieved all of its aspirations.

163. The concept of the régime for archipelagic States, which had been one of the most delicate problems, was an important innovation. No one could deny the importance of the development of the right of passage through international straits. The consideration of the problem of ice-covered areas provided an example of an occasion on which the two great Powers had joined in agreement with the small countries in the interest of mankind. The concept of the rights of land-locked and geographically disadvantaged States should also be mentioned. Those ideas would never have been formulated without the Conference. Part XII of the Convention, concerning the protection and preservation of the marine environment, was also a triumph of major import for the future, while the provisions on the peaceful settlement of disputes were a collective achievement.

164. In his delegation's opinion, then, the Conference had successfully completed a unique task. It was regrettable that

there had not been consensus, but he was sure that consensus could be achieved in the future.

165. The PRESIDENT said that, since resolution III had been adopted, the words "transitional provision" at the end of the draft convention should be deleted.

Draft resolution in document A/CONF.62/L.127

166. The PRESIDENT said, as a result of consultations held by one of the members of the Collegium, Ambassador Yan'kov of Bulgaria, it appeared that there was general agreement that draft resolution A/CONF.62/L.127, presented by Peru on behalf of the Group of 77, could be adopted without a vote.

167. Mr. WOLF (Austria), speaking on behalf of the landlocked and geographically disadvantaged States, said that the foot-note concerning the preamble to the draft resolution was unnecessary because the Convention had been adopted, and he requested that it should be deleted.

168. The PRESIDENT announced that the sponsors of the draft resolution had acceded to the request of the representative of Austria. If he heard no objection, he would take it that the Conference wished to adopt the draft resolution without a vote.

Draft resolution A/CONF.62/L.127 was adopted without a vote.

169. Mr. KIRCA (Turkey) said that his delegation agreed with the third, fourth and ninth preambular paragraphs and with paragraphs 1 to 5 of the resolution which had been adopted. If the text had been put to a vote, Turkey would have voted against the resolution as a whole, because it considered that the new maritime régime referred to in the other paragraphs, instead of contributing to the establishment in semi-enclosed seas of a just and equitable international economic order, might give rise to not only economic but also political disorder.

Resumed session of the Conference for the conclusion of the work of the Drafting Committee and consideration of its recommendations

170. The PRESIDENT said that two questions had to be resolved, namely, when, where and for how long the Drafting Committee was to meet and when the Conference was to meet again to consider the recommendations of the Drafting Committee. The consultations held with the Chairman of the Drafting Committee indicated that, in order to complete its work, that body would have to meet from 12 July to 13 August 1982, with the possibility of an extension for a further week. If there were no objections, he would take it that the Conference wished to approve that proposal.

It was so decided.

171. Mr. ZULETA (Special Representative of the Secretary-General), referring to the venue of the session, said that the preliminary consultations held by the Secretariat showed that the difficulties in finding the necessary services for the Drafting Committee were pretty much the same at both headquarters, because the calendar approved by the Committee on Conferences was very full. Consequently, he considered that it would be very helpful to the Secretariat, if the Conference would permit it, before making a definite recommendation, to obtain the opinion of the Committee on Conferences and then abide by that recommendation as far as possible.

172. Mr. ENGO (Cameroon) said that the next session of the Drafting Committee would be extremely important. If it was held in New York, it might be regarded as a continuation

of the activities of the Conference; on the other hand, if it was necessary to hold it in Geneva, a special decision of the General Assembly might perhaps be required.

173. In his delegation's view, there were two reasons for opting for New York: on the one hand, the Drafting Committee would be dealing with questions of a sensitive political character, which would require the presence of members of the respective missions and also interested observers and, on the other, from the financial point of view, it would avoid the additional expenses that would be entailed by moving representatives and staff to Geneva.

174. Mr. KOROMA (Sierra Leone), speaking as a member of the Drafting Committee, said that, in deciding the venue of the next session of that body, account should be taken of the necessity of maintaining equitable geographical representation. It should be recalled that the States members of the Group of 77, including Sierra Leone, did not have large delegations in Geneva.

175. The PRESIDENT said that the Conference would request the special representative of the Secretary-General to establish, firstly, what were the possibilities at Geneva and in New York and, in the event that they were equivalent, to take into account the fact that the preference of the Conference would be for the Drafting Committee to meet in New York. If there were no objections, he would take it that the Conference accepted that procedure.

It was so decided.

176. Mr. MWANANG'ONZE (Zambia) requested that, when a final decision was taken on the venue of the session of the Drafting Committee, all States participating in the Conference should be so informed, not just those composing the Committee.

177. Mr. BEESLEY (Canada) asked when a decision would be taken on the venue of the session of the Drafting Committee.

178. The PRESIDENT said that, as he had been informed by the Special Representative of the Secretary-General, the decision would be taken in one to two weeks.

179. He suggested that the plenary meetings of the Conference to consider the recommendations of the Drafting Committee should be held in New York from 22 to 24 September. If there were no objections, he would take it that the Conference accepted that suggestion.

It was so decided.

Arrangements for the adoption and signing of the Final Act in Caracas, Venezuela

180. Mr. ZULETA (Special Representative of the Secretary-General) said that, since the end of the tenth session, consultations had been held on the matter with the Government of Venezuela, which had agreed to maintain a flexible position regarding the date, in order to take into account the needs of the Conference. For his part, he could state, without compromising the final position of Venezuela or of the Secretary-General, that it would be possible to hold the session for the signing of the Final Act and the opening of the Convention for signature during the first part of the month of December, subject to further talks with the Government of Venezuela.

181. The PRESIDENT said that, if there were no objections, he would take it that the Conference agreed to what had been stated by the Special Representative of the Secretary-General.

It was so decided.

Final statements

182. Mr. ZULETA (Special Representative of the Secretary-General) said that the Secretary-General had intended to attend the session but that, owing to the lateness of the hour, he had had to honour other commitments which could not be postponed. At all events, he wished to express, through the speaker, his appreciation for the culmination of a long labour.

183. After 14 years of intense work, a legal instrument had been adopted to regulate the use of the seas and national exploitation of resources and, at the same time, to create an adequate legal framework to ensure that conflicts which arose in relation to the seas might be resolved peacefully.

184. History would confirm that the joint and sustained effort of so many human beings of exceptional qualities, who had worked indefatigably in search of general agreement, would serve to strengthen the role of the United Nations in the maintenance of peace and security, in the promotion of balanced economic and social development that would contribute to the establishment of a more equitable international economic order and in the emergence of a new world outlook, based on the concept that mankind as a whole had an obligation to preserve a common heritage for the benefit of future generations.

185. The lives of all those present had been enriched in a way which was difficult to describe.

186. It had been learned that once people were willing to listen to and understand the problems of others, solutions could be found which would be acceptable to the great majority and, in the future, to everyone.

187. The participants in the Conference had learned to live together as friends, indeed practically as brothers, and the bonds of friendship and respect which had linked them for so many years would continue in being as a sign that respect for the individual outweighed the transient difference which might come between nations.

188. Every one of the representatives who had taken part in the Conference deserved a special speech of thanks. That was particularly true, however, of those who had presided over the negotiations, formally or informally, or had worked on the drafting of compromise texts, and in so doing had given a good part of their lives to the community in the service of a cause in which they believed. Many of them, beginning with President Amerasinghe, had left the world without living to see the momentous day which was, ultimately, a tribute to their memory.

189. He believed that he was speaking for all his colleagues in all departments of the Secretariat, including those who, in their booths or down in the basement of the building, helped to provide the facilities for work and communication, both oral and written, in many languages, in telling the President that their having had the opportunity to assist in the monumental task which he had accepted and fulfilled with such talent, perseverance and unbelievable vigour would be a treasured foot-note to the pages of their lives and a most pleasant memory to pass on to their children as part of that process of education which ended only in death.

190. It was no less a pleasure to express similar sentiments of respect, admiration, gratitude and friendship to the President's comrades in the Collegium, Paul Bamela Engo of Cameroon, Andrés Aguilar of Venezuela, Alexander Yankov of Bulgaria, Alan Beesley of Canada and Kenneth Rattray of Jamaica.

191. A new page was being turned in the law of the sea. The Convention put an end to long years of uncertainty regarding the rights and duties of States in the ocean space. It was, however, merely the first step in a long process in which only co-

operation among States could breathe life into the newborn infant.

192. The Convention would be what the States wanted it to be. He, for his part, could assure members that, within the scope of its functions under the United Nations Charter, the Secretariat was prepared to offer any assistance which Governments might consider necessary.

193. There was a character in French literature called *Le Bourgeois Gentilhomme*, who had discovered belatedly that he had been speaking prose without realizing it. The Conference, knowing very well what it was doing, had not taken so long to make history.

194. Mr. ARIAS SCHREIBER (Peru), speaking as Chairman of the Group of Latin American States, expressed his deep gratitude for the skill, objectivity and constructive spirit shown by the President of the Conference in his efforts to ensure that the Convention would be adopted by consensus. The developing countries for their part had honoured the gentleman's agreement and done their utmost to negotiate a treaty which would be generally acceptable to all the participating States.

195. He also paid a tribute to Mr. Aguilar, Chairman of the Second Committee. Notwithstanding the circumstances which had prompted Venezuela's vote, his Latin American colleagues would never forget the impartiality and integrity he had shown in helping to formulate the longest and most difficult parts of the new Convention, the name of which would be linked to that of the hospitable capital of his country.

196. Mr. KOROMA (Sierra Leone), speaking as Chairman of the Group of African States, thanked the President of the Conference for his selfless dedication and perseverance and the personal sacrifices he had made in the hope of bringing the Conference to consensus.

197. Mr. GOERNER (German Democratic Republic), speaking as Chairman of the group of Eastern European (socialist) States, thanked the President for his untiring personal efforts in guiding the work of the Conference. It was regrettable that the efforts which the President had made had not resulted in the adoption of the Convention by consensus, but everyone knew the reasons for that. He likewise thanked the members of the Collegium, whose experience and dedication had made it possible to solve complex problems while taking into account the legitimate interests of all parties, and expressed his gratitude to the Chairmen of the Working Groups, to the Chairmen of the Committees, and to the staff of the Secretariat, who had shown a great sense of responsibility.

198. Mr. GIÖRGOLÒ (Italy), speaking as Chairman of the group of Western European and other States, paid a tribute to the skill shown by the President of the Conference, and conveyed to him his group's most sincere gratitude.

199. Mr. AL JUFAIRI (Qatar), speaking as Chairman of the group of Asian States, thanked the President for the efforts he had made, which had resulted in the adoption of a Convention which, it was to be hoped, would serve all mankind. He also paid a tribute to the Secretary-General and to the Secretariat of the United Nations for their services to the Conference.

200. Mr. TARCICI (Yemen), speaking on behalf of the Chairman of the group of Arab States, expressed his gratitude for the noble efforts and great talents of the President of the Conference. He asked the President to convey his group's gratitude to the Secretariat and to all those who had contributed to the success of a historic conference.

201. Mr. RATINER (United States of America), taking the floor as a representative of the host country, said that the United States delegation associated itself with the expressions of gratitude addressed to the officers and to all the Secretariat

staff, who had made the Conference possible. He wished also to offer his personal congratulations to all his friends and colleagues who had taken part in the work of the Conference.

202. The PRESIDENT said that the Conference had kept its rendezvous with history. After eight years of hard work, it had at last reached the summit.

203. The journey had actually begun not in 1973, when the Conference had commenced its work, but in 1967, the year in which the then Permanent Representative of Malta, Mr. Arvid Pardo, had made a historic statement in the First Committee of the General Assembly.¹⁰ That statement had launched them on their journey, and he now took the opportunity to pay a tribute to Mr. Pardo.

204. Since 1967, when the *Ad Hoc* Committee to Study the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the Limits of National Jurisdiction had been established, until his death in 1980, the captain of the ship had been Hamilton Shirley Amerasinghe. It was now fitting for the Conference, on that historic day, to remember him and to acknowledge the debt it owed him. The new Convention should constitute a lasting monument to his memory.

205. He said that both he and the other participants in the Conference, with a few exceptions, were like the proud parents of a new-born baby and it was natural for them to feel that way. They were not, however, the most objective persons to evaluate the merits or demerits of the Convention just adopted. Intellectual humility dictated that they should be restrained in praising their own work and that they should let history vindicate or condemn them. In any case, he believed that he would not be departing from the tradition of intellectual humility if he were to point out some of the unique features of the Convention, its importance to the international community and the unique methods of work of the Conference.

206. First, it was the first Convention covering all aspects of the uses and resources of ocean space. In that respect, it differed from the 1958 Geneva Conventions, which covered only limited aspects of the law of the sea.

207. Second, the Convention did not merely codify existing international laws; it also contained many new concepts of international law, such as the exclusive economic zone and the common heritage of mankind, to cite only two examples. Those innovative concepts had been negotiated and agreed upon in response to the advance of technology, to the demands for greater international equity, especially by the new nations, and to new uses of the sea and its resources.

208. Third, the Convention contained important and agreed limits on different maritime zones of coastal States, agreed regimes of passage for ships through and aircraft over critical sea-lanes and clearly established rights and obligations of coastal States, on the one hand, and third States, on the other, in the territorial sea, in the exclusive economic zone and on the continental shelf. In that way, the Convention would have made a significant contribution to the promotion of peace and security among nations and to law and order in ocean space.

209. Fourth, for many developing land-locked countries, one of the most important benefits of the Convention was the agreement it contained on the right of access of the land-locked States to and from the sea and on freedom of transit.

210. Fifth, the Convention contained important provisions on the protection and preservation of the marine environment. In their totality, those provisions represented a significant advance in the common struggle to prevent, reduce and control pollution of the marine environment.

211. Sixth, the Convention had made a significant contribution to the elaboration of a comprehensive set of rules on marine scientific research and on the promotion of international co-operation in the field of marine technology.

212. Seventh, unlike most other treaties, the Convention contained mandatory provisions on the settlement of disputes which, in his view, made another contribution to the peaceful settlement of disputes between States and to the promotion of the concept of world peace through law.

213. Eighth, for those who cared deeply for the preservation of marine mammals, especially whales and dolphins, as he did, the Convention enjoined States to co-operate, through appropriate international organizations, for their conservation, management and study. However small that step might be, it was a step in the right direction.

214. Referring to Part XI of the Convention, on the exploration and exploitation of the resources of the international area of the sea-bed and the ocean floor beyond the limits of national jurisdiction, he said that it had been negotiated among three parties, the developing countries and the Group of 77, the Western industrialized countries and the group of Eastern European (socialist) States. The successful outcome of the negotiations demonstrated that it was possible for North and South, East and West, to co-operate with one another, to acknowledge each other's interests and to seek mutually acceptable solutions to them. In a world often marked by confrontation, misunderstandings and even violence, it was no exaggeration to say that, in that little part of human enterprise represented by the Conference, nations from every ideological and geographical group had eschewed the path of confrontation in favour of co-operation. Neither was it an exaggeration to say that the majority of the developing countries in the Conference had not imposed their majority power on the minority, and the minority of powerful States had always tried to accommodate the legitimate interests of the less powerful States. It had been a relatively successful exercise of the North-South dialogue, in spite of the fact that it had not been possible to adopt the Convention by consensus.

215. The successful outcome of the Conference was important for the prestige and credibility of the United Nations. It showed that the United Nations could be an effective forum for multilateral negotiations on issues of vital importance to all States and to the international community as a whole. It also showed that, given the necessary political will, States could avail themselves of the United Nations as a centre for harmonizing their activities.

216. In conclusion, speaking on behalf of the Conference as a whole, he acknowledged his debt to his colleagues in the Collegium, with whom he had worked during the past two years as a united team. He also expressed his appreciation to the Chairmen of the negotiating groups and to the devoted members of the Secretariat, under the able and effective leadership of Mr. Bernardo Zuleta.

217. Now that the Convention had been adopted, the time had come for the participants to return to their countries and promote public understanding of the importance of the Convention, so as to convince Governments and parliaments to sign and ratify it in a timely manner. He hoped that those few delegations which had voted against the Convention or had abstained on it would, after further reflection, support it.

Closure of the first part of the session

218. The PRESIDENT announced that the Conference had concluded its work for the first part of the eleventh session.

¹⁰ See *Official Records of the General Assembly Twenty Second Session, First Committee*, vol. II, 1342nd meeting.

ANNEX 46

Report of the Select Committee of the Mauritius Assembly on the Excision of the Chagos
Archipelago, June 1983



REPORT of The Select Committee on the Excision of the Chagos Archipelago

I — Introduction

1. On 21st July 1982, the following motion standing in the name of the Honourable The Prime Minister was unanimously approved:—

"This Assembly is of the opinion that, in accordance with Standing Order 96 of the Standing Orders and Rules of the Legislative Assembly, a Select Committee of the House consisting of not more than nine members to be nominated by Mr Speaker, be appointed to look into the circumstances which led to and followed the excision of the Chagos Archipelago, including Diego Garcia, from Mauritius in 1965 and the exact nature of the transactions that took place with documents in support and to report; the said Select Committee to have powers to send for persons, papers and records." (1)

2. On 20th August 1982, Mr Speaker nominated the following Honourable Members to form part of the Select Committee (2):—

The Honourable Minister of Finance

The Honourable Minister of Commerce, Industry, Prices & Consumer Protection

The Honourable Minister of External Affairs, Tourism & Emigration

The Honourable Minister of Agriculture, Fisheries & Natural Resources

The Honourable Attorney-General and Minister for Women's Rights & Family Affairs

The Honourable Minister for Rodrigues & the Outer Islands

The Honourable A. Gayan

Dr the Honourable S. Peerthum

The Honourable Mrs F. Roussety

3. At its first meeting, the Select Committee unanimously elected the Honourable Jean-Claude de l'Estrac, then Minister of External Affairs, Tourism and Emigration, to the Chair.

4. The Committee met on 11 occasions and in the course of its proceedings heard witnesses whose names are listed in Appendix 'A' of this Report.

(1) Mauritius Legislative Assembly—Debates No. 8 of 21st July 1982—Col. 1026-1056.

(2) Mauritius Legislative Assembly—Debates No. 17 of 20th August 1982—Col. 2397—2398.

II — The Chagos Archipelago

5. The Chagos Archipelago — until 8th November 1965, a dependency of Mauritius — comprises the islands of Diego Garcia, Egmont or six Islands, Peros Banhos, Salomon Islands, Trois Frères, including Danger Island and Eagle Island. It lies some 1200 miles north-east of Mauritius and covers an area from 7°39' to 4°41' S and from 70°50' to 72°41' E. The largest island of the group is Diego Garcia which is about 11 square miles.

6. The early history of the archipelago is closely associated with that of the Seychelles which were both explored by the Portuguese as far back as the first half of the sixteenth century. Since then, both archipelagoes have known the fate common to the other islands of the region which changed hands, most particularly, according to the hazards of the long standing rivalry between the British and the French in the Indian Ocean. It is to be noted—as a premonition to the present status of Diego Garcia—that on 18th March 1786 an attempt was made from Bombay, by the East India Company to convert the island into a military base.(1) The venture proved unsuccessful. But when, during World War II, Diego Garcia happened to be a valuable 'naval port of call' (2), the assessment proved to be a worthy one which dates back as far as 1769 when the French Naval Lieutenant La Fontaine made 'a thorough survey of the bay, the first sign of French appreciation of the possible strategic value of that island. (3)

Indeed, the strategical situation of the main island of the Chagos Archipelago—about 3,400 miles from the Cape of Good Hope, 2,600 miles from the North West Cape, Australia, 2,200 miles from Berbera, Somalia and 1,900 miles from Masirah Island, Oman (4)—was bound to make of Diego Garcia a point of capital importance in modern geo-politics. This position, in the nearest vicinity of the Maldives and of India, became more evident after World War II when England gradually withdrew from the region, in the wake of its new policy of granting political independence to its colonies.

7. Hence, the Chagos Archipelago was bound to play a pre-eminent role in what tended to constitute, through Britain's withdrawal, 'one of the largest and most complex power vacuums of the post-war periods.' (5) Later, the Gulf crisis was soon to make of the region a most strategic field of action for the powers which are bent upon controlling the energy routes to Europe and Asia.

(1) Auguste Toussaint—*L'Océan Indien aux XVIIIe siècle*—Flammarion, p. 65.

(2) Joel Larus—*Diego Garcia; Political clouds over a vital U.S. base*. Strategic Review, Winter 1982—United States Strategic Institute, p. 46.

(3) Robert Scott—*Limuria, The Lesser Dependencies of Mauritius*—Oxford University Press, p. 244.

(4) Robert Scott—*Op. cit.* p. 68.

(5) Joel Larus—*Op. cit.*

8. It might be useful to record here that it was not long after the British colonisation of Mauritius that the islands which constituted the dependencies thereof became an object of considerable interest to the new administering government. On 21st March, 1826, the House of Commons voted a resolution asking that an address be presented to His Majesty requesting that he 'be graciously pleased to give directions that there be laid before this House a return of the number of all the islands, which come under the denomination of dependencies of Mauritius, showing their geographical position in reference to that island, the extent of their territory, and any census which may have been taken of their population together with their civil and military establishments and the description of naval force which may have been stationed there at any time since the conquest of the colony.' (1) Complying with the request, Sir Lowry Cole, the then Governor of Mauritius, submitted, on 19th September of the same year, to Lord Bathurst what one of his successors described as 'the first catalogue of the dependencies of Mauritius ever to have been compiled' and which even included two islands 'which are now known to have existed only in the imagination of cartographers.' (2)

9. However, since the coming into force of the instructions contained in the Letters Patent of 31 August 1903 which made of the Seychelles a colony administratively independent from Mauritius, thought was constantly given by the British Government to the necessity of sharing between the two colonies the islands around. Such an exercise was concluded in 1921 and the Chagos Archipelago remained one of the lesser dependencies of Mauritius.

III — The British Indian Ocean Territory

10. The long association of the Chagos Archipelago with Mauritius came to an end on 8th November 1965 with the coming into force of the British Indian Ocean Territory Order (Appendix 'B'). The new "colony" originally included not only the Chagos Archipelago, but the Farquhar Islands, the Aldabra Group and the islands of Desroches which formed part of the then British Colony of the Seychelles. Mention of these dependencies of the Seychelles is of strong political relevance. The two main political parties of the Seychelles which met the British Authorities during the first constitutional talks on the independence of that country (14—27 March 1975) made it a point to claim the islands back, but to no avail. However, as a result of the second talks with the Foreign and Commonwealth Office and which culminated into the independence of the then colony (28th June 1976) the Farquhar Islands, the Aldabra Group and the islands of Desroches were finally returned to the Seychelles. Hence, with the coming into force on 28th June 1976, of the British Indian Ocean Territory Order 1976, the 'territory' now comprises only the Chagos Archipelago, one of the former lesser dependencies of Mauritius.

(1) Mauritius Archives—SA 9.

(2) Robert Scott op. cit. p. 3.

11. The excision from Mauritius of the Chagos Archipelago was effected in accordance with the provisions of the Colonial Boundaries Act, 1895, but in complete violation of Resolution 6 of the Declaration on the Granting of Independence to Colonial Countries and Peoples voted by the 948th General Meeting of the United Nations Organizations, on 14th December 1960 (Appendix 'C'). Later,

- (i) the United Nations General Assembly Resolution 2066 voted on 16th December 1965 (Appendix 'D'), in line with the Declaration on the Granting of Independence to Colonial Countries and Peoples (Appendix 'C'); and
- (ii) the Resolution on Diego Garcia voted by the Assembly of Heads of State and Government of the Organization of African Unity at its 17th Ordinary Session in Sierra Leone from 1st to 4th July 1980. (Appendix 'E')

will be flouted in the same manner.

12. It would be wrong, however, to pretend that the excision of the Chagos Archipelago was a unilateral exercise on the part of Great Britain. In a statement in the House of Commons, no less a person than the Prime Minister of Great Britain declared that "the Government of Mauritius have been kept fully informed of, and have raised no objection to, the proposed use of Diego Garcia as a naval communication facility". (1) Details of such connivance, together with the Select Committee's opinion on the legal and moral validity of the transaction are shown later in the report. (Para. 52). The Committee, however, hastens to record that the attitude of the political delegation which attended the Mauritius Constitutional Talks 1965 when the question was first mooted is in sharp contrast with the firm and patriotic stand of the Seychelles political leaders who succeeded during the Constitutional Talks which preceded the independence of the Seychelles to recover the territorial integrity of their country.

13. The first public announcement in regard to the excision was made in the House of Commons on 10th November 1965 by the then Secretary of State for the Colonies, Mr Anthony Greenwood. (2). The news, embargoed for release in Mauritius at 20.00 hrs on that day, reproduced *in extenso* the Secretary of State's statement and contains the vague indication that the islands would be used for "defence facilities by the British and United States Governments." Mention is also made therein of the compensation to be paid to the company which exploited the plantations on the islands, the cost of "resettling elsewhere those inhabitants who can no longer remain there" and an additional grant of £3m. for development projects in Mauritius (Appendix 'F'). Later, the freeholds were acquired at agreed prices totalling £1,013,200.

(1) House of Commons debates — Vol. 811, Col. 338.

(2) House of Commons debates—Vol. 720, Col. 1-2.

14. The decision of the British Government became immediately a matter of big concern to most of the countries of the world and particularly to those located in the Indian Ocean and which saw in the process the beginning of a long term militarization of the region, with inevitable risks of involvement in nuclear warfare.

15. On the excision issue, as early as 16th December 1965, the United Nations, as its 1398th Plenary Assembly voted a Resolution inviting, *inter alia*, 'the administering power to take no action which would dismember the territory of Mauritius and violate its territorial integrity.' (Appendix D).

16. The Resolution did not, in the least, deter the British Government in its plans. On 30th December 1966, an Exchange of Notes was signed in London between the United Kingdom and the United States Governments on the Availability of certain Indian Ocean Islands for Defence Purposes (Common Paper No. 3231) and which confirmed the deal to use the islands in a joint military venture by the two countries. Indeed, the United States Government agreed at the very start 'to contribute up to £ 5m towards the costs of setting up the British Indian Ocean Territory, by waiving to that extent research and development surcharges for the United Kingdom purchase of the Polaris missile system.' (1) The islands of the British Indian Ocean Territory were made available for the defence purposes of both governments for an initial period of 50 years. (2)

17. The nature of these defence arrangements was first released to local public information in a press communique issued on 3rd December 1965 by the Government of Mauritius and which indicated "that at the time the matter was discussed with the Mauritius Government, the British and the American Governments were considering the establishment of a communications centre, supporting facilities and a naval refuelling depot" on the islands. (3) The disturbing element in the communique and which was for the first time brought to the public knowledge refers to prior consultation with the Government of Mauritius on the issue. This feature will be analysed later in the report. (Paras 39-44) In addition, it should be noted that the relatively more detailed press release of the Mauritius Government bears contrast with the euphemistic approach of the United Kingdom Government which persisted as late as 1970, on the eve of an upgrading of such facilities, to pretend that these innocently consisted of "a limited United States naval communications centre, partly operated by the United Kingdom and which would provide communications support to United States and United Kingdom ships and aircraft in the Indian Ocean." (4)

(1) House of Commons debates—Vol. 899, Col. 271-272.

(2) House of Commons debates—Vol. 870, Col. 1274.

(3) Mauritius Legislative Assembly debates No. 27 of 14th December, 1965, Col. 1850-1851.

(4) House of Commons debates—Vol. 808, Col. 328.

These arrangements, within the terms of the 1966 Exchange of Notes, were approved, in principle, by the United Kingdom Government in 1968. A further Exchange of Notes was signed on 24th October, 1972, and the facility began operating in 1973 (1) when the United Kingdom Government agreed to "a limited expansion of the radio station" (2) in addition to the original defence facilities which were said then to "consist of a United States navy radio station, an 8,000 ft runway which is not capable of taking the larger transport and tanker aircraft fully laden; a natural anchorage restricted in draught and turning room; accommodation for some 450 personnel; and limited aircraft parking space and oil storage facilities." (2)

18. However, on 5th February, 1974, a statement made in the House of Commons by the Secretary of State for Foreign and Commonwealth Affairs, Mr Julian Amery, revealed that Her Majesty's Government had agreed in principle to a proposal of the United States Government made in January 1974 and in accordance with the 1966 Anglo-American Agreement (Command Paper No. 3231) to the expansion of the facilities at Diego Garcia and which would involve "improvements to the anchorage and to the airfield as well as to the shore facilities". The last part of the statement is however, indicative of military concern of a larger dimension:—

"Her Majesty's Government have long felt that it is desirable in the general Western interest to balance increased Soviet activities in the Indian Ocean area. Accordingly, they welcome the expansion of the United States facilities which will also be available for British use. Against this background, the United States and the British Governments have agreed to consult periodically on joint objectives, policies and activities in the area. As regards the use of the expanded facilities in normal circumstances, the United States and British representatives in Diego Garcia will inform each other of intended movements of ships and aircraft. In other circumstances the use of the facilities would be a matter for the joint decision of the two Governments." (3)

Later, on 20th March, 1974, the Under-Secretary of State for Foreign and Commonwealth Affairs, Miss Joan Lester, again stressed that one of the reasons for the United Kingdom's acceptance of the United States proposal was the fact that the Soviet naval presence in the Indian Ocean had increased steadily in quantity and quality over the last five years and is larger than that of the Western countries. (4)

(1) House of Commons debates—Vol. 870; Col. 1274.

(2) House of Commons debates—Vol. 897; Col. 204.

(3) House of Commons debates—Vol. 868; Col. 276-277.

(4) House of Commons debates—Vol. 870; Col. 1275.

19. An assessment of the actual military arrangements on the islands is obviously difficult and whatever may be their size and nature is immaterial to this report. On two occasions at least,—11th March and 22nd July, 1975—the then British Secretary of State for Defence, Mr Roy Mason, declared to the House of Commons that it was not the policy of the British Government “to confirm or deny the presence of nuclear weapons in ships, aircraft or any particular location”—a statement pregnant with alarming military connotations.

Ten days after the announcement in regard to the constitution of the British Indian Ocean Territory, the then Secretary of State for the Colonies, Mr Anthony Greenwood, declared to the House of Commons: “There is certainly no question of any derogation from Britain’s sovereignty of these territories.” (1) And, later, the then Secretary of State for Foreign and Commonwealth Affairs, Mr Hattersley, re-echoed: “The island of Diego Garcia is British Sovereign Territory.” (2) At this stage, the Committee cannot dismiss the fact that such sovereignty was claimed in the teeth of strong opposition from the United Nations Organisation, the Organisation of African Unity and most of the independent States in the Indian Ocean, including India, whose Prime Minister, Mrs Indira Gandhi, on 7th February, 1974, highlighted the danger that the militarization of the Chagos Archipelago constituted for the security of her country.

IV — The Mauritius Constitutional Conference, 1965

20. On 7th September, 1965, a Mauritius delegation comprising representatives of the Mauritius Labour Party, the Parti Mauricien Social Démocrate, the Independent Forward Bloc, the Muslim Committee of Action and two independent Members of the Legislative Assembly (Appendix G) met at Lancaster House, under the chairmanship of the then Secretary of State for the Colonies, Mr Anthony Greenwood, “to reach agreement on the ultimate status of Mauritius, the time of accession to it, whether accession should be preceded by consultation with the people and, if so, in what form.” (3) The Conference met until 24th September, 1965.

21. The claim for independence was supported at the Conference by the Mauritius Labour Party, the Independent Forward Bloc and the Muslim Committee of Action, although this party had put up certain conditions in regard to the electoral system. The Parti Mauricien Social Démocrate advocated, as a substitute for independence, close constitutional associations with Great Britain and submitted that, in any event, the people of Mauritius should be allowed to express their preference in a free referendum.

(1) House of Commons debates Vol. 720, Col. 1309.

(2) House of Commons debates Vol. 872, Col. 327.

(3) Report of the Mauritius Constitutional Conference—September 1965—Sessional Paper No. 6 of 1965, p. 1.

22. In the final communiqué issued on 24th September 1965, the Secretary of State for the Colonies ruled out the proposal submitted by the Parti Mauricien Social Démocrate for association with Great Britain on the ground that "given the known strength of the support for independence, it was clear that strong pressure for this would be bound to continue and that in such a state of association neither uncertainty nor the acute political controversy about ultimate status would be dispelled." The plea for a referendum which, in the Secretary of State's opinion would prolong "the current uncertainty and political controversy in a way which would harden and deepen communal divisions and rivalries" was also discarded. The United Kingdom's Government ultimate decision on the issue was "to fix a date and take necessary steps to declare Mauritius independent after a period of six months full internal self-government if a resolution asking for this was passed by a simple majority of the new Assembly." (1)

23. The final communiqué also referred to the following defence arrangements between the British and the Mauritius Governments:—

23. At this final Plenary meeting of the Conference the Secretary of State also indicated that the British Government had given careful consideration to the views expressed as to the desirability of a defence agreement being entered into between the British and Mauritius Governments covering not only defence against external threats but also assistance by the British Government in certain circumstances in the event of threats to the internal security of Mauritius. The Secretary of State announced that the British Government was willing in principle to negotiate with the Mauritius Government before independence the terms of a defence agreement which would be signed and come into effect immediately after independence. The British Government envisaged that such an agreement might provide that, in the event of an external threat to either country, the two governments would consult together to decide what action was necessary for mutual defence. There would also be joint consultation on any request from the Mauritius Government in the event of a threat to the internal security of Mauritius. Such an agreement would contain provisions under which on the one hand the British Government would undertake to assist in the provision of training for, and the secondment of trained personnel to, the Mauritius police and security forces; and on the other hand the Mauritius Government would agree to the continued enjoyment by Britain of existing rights and facilities in H.M.S. Mauritius and at Plaisance Airfield. (2)

(1) Report of the Mauritius Constitutional Conference—September 1965—Sessional Paper No. 6 of 1965, p. 4.

(2) *Op. cit.*, p. 5.

That section of the communiqué which touches upon military arrangements makes no mention of any agreement in regard to the excision of any part of the Mauritian territory in the context of either mutual defence or what was ultimately termed "in the general western interest to balance increased Soviet activities in the Indian Ocean." (1)

However, in the light of evidence produced by representatives of the political parties which took part in the Mauritius Constitutional Conference 1965, and which is reviewed at paragraph 25 hereunder, the Committee is convinced, without any possible doubt, that, at a certain time while the Constitutional talks were on, the question was mooted. And, further, the Committee is satisfied that the genesis of the whole transaction is intimately connected with the constitutional issue then under consideration.

24. The Committee regrets that, apart from Sir Seewoosagur Ramgoolam who led the Mauritius Labour Party delegation, the leaders of the other participating political parties are no more. Nevertheless, the Committee has been fortunate enough to hear members from each of the parties present at Lancaster House, in September 1965.

25. Their reports to the Select Committee can be summarized as hereunder:

A The Mauritius Labour Party

The Mauritius Labour Party, led by the then Premier and Minister of Finance, Dr the Honourable Seewoosagur Ramgoolam, now Sir Seewoosagur Ramgoolam, was, numerically speaking, the most important political party which attended the Constitutional Conference. Sir Seewoosagur was heard by the Select Committee on 6th December 1982. He declared that the eventual excision of the Chagos Archipelago from Mauritius never appeared on the agenda of the Constitutional talks nor was it ever brought for discussion in Mauritius prior to the Conference. It was only, while the talks were on, that he had two private meetings with the British Authorities; one, at 10, Downing Street where the British Government's decision to grant independence to Mauritius was communicated to him by the then Prime Minister, and the second, on 23rd September, 1965, in one of the committee rooms of Lancaster House where he was, for the first time, informed by the Secretary of State, Mr. Anthony Greenwood, of the United Kingdom's intention of detaching the Chagos Archipelago from Mauritius.

(1) House of Commons debates Vol. 868, Col. 277.

Sir Seewoosagur declared that he accepted the excision, in principle, as (i) he felt he had no legal instrument to prohibit the United Kingdom Government from exercising the powers conferred upon it by the Colonial Boundaries Act 1895, which powers could not be resisted even by India when the partition of this country took place before its independence (ii) he could not then assess the strategic importance of the archipelago which consisted of islands very remote from Mauritius and virtually unknown to most Mauritians and (iii) it was concretely expressed to him that the islands would be used as a communications centre and not as a military base.

Sir Seewoosagur strongly emphasised that, at no time, during that meeting and during meetings he had subsequently with the Secretary of State — after the Constitutional talks — to discuss details of the excision, was he made aware that the United States of America were in the deal and that the islands would be required for a joint U.K./U.S.A. defence venture. So much so that the statement made in the Legislative Assembly, on 14th December 1965, by the then Acting Premier, Mr Guy Forget, (Appendix 'F') came as a surprise to him. He even declared to the Select Committee that the circumstances which led to the introduction in that statement of certain elements then unknown to him were still shrouded in 'mystery'. He did not deny, however, that while the Conference was on, a Mauritian delegation led by late Mr Guy Forget met the Minister in Charge of Economic Affairs in the American Embassy in London.

Sir Seewoosagur maintained that the choice he made between the independence of Mauritius and the excision of the archipelago was a most judicious one. He thought, however, that had all the political parties present at Lancaster House been united in the claim for independence, better conditions might have been obtained. But, the Parti Mauricien Social Démocrate (P.M.S.D.) walked out of the Conference, as soon as it became evident that independence could not be avoided.

Sir Seewoosagur recalled that at one of the meetings on the excision issue, with the Secretary of State, he stressed that the sovereignty of Mauritius over the islands should be maintained and all rights connected with fishing and mineral prospection should be preserved. He also claimed the possibility for planes to use the strip on Diego Garcia for any emergency landing on their route to and from Mauritius. No records of these proceedings were communicated to him, but he had the impression

that, apart from the claim for sovereignty, all the other points were agreeable to the British Government including a proposition that, in the event of excision, the islands would be returned to Mauritius when not needed by the United Kingdom Government. He recognised, however, that apart from certain statements made by himself and members of his Government in international meetings, no official request had been made for the retrocession of the islands to Mauritius.

Touching upon the question of the displacement of the Ilois community, Sir Seewoosagur said that it was never raised with him at any time in London and whatever correspondence he exchanged later in Mauritius with the British High Commission on the subject, had to take into account the unexpected nature of the statement made in the House by late Mr Guy Forget. (Appendix 'F')

Sir Veerasamy Ringadoo confirmed that, at no time, was the question of the excision of the Chagos Archipelago brought on the table of the Mauritius Constitutional Conference of September 1965. He might have been informed of such proposals after the private meeting Sir Seewoosagur Ramgoolam had with the Secretary of State, Mr Anthony Greenwood, on 23rd September, 1965. He did not object to the principle of the excision as he felt that, being given the defence agreement entered into with Great Britain (paragraph 23)—a decision which had the unanimous support of all political parties present at Lancaster House, most particularly in view of the social situation which had deteriorated in Mauritius—the United Kingdom Government should be given the means to honour such agreement. It was in this context that he viewed the excision of the islands which were to be used as a communications station.

Sir Veerasamy stated that, about one week after the Constitutional talks, Sir Seewoosagur Ramgoolam and himself had discussions with officials of the Foreign Office on the excision issue, where both of them stressed that (i) when no longer needed, the islands should be returned to Mauritius (ii) all rights connected with fishing and mineral prospection would be maintained for Mauritius (iii) the possibility for planes to use the strip on Diego Garcia, in any emergency, on their route to and from Mauritius should be recognized and (iv) 'all the requirements for the installation of the station and for the food and everything would, as far as possible, be taken from Mauritius.' Unfortunately, no minutes of this meeting were circulated.

Sir Veerasamy supported Sir Seewoosagur's contention that nothing was heard in Mauritius about the excision until Mr Guy Forget made a statement in the Legislative Assembly on 14th December, 1965. He also maintained that the substance of this statement was absolutely alien to the nature of the talks he had, in company of Sir Seewoosagur, with the officials of the Foreign Office, in London.

Sir Harold Walter also stated that, at no time in Mauritius, prior to the Constitutional talks, was the question of the excision brought up for discussion. He happened to learn of this issue when he saw the definition of the State of Mauritius in a draft Constitution prepared for the country by the Colonial Office. He then questioned Sir Seewoosagur Ramgoolam on the matter and the latter revealed to him that he had to make some concessions on that score, as he felt that at one time during the Conference, the British Authorities tended to agree to the claim of the Parti Mauricien Social Democrate (P.M.S.D.) for a referendum.

Sir Harold did not resist the stand taken by the Leader of the Mauritius Labour Party as he knew the amount of pressure that was made to bear on the United Kingdom Government against the grant of independence to Mauritius. Moreover, public opinion in the country was largely divided on the nature of constitutional progress to be achieved. Indeed, he had got Sir Seewoosagur's assurance that the abandonment of the Chagos Archipelago had been agreed on certain conditions, namely, that (i) fishing and mineral prospection rights would be preserved for Mauritius (ii) the islands would be returned when no more needed and (iii) Mauritians would be employed to work there. He further stressed that no Mauritian delegate present at Lancaster House had expressed any dissent on the principle of the excision.

Sir Harold declared having been made aware of the United States' interest in the archipelago "years after" the Constitutional Conference. Everything that could have been published on that issue before or immediately after the talks might have escaped his attention as he was mainly interested in the accession of Mauritius to national sovereignty.

Sir Harold stated that the question of the Ilois was raised in London and they were considered as Mauritians who had migrated to work on the islands. However, the amount of compensation to be paid by the United Kingdom was not discussed at his level and he came to know about it much later.

Sir Satcam Boolell informed the Committee that the question of the excision of the Chagos Archipelago was raised by the British Officials in private with Sir Seewoosagur Ramgoolam, in London. He was not much concerned about it as he only had in mind the independence of Mauritius. He can vaguely recollect that the United Kingdom Government wanted Diego Garcia to be used as a signal station and that the whole archipelago would be returned to Mauritius when no more needed. He was further given to understand that all mineral resources around the islands would remain the property of the Government of Mauritius. At no time was he made aware of the United States involvement in the deal.

Sir Satcam further added that, in spite of the fact that he was then the Minister responsible for agriculture, he had no idea of any bid for the sale of Mauritian sugar on the American market as that transaction was in the hands of the Mauritius Sugar Syndicate.

Sir Satcam affirmed that he did not attend any meetings where the excision of the Chagos Archipelago was discussed and on this question he had put all his trust in the wisdom and experience of Sir Seewoosagur Ramgoolam.

B. *The Parti Mauricien Social Démocrate (P.M.S.D.)*

The first political commotion which took place in Mauritius, as a result of the excision of the Chagos Archipelago was the resignation, on 11th November, 1965, of the three P.M.S.D. Ministers (Messrs Koenig, Duval and Devienne) from the coalition Government. The next day, they convened a press conference in Port Louis and explained that the reason for their resignation was Government stand in regard to the excision of the Chagos Archipelago. The party's leader, Mr Koenig, stressed that the P.M.S.D. was not against the use of the archipelago for a joint United Kingdom/United States defence venture. But his party felt that Government should have retained the sovereignty of Mauritius over the islands and negotiated their occupation, on the best possible terms, direct with the occupying powers. The P.M.S.D. had in mind the possibility of securing a substantial sugar quota on the United States market and defining a policy of emigration to the United States for unemployed Mauritians.

This stand was supported by Sir Gaëtan Duval, Q.C., one of Mr Koenig's co-delegate, when he appeared before the Select Committee on 12th November, 1982. He underlined that a periodical review of such arrangements direct with the occupying powers would have been most beneficial to Mauritius. Sir Gaëtan further assured the Committee that the Council of Ministers was, from the very start, aware that the Chagos Archipelago would be used for defence purposes jointly by the United Kingdom and the United States. He indicated that this state of affairs is contained in official documents. The possibility of recruiting Mauritian workers for the construction of military installations at Diego Garcia and the purchase, as far as possible, of materials from Mauritius was even envisaged at that time.

Sir Gaëtan explained that, on 23rd September, 1965, while the Mauritius Constitutional Conference was discussing the proposition for a referendum put forward by his party, the chairman, Mr Anthony Greenwood, suspended the proceedings and invited the Mauritian delegates to meet him and offer their views on the future of the Chagos Archipelago. The P.M.S.D. refused to attend the meeting, feeling that such a question was outside the agenda of the Conference and that the party had no mandate to consider any possible excision of part of the Mauritian territory. Sir Seewoosagur Ramgoolam, Sir Abdool Razack Mohamed and Mr Sookdeo Bissoondoyal, representing respectively the Mauritius Labour Party, the Muslim Committee of Action and the Independent Forward Bloc responded to the invitation but Sir Gaëtan was not in a position to say if the final decision was taken in their presence or as a result of private consultations between Mr Anthony Greenwood and Sir Seewoosagur Ramgoolam. It was, revealed Sir Gaëtan, at the resumption of proceedings, after such a meeting extraneous to the Conference agenda, that the Secretary of State ruled out the suggestion for a referendum, leaving the clear impression that some sort of blackmailing had taken place.

Alluding to the question of the displaced Ilois, Sir Gaëtan argued that the excision having taken place in 1965, that is, three years before the independence of Mauritius, those persons cannot be considered as citizens of Mauritius but British nationals. He regretted that (i) the case of Mr Vencatassen had been withdrawn from the British Law Courts, thus depriving the community at large from obtaining the verdict of the Court on this delicate issue and (ii) the attitude of the Mauritius Government, after independence, vis-à-vis the United Kingdom, might, in a large measure, have jeopardised the claim of Mauritius for recovering its sovereignty over the archipelago.

C *The Independent Forward Bloc (I.F.B.)*

Honourable Aneerood Jugnauth, Q.C., Prime Minister of Mauritius, who formed part of the Mauritius Delegation to the Constitutional talks 1965, under the banner of the I.F.B., was heard by the Select Committee. He stated that never, in the course of the talks, was the question of the excision of the Chagos Archipelago raised. Some time before the Conference ended, the Leader of the Mauritius Labour Party, Dr Seewoosagur Ramgoolam, came to the desk of the I.F.B. delegation and told the delegates that he had accepted a proposition from the United Kingdom to use Diego Garcia as a communications station. There was no indication that the islands would be used as a military base, nor was the question of an excision from the Mauritian territory mentioned. Mr Jugnauth said that, at the time, the I.F.B. "had not much to say about it", as the party thought that the installation of communications facilities on the islands was an innocuous venture.

Mr Jugnauth stressed that, at no time, did the Leader of the I.F.B. inform his co-delegates that he had taken part in any private talks on the issue with the British authorities, nor was the eventual excision of the islands ever discussed at party level. He added that the statement made by Mr Guy Forget in the Legislative Assembly on 14th December, 1965, (Appendix 'F') came as a surprise to him in the sense that it contained facts that were never brought to his knowledge or to that of his party before. He was not a minister when the excision was discussed in the then Council of Ministers and he was never informed subsequently of the decision then taken.

Mr Jugnauth recalled that the withdrawal of the P.M.S.D. from the Constitutional talks had nothing to do with the excision of the Chagos Archipelago which, he repeated, was never brought on the Conference agenda. The P.M.S.D. delegates left when they learnt of the United Kingdom's intention to grant independence to Mauritius.

The Committee wishes at this stage to reproduce a statement made in the Legislative Assembly, on 19th October, 1976 by late Mr. S. Bissoondoyal, then Leader of the I.F.B. on the excision of the archipelago and which supports substantially the evidence of Mr. Jugnauth:—

The London Conference in 1965 witnessed this question coming out whether Mauritius would agree to part with Diego Garcia. That was the question put to me as a Member of the Government, put to me in private. I had an answer for it and that question was also put to the Leader



of the Parti Mauricien. I am aware of the attitude of the Parti Mauricien at that time. Now let me make it clear to the House, the aftermath of all this matter was dealt with personally by the Prime Minister and no Government then existing. I was a Member of the Government, I knew what was taking place: (1)

- D. *Mr Maurice Paturau, D.F.C., C.B.E.—Independent Member*
Mr Paturau appeared before the Select Committee on 13th December 1982. He formed part of the Mauritius delegation which attended the Constitutional talks of September 1965. He revealed that he participated in no less than two meetings with the British authorities on the question of the excision of the Chagos Archipelago, but all these meetings were extra-neous to the open Constitutional Conference which was then in progress. It was in the course of the first of these meetings that Dr Ramgoolam himself and the other party leaders took cognizance of the amount of compensation proposed by the United Kingdom. When the possibility of securing a sugar quota on the American market was evoked by the Mauritian side, the British officials suggested that this question should be dealt with direct with the American Embassy in London. A meeting was accordingly arranged and Mr Guy Forget led the Mauritian delegation which comprised, *inter alia*, Messrs Abdool Razack Mohamed and Jules Koenig. The request of Mauritius was turned down by the American officials who stated that "as far as Chagos was concerned, they would not commit the American Senate or House of Representatives about anything like a sugar quota." They intimated that anything connected with the Chagos Archipelago issue was a matter for direct negotiation between the United States and the United Kingdom Governments, and not with Mauritius.

The second meeting took place after the P.M.S.D. had retired from the Conference and the Mauritius delegation was then represented by Dr Ramgoolam, Messrs Abdool Razack Mohamed, Sookdeo Bissoondoyal and himself. A final compensation of £3m was then proposed by the United Kingdom Government. He expressed dissent as he thought the compensation inadequate, but the other delegates agreed.

Mr Paturau stressed that during all the negotiations that took place, he had in mind the lease of the Chagos Archipelago by Mauritius. An initial period of thirty years was even proposed during which term a sugar quota at more remunerative prices would be negotiated, coupled with the possibility of obtaining

rice and flour from America at subsidized rates. Such lease would have been, more or less, on the model of the North West Cape Agreement between Australia and the United States, signed in 1963. He did not agree that the idea of a communications station was devoid of any military connotation. The American sub-marines needed in fact a land base which would 'generate enough messages at low frequency, but of high power so that they could reach the sub-marine and give it the actual position it was in so that it could fire its missiles with as much precision.'

Referring to the attitude of the P.M.S.D. on the excision issue, Mr Paturau said that, at no time, either in London or in Mauritius, did that party express any opposition to the principle of the excision. The party was most concerned at Lancaster House with reservations in the electoral system and walked out of the Conference on that issue, whereas the resignation of the Ministers of that party from the then Council of Ministers was motivated by the inadequacy of the compensation offered by the United Kingdom Government. As regards the inhabitants of the islands, he explained that, to his mind, those who came from the Seychelles were considered as migrants, whereas the others were "established Mauritians" whose fate was never discussed at the meetings he attended.]

V — The Lesser Dependencies in the Wake of a New Destiny

26. In November 1959, a Commission headed by Professor J. E. Meade was appointed to report to His Excellency the Governor of Mauritius, then Sir Colville Montgomery Devere'll, K.C.M.G., C.V.O., on ways and means of improving the economic and social structure of Mauritius. Although the terms of reference of the Commission were wide enough, the Commissioners did not feel that a study of the economic potentialities of the dependencies of Mauritius, including Rodrigues, was justified. Indeed, the temptation of ignoring whatever contribution the lesser dependencies particularly, could make to the economy of Mauritius was so great that at paragraph 6:44 of their report, the Commissioners invited Government to reject an application for financial assistance made by the two private companies which were then engaged in copra production on the Chagos and Agalega islands. (1)

27. The outright ignorance of the lesser dependencies and of their possible contribution to the economy of Mauritius, by the Meade Commission, did not deter the private sector in its attempt to rehabilitate the islands by a more scientific approach to copra production. The sector felt that if the soap and oil industry were to be maintained in Mauritius, as a means of helping both to combat unemployment and to save foreign exchange,

(1) J. E. Meade & Others, *The Economic and Social Structure of Mauritius*—Frank Cases & Co. Ltd. p. 138.

it was imperative that the raw materials produced on the islands should not be abandoned. Hence, in September/October 1961, an exploratory survey of the islands was undertaken by a team composed of Mr René Maingard de la Ville-es-Offrans, acting on behalf of Rogers & Co., Mr Paul Moulinié, an entrepreneur from the Seychelles and Dr Octave Wihé.

28. Mr René Maingard de la Ville-es-Offrans, now Sir René Maingard de la Ville-es-Offrans, C.B.E., was heard by the Select Committee on 8th February 1983. He related to the Committee the attempts made by the private sector to rehabilitate copra production on the islands, with a view particularly to saving the soap and oil industry in Mauritius. These attempts may be summarized as follows. In August 1961, the two private companies which were operating on the islands offered to Rogers & Co. to buy 55% of their shares. Rogers & Co., before taking any decision on the offer, resolved to conduct a survey *in situ* of the islands and this exercise was undertaken by the team referred to at paragraph 27 above. After a full assessment of the economic situation of the operating companies and a thorough survey of the prospects of the industry, the party recommended that the islands be purchased by a private enterprise made up with the equal participation of Rogers & Co., the existing shareholders and Mr Paul Moulinié of the Seychelles. Mr Maingard de la Ville-es-Offrans tried to enlist, for the purpose, the financial support of the Government of Mauritius. Hence, through the agency of Dr Seewoosagur Ramgoolam, a meeting was arranged at Le Reduit between himself and the Governor of Mauritius (Sir Colville M. Deverell, K.C.M.G., C.V.O.), the Colonial Secretary (Mr Tom Vickers, C.M.G.), the Financial Secretary (Mr A. F. Bates, C.M.G.) and Mr A. L. Nairac, C.B.E., Q.C. who was then Minister of Industry, Commerce & External Communications.

The Governor then informed him that, taking into consideration the recommendations of the Meade Commission, the Colonial Office was opposed to any form of Government financial participation in the venture.

On 7th March 1962, the Colonial Steamships Co. Ltd. offered to put up a society, the Chagos Agalega Ltd., at par with Mr Paul Moulinié and shareholders from the Seychelles with a view to purchasing the islands. That company was registered in the Seychelles and the promoters suggested that the sovereignty of the islands should be transferred from Mauritius to the Seychelles. Although the then Governor of the Seychelles seemed agreeable to the project, the Colonial Office again stood in the way. Hence, the exploitation of the islands remained the sole concern of the Chagos Agalega Ltd., which had become the owners of the islands.

In 1964, Mr René Maingard de la Ville-es-Offrans had again the possibility of discussing, *inter alia*, the future of the islands with top British political personalities, such as Messrs Lennox-Boyd, Patrick Wall, Ian Mac Leod and Sir Tufton Beamish. He got the firm impression out of the talks that the British Government had no intention of parting with the islands for which they had conceived projects of a nature other than industrial.

In April 1967, the assets of the Chagos Agalega Ltd. were compulsorily acquired by the United Kingdom Government and the administering company gave full powers to Mr Paul Moulinié to discuss the compensation issue and to take all measures connected with the displacement of the local population. Indeed, neither the Government of Mauritius nor any of the Mauritian shareholders took part in the negotiations. The amount paid by the United Kingdom Government was £660,000.—, but consideration of the company's assets brought the figure to Rs 7,500,000. The Chagos Agalega Ltd was wound up on 19th December 1975 after the compulsory acquisition, on 1st October 1975, of Agalega by the Government of Mauritius. Its registration at the Registrar General's Office of the Seychelles was cancelled on 11th December 1980.

29. The Meade Commission was appointed 'to make recommendations concerning the action to be taken in order to render the country capable of maintaining and improving the standard of living of its people, having regard to current and foreseeable demographic trends' with particular reference to 'the economics of the staple agricultural industries of Mauritius'. In the chapter introductory to their report, the commissioners, however, explained that in their assessment they had chosen to ignore the dependencies of Mauritius, namely Rodrigues, the Chagos Archipelago, Agalega and St. Brandon. They did not even consider a visit to these dependencies necessary. The reason for this deliberate omission is thus outlined in chapter 1:2 of the report. 'Unfortunately, we had no opportunity of visiting the dependencies and have not therefore included them within the scope of our report. We do not think this greatly detracts from our report, however, since the dependencies amount for only 12% of the colony's area and 3% of its population, and play little or no part in the economic life of the island of Mauritius itself.' (1)

This statement might have proved surprising at the time it was published in as much as it looked contradictory to the terms of reference of the Commission which invited the Commissioners, *inter alia*, to look for a definition of 'the broad lines of development policy in the future.' It is indeed unbelievable that, in that particular context, the unquestionable potentialities of the dependencies, including Rodrigues, in the framing of a new social and economic structure for Mauritius could not have attracted the attention of the experts who formed part of the Meade Commission.

The Select Committee is thus tempted, at this stage, to share Sir Rene's feelings that the deliberate assignment of the dependencies of Mauritius to purposes in no way connected with the economic and social interests of Mauritius, formed part of a definite and long term strategy on the part of the United Kingdom Government.

(1) J. E. Meade and Others—op. cit.

PART II

DOCUMENTARY EVIDENCE

VI — Preliminary Remark

30. At the very outset, the Committee wishes to report a most deplorable state of affairs. To an application for copies of correspondence exchanged between the Governor of Mauritius and the Secretary of State for the Colonies, pertaining to the years immediately preceding the independence of Mauritius, the Private Secretary and Comptroller, Le Reduit, replied that there were 'no record concerning the despatch of document from this office to other departments prior to 1970.' He further added: 'I have also made searches in our Archives but have not been able to find any document where the information asked for could have been registered. I understand from Mr E. G. Goldsmith, former Private Secretary, that at the time of independence in 1968, a lot of documents were either destroyed or taken over by Mr Young, who was then Information Officer at the British High Commission.'

The Committee deeply regrets that such valuable documents have not been allowed to form part of our archives. Their removal or destruction, in addition to being a national calamity, will be most harmful to the efforts of students in our local political history.

VII — The Anglo-American Survey

31. The first serious hint at the possibility of the United Kingdom Government using Mauritius and its dependencies, most particularly Diego Garcia, as a unit for its defence strategy in the Indian Ocean, came from Mr David Windsor, of the United Kingdom Institute of Strategic Studies, in the course of an interview given on the B.B.C. in the programme 'London Calling Mauritius', on 21st February, 1964. (1). This opinion was subsequently carried by the written press overseas which made no mystery of the United Kingdom's choice of 'keeping Aden at all costs, enlarging Britain's fleet of aircraft carriers, or finding some territory in the Indian Ocean, if there is one, with natural facilities and a small, politically isolated population.' (2).

32. However, no allusion to any consultation between the United Kingdom Government and the local authorities was reported until the 31st July, 1964, when a local daily reproduced the following information from its London correspondent:

"Il y a eu à Maurice, une importante réunion du Cabinet des Ministres, présidée par Sir John Rennie, probablement le 13 ou le 14 juillet. Au cours de cette réunion, Sir John a tenu les ministres présents au courant d'un communiqué dans lequel le Secrétaire d'Etat aux Colonies, M. Sandys, révèle l'intention de Londres de faire de Maurice, des Seychelles et d'Agalega une importante base navale militaire." (3)

(1) Advance—22nd February 1964.

(2) The Economist—4th July 1964

(3) Le Mauricien—31st July 1964.

33. The meeting of the Council of Ministers referred to in the press excerpt quoted at paragraph 32 above took place on the 14th July 1964. The Minutes of that meeting indicate that the then Governor of Mauritius, Sir John Shaw Rennie, K.C.M.G., O.B.E., made a statement on certain developments in the field of defence. The Select Committee regrets that the Governor's pronouncement cannot be reproduced as it, undoubtedly, forms part of the records which have either been destroyed or removed to the British High Commission as mentioned in paragraph 30 of this report. However, this situation does not deter the Select Committee in its opinion that Sir John's statement was of a nature which cannot but render absolutely misleading, both to the House and to the nation, the interjection made in the Legislative Assembly, on 10th November, 1964, by Honourable Satcam Boolell to the effect that the Government of Mauritius was not aware of any military project conceived by the United Kingdom Government for either Mauritius or any of its dependencies. (1) Indeed, in reply to a parliamentary question in the House of Commons on 5th April 1965, Mrs Eirene White, then Under-Secretary of State for the Colonies, revealed that consultation prior to the survey had in fact taken place both at the level of the Premier and of the Council of Ministers. She stated: "The Premier of Mauritius was consulted in July last about the joint survey of possible sites for certain limited facilities that was then about to begin. In November the Council of Ministers, who had been kept informed, were told that the results of the survey were still being examined and that the Premier would be consulted again before any announcement was made in London or in Washington." (2) However, the Select Committee will establish hereunder (para. 34) that not only the Council of Ministers but the whole Legislative Assembly sitting in 1964 were informed, in unequivocal terms, of the British-American technical survey of the islands. The information was even released to the press on 14th December, 1964.

34. On 10th November, 1964, in the Legislative Assembly, at adjournment time, Honourable B. Ramlallah intervened lengthily on certain speculation to the effect that a joint Anglo-American survey was in progress in Diego Garcia and requested a full and prompt explanation from Government (Appendix 'H'). The reply came on 14th December, 1964, in the form of a letter from the then Chief Secretary, Mr Tom Vickers, C.M.G., addressed to Honourable Ramlallah, copied to all Members of the Legislative Assembly and released to the press. (Appendix 'I'). Confirmation is contained therein of (i) the presence of a joint British-American survey team 'on certain islands, including the Chagos Archipelago, Agalega, but not including Mauritius' and (ii) prior notification of this exercise having been given to the Council of Ministers. Such notification was no doubt contained in Sir John Rennie's statement to the Council of Ministers on 14th July, 1964. (paragraph 33) and

(1) Mauritius Legislative Assembly Debates No. 23 of 10th November 64 Col. 1574.

(2) House of Commons Debates—Vol. 710, Col. 26.

brings to naught all future submissions to the effect that any United Kingdom's project for the islands was first communicated to both the Premier and his Ministers *en marge* of the Constitutional talks of September 1965 and that the United States participation therein was unheard of prior to that conference.

35. The news of the Anglo-American survey of the islands met with protests from nearly all quarters of the Mauritian press which urged the then Government to combat the project. The danger of thus pushing the Indian Ocean into the zone of nuclear warfare was vehemently denounced in the Upper House of Parliament, India, on 18th November 1965, by the then Indian Minister of State for External Affairs, Mr Sardar Swaran Singh, and a no less energetic condemnation of the project was echoed in Sri Lanka by the then Prime Minister, Mrs Bandaranaike. And, at this stage, the Select Committee wishes to underline that, in the face of the complete indifference of the then Government, even a group of Mauritians living in the United Kingdom took the initiative of publishing in the British press their strong opposition to the Anglo-American venture. (1) Unfortunately, none of these outbursts of indignation succeeded in provoking from the then Premier of Mauritius and his Ministers a single note of protest.

36. On 15th June 1965, nearly on the eve of the Constitutional talks, Dr J. M. Curé, pressed Government to say whether the United States of America had any military interests in our dependencies. He urged Government to convey to the British Authorities 'the inadvisability of entering into any agreement with the United States of America before a change in our Constitution as envisaged by the London Conference of September next' and to ascertain, in the first instance 'the presence of oil fields in our dependencies before alienating them'. (Appendix J) The reply again came from Mr Tom Vickers who referred the Legislative Assembly to the reply he made on 14th December 1964 to Honourable Ramlallah. (Appendix D) Hence, when the parliamentary vacations came on 29th June, 1965, the Ministers who formed part of the Mauritius delegation to the Constitutional talks of September of that year, prepared their trip to Lancaster House in a spirit which, as far as the lesser dependencies were concerned, bordered, in the Select Committee's opinion, on outright collusion. Indeed, Sir Seewoosagur Ramgoolam when he deposed before the Select Committee on 6th December, 1982, made no bones of submitting that his main concern at Lancaster House was the independence of Mauritius and that he was prepared to achieve that aim at any costs. He stated: 'A request was made to me. I had to see which was better—to cede out a portion of our territory of which very few people knew, and independence. I thought that independence was much more primordial and more important than the excision of the island which is very far from here, and which we had never visited, which we could never visit.' He added: "If I had to choose between independence and the ceding of Diego Garcia, I would have done again the same thing.'

(1) *Le Mauricien*—29th September, 1964.

VIII — Outside the Conference Table, 1965

37. The Select Committee accepts the unanimous statements made by the participants at the Constitutional Conference of September 1965, and who deponed before the Select Committee (paragraph 25), to the effect that at no time was the question of the excision of any part of the Mauritian territory brought for discussion at the open Conference. Such decision of the United Kingdom Government was privately communicated to the then Premier, Dr the Honourable Seewoosagur Ramgoolam. But the Select Committee is not prepared to put on the sole shoulders of the latter the blame for acceding unreservedly to the United Kingdom's request. Evidence is not lacking to show that, indeed, the Premier shared with, at least, the leaders of the political parties present at Lancaster House, and with some independent participants, including Mr Paturau, D.F.C., the United Kingdom's offer of excision of the islands and the interests of the United States of America in the deal. So much so that, at one time during the Conference, a Mauritian delegation comprising MM Guy Forget (Labour), Jules Koenig (PMSD), Abdool Razack Mohamed (CAM) and Maurice Paturau (Independent) met the Minister in charge of Economic Affairs in the American Embassy in London in an attempt to secure, against the proposal for excision, a remunerative market in America for Mauritian sugar. The only surviving member of that particular delegation, Mr Maurice Paturau, D.F.C., informed the Select Committee that the American authorities turned down the proposition and stressed that all matters incidental to the Chagos Archipelago issue were meant for discussion between the United States and the United Kingdom and not with Mauritius.

38. The most decisive event in the history of the excision of the Chagos Archipelago occurred on Thursday, 23rd September, 1965, on the eve of the closing session of the Constitutional talks. On that day, discussions were officially held between a group of United Kingdom officials, headed by the Secretary of State for the Colonies, Mr Anthony Greenwood, and a number of Mauritian Ministers. Evidence produced before the Select Committee shows, without any possible doubt, that the following Ministers took part in the proceedings: The Premier (Dr Seewoosagur Ramgoolam), the Minister of Social Security (Mr Abdool Razack Mohamed), the Minister of Industry, Commerce and External Communications (Mr Maurice Paturau, D.F.C.), the Minister of Local Government (Mr Sookdeo Bissoondoyal). As regards Mr Koenig, the minutes do not refer to his presence (Appendix K). The Chief Secretary's memorandum (Appendix M) mentions his attendance at certain discussions, without specifically referring to the meeting held on 23rd September 1965. Sir Gaëtan Duval categorically affirmed that Mr Koenig did not attend that meeting and Mr Paturau stated that he had no recollection of Mr Koenig being present. Record of the proceedings (Appendix K) indicates (i) the eight conditions on which Dr the Honourable Seewoosagur Ramgoolam undertook to obtain the approval of the local Council of Ministers and (ii) the acceptance thereof, in principle, by MM Mohamed (CAM) and Bissoondoyal (LFB). As regards the other participant, Mr Paturau, he had expressed dissent about the amount (£ 3m) of final compensation offered,

IX—Before the Council of Ministers

39. The relevant parts of the minutes of the meeting held on 23rd September, 1965 (Appendix 'K') were transmitted to the Governor of Mauritius under cover of Colonial Office Despatch No. 423 dated 6th October 1965. (Appendix 'L'). The Select Committee notes that this document does not give any definite character to the proposals which Dr the Honourable S. Ramgoolam had undertaken to carry to the approval of his colleagues in the Council of Ministers. Hence, (i) defence and internal security would have to be negotiated, after independence (ii) projects to which the £3 m compensation would be devoted would be the subject of further discussions (iii) the British Government would use their good offices, without any firm guarantee of success, with the United States Government to secure concessions over sugar imports, supply of wheat and other commodities, to use labour and materials from Mauritius for construction works on the islands and (iv) to ensure that navigational and meteorological facilities, fishing rights and the possibility of using the air strip for emergency landing and refuelling of civil planes be made available to Mauritius. As regards the two other crucial points, namely, the return to Mauritius of the islands when no more needed and the exclusive right of Mauritius to 'the benefit of any mineral and oil discovered in or near the Chagos Archipelago', the United Kingdom Government simply took note, whilst stressing that the archipelago would remain under British Sovereignty.

40. The arrangements regarding defence and internal security appear, in more details, in the final communiqué issued at the end of the Conference, (para. 23) Hence, in the Memorandum (Appendix 'M') prepared by the Chief Secretary, Mr Tom Vickers, C.M.G., for the Council of Ministers and embodying the United Kingdom's reservations on the proposals agreed to in principle by the Premier, Mr Mohamed and Mr Bissoondoyal (Appendix 'K'), a significant change had occurred. Point (i) relating to the defence agreement had been replaced by the following: (i) the Chagos Archipelago would be detached from Mauritius and placed under British Sovereignty by Order in Council. And the last paragraph of the Memorandum invited the Government of Mauritius to give confirmation of his willingness 'to agree that the British Government should now take the necessary legal steps to detach the Chagos Archipelago'. The Select Committee notes with concern that this unexpected proposition which had supposedly emerged from the discussions held on 23rd September 1965, but which is not contained in the original record of proceedings (Appendix 'K') did not strike the attention of any Mauritian Minister as being new and unwarranted.

41. The Council of Ministers met on 5th November 1965 and the names of the Ministers present are listed in Appendix 'N' of this Report. Telegram 247 from Mauritius to the Secretary of State (Appendix 'O') translates the views of the Council of Ministers on the Chief Secretary's memorandum (Appendix 'M') and reports the dissent of the P.M.S.D. Ministers, in relation to the inadequacy of the compensation offered. No dissentient voice was

recorded on the principle of (i) the detachment of the archipelago and (ii) the establishment of "defence facilities" thereon (Appendices 'P' & 'Q'). On the 11th November 1965, the P.M.S.D. Ministers resigned from the Coalition Government and in a press conference held the next day, they re-affirmed that their objection was not based on the principle of putting the islands at the disposal of the joint U.K./U.S. venture, but merely on the conditions under which such facilities have been granted, in complete indifference of the social and economic needs of Mauritius.

42. The United Kingdom's views on the last hour reservations of the Council of Ministers in regard to the excision came by way of telegram 313 dated 19th November 1965 (Appendix 'R'). It reasserts the hypothetical character of all future negotiations with the United States about sugar imports. The conditions under which the islands would be returned to Mauritius and prospections for oil and minerals permitted, are worth quoting:

3. As regards point (vii) the assurance can be given provided it is made clear that a decision about the need to retain the islands must rest entirely with the United Kingdom Government and that it would not (repeat not) be open to the Government of Mauritius to raise the matter, or press for the return of the islands on its own initiative.
4. As stated in paragraph 2 of my telegram No. 298 there is no intention of permitting prospecting for minerals and oils. The question of any benefits arising therefrom should not therefore arise unless and until the islands were no longer required for defence purposes and were returned to Mauritius.

43. The latest development as regards the eventual return of the islands to Mauritius when no more required is contained in a reply made by the British Prime Minister in the House of Commons, on 11th July, 1980, and which is reproduced hereunder:—

I had a useful exchange of views on 7 July with the Prime Minister of Mauritius on political, economic and cultural matters. Diego Garcia was one of the subjects discussed. When the Mauritius Council of Ministers agreed in 1965 to the detachment of the Chagos Islands to form part of British Indian Ocean Territory, it was announced that these would be available for the construction of defence facilities and that, in the event of the islands no longer being required for defence purposes, they should revert to Mauritius. This remains the policy of Her Majesty's Government. (1)

As regards the plea for employing Mauritian labour on construction works on the islands, the Select Committee is reproducing at Appendix 'S' of this report, an eloquent and self-explanatory exchange of correspondence between the Prime Minister of Mauritius and the British High Commissioner, as late as February/March 1971.

(1) House of Commons debates — Vol. 988, Col. 314.

44. The agreement of the Council of Ministers for the detachment of the Chagos Archipelago from Mauritius having been obtained at the sitting of 5th November, 1965, the Governor of Mauritius, Sir John Shaw Rennie, K.C.M.G., C.B.E., addressed a confidential letter to Ministers on 10th November, 1965, conveying the substance of the public announcement to that effect that was to be made in the House of Commons later on the same day. Sir John's letter together with the text of a communique to be released immediately afterwards are herewith reproduced as annexures T and U respectively.

X—The Public Announcement

45. Before entering into the last stage of description of the circumstances which led to the excision of the Chagos Archipelago, the Select Committee wishes to summarize hereunder the sequence of events leading thereto and underline at the same time the responsibilities of the then Premier, Dr the Honourable Seewoosagur Ramgoolam and its Council of Ministers therein:—

- (i) In August 1964, an anglo-american survey of the islands takes place. On the 14th July preceding, the whole Council of Ministers is so informed by the then Governor of Mauritius, Sir John Shaw Rennie, K.C.M.G., C.B.E. (Para. 33)
- (ii) In September 1965, the Mauritius Constitutional Conference is held in Lancaster House, London. *En marge* of these talks, the Premier is apprised in private of the joint UK/US project of using the islands for "defence" purposes. This information is conveyed by him to his fellow delegates and a delegation comprising the Deputy Leader of the Mauritius Labour Party, the Leader of the P.M.S.D., the Leader of the CAM and an Independent Member meets the Minister in Charge of Economic Affairs in the American Embassy, London, in an attempt to negotiate, in return for the use of the Chagos Archipelago, certain facilities from the United States of America. (Para. 37)
- (iii) On 23rd September 1965, the Secretary of State for the Colonies, Mr Anthony Greenwood, meets the Premier and certain Ministers of the Coalition Government. The discussions include the eventual detachment of the Chagos Archipelago. (Para. 38).
- (iv) On 5th November 1965, the Council of Ministers is invited to give *inter-alia*, its agreement to the detachment. The agreement is given, in principle. (Para. 41).
- (v) On 8th November, 1965, the British Indian Ocean Territory Order is issued. (Para. 10).
- (vi) On 10th November, 1965, the Governor of Mauritius, Sir John Shaw Rennie, K.C.M.G., C.B.E., addresses a confidential letter to Ministers informing them of the United Kingdom's Government final decision on the issue and attaching the text of a press release in that connection. (Para. 44).

The above catalogue of events is most important for the comprehension of the most undignified attitude of certain Labour Ministers of the last Government who deponed before the Select Committee. (Para. 25).

46. Evidence shows that Dr the Honourable Seewoosagur Ramgoolam came back from the London Constitutional Conference on 11 October 1965 and left again for the United Kingdom on 29 November 1965, for medical treatment. He returned on 3 January 1966.

47. As already indicated by Sir John Shaw Rennie, K.C.M.G., C.B.E. (para. 44), the Secretary of State for the Colonies, Mr Anthony Greenwood, made on 10th November, 1965, an announcement in the House of Commons regarding 'new arrangements for the administration of certain islands in the Indian Ocean.' The text of that communication was released in Mauritius by the Chief Secretary's Office on the same day. (Appendix 'U')

48. On 14th December 1965, a parliamentary question was put to the Premier and Minister of Finance requesting a comprehensive statement 'on the question of the sale or hire of the island of Diego Garcia to either the United Kingdom Government or the United States of America or to both jointly' and certain other related matters. (Appendix F.) Honourable Guy Forget, on behalf of the Premier and Minister of Finance, replied to the question and reproduced *verbatim* the reply made by the Secretary of State for the Colonies, in the House of Commons, on 10th November, 1965 (Appendix U).

49. On 6th December 1982, when Sir Seewoosagur Ramgoolam appeared before the Select Committee, he declared, to the Committee's astonishment and dismay, that the statement made in the Legislative Assembly, on 14th December 1965, by Mr Guy Forget, came as a surprise to him. 'Something was done mysteriously', he added. Indeed, he further stated: 'When I came back from the Conference to Mauritius, I was faced with the statement made to a question put in Parliament, by the late Mr Forget, which I said, as I still maintain, is a mystery to me.' And Sir Seewoosagur Ramgoolam went further as to declare that as late as 1972, when, as Prime Minister, he accepted on behalf of the Mauritius Government the receipt of a sum of £ 650,000 from the United Kingdom Government 'in full and final discharge of your Government's undertaking, given in 1965, to meet the cost of resettlement of persons displaced from the Chagos Archipelago since 8th November 1965, including those at present still in the archipelago' (Appendix W), he was still unwillingly bound by Mr Forget's statement.

When asked by the Select Committee to comment on Sir Seewoosagur Ramgoolam's observations that, "Mr Forget's statement came as a complete surprise to him and that there is a mystery surrounding Mr Forget's statement on the 14th December," Sir Veerasamy Ringadoo replied:—"If he had said that, then his recollection is as good as mine." Sir Veerasamy, who was then Minister of Education and Cultural Affairs, did not remember having seen the text of the communique (Appendix 'T') which the Governor of Mauritius addressed to Members of the Council of Ministers on 10th November 1965.

That element of surprise in the face of Honourable Forget's statement was also shared by Sir Harold Walter.

XI. The Displaced Ilois

50. On 3rd October 1980, the Public Accounts Committee, a Sessional Select Committee of the Legislative Assembly produced a detailed report on the "financial and other aspects of the 'sale' of Chagos Islands and the resettlement of the Displaced Ilois." The report is reproduced at Appendix 'Z'.

The Committee wishes to underline a new disturbing element in the question of the resettlement of the displaced population of the excised islands. Deponing before the Select Committee on 6th December 1982, Sir Seewoosagar Ramgoolam stated that the resettlement issue was "taken up here in Mauritius" after the Constitutional Conference of September 1965. He stated that the issue was so extraneous to the proceedings at Lancaster House that, when he wrote to the British High Commissioner, on 4th September 1972, acknowledging receipt of a sum of £ 650,000 from the British Government "in full and final discharge" of the United Kingdom's undertaking given in 1965 "to meet the cost of resettlement of persons displaced from the Chagos Archipelago since 8th November 1965, including those at present still in the archipelago" (Appendix 'W'), he was simply acting in the "context" of the unexpected reply made by Mr Forget in the Legislative Assembly on 14th December 1965 (Appendix 'F').

In the light of documentary evidence produced, the Committee cannot but reject Sir Seewoosagar's submission. Item (iii) of the Record of Meeting held at Lancaster House, on 23rd September 1965, (Appendix 'K') indicates that the question was raised with him on that occasion. And Colonial Office Despatch No. 423 of 6th October 1965 (Appendix 'L') reports that he agreed that the document under reference was an accurate report of the proceedings.

On 4th November 1965, a Memorandum by the Chief Secretary (Appendix 'M') conveying the points agreed upon at the meeting of 23rd September 1965, was circulated to the then Council of Ministers and item (iii) thereof again alluded to the resettlement question.

Hence, as far back as September 1965, documents relating to such a delicate issue were in Government files and the Committee, whilst deploring Sir Seewoosagar's inaccurate statement before the Select Committee, strongly condemns the then Government for its indifference towards the displaced Ilois. Although the amount of compensation had been paid into the public treasury as far back as 1972, it was not until January 1977, after Mr Prosser's visit to Mauritius as a result of strong public agitation that, as a measure preliminary to some sort of rehabilitation, a survey of the persons involved was conducted.

XII. The Latest Developments

51. The Committee feels much comfort in the Resolution contained in the Political Declaration voted at the Non-Aligned Movement's New Delhi Summit Meeting, 1983, about Diego Garcia. (Appendix 'X'). It fully concurs with the views expressed to the effect that "the establishment and strengthening of the military base at Diego Garcia has endangered the sovereignty, territorial integrity and peaceful development of Mauritius and other states". It sincerely hopes that this new Resolution, added to those already adopted by international organisations, such as the United Nations General Assembly (Appendix 'D') and the Organisation of African Unity (Appendix 'E') will contribute to the return to Mauritius of that part of its territory.

XIII. Conclusions

52. Five main themes emerge from the Committee's proceedings and they are set out hereunder as a concluding chapter to this report.

A. *The political climate prior to the Constitutional Conference, 1965*

All the political parties which appeared before the Committee, —with the exception of the P.M.S.D. whose stand will be commented upon in the subsequent sub-paragraph— were unanimous in their submission (para. 25) that the question of the excision of the islands or their use for defence purposes did not occupy public opinion prior to the Constitutional Conference of September 1965. So much so that none of them did think it appropriate to make their stand known before leaving for the Constitutional talks. Sir Seewoosagur Ramgoolam alleged that the proposition of the U.K. Government was first communicated to him in private talks while the Conference was in progress. Honourable Aneerood Jugnauth, Q.C., then a member of the I.F.B. delegation, stated to the Committee that before the different delegations to the 1965 Constitutional Conference parted, Sir Seewoosagur Ramgoolam had come to the desk where the I.F.B. delegation was and had informed them that he had had private talks with the British Government and had agreed, on behalf of the Government of Mauritius, to a request for communications facilities to be installed at Diego Garcia. He added:—"When he told us that, we took note and we had not much to say about it."

Evidence produced before the Committee does not support the claim that the question of the excision of the islands or their use for defence purposes did not occupy public opinion prior to the Constitutional Conference. Amongst others, the more

salient features indicative of the U.K. Government's definite plans for the militarization of the islands with United States involvement and their possible excision therefor are listed chronologically hereunder:—

1. On 21st February 1964, Mr David Windsor, of the United Kingdom Institute of Strategic Studies, in a broadcast styled "London Calling Mauritius" hinted, in most unequivocal terms, at the U.K.'s decision of using Mauritius and its dependencies as a unit for its defence strategy in the Indian Ocean (para. 31). Report of this broadcast was lengthily reproduced in the local press. (Appendix 'A 1').
2. On 4th July 1964, the *Economist*, reviewing the U.K.'s military strategy as a result of the political uncertainties in Aden, called for a "military effort" for the setting up of a new Indian Ocean base and stressed that "this way of thinking points unerringly to some kind of Anglo-American exercise." Again, this article was taken up in the local press. (Appendix 'A 2').
3. On 22nd July 1964, the Australian paper "Daily News" revealed that talks had been initiated between Washington and Whitehall for a joint military venture in the Indian Ocean and pointed Mauritius as a logical base for such operation both for reasons of strategy and political stability. This excerpt was also published in the local press. (Appendix 'A 3').
4. On 30th August 1964, Reuter confirmed that "high level discussions" were in progress for providing new American bases "on British islands in the Indian Ocean" and reported that a technical survey had already been effected. (Appendix 'A 4').
5. On 31st August 1964, the "Daily Telegraph" directly alluded to the possibility of using Diego Garcia as a Polaris communications centre. (Appendix 'A 5').
6. On 5th September 1964, the *Economist* carried a more direct allusion to the "present Anglo-American search for a communications centre (and may be something more) in the Seychelles or one of the Mauritius dependencies." (Appendix 'A 6').
7. On 23rd September 1964, a group of Mauritian nationals residing in London lodged in the British press a strong protest against the possible installation of "military bases on Mauritian territory and on other islands in the Indian Ocean." This denunciation was reproduced in the local press. (Appendix 'A 7').

8. On 10th November 1964, Honourable B. Ramlallah intervened rather lengthily on the question (Appendix 'H') in the Legislative Assembly. His intervention succeeded in obtaining from Government side two contradictory statements. On the same day, Honourable Satcam Boolell, then Minister of Agriculture and Natural Resources, interjected that Government was not aware of the project. This assertion will be contradicted on 14th December 1964 when the Chief Secretary will confess that indeed "a joint British-American technical survey of certain islands, including the Chagos Archipelago and Agalega but not including Mauritius" had been in progress and that the Council of Ministers—of which Honourable Boolell was a member—had been duly informed. (Appendix 'I'). Such information was, indeed, communicated to the Council of Ministers by the then Governor-General on 14th July 1964. (Para. 33).
9. On 16th January 1965, the *Economist*, in an article headed "Strategies West and East" confirmed that a joint Anglo-American survey of the islands had been effected and, for the first time, hinted at the necessity of excising the Aldabra Group from the Seychelles and Diego Garcia from Mauritius, by an Order-in-Council. (Appendix A 8).
10. On 5th April 1965, Reuter made mention of a statement in the House of Commons by Mrs Eirene White, then Under-Secretary of State for the Colonies, who indicated that consultations about the joint Anglo-American survey of the islands had taken place with the Mauritian authorities, at two levels: namely, with Dr. the Honourable Seewoosagur Ramgoolam, in July 1964 and with the Council of Ministers in November of the same year. (Appendix 'A 9').
11. On 9th May, 1965, the Washington Post revealed that, as a result of the technical survey, Diego Garcia stood first on the priority list drawn by the American and British authorities as a recommended location for a joint Anglo-American military facility in the Indian Ocean and referred to the necessity of entrusting the administration of the island to London. The paper revealed that the United States had requested that the "entire archipelago be acquired" and that such exercise should be completed before the forthcoming Constitutional Conference. This

illuminating article even hinted at the U.S. idea "wherever possible, to buy out indigenous inhabitants of the islands selected for military use and move them elsewhere." (Appendix 'A 10').

12. On 3rd June 1965, news broke out in the local press that the Anglo-American military base would, in fact, be installed on the dependencies of Mauritius and of the Seychelles and that a sum of Rs 135 m had been voted for the acquisition of the islands and the displacement of their inhabitants. (Appendix 'A 11').
13. On 15th June 1965, Dr. M. Curé, by way of a parliamentary question, urged Government to "express to the British Government the inadvisability of entering into any agreement with the United States of America" for the eventual acquisition of the dependencies of Mauritius, before the forthcoming Constitutional Conference. The Chief Secretary replied that he had nothing to add to the information communicated by him to Mr Ramlallah on 14th December 1964. (Appendix '1')
14. On 19th June 1965, the local press carried information to the effect that the joint U.K./U.S. military project in the Indian Ocean was on the agenda of the Commonwealth Prime Ministers' Conference which was then in session and requested the prompt intervention of the Premier of Mauritius and of the Government. The appeal fell on deaf ears. (Appendix 'A 12').
15. On 27th July 1965, the local press again reported that the Government of Mauritius had been put in presence of the whole scheme, including the excision of the islands and that the Premier had offered, as a counter-proposal, the lease thereof. (Appendix 'A 13').

This long—but not complete—catalogue of events translates, in the Committee's opinion, the psychosis prevalent in the public mind, both in Mauritius and overseas, on the issue, prior to the Constitutional Conference of September 1965. It is a matter of regret therefore, that none of the political parties which, at that time, formed part of the Coalition Government, did think it fit to allay the fears of the population. Hence, the Select Committee strongly condemns the passive attitude of the political class represented in the then all-party Government and which formed part of the Mauritian delegation which attended the Constitutional Conference of September 1965. Their silence, in the light of such repeated warnings from responsible sectors of public opinion, bordered, in the Committee's judgment, on connivence.

Even more strongly, the Select Committee condemns the attitude of the then Ministers who, as will be commented upon at sub-paragraph (C), gave their agreement to the excision of the Chagos Archipelago and to its use for U.K./U.S. defence interests.

B. *The attitude of the Parti Mauricien Social Démocrate (P.M.S.D.)*

The position of the P.M.S.D. on the excision of the Chagos Archipelago was made known to the Select Committee by Sir Gaëtan Duval when he deponed on 12th November 1982. He claimed that the P.M.S.D. had not been against the use of the archipelago for a joint U.K./U.S. venture, but had been dissatisfied with the conditions attached to the deal. The sovereignty of Mauritius ought to have been preserved and negotiations for terms most beneficial to the social and economic betterment of the Mauritian population, subsequently conducted with any nation interested in the use of the islands. Sir Gaëtan explained that the then Leader of the P.M.S.D. even refused to attend the meeting held on 23rd September 1965, as a proof that the party was adamant on the excision issue. Referring to the reasons for the resignation of P.M.S.D. Ministers from Government, Sir Gaëtan had this to say: "*Je dois vous dire qu'à ce moment là nous démissionnons non pas parceque nous étions contre l'idée de la construction d'une base américaine, mais parce que nous étions contre l'idée de la cession d'une partie du territoire mauricien*". He will later state: "*Nous étions d'accord sur le principe de la base anglo-américaine à Diego Garcia mais nous refusons la cession.*"

The Select Committee regrets not being able to accept Sir Gaëtan's submission. On no less than three occasions, documentary evidence will establish without the least possible doubt that the P.M.S.D. was indeed agreeable, in principle, to the excision of the Chagos Archipelago but objected to the terms thereof. These occasions are listed hereunder:—

- (i) the Minutes of the Council of Ministers indicate that on 5th November 1965, the Council was called upon to give "their agreement that the British Government should take necessary legal steps to detach the Chagos Archipelago." On that day, the P.M.S.D. Ministers intimated that "while they were agreeable to detachment of the Chagos Archipelago they must reconsider their position as Members of the Government in the light of the Council's decision because they considered the amount of compensation inadequate". (Appendix 'P'). These Minutes were approved without any amendment to that effect, on 12th November 1965, (Appendix 'Q') in the absence of the P.M.S.D. Ministers who had resigned the day before.

- (ii) Public confirmation of the Minutes of the Council of Ministers held on 5th November 1965 (Appendix 'P') was however given at a press conference held by the leaders of that party on 12th November 1965 to explain their resignation as Ministers. The following excerpts from press reports are worth quoting:—

Je tiens à déclarer de la façon la plus formelle que le P.M.S.D. n'est pas contre le principe de céder les Chagos ou que cet archipel devienne un centre de communications pour faciliter la défense de l'Occident. Le P.M.S.D. en approuve le principe: il est en désaccord sur les termes et les conditions de cette cession. (Mr Koenig) (1)
Nous ne sommes pas contre l'excision des îles pour les besoins militaires de l'Ouest. (Mr Koenig) (2)

- (iii) On 14th December 1965, Mr Duval, by way of a parliamentary question invited Government to give an opportunity to the Legislative Assembly "to discuss the detachment of the Chagos Archipelago from Mauritius and its inclusion in the British Indian Ocean Territory, specially in view of the stand taken by India and other Afro-Asian countries". Mr Forget, on behalf of the Premier and Minister of Finance, rightly referred Mr Duval to the press conference of the P.M.S.D. held on 12th November 1965 where no disagreement against the excision was expressed by the party. The supplementary question put by Mr. Duval re-affirmed that the P.M.S.D. was concerned by the conditions of the excision and not by the excision itself. (Appendix 'Y').

Hence, the plea of the P.M.S.D.'s opposition to the excision of the islands does not hold water.

C. The existence of documents

Both Sir Seewoosagur Ramgoolam and Sir Veerasamy Ringadoo, when they deponed before the Select Committee (para. 25A) stated that at no time were they put in presence of any document relating to the excision of the islands. They argued that there never existed any agreement thereon nor any minutes of proceedings of possible discussions on the issue. This statement was made not only to the Committee but was very often repeated in the Legislative Assembly, in the past, in reply to interventions from all sides of the House.

(1) Le Mauricien—13th November 1965

(2) L'Express—13th November 1965

The Select Committee is in a position to reject these statements. In spite of Sir Seewoosagur's declaration to the effect that no Minutes whatsoever had been produced to him, the Select Committee has been able to obtain at least two documents from files kept at the Prime Minister's Office and which indicate the contrary. They are listed hereunder:—

- (i) The record of the meeting held at Lancaster House and which outlines the points agreed upon between the Secretary of State for the Colonies on one side and on the other Dr the Honourable Seewoosagur Ramgoolam, the Honourable Abdool Razack Mohamed and the Honourable Sookdeo Bissoondoyal. The document is reproduced at Appendix 'K' of this report.
- (ii) Colonial Office despatch No. 423, dated 6th October, 1965, which confirms that the contents of the record mentioned above had already been agreed in London with Dr the Honourable Seewoosagur Ramgoolam "and by him with Mr Mohamed, as being an accurate record of what was decided". (Appendix 'L').
- (iii) Furthermore, on 5th November 1965, the Council of Ministers, including Sir Seewoosagur Ramgoolam and Sir Veerasamy Ringadoo, gave their agreement to the effect that, "the British Government should take the necessary legal steps to detach the Chagos Archipelago." (Appendix 'P').

In these circumstances, the Select Committee cannot but record its indignation at the attitude of these Senior Ministers of the then Government who, before the Committee, in the Legislative Assembly, and in public pronouncements, denied the existence of any documents relating to the detachment of the islands. In the same breath, the Select Committee wishes to denounce the then Council of Ministers which did not hesitate to agree to the detachment of the islands.

D. The United States Involvement and Defence Considerations

The Select Committee again rejects the submission made by the then Leaders of the Mauritius Labour Party and the Independent Forward Bloc to the effect that, from information made available to them, in 1965, the islands would be used as a communications centre only with no United States involvement.

The United States interest in the deal was evident ever since 1964 when the technical survey of the islands was being carried out. The evidence is contained in the then Chief Secretary's reply to Mr Ramlallah, (Appendix 'I'). Again, at the Constitutional

Conference of September 1965, the United States involvement was such that a delegation headed by the Deputy Leader of the Mauritius Labour Party visited the Minister in Charge of Economic Affairs at the American Embassy, in London, in an attempt to secure, for Mauritius, some benefits in return for the excision. (Para. 37). And later, the record of the meeting held at Lancaster House on 23rd September 1965, will, in no uncertain terms, at items (iv) (v) and (vi) bear testimony of the U.S. presence in the deal. (Appendix 'K').

In addition, all documents exchanged between the Secretary of State for the Colonies and the Mauritius Government preceding and following the then Council of Ministers' agreement to the excision (Appendices 'L', 'M', 'O', 'R') bear reference to a joint U.K./U.S. venture. Some of the letters, including the memorandum submitted to the Council of Ministers by the Chief Secretary on 4th November 1965 (Appendix 'M') were even boldly headed "U.K./U.S. Defence Interests".

Here again, the Select Committee cannot but strongly denounce such deliberate misleading of public opinion on the matter.

E. *The Blackmail Element*

Sir Seewoosagur Ramgoolam's statement before the Select Committee is highly indicative of the atmosphere which prevailed during the private talks he had, at Lancaster House, with the British authorities. He averred that he was put before the choice of either retaining the archipelago or obtaining independence for his country, but refused to describe the deal as a blackmail. Sir Gaëtan Duval argued that the choice was between the excision and a referendum on independence. This contradiction is substantially immaterial to the Committee. What is of deeper concern to the Select Committee is the indisputable fact that a choice was offered through Sir Seewoosagur to the majority of delegates supporting independence and which attitude cannot fall outside the most elementary definition of blackmailing. Sir Harold Walter, deposing before the Select Committee on 11th January 1983, will even go to the length of stating that the position was such that, had Diego Garcia which "was, certainly, an important tooth in the whole cogwheel leading to independence" not been ceded, the grant of national sovereignty to Mauritius "would have taken more years probably".

The Declaration on the Granting of Independence to Colonial Countries and Peoples voted by the General Assembly of the United Nations on 14th December 1960 (Appendix 'C') clearly sets out at para. 5 that the transfer of power to peoples living in "Trust and Non-Self Governing Territories or all other Territories" should be effected "without any conditions and reservations". In addition, at para. 6, it expressly lays down that, "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."

Hence, notwithstanding the blackmail element which strongly puts in question the legal validity of the excision, the Select Committee strongly denounces the flouting by the United Kingdom Government, on these counts, of the Charter of the United Nations.

1st June 1983.

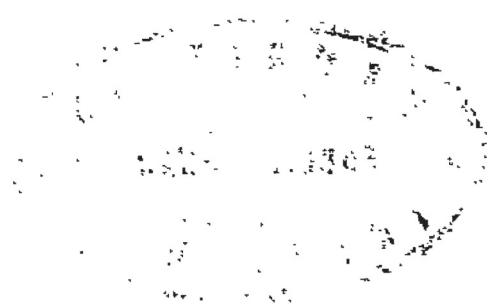
JEAN-CLAUDE DE L'ESTRAC
Chairman



APPENDIX A

List of Persons who Deponed Before the Select Committee and Date of Hearing

1. Sir Charles Gaëtan Duval, Q.C.—Leader of the Opposition—12th November 1982 ;
2. Sir Seewoosagur Ramgoolam, G.C.M.G. — 6th December 1982.
3. Sir Veerasamy Ringadoo, Kt. — 13th December 1982.
4. Mr Maurice Paturau, D.F.C., C.B.E. — 13th December 1982.
5. Sir Harold Walter, Kt. — 11th January 1983.
6. Sir Satcam Boolell, Kt. — 11th January 1983.
7. The Hon. Aneerood Jugnauth, Q.C. — Prime Minister of Mauritius — 1st February 1983.
8. Sir René Maingard de la Ville-es-Offrans, C.B.E. — 8th February 1983.



STATUTORY INSTRUMENTS

1965 No. 1920

Overseas Territories

The British Indian Ocean Territory Order 1965

Made 8th November 1965

At the Court at Buckingham Palace, the 8th day of November 1965

Present

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Colonial Boundaries Act 1895, or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the British Indian Ocean Territory Order Citation. 1965.

2. (1) In this Order—

Inter-
pretation.

"the Territory" means the British Indian Ocean Territory;

"the Chagos Archipelago" means the islands mentioned in schedule 2 to this Order;

"the Aldabra Group" means the islands as specified in the First Schedule to the Seychelles Letters Patent 1948 and mentioned in schedule 3 to this Order.

(2) The Interpretation Act 1889 shall apply, with the necessary modifications, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting and otherwise in relation to Acts of Parliament of the United Kingdom.

3. As from the date of this Order—

British
Indian
Ocean Terri-
tory to be a
separate
colony.

(a) the Chagos Archipelago, being islands which immediately before the date of this Order were included in the Dependencies of Mauritius, and

(b) the Farquhar Islands, the Aldabra Group and the Island of Desroches, being islands which immediately before the date of this Order were part of the Colony of Seychelles,

shall together form a separate colony which shall be known as the British Indian Ocean Territory.

4. There shall be a Commissioner for the Territory who shall be appointed by Her Majesty by Commission under Her Majesty's Sign Manual and Signet and shall hold office during Her Majesty's pleasure.

Establish-
ment of office
of Com-
missioner.

APPENDIX B—continued

Powers and
duties of
Com-
missioner.

5. The Commissioner shall have such powers and duties as are conferred or imposed upon him by or under this Order or any other law and such other functions as Her Majesty may from time to time be pleased to assign to him, and, subject to the provisions of this Order and any other law by which any such powers or duties are conferred or imposed, shall do and execute all things that belong to his office according to such instructions, if any, as Her Majesty may from time to time see fit to give him.

Oaths to be
taken by
Com-
missioner.

6. A person appointed to hold the office of Commissioner shall, before entering upon the duties of that office, take and subscribe the oath of allegiance and the oath for the due execution of his office in the forms set out in Schedule I to this Order.

Discharge of
Commissioner's func-
tions during
vacancy, etc.

7. (1) Whenever the office of Commissioner is vacant or the Commissioner is absent from the Territory or is from any other cause prevented from or incapable of discharging the functions of his office, those functions shall be performed by such persons as Her Majesty may designate by instructions given under Her Sign Manual and Signet or through a Secretary of State.

(2) Before any person enters upon the performance of the functions of the office of Commissioner under this section, he shall take and subscribe the oaths directed by section 6 of this Order to be taken by a person appointed to hold the office of Commissioner.

(3) For the purposes of this section—

- (a) the Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the functions of his office, by reason only that he is in the Colony of Seychelles or is in passage between that Colony and the Territory or between one part of the Territory and another; and
- (b) the Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the functions of his office at any time when an officer is discharging those functions under section 8 of this Order.

Discharge of
Commissioner's func-
tions by
deputy.

8. (1) The Commissioner may, by instrument under the Official Stamp of the Territory, authorize a fit and proper person to discharge for and on behalf of the Commissioner on such occasions and subject to such exceptions and conditions as may be specified in that Instrument such of the functions of the office of Commissioner as may be specified in that Instrument.

APPENDIX B—continued

(2) The powers and authority of the Commissioner shall not be affected by any authority given to such person under this section otherwise than as Her Majesty may at any time think proper to direct, and such person shall conform to and observe such instructions relating to the discharge by him of any of the functions of the office of Commissioner as the Commissioner may from time to time address to him.

(3) Any authority given under this section may at any time be varied or revoked by Her Majesty by instructions given through a Secretary of State or by the Commissioner by Instruments under the Official Stamp of the Territory.

9. There shall be an Official Stamp for the Territory which the Commissioner shall keep and use for stamping all such documents as may be by any law required to be stamped therewith. Official Stamp.

10. The Commissioner, in the name and on behalf of Her Majesty, may constitute such offices for the Territory, as may lawfully be constituted by Her Majesty and, subject to the provisions of any law for the time being in force in the Territory and to such instructions as may from time to time be given to him by Her Majesty through a Secretary of State, the Commissioner may likewise— Constitution of offices.

(a) make appointments, to be held during Her Majesty's pleasure, to any office so constituted; and

(b) dismiss any person so appointed or take such other disciplinary action in relation to him as the Commissioner may think fit.

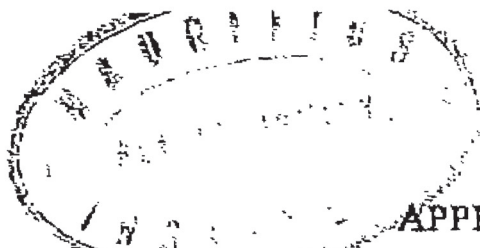
11. (1) The Commissioner may make laws for the peace, order and good government of the Territory, and such laws shall be published in such manner as the Commissioner may direct. Power to make laws.

(2) Any laws made by the Commissioner may be disallowed by Her Majesty through a Secretary of State.

(3) Whenever any law has been disallowed by Her Majesty, the Commissioner shall cause notice of such disallowance to be published in such manner as he may direct.

(4) Every law disallowed shall cease to have effect as soon as notice of disallowance is published as aforesaid, and thereupon any enactment amended or repealed by, or in pursuance of, the law disallowed shall have effect as if the law had not been made.

(5) Subject as aforesaid, the provisions of subsection (2) of section 38 of the Interpretation Act 1889 shall apply to such disallowance as they apply to the repeal of an enactment by an Act of Parliament.



APPENDIX B—continued

Commissioner's
powers of
pardon, etc.

12. The Commissioner may, in Her Majesty's name and on Her Majesty's behalf—

- (a) grant to any person concerned in or convicted of any offence against the laws of the Territory a pardon, either free or subject to lawful conditions; or
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any sentence imposed on that person for any such offence; or
- (c) substitute a less severe form of punishment for any punishment imposed by any such sentence; or
- (d) remit the whole or any part of any such sentence or of any penalty or forfeiture otherwise due to Her Majesty on account of any offence.

Concurrent
appoint-
ments.

13. Whenever the substantive holder of any office constituted by or under this Order is on leave of absence pending relinquishment of his office—

- (a) another person may be appointed substantively to that office;
- (b) that person shall, for the purpose of any functions attaching to that office, be deemed to be the sole holder of that office.

Disposal of
land.

14. Subject to any law for the time being in force in the Territory and to any Instructions from time to time given to the Commissioner by Her Majesty under Her Sign Manual and Signet or through a Secretary of State, the Commissioner, in Her Majesty's name and on Her Majesty's behalf, may make and execute grants and dispositions of any lands or other immovable property within the Territory that may be lawfully granted or disposed of by Her Majesty.

Existing
laws.

15. (1) Except to the extent that they may be repealed, amended or modified by laws made under section 11 of this Order or by other lawful authority, the enactments and rules of law that are in force immediately before the date of this Order in any of the islands comprised in the Territory shall, on and after that date, continue in force therein but shall be applied with such adaptations, modifications and exceptions as are necessary to bring them into conformity with the provisions of this Order.

(2) In this section „ enactments " includes any instruments having the force of law.

Exercise of
jurisdiction
by courts.

16. (1) The Commissioner, with the concurrence of the Governor of any other colony, may, by a law made under section 11 of this Order, confer jurisdiction in respect of the Territory upon any court established for that other colony.

(2) Any such court as is referred to in subsection (1) of this section and any court established for the Territory by a law made under section 11 of this Order may, in accordance with any directions issued from time to time by the Commissioner, sit in the Territory or elsewhere for the purpose of exercising its jurisdiction in respect of the Territory.

APPENDIX B—continued

17. (1) Notwithstanding any other provisions of this Order but subject to any law made under section 11 thereof, Judicial proceedings.

- (a) any proceedings that, immediately before the date of this Order, have been commenced in any court having jurisdiction in any of the islands comprised in the Territory may be continued and determined before that court in accordance with the law that was applicable thereto before that date;
- (b) where, under the law in force in any such island immediately before the date of this Order, an appeal would lie from any judgment of a court having jurisdiction in that island, whether given before that date or given on or after that date in pursuance of paragraph (a) of this subsection, such an appeal shall continue to lie and may be commenced and determined in accordance with the law that was applicable thereto before that date;
- (c) any judgment of a court having jurisdiction in any such island given, but not satisfied or enforced, before the date of this Order, and any judgment of a court given in any such proceedings as are referred to in paragraph (a) or paragraph (b) of this subsection, may be enforced on and after the date of this Order in accordance with the law in force immediately before that date.

(2) In this section "judgment" includes decree, order, conviction, sentence and decision.

18. (1) The Seychelles Letters Patent 1948 as amended by the Seychelles Letters Patent 1955 are amended as follows:—

- (a) the words "and the Farquhar Islands" are omitted from the definition of "the Colony" in Article 1(1);
- (b) in the first schedule the word "Desroches" and the words "Aldabra Group consisting of", including the words specifying the islands comprised in that Group, are omitted.

Amendment
of Seychelles
Letters
Patent 1948
and Mauri-
tius (Con-
stitution)
Order 1964,
etc.

(2) Section 90(1) of the Constitution set out in schedule 2 to the Mauritius (Constitution) Order 1964 is amended by the insertion of the following definition immediately before the definition of "the Gazette":—

"Dependencies" means the islands of Rodrigues and Agalega, and the St. Brandon Group of islands often called Cargados Carajos;"

(3) Section 2(1) of the Seychelles (Legislative Council) Order in Council 1960 as amended by the Seychelles (Legislative Council) (Amendment) Order in Council 1963 is further amended by the deletion from the definition of "the Colony" of the words "as defined in the Seychelles Letters Patent 1948".

APPENDIX B—*continued*

19. There is reserved to Her Majesty full power to make laws from time to time for the peace, order and good government of the British Indian Ocean Territory (including, without prejudice to the generality of the foregoing, laws amending or revoking this Order). Power reserved to Her Majesty.

(sd) W. G. AGNEW

SCHEDULE I

Section 6

OATH (OR AFFIRMATION) OF ALLEGIANCE

I,.....do swear (or do solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

OATH (OR AFFIRMATION) FOR THE DUE EXECUTION OF
THE OFFICE OF COMMISSIONER

I,.....do swear (or do solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of Commissioner of the British Indian Ocean Territory.

SCHEDULE 2

Section 2(1)

Diego Garcia	Salomon Islands
Egmont or Six Islands	Trois Frères, including Danger Island and
Péros Banhos	Eagle Island

SCHEDULE 3

West Island	Cocoanut Island
Middle Island	Euphratis and other small Islets.
South Island	

Note: The British Indian Ocean Territory Order 1965 was amended, as follows, by the British Indian Ocean Territory (Amendment) Order 1968:—

(a) In the definition of "the Aldabra Group" in section 2(1) the words "as specified in the First Schedule to the Seychelles Letters Patent 1948 and " were omitted;

(b) in schedule 2 for the words—

"Trois Frères, including Danger Island and Eagle Island," there were substituted the words—

"Three Brothers Islands
Nelson or Legour Island
Eagle Islands
Danger Islands,"; and

(c) in schedule 3 the words "Polymnie Island" were inserted immediately after the words "Cocoanut Island".

APPENDIX B—*continued*
OVERSEAS TERRITORIES

The British Indian Ocean Territory Royal Instructions 1965

Dated 8th November 1965

Elizabeth R.

Instructions to Our Commissioner for the British Indian Ocean Territory or other Officer for the time being performing the functions of his office.

We do hereby direct and enjoin and declare Our will and pleasure as follows:—

1. (1) These Instructions may be cited as the British Indian Ocean Territory Royal Instructions 1965. Citation, commencement and revocation.

(2) These Instructions shall come into operation on the same day as the British Indian Ocean Territory Order 1965 and thereupon the Instructions issued to Our Governor and Commander-in-Chief for Mauritius and dated the 26th February 1964, and the Instructions issued to Our Governor and Commander-in-Chief of the Colony of Seychelles and dated the 11th March 1948, and the Additional Instructions issued to the said Governor and Commander-in-Chief and dated the 2nd May 1960 and the 29th July 1963, shall, without prejudice to anything lawfully done thereunder, and in so far as they are, respectively, applicable to the islands comprised in the British Indian Ocean Territory as defined in the British Indian Ocean Territory Order 1965, cease to have effect in respect of those islands.

2. — (1) In these Instructions "the Commissioner" means the Commissioner for the British Indian Ocean Territory and includes the person who, under and to the extent of any authority in that behalf, is for the time being performing the functions of his office. Interpretation.

(2) The Interpretation Act 1889 shall apply, with the necessary adaptations, for the purpose of interpreting these Instructions and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament of the United Kingdom.

3. — (1) These Instructions, so far as they are applicable to any functions of the office of Commissioner to be performed by such person as is mentioned in paragraph (1) of the preceding clause, shall be deemed to be addressed to, and shall be observed by, such person. Instructions to be observed by deputy.

(2) Such person may, if he thinks fit, apply to Us through a Secretary of State for instructions in any matter; but he shall forthwith transmit to the Commissioner a copy of every despatch or other communication addressed to Us.

4. In the enacting of laws the Commissioner shall observe, so far as is practicable, the following rules:— Rules for the enactment of laws.

(1) All laws shall be styled Ordinances and the words of enactment shall be "Enacted by the Commissioner for the British Indian Ocean Territory".

APPENDIX B—*continued*

(2) Matters having no proper relation to each other shall not be provided for by the same Ordinance; no Ordinance shall contain anything foreign to what the title of the Ordinance imports; and no provision having indefinite duration shall be included in any Ordinance expressed to have limited duration.

(3) All Ordinances shall be distinguished by titles, and shall be divided into successive sections consecutively numbered, and to every section there shall be annexed in the margin a short indication of its contents.

(4) All Ordinances shall be numbered consecutively in a separate series for each year commencing in each year with the number one, and the position of each Ordinance in the series shall be determined with reference to the day on which the Commissioner enacted it.

Certain Ordinances not to be enacted without instructions.

5. The Commissioner shall not, without having previously obtained instructions through a Secretary of State, enact any Ordinance within any of the following classes, unless such Ordinance contains a clause suspending the operation thereof until the signification of Our pleasure thereon, that is to say—

- (1) any Ordinance for the divorce of married persons;
- (2) any Ordinance whereby any grant of land or money, or other donation or gratuity may be made to himself;
- (3) any Ordinance affecting the currency of the British Indian Ocean Territory or relating to the issue of bank notes;
- (4) any Ordinance imposing differential duties;
- (5) any Ordinance the provisions of which shall appear to him to be inconsistent with obligations imposed upon Us by Treaty;
- (6) any Ordinance affecting the discipline or control of Our Forces by land, sea or air;
- (7) any Ordinance of an extraordinary nature and importance whereby Our prerogative, or the rights or property of Our subjects not residing in the British Indian Ocean Territory, or the trade, transport, or communications of any part of Our dominions or any territory under Our protection or any territory in which We may for the time being have jurisdiction may be prejudiced;
- (8) any Ordinance whereby persons of any community or religion may be subjected or made liable to disabilities or restrictions to which persons of other communities or religions are not also made liable, or become entitled to any privilege or advantage which is not conferred on persons of other communities or religions;

APPENDIX B—continued

- (9) any Ordinance containing provisions which have been disallowed by Us;

Provided that the Commissioner may, without such instructions as aforesaid and although the Ordinance contains no such clause as aforesaid, enact any such Ordinance (except an Ordinance the provisions of which appear to him to be inconsistent with obligations imposed upon Us by Treaty) if he shall have satisfied himself that an urgent necessity exists requiring that the Ordinance be brought into immediate operation; but in any such case he shall forthwith transmit a copy of the Ordinance to Us together with his reasons for so enacting the same.

6. When any Ordinance has been enacted, the Commissioner shall at the earliest convenient opportunity transmit to Us, through a Secretary of State, for the signification of Our pleasure, a transcript in duplicate of the Ordinance duly authenticated under the Official Stamp of the British Indian Ocean Territory and by his own signature, together with an explanation of the reasons and occasion for the enactment of the Ordinance. Ordinances to be sent through Secretary of State.

7. As soon as practicable after the commencement of each year, the Commissioner shall cause a complete collection to be published, for general information, of all Ordinances enacted for the British Indian Ocean Territory during the preceding year. Ordinances to be published yearly.

8. Every appointment by the Commissioner of any person to any office of employment shall, unless otherwise provided by law, be expressed to be during pleasure only. Appointments to be during pleasure.

9. (1) Before disposing of any lands to Us belonging in the British Indian Ocean Territory the Commissioner shall cause such reservations to be made therefrom as he may think necessary for any public purpose. Disposition of Crown lands.

(2) The Commissioner shall not, directly or indirectly, purchase for himself any land or building in the British Indian Ocean Territory to Us belonging without Our special permission given through a Secretary of State.

10. Whenever any offender has been condemned by the sentence of any court having jurisdiction in the matter to suffer death for any offence committed in the British Indian Ocean Territory, the Commissioner shall call for a written report of the case from the judge who tried it, and for such other information derived from the record of the case or elsewhere as he may require, and may call upon the judge to attend upon him and to produce his notes; and if he pardons or respites the offender, he shall as soon as is practicable, transmit to Us through a Secretary of State a report upon the case, giving the reason for his decision. Power of pardon in capital cases.

Given at Our Court at St. James's this eighth day of November 1965 in the fourteenth year of Our Reign.



APPENDIX C

1514 (XV)

Declaration on the granting of Independence to Colonial Countries and Peoples
The General Assembly,

Mindful of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,

Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence,

Aware of the increasing conflicts resulting from the denial of or impediments in the way of the freedom of such peoples, which constitute a serious threat to world peace,

Considering the important role of the United Nations in assisting the movement for independence in Trust and Non-Self-Governing Territories,

Recognizing that the peoples of the world ardently desire the end of colonialism in all its manifestations,

Convinced that the continued existence of colonialism prevents the development of international economic cooperation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,

Affirming that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law,

Believing that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

APPENDIX C—*continued*

Welcoming the emergence in recent years of a large number of dependent territories into freedom and independence, and recognizing the increasingly peaceful trends towards freedom in such territories which have not yet attained independence,

Convinced that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory, solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations;

And to this end Declares that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation.

2. All peoples have the right to self-determination, by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

5. Immediate steps shall be taken, in Trust and Non-Self Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

7. All states shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all states, and respect for the sovereign rights of all peoples and their territorial integrity.

14th December 1960.

948th plenary meeting

United Nations General Assembly Resolution 2066

QUESTION OF MAURITIUS

The General Assembly,

Having considered the question of Mauritius and other islands composing the Territory of Mauritius,

Having examined the chapters of the reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Territory of Mauritius,

Recalling its resolution 1514 (XV) of 14 December 1960 containing the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Regretting that the administering Power has not fully implemented Resolution 1514 (XV) with regard to that Territory,

Noting with deep concern that any step taken by the administering Power to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base would be in contravention of the Declaration, and in particular of paragraph 6 thereof,

1. *Approves* the chapters of the reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Territory of Mauritius and endorses the conclusions and recommendations of the Special Committee contained therein;

2. *Reaffirms* the inalienable right of the people of the Territory of Mauritius to freedom and independence in accordance with General Assembly Resolution 1514(XV),

3. *Invites* the Government of the United Kingdom of Great Britain and Northern Ireland to take effective measures with a view to the immediate and full implementation of Resolution 1514 (XV);

4. *Invites* the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity;

5. *Further invites* the administering Power to report to the Special Committee and to the General Assembly on the implementation of the present resolution;

6. *Requests* the Special Committee to keep the question of the Territory of Mauritius under review and to report thereon to the General Assembly at its twenty-first session.

1398th plenary meeting, 16 December 1965

APPENDIX E

AHG/Res. 99(XVII)

RESOLUTION ON THE DIEGO GARCIA

The Assembly of Heads of State and Government of the Organization of African Unity meeting at its 17th Ordinary Session in Freetown, Sierra Leone from 1 to 4 July, 1980.

Pursuant to article 1, para. 2, of the Charter of the Organization of African Unity, which stipulates 'The Organization shall include the continental African States, Madagascar and other islands surrounding Africa',

Considering that one of the fundamental principles of the Organization is the 'respect for the sovereignty and territorial integrity of each state',

Aware of the fact that Diego Garcia has always been an integral part of Mauritius, a Member State of the Organization of African Unity,

Recognizing that Diego Garcia was not ceded to Britain for military purposes,

Realising that the militarization of Diego Garcia is a threat to Africa and to the Indian Ocean as a zone of Peace,

Demands that Diego Garcia be unconditionally returned to Mauritius and that its peaceful character be maintained.

DIEGO GARCIA — SALE OR HIRE — (No. A/33) — Mr J.R. Rey (Moka)
 asked the Premier and Minister of Finance whether he will make a statement on the question of the sale or hire of the Island of Diego Garcia to either the United Kingdom Government or to the Government of the United States of America or both jointly and state what is the price offered by the would-be purchasers and what is the minimum price insisted upon by the Government of Mauritius?

Mr. Forget on behalf of the Premier and Minister of Finance:—

I would refer the Honourable Member to the following communique issued from the Chief Secretary's Office on 10th November on the subject of the Chagos Archipelago, a copy of which is being circulated. In discussions of this kind which affect British arrangements for the defence of the region in which Mauritius is situated, there could, in the Government's view, be no question of insisting on a minimum amount of compensation. The question of the sale or hire of the Chagos Archipelago has not arisen as they were detached from Mauritius by Order in Council under powers possessed by the British Government.

(Communique)

EMBARGOED FOR RELEASE UNTIL 2000 HOURS LOCAL TIME
 WEDNESDAY 10th NOVEMBER

Defence facilities in the Indian Ocean

In reply to a Parliamentary Question the Secretary of State made the following statement in the House of Commons on Wednesday November 10th:—

" With the agreement of the Governments of Mauritius and the Seychelles new arrangements for the administration of certain islands were introduced by an Order in Council made on the 8th November. The islands are the Chagos Archipelago, some 1,200 miles north east of Mauritius, and Aldabra, Farquhar and Desroches in the western Indian Ocean. Their population are approximately 1,000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of the Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and U.S. Governments, but no firm plans have yet been made by either Government. Compensation will be paid as appropriate. "

The cost of compensating the Company which exploits the plantations and the cost of resettling elsewhere those inhabitants who can no longer remain there will be the responsibility of the British Government. In addition, the British Government has undertaken in recognition of the detachment of the Chagos Archipelago from Mauritius, to provide additional grants amounting to £3m. for expenditure on development projects in Mauritius to be agreed between the British and the Mauritius Governments. These grants will be over and above the allocation earmarked for Mauritius in the next period of C.D. & W. assistance.

The population of the Chagos Archipelago consists, apart from civil servants and estate managers, of a labour force, together with their dependants, which is drawn from Mauritius and Seychelles and employed on the copra plantations. The total number of Mauritians in the Chagos Archipelago is 638, of whom 176 are adult men, employed on the plantations.

MAURITIUS CONSTITUTIONAL CONFERENCE — 1965

Mauritius Delegation

The Mauritius Labour Party ...	...	Sir Seewoosagar Ramgoolam Hon. G. Forget Hon. V. Ringadoo Hon. S. Boolell Hon. H. Walter Hon. R. Jomadar Hon. R. Jaypal Dr the Hon. L. R. Chaperon Hon. V. Govinden, M.B.E. Hon. H. Ramnarain Hon. R. Modun Hon. S. Veerasamy Dr the Hon. J. M. Curé
The Parti Mauricien Social Démocrate ...	...	Hon. J. Kœnig, Q.C. Hon. L. R. Devienne Hon. C. G. Duval Hon. J. C. M. Lesage Hon. H. Rossenkhan
The Independent Forward Bloc ...	...	Hon. S. Bissoondoyal Hon. A. W. Foondun Hon. D. Basant Rai Hon. A. Jugnauth Hon. S. Bappoo
The Muslim Committee of Action ...	...	Hon. A. R. Mohamed Hon. A. H. Osman Hon. H. R. Abdool
Independent Members ...	...	Hon. J. M. Paturau, D.F.C. Hon. J. Ah-Chuen

APPENDIX H

Extract from Debates No. 23 of 10th November, 1964 — Adjournment

Mr. B. Ramlallah (Poudre d'Or) — *Anglo-American Military Base*

Sir, as we have been speaking of America and Americans, there is a very pertinent question which is in the air about the projected base in Mauritius or at Diego. I think if the Government is able to do so, if it is not going to reveal a secret, the sooner it makes a declaration about that projected base the better it will be. Even the British Press is writing about it. There is much wild talk going around it in Mauritius. In India, Pakistan, everywhere people are talking about it, and we do not know what is the foundation of the talk. I understand even Mrs Bandaranaike has said in a press interview that she is opposed to the base in this part of the world.

Anyway I think the sooner something is said about it, the better it will be for the Government because people think that Government is in a way connected with it. Probably £ 125m or £ 115m ...

Mr Boolell: The Government is not aware of it.

Mr Ramlallah: The Minister has come to my rescue. If this Government is not aware of it, I hope the Premier will stand up and say that we have not been consulted, that something is being done behind our back. There is something in the air there is no doubt about it.

Prospection is going on; we know that a lot of experts have come to Mauritius and surprisingly enough the Government has not been made aware. It is time the Government makes a declaration and says bluntly to the Imperial Government „ We have heard of that. You should tell us what is in store. " We have heard something very painful — that America wants to have the base at Diego, which was supposed to be our colonial territory and which would then be cut off from us. They want to do it in order not to give us the £ 125m or whatever it is. That is something which makes us think seriously and I hope Government will give it all the seriousness which it deserves.

APPENDIX I

No. 19085

14th December, 1964

On the adjournment of the Legislative Assembly on 10th November, you referred to speculation about defence installations.

The position is that a joint British-American technical survey of certain islands, including the Chagos Archipelago and Agalega but not including Mauritius, has been in progress. The results of the survey are still being examined and no decisions have been taken either by the British or by the American Government as to their respective requirements. The Council of Ministers was notified of the survey in advance and will be consulted about further steps in due course.

I am circulating a copy of this letter to other members of the Assembly and releasing it to the Press in the usual way.

TOM VICKERS
Chief Secretary

The Hon. B. Ramlallah, M.L.A.
c/o Mauritius Times
Port Louis.

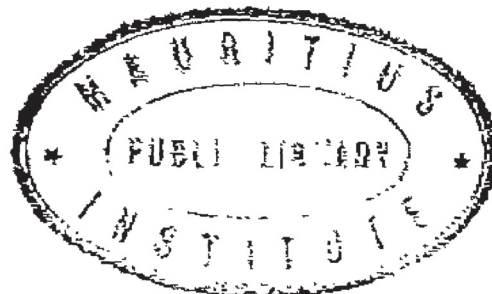
Extract from Debates No. 15 of 15th June, 1965

Acquisition of Dependencies of Mauritius by the U.S.A.

(No. A/30) Dr J. M. Coré (Nominated Member) asked the Chief Secretary whether the Government has been approached for the acquisition of our dependencies or part thereof by the United States of America for military purposes. If so, will he make a statement thereon and state whether the Government will

- (a) express to the British Government the inadvisability of entering into an agreement with the United States of America before a change in our Constitution as envisaged by the London Conference of September next; and
- (b) ascertain the presence of oilfields in our dependencies before alienating them?

Mr Vickers: I have nothing to add to the information I conveyed to Hon. Members of the Legislative Assembly by the circulation of the copy of the letter which I addressed to the Hon. Member for Poudre d'Or on the 14th December, 1964, after he had raised the matter on the adjournment of the Legislative Assembly on the 10th November, 1964.



APPENDIX K

Extract from Record of Meeting held in Lancaster House
on Thursday, 23 September, 1965, between the Colonial
Secretary (Mr Greenwood) and Mauritian Ministers

Paragraphs 22 and 23

22. Summing up the discussion, the Secretary of State asked whether he could inform his colleagues that Dr Ramgoolam, Mr Bissoondoyal and Mr Mohamed were prepared to agree to the detachment of the Chagos Archipelago on the understanding that he would recommend to his colleagues the following :—

- i. negotiations for a defence agreement between Britain and Mauritius;
- ii. in the event of independence an understanding between the two governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;
- iii. compensation totalling up to £ 3m, should be paid to the Mauritius Government over and above direct compensation to landowners and the cost of resettling others affected in the Chagos Islands;
- iv. the British Government would use their good offices with the United States Government in support of Mauritius' request for concessions over sugar imports and the supply of wheat and other commodities;
- v. that the British Government would do their best to persuade the American Government to use labour and materials from Mauritius for construction work in the islands;
- vi. the British Government would use their good offices with the U.S. Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable:
 - a. Navigational and Meteorological facilities;
 - b. Fishing Rights;
 - c. Use of Air Strip for emergency landing and for refuelling civil planes without disembarkation of passengers;
- vii. that if the need for the facilities on the islands disappeared the islands should be returned to Mauritius;
- viii. that the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to the Mauritius Government.

23. Sir S. Ramgoolam said that this was acceptable to him and Messrs Bissoondoyal and Mohamed in principle but he expressed the wish to discuss it with his other ministerial colleagues.

APPENDIX L

Colonial Office Despatch to Governor of Mauritius No. 423 dated 6 October, 1965

Sir,

I have the honour to refer to the discussions which I held in London recently with a group of Mauritius Ministers led by the Premier on the subject of U.K./U.S. Defence Facilities in the Indian Ocean. I enclose a copy of the record prepared here of the final meeting on this matter with Mauritius Ministers. This record has already been agreed in London with Sir S. Ramgoolam, and by him with Mr Mohamed, as being an accurate record of what was decided.

2. I should be grateful for your early confirmation that the Mauritius Government is willing to agree that Britain should now take the necessary legal steps to detach the Chagos Archipelago from Mauritius on the conditions enumerated in (i)-(viii) in paragraph 22 of the enclosed record.

3. Points (i) and (ii) of paragraph 22 will be taken into account in the preparation of a first draft of the Defence Agreement which is to be negotiated between the British and Mauritius Governments before Independence. The preparation of this draft will now be put in hand.

4. As regards point (iii), I am arranging for separate consultations to take place with the Mauritius Government with a view to working out agreed projects to which the £ 3 million compensation will be devoted. Your Ministers will recall that the possibility of land settlement schemes was touched on in our discussions.

5. As regards points (iv), (v) and (vi) the British Government will make appropriate representations to the American Government as soon as possible. You will be kept fully informed of the progress of these representations.

6. The Chagos Archipelago will remain under British sovereignty, and Her Majesty's Government have taken careful note of points (vii) and (viii).

I have the honour to be,

etc.

C M (65) 183

4th November, 1965

COPY No. 19

COUNCIL OF MINISTERS

UK/US Defence Interests in the Indian Ocean

MEMORANDUM BY THE CHIEF SECRETARY

As Council is aware, the establishment of a communications centre and supporting defence facilities on Diego Garcia by the U.S. Government for joint UK/US use was further discussed in London in September by the Secretary of State for the Colonies with the Premier, the Minister of Social Security, the Minister of Industry, the Minister of Local Government and the Attorney-General. The Secretary of State explained that a lease would not be practicable from the point of view of the British and the American Governments. The Ministers were also informed of the difficulties in the way of obtaining a *quid pro quo* in the form of trading concessions, such as a bigger allocation of sugar in the American market, and on this point they had an interview with the Minister in charge of Economic Affairs in the American Embassy in London.

2. The proposals that eventually emerged from these discussions are as follows :—

- (i) the Chagos Archipelago should be detached from Mauritius and placed under British sovereignty by Order in Council;
- (ii) in the event of independence a defence agreement should be negotiated between Britain and Mauritius and there should be an understanding between the two Governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;
- (iii) the compensation totalling up to £3 million should be paid to the Mauritius Government to be devoted to agreed development projects over and above direct compensation to land owners and the cost of resettlement of others affected in the Chagos Archipelago;
- (iv) the British Government would also use their good offices with the U.S. Government in support of the request of Mauritius for concessions over sugar imports and the supply of wheat and other commodities;
- (v) the British Government would do their best to persuade the U.S. Government to use labour and materials from Mauritius for construction work in the Chagos Archipelago;
- (vi) the British Government would use their good offices with the U.S. Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable;
 - (a) navigational and meteorological facilities;
 - (b) fishing rights;
 - (c) use of air strip for emergency landing and for refuelling civil planes without disembarkation of passengers;

APPENDIX M—*continued*

(vii) if the need for the facilities in the Chagos Archipelago disappeared, sovereignty would be returned to Mauritius;

(viii) the benefit of any minerals or oil discovered on or near the Chagos Archipelago would revert to the Mauritius Government.

3. The Secretary of State has said that as regards point (iii) he is arranging for consultations to take place with the Mauritius Government with a view to working out the agreed projects to which the £3 m. compensation will be devoted (Ministers present at the discussions in London will recall that the possibility of land settlement schemes was raised). As regards points (iv), (v) and (vi) the British Government will make appropriate representations to the U.S. Government and will keep the Mauritius Government fully informed of progress in the matter. The Chagos Archipelago will remain under British sovereignty and the British Government have taken careful notes of points (vii) and (viii).

4. The Secretary of State has now asked for early confirmation that the Mauritius Government is willing to agree that the British Government should now take the necessary legal steps to detach the Chagos Archipelago on the conditions enumerated in paragraph 2 above.

T. D. VICKERS

(65)45

Copy No. 23

Council of Ministers

Minutes of Proceedings of the 45th Meeting held on Friday the 5th November 1965.

PRESENT: His Excellency the Governor (Sir John Rennie, K.C.M.G., O.B.E.)

The Premier and Minister of Finance (Dr. the Honourable Sir See-
woosagur Ramgoolam, Kt.)

The Chief Secretary (The Honourable T.D. Vickers, C.M.G.)

The Minister of Works and Internal Communications (The Honour-
able J.G. Forget)

The Minister of Education and Cultural Affairs (The Honourable-
V. Ringadoo)

The Minister of Social Security (The Honourable A. R. Mohamed)

The Minister of Agriculture and Natural Resources (The Honourable
S. Boolelf)

The Minister of Health (The Honourable H. E. Walter)

The Minister of Information, Posts & Telegraphs & Telecommunica-
tions (The Honourable A. H. M. Osman)

The Minister of Industry, Commerce & External Communications
(The Honourable J. M. Paturau, D.F.C.)

The Minister of Local Government & Co-operative Development
(The Honourable S. Bissoondoyal)

The Attorney-General (The Honourable J. Kœnig, Q.C.)

The Minister of Labour (The Honourable R. Jomadar)

The Minister of State (Development) in the Ministry of Finance
(The Honourable L. R. Devienne)

The Minister of Housing, Lands and Town & Country Planning
(The Honourable C. G. Duval)

The Minister of State (Budget) in the Ministry of Finance (The
Honourable K. Tirvengadam)

APPENDIX O

TELEGRAM No. 247 FROM MAURITIUS TO THE SECRETARY OF
STATE FOR THE COLONIES SENT 5th NOVEMBER 1965

Your Secret Despatch No. 423 of 6th October.

United Kingdom/U.S. Defence Interests.

Council of Ministers today confirmed agreement to the detachment of Chagos Archipelago on conditions enumerated, on the understanding that

- (1) statement in paragraph 6 of your despatch „ H.M.G. have taken careful note of points (vii) and (viii) " means H.M.G. have in fact agreed to them.
- (2) As regards (vii) undertaking to Legislative Assembly excludes
 - (a) sale or transfer by H.M.G. to third party or
 - (b) any payment or financial obligation by Mauritius as condition of return.
- (3) In (viii) " on or near " means within areas within which Mauritius would be able to derive benefit but for change of sovereignty. I should be grateful if you would confirm this understanding is agreed.

2. PMSD Ministers dissented and (are now) considering their position in the government. They understand that no disclosure of the matter may be made at this stage and they also understand that if they feel obliged to withdraw from the Government they must let me have (resignations) in writing and consult with me about timing of the publication (which they accepted should not be before Friday 12th November).

3. (Within this) Ministers said they were not opposed in principle to the establishment of facilities and detachment of Chagos but considered compensation inadequate, especially the absence of additional (sugar) quota and negotiations should have been pursued and pressed more strongly. They were also dissatisfied with mere assurances about (v) and (vi). They also raised the points (1), (2) and (3) in paragraph 1 above.

APPENDIX P

Extract from Minutes of Proceedings of the Meeting of the
Council of Ministers held on 5th November 1965

UK/US
Defence
interest in
the Indian
Ocean.

No. 553 Council considered the Governor's Memorandum CM (65) 183 on UK/US Defence Interests in the Indian Ocean.*

Council decided that the Secretary of State should be informed of their agreement that the British Government should take the necessary legal steps to detach the Chagos Archipelago on the conditions enumerated on the understanding that the British Government has agreed to points (vii) and (viii) that as regards point (vii) there would be no question of sale or transfer to a third party nor of any payment or financial obligation on the part of Mauritius as a condition of return and that „on or near “ in point (viii) meant within the area within which Mauritius would be able to derive benefit but for the change of sovereignty.

The Attorney General, the Minister of State (Development) and the Minister of Housing said that, while they were agreeable to detachment of the Chagos Archipelago, they must reconsider their position as members of the Government in the light of the Council's decision because they considered the amount of compensation inadequate, in particular the absence of any additional sugar quota, and the assurance given by the Secretary of State in regard to points (v) and (vi) unsatisfactory.

*reproduced as Appendix 'M'

Extract from Minutes of Proceedings of the Meeting of the
Council of Ministers held on 12th November 1965

C. M. (65) 46

COPY No. 23

COUNCIL OF MINISTERS

Minutes of Proceedings of the 46th Meeting held on Friday the 12th November 1965

PRESENT: His Excellency the Governor (Sir John Rennie, K.C.M.G., O.B.E.)

The Premier and Minister of Finance

(Dr the Honourable Sir Seewoosagur Ramgoolam, Kt.)

The Chief Secretary (The Honourable T. D. Vickers, C.M.G.)

The Minister of Works and Internal Communications)

(The Honourable J. G. Forget)

The Minister of Education and Cultural Affairs

(The Honourable V. Ringadoo)

The Minister of Social Security (The Honourable A.R. Mohamed)

The Minister of Agriculture and Natural Resources

(The Honourable S. Boolell)

The Minister of Health (The Honourable H. E. Walter)

The Minister of Information, Posts & Telegraphs & Telecommunications

(The Honourable A. H. M. Osman)

The Minister of Industry, Commerce & External Communications

(The Honourable J. M. Paturau, D.F.C.)

The Minister of Local Government & Co-operative Development

(The Honourable S. Bissoondoyal)

The Minister of Labour (The Honourable R. Jomadar)

The Minister of State (Budget) in the Ministry of Finance

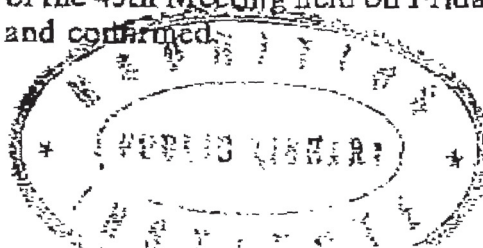
(The Honourable K. Tirvengadam)

Council met at 10.20 a.m.

The Governor announced that the previous afternoon he had received from the Honourable J. Koenig, M.L.A., the Honourable L.R. Devienne, M.L.A., and the Honourable C.G. Duval, M.L.A., their letters of resignations as appointed members of the Council of Ministers. These resignations took immediate effect, i.e. from Thursday the 11th November 1965.

Confirmation of
Minutes

The Minutes of the 45th Meeting held on Friday the 5th November 1965 were corrected and confirmed.



APPENDIX R

TELEGRAM No. 313 TO MAURITIUS FROM SECRETARY OF
STATE FOR THE COLONIES SENT 19th NOVEMBER 1965

Your telegram No. 254.

U.K./U.S. defence interests.

There is no objection to Ministers referring to points contained in paragraph 22 of enclosure to Secret despatch No. 423 of 6th October so long as qualifications contained in paragraphs 5 and 6 of the despatch are borne in mind.

2. It may well be some time before we can give final answers regarding points (iv), (v) and (vi) of paragraph 22 and as you know we cannot be at all hopeful for concessions oversugar imports and it would therefore seem unwise for anything to be said locally which would raise expectations on this point.

3. As regards point (vii) the assurance can be given provided it is made clear that a decision about the need to retain the islands must rest entirely with the United Kingdom Government and that it would not (repeat not) be open to the Government of Mauritius to raise the matter, or press for the return of the islands on its own initiative.

4. As stated in paragraph 2 of my telegram No. 298 there is no intention of permitting prospecting for minerals and oils. The question of any benefits arising therefrom should not therefore arise unless and until the islands were no longer required for defence purposes and were returned to Mauritius.

(Passed to Ministry of Defence for transmission to Mauritius).

APPENDIX S

No. 1138

18th February 1971

In connection with the proposed construction of an austere naval communications facility on Diego Garcia under the terms of a bilateral agreement between the United Kingdom and the United States of America, I should be grateful if consideration could be given to the possibilities of employing Mauritian labour.

As you know, Mauritius is faced with a severe unemployment problem, and the Mauritius Government is exploring all the possibilities of relieving the situation. Favourable consideration of request made will undoubtedly help the Mauritius Government while, at the same time providing the British and the U.S. Governments with readily available labour.

S. RAMGOOLAM

Prime Minister

His Excellency Mr P. Carter
British High Commissioner,
Port Louis.

BRITISH HIGH COMMISSION

Chaussée, Port Louis, Mauritius

22 March 1971

32/1

Dr the Hon. Sir Seewoosagur Ramgoolam Kt, M.L.A.
Government House
Port Louis.

Dear Prime Minister,

1. You will remember that in my letter of 18 February replying to yours of the said date, I said that I would consult my Government regarding your enquiry about the possibility of employing Mauritian labour on Diego Garcia.

2. I have now heard from my Government. They have asked me to say that they are, of course, well aware of the undertaking that they gave on this subject to the Mauritius Government in 1965, namely that they would do their best to persuade the American Government to use labour from Mauritius for works of construction on the Islands. They are also well aware of the provisions of sub-paragraph (7)(a) of the Anglo-American exchange of notes of 1966 (Cmd 3231) on the British Indian Ocean Territory. Indeed, Her Majesty's Government did tackle United States Government and urged this proposition on them. However, Her Majesty's Government have now heard from the United States Government that it will not be possible for them to employ any Mauritians on the Diego Garcia facility.

3. I understand that the United States Ambassador in Mauritius is informing your Government of this decision.

Kindest regards,

Yours very sincerely,

PETER A. CARTER

APPENDIX T

GOVERNMENT HOUSE MAURITIUS

10th November, 1965

My Dear Minister,

In the light of the decision by the Council of Ministers last Friday and a similar decision by the Government of the Seychelles an Order in Council has been made to introduce new arrangements for the administration of the Chagos Archipelago, Aldabra, Farquhar and Desroches as a new territory to be called the British Indian Ocean Territory. The Secretary of State will be making a statement in Parliament in reply to a Parliamentary Question later today and I intend to issue thereafter the enclosed statement.

The Secretary of State has confirmed that the Chagos Archipelago will remain under British sovereignty but is nevertheless giving further consideration to the points raised in the Council of Ministers on Friday and the U.S. Government has been warned that certain points will be raised with them.

Yours sincerely,

J. S. RENNIE

Note :— The text of the question and reply is reproduced at Appendix 'V'

APPENDIX U

Embargoed for release until 2000 hours local time Wednesday, 10th November

Defence facilities in the Indian Ocean

In reply to a Parliamentary Question the Secretary of State made the following statement in the House of Commons on Wednesday November 10th :—

" With the agreement of the Governments of Mauritius and the Seychelles new arrangements for the administration of certain islands were introduced by an Order in Council made on the 8th November. The islands are the Chagos Archipelago, some 1,200 miles north-east of Mauritius, and Aldabra, Farquhar and Desroches in the Western Indian Ocean. Their populations are approximately 1,000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of the Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and U.S. Governments, but no firm plans have yet been made by either Government. Compensation will be paid as appropriate.

The cost of compensating the Company which exploits the plantations and the cost of resettling elsewhere those inhabitants who can no longer remain there will be the responsibility of the British Government. In addition, the British Government has undertaken in recognition of the detachment of the Chagos Archipelago from Mauritius, to provide additional grants amounting to £3 m. for expenditure on development projects in Mauritius to be agreed between the British and the Mauritius Governments. These grants will be over and above the allocation earmarked for Mauritius in the next period of C.D. & W. assistance.

The population of the Chagos Archipelago consists, apart from civil servants and estate managers, of a labour force, together with their dependants, which is drawn from Mauritius and Seychelles and employed on the copra plantations. The total number of Mauritians in the Chagos Archipelago is 638, of whom 176 are adult men employed on the plantations.

Chief Secretary's Office
Port Louis
10th November, 1965

WRITTEN ANSWERS TO QUESTIONS

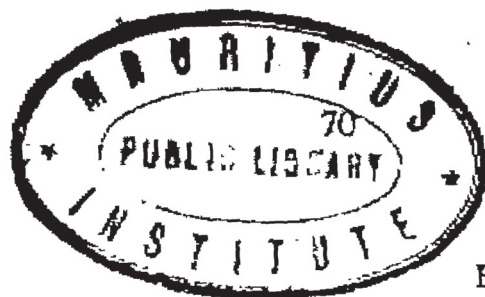
Wednesday, 10th November, 1965

MAURITIUS AND SEYCHELLES

Defence Facilities

Mr James Johnson asked the Secretary of State for the Colonies what further approaches have been made to the Mauritius and Seychelles Governments about the use of islands in the Indian Ocean for British and American defence facilities.

Mr Greenwood: With the agreement of the Governments of Mauritius and Seychelles new arrangements for the administration of certain islands in the Indian Ocean were introduced by an Order in Council made on 8th November. The islands are the Chagos Archipelago some 1,200 miles north-east of Mauritius, and Aldabra, Farquhar and Desroches in the Western Indian Ocean. Their populations are approximately 1,000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and United States Governments, but no firm plans have yet been made by either Government. Appropriate compensation will be paid.



APPENDIX W

British High Commission
Chaussée, Port Louis, Mauritius
26th June 1972

32/1

Dr the Rt Hon. Sir Seewoosagur Ramgoolam Kt, M.L.A.
Government House,
Port Louis.

My dear Prime Minister,

I refer to the meeting in London on 23 February, 1972, between yourself, Sir Harold Walter and Lord Lothian, and to your meeting with Baroness Tweedsmuir on 23 June, 1972, at which the Mauritius Government scheme for the resettlement of the persons displaced from the Chagos Archipelago was discussed.

2. The scheme has been fully appraised in London and I have been authorised to inform you that the British Government are prepared to pay £ 650,000 (the cost of the scheme) to the Mauritius Government provided that the Mauritius Government accept such payment in full and final discharge of my Government's undertaking, given at Lancaster House, London, on 23 September, 1965, to meet the cost of resettlement of persons displaced from the Chagos Archipelago since 8 November, 1965, including those at present still in the Chagos Archipelago.

3. Accordingly, I should be most grateful if you would confirm that you are willing to accept the payment of £ 650,000 in full and final discharge of my Government's undertaking, and to agree that the British Government may state this in public, should the need arise.

4. When replying, perhaps you would indicate the date and manner in which the Mauritius Government wish payment to be made.

Yours very sincerely,
R. D. GIDDENS

4th September 1972

With reference to the communication No. 32/1 dated the 26th June, 1972, by the then Acting High Commissioner, I confirm that the Mauritius Government accepts payment of £ 650,000 from the Government of the United Kingdom (being the cost of the scheme for the resettlement of persons displaced from the Chagos Archipelago) in full and final discharge of your Government's undertaking, given in 1965, to meet the cost of resettlement of persons displaced from the Chagos Archipelago since 8 November, 1965, including those at present still in the Archipelago. Of course, this does not in any way affect the verbal agreement giving this country all sovereign rights relating to minerals, fishing, prospecting and other arrangements.

In regard to the date and manner of the payment to be made I presume it will be in British pounds sterling made to the Government of Mauritius at the earliest date convenient to your Government.

The Government of Mauritius has no objection to the Government of United Kingdom making a public statement to this effect, should the need arise.

With my warmest regards,
S. RAMGOOLAM
Prime Minister

C. Whomersley.

71

APPENDIX X

Extract from the Political Declaration of Non-Aligned
Movement's New Delhi Summit Meeting 1983

IX-MAURITIAN SOVEREIGNTY OVER THE CHAGOS ARCHIPELAGO,
INCLUDING DIEGO GARCIA

81. The Heads of State or Government expressed, in particular, their full support for Mauritian sovereignty over the Chagos Archipelago, including Diego Garcia, which was detached from the territory of Mauritius by the former colonial power in 1965 in contravention of United Nations General Assembly resolutions 1514(XV) and 2066(XX). The establishment and strengthening of the military base at Diego Garcia has endangered the sovereignty, territorial integrity and peaceful development of Mauritius and other States. They called for the early return of Diego Garcia to Mauritius.

Debates No. 27 of 14th December 1965

Chagos Archipelago — Detachment from Mauritius

(B/245) Mr C. G. Duval (Curepipe) asked the Premier and Minister of Finance whether he will give an opportunity to the House to discuss the detachment of the Chagos Archipelago from Mauritius, and its inclusion in the British Indian Ocean Territory, especially in view of the stand taken by India and other Afro-Asian countries.

Mr Forget on behalf of the Premier and Minister of Finance :—

No, Sir, since I understand from the public statement made by the Leader of the Opposition on November 12th that there is no disagreement between the Opposition and the Government on the principle of the detachment and use for defence facilities of the Chagos Archipelago.

Mr Duval: Sir, in view of the reply of the hon. Minister replacing the Premier, and in view of the fact that there have been contradictory statements made by members of the Government at different moments about the conditions attached to the excision of the base, will the Minister say whether, at least, the correspondence exchanged between Her Majesty's Government and this Government will be released to the public?

Mr Speaker : This does not arise from the question.

SPECIAL REPORT OF THE PUBLIC ACCOUNTS COMMITTEE FOR THE 1980 SESSION

Financial and other aspects of the "Sale" of Chagos Islands and the Re-settlement of the displaced Ilois

Introduction

Your Committee investigated into the Revenue received by Government in 1975 for the "SALE" of the Chagos Archipelago and in 1972, for the re-settlement of the displaced Ilois and also into all the disbursements effected in relation to this matter. In the course of our inquiry we came across some disturbing facts which we have felt should be brought to notice.

£ 3 m cash compensation from U.K. in 1965

Your Committee was informed that financial compensation for the "SALE" of Diego Garcia was effected in two stages. The sum of £ 3 m was paid by the British Government in financial year 1965/66 and was credited to Capital Revenue, item L IV/4 — "Sale of Chagos Islands", as per the Accountant General's Financial Report for the financial year 1965/66. This item did not appear in the Estimates of 1965/66. Your Committee enquired whether the word "sale" had caused any problem at the time but was unfortunately unable to obtain any information on this matter. It has also not been possible to get any information on the basis on which the sum of £ 3 m was arrived at in the discussions with the British Government in 1965.

In an answer to a Parliamentary Question (PQ B/754 of 1979) the Prime Minister informed the House that the compensation of £ 3 m was meant for the implementation of development projects in Mauritius. The money was therefore credited to Capital Revenue and was not earmarked for any specific project.

Your Committee was also not able to ascertain whether any cash compensation was effected to the company exploiting the copra plantations in the Chagos at the time. We learned from the representative of the Prime Minister's Office that it was a Seychellois Company, namely Moulinié & Co.

£ 650,000 from U.K. in 1972 for Resettlement Scheme

The second payment of £ 650,000 by the British Government was effected on 28th October, 1972 and credited to Capital Revenue, item L I/8 — "Financial Assistance for Resettlement Scheme" in the Financial Report of 1972/73. This item had not appeared in the Estimates for the year 1972/73. This figure was arrived at after discussions had taken place between the British and Mauritian Governments, on a special scheme "devised to build housing estates and establish pig-rearing co-operatives on land to be provided by the Government of Mauritius", (Forward to the Prosser Report submitted to Government in 1976) for the resettlement of persons displaced from Diego Garcia. Land at Roche Bois and at Pointe aux Sables was duly acquired for this purpose.

APPENDIX Z—continued

No details on how and when this initial scheme was worked out, were provided to your Committee.

In the Foreword to the Prosser Report the Prime Minister's Office states the following:

"Not long after, it became clear that the displaced persons concerned were not happy with the proposed scheme. An official survey confirmed that the majority was in favour of the simple expediency of sharing the financial assistance received from Britain among the workers, irrespective of their need for proper housing and for a planned means of future livelihood".

Your Committee has not obtained any information on the survey mentioned above although there was an official request for the details of how and when the displaced persons showed dissatisfaction with that initial scheme.

The Prosser Report

For 5 years after funds had been made available by the U.K. Government for the resettlement of the displaced Ilois, the Government of Mauritius was unable to arrive at a satisfactory decision on the manner in which the funds should be utilised. In 1976, the Prime Minister discussed the problems affecting the displaced Ilois with the British Government and it was decided that Mr A.R.G. Prosser, C.M.G., M.B.E., Adviser on Social Development in the Ministry of Overseas Development, would visit Mauritius in order to advise on an appropriate solution to the problem.

The major recommendations made by Mr Prosser were the following:

- (a) The immediate setting up of a Resettlement Committee with a first-class administrative officer attached to it on a full time basis. The Government did implement this recommendation. Its composition was in fact reinforced by the inclusion of the Secretary to the Cabinet as its Chairman. It was unfortunate however, that the Committee was not provided with an administrative officer on a full time basis. The Principal Assistant Secretary of the Ministry for Rodrigues was assigned this duty on a part time basis. Your Committee appreciates the fact that his normal duties as P.A.S. in his own Ministry must not have left him much time to deal with the Ilois problem.
- (b) Another important recommendation was an occupational training scheme for the unemployed. Mr Prosser even made the interesting suggestion that functional training could be combined with the building of houses necessary for the Resettlement Scheme. This scheme will be described later.

Mr. Prosser recommended that the sum of Rs 750,000 should be set aside for this purpose, immediately.

It is very unfortunate that Government never considered this interesting recommendation.

- (c) Welfare services. Mr. Prosser suggested that the Resettlement Committee should allocate Rs 60,000.— to the Social Welfare Commissioner so that the present Social Worker could be funded for a period of 3 years. We were informed that a primary school teacher was seconded for duty to the Social Welfare Division to work with the Ilois on a full time basis. But we obtained no information on the length of time for which she was thus employed.

APPENDIX Z—continued

- (d) The housing scheme proposed by Mr Prosser was in fact the most important recommendation in his report. As Mr Prosser rightly pointed out "the most intractable problem for the Ilois, has been housing". (Prosser Report — para. 4). He worked out that after deducting the sum of Rs 750,000 for training purposes and Rs 60,000 for the service of the Social Worker, the sum of Rs 18,500 would be available for each individual household of the 426 families. He suggested a scheme whereby each household in need of a house could be provided with a 15,000 rupee house which would be of „ sound construction but.....slightly outside the high quality of building regulations which govern housing in Mauritius ". (Prosser Report, para. 22) the remaining Rs 3,500 would be distributed to each household for basic furnishing purposes. In the Foreword to the Prosser Report, the Prime Minister's Office did not accept this recommendation to provide the Ilois with sub-standard houses. The Government went very far, by undertaking to allocate the necessary additional funds in order that the houses constructed for the Ilois are not below standards acceptable in the country. In a general way, the Government felt that the Prosser recommendations as amended were in the long term interest of the Ilois community.

Your Committee was informed by representatives of the Prime Minister's Office that Mr Prosser's recommendations for a housing scheme had been rejected by the representatives of the Ilois on the Resettlement Committee and that the latter had opted for cash compensation.

However, your Committee was seriously concerned by some of the facts that came to light in the survey carried out in January 1977 in specific relation to the housing issue. It is true that representatives of the Ilois did formally request that the money available be distributed in cash to the Ilois, at a meeting of the Resettlement Committee held on 4th December 1976. However, the survey carried out in January 1977 revealed that of the 557 families who had registered, 341 had opted for a house and 213 for cash compensation. 3 had not expressed any option. Of the 38 families in Agalega, 6 had opted for a house in Mauritius and 32 for cash payment with the possibility of continued employment there. It should also be well noted that representatives of the Ilois did enquire, at a meeting of the Committee held on 19th February 1977, whether there was any possibility of satisfying both options. According to the minutes of proceedings of that meeting, the Resettlement Committee felt that this proposal would not be feasible. However, the Chairman added that the views of the Committee would be submitted to the Government and a decision would be taken at a later stage. In spite of the fact that a majority of households, over 60% opted for housing, one year later, in December 1977, Government decided to effect cash compensation to all Ilois, irrespective of their date of arrival.

Your Committee wanted to know in very concrete terms, the way in which the proposal for a housing scheme was presented to the Ilois. We wanted to know whether Government had worked out in detail the type of houses to be built, the length of time it would take to construct them etc., and whether such information had been made available to the representatives of the Ilois. Your Committee was unfortunately, not provided with this information.

APPENDIX Z—*continued*

What your Committee found even more surprising was the fact that after it had been discovered in January 1977 that a majority had opted for housing and that the representatives of the Ilois had in February 1977, requested that both options, namely housing and cash compensation, be considered, the Prime Minister, in December 1977, stated the following in a reply to a Parliamentary Question (B/746 of 1977):

"The Government has finally given up hope to convince the families from Diego Garcia that it is in their best interests to have houses built for them rather than to have a cash compensation only. So steps are being taken to share the grant as well as the interest accrued thereon to the families".

Surveys of the Ilois

It has not been easy to establish the exact number of persons that were transferred from the Chagos Archipelago. In reply to a Parliamentary Question in the House of Commons in November 1965, in relation to defence facilities in the Indian Ocean, the Secretary of State referring to the Chagos Archipelago and Aldabra, Farquhar and Desroches islands said the following:

"Their population are approximately 1000, 100, 172 and 112 respectively".
(See Annex I)

On 14 December 1965, in the Legislative Council, Mr Forget, on behalf of the Premier and Minister of Finance informed the House that:

"The total number of Mauritians in the Chagos Archipelago is 638, of whom 176 are adult men, employed on the plantations". (See Annex I).

In Mauritius, two main surveys were carried out to establish the total number of Ilois families. The first survey was carried out by the Public Assistance Officers who collected relevant information from the displaced Ilois everytime a group landed in Mauritius. The survey revealed that 426 families had been transferred from the Chagos since 1965. This figure of 426 families was considered to be the correct one by Mr Prosser.

In 1976, when the possibility of the distribution of cash compensation to all Ilois, irrespective of their date of arrival, came up, the Resettlement Committee, set up in 1976, upon a recommendation made by Mr Prosser, decided that a registration of all Ilois settled in Mauritius should be carried out. This second major survey was carried out, in January 1977, by the Public Assistance Division of the Ministry of Social Security under the aegis of the Resettlement Committee. In this case, press and radio/Tv communiques were issued asking all displaced persons to register themselves. The figure arrived at in this second survey was 557 families.

Of these 557 families—

378 persons were under 5 years of age

543 persons were between 5-12 years of age

334 persons were between 12-18 years of age

1068 were adults

102 were above 60 years of age.

Over 150 persons had arrived before 1965. (See Annexures II & III)

The survey also indicated that there were 38 Ilois families in Agalega.

APPENDIX Z—continued

Although the Ilois were provided with facilities for their registration, a number of persons were left out for various reasons. The representatives of the Prime Minister's Office informed your Committee that there have been a certain number of complaints from those who claim not to have received any compensation; the Permanent Secretary of the Prime Minister's Office has even received letters from some Ilois in Rodrigues, Australia and South Africa. It should be noted that there was, in fact, no facilities provided for registration of the Ilois in Rodrigues, Agalega and St. Brandon, when the 1977 survey was carried out.

Government has now decided to proceed with a new survey of all those who had failed to register in 1977. Your Committee recommends that this facility should be extended to those Ilois residing in the Seychelles as well.

The Ilois in Agalega

Your Committee was informed that in the Resettlement Committee, a suggestion was made to the effect that a possibility existed for the families in Agalega to be given shares in the Agalega Corporation to the value of their allocation instead of being paid in cash. Your Committee was not provided with any information on the manner in which cash compensation was actually effected in Agalega.

Cash compensation

When Government finally decided to go ahead with cash compensation, payment was effected in March 1978 on the basis of the survey carried out in January 1977. The following payments were then made:

	<i>Rs</i>	<i>Total</i>
351 children under 5	1,000	351,000
459 children between 5 and 11	1,200	550,800
474 children between 11 and 18	1,500	711,000
1081 adults	7,590	8,204,790
109 old age pensioners (additional)	250	27,250
71 females with children (additional)	250	17,750
TOTAL		9,862,590
Amount available (including interest)		11,167,604
Amount paid		9,862,580
BALANCE		1,305,014

APPENDIX Z—continued

Disbursements as from 1972

Various disbursements were effected as from 1972 when funds were made available by the British Government. The total amount disbursed from 1972 to 1977 was Rs 155,773.33 (Annex IV). Apart from the cash compensation of Rs 9,858,827 effected in 1977/78, there was a further disbursement of Rs 18,605 in 1978/79. Your Committee has, however, not been able to obtain any details on the nature of all the disbursements effected, apart from the cash compensation of Rs 9,858,827 effected in 1978. It should also be noted that interest was, of course, not credited on the disbursements. Interest on the account was paid at 6% per annum between 28th October 1972 and 31st December 1977 although the Bank Rate had risen to 7% from March 1977 to January 1978, and to 9% from January 1978 to October 1979 and has been 10½% since then.

Your Committee fails to understand why interest was not credited to the Fund after December 1977. If accounts had been properly kept, a higher sum would have accumulated in the form of interest.

Further financial assistance from U.K. Government

At a meeting of the Resettlement Committee held on 19th February 1977, a representative of the Ilois wanted to know whether there was any possibility of obtaining further assistance from the British Government. The Committee according to the Minutes of Proceeding of that Meeting "agreed that there was little, if any, likelihood of such assistance forthcoming".

However, representatives of the Prime Minister's Office informed your Committee that it had always been the wish of the Mauritian Government that such further assistance should be provided by the U.K. Government. Your Committee has however, not been informed whether such request has been made formally and officially by the Government since March 1978.

In a reply to a Parliamentary Question in June 1980, (B/766 of 1980) the Prime Minister informed the House that:

"Regarding the additional compensation to be paid to the Ilois, the British Government has already offered a supplementary amount of £ 1.25 million for their resettlement but is unable to pursue the matter because of a court action in the United Kingdom. The matter being *sub-judice*, we have to wait for the outcome".

Your Committee is aware of the fact that the Prime Minister is referring to the court action entered by certain members of the Ilois community presenting legal claims to the U.K. Government. They are being represented by Mr. B. Sheridan who during his visit in Mauritius in November 1979 tried to make the Ilois sign a document (a deed of acceptance and power of attorney) the terms and conditions of which are reproduced in Annexure V.

In reply to a Parliamentary Question in November 1979 (P.Q. B/1033 of 1979) the Prime Minister informed the House that Government had spent Rs 2,015 on Mr Sheridan during his visit in Mauritius. This would imply that he was in Mauritius in an official capacity, to a certain extent.

APPENDIX Z—*continued*

General Comments

1. Your Committee feels that this whole problem of displaced persons which arose since 1965 did not receive the serious attention it deserved on the part of government until 1976 when Mr Prosser visited Mauritius. The first serious survey to establish the exact number of persons involved was carried out as late as in January 1977.

2. The compensation of £650,000 was linked to a specific scheme when it was made available in 1972. The money was distributed 5 years later when conditions of life had become very difficult due to rapid inflation during that corresponding period. Mr Prosser himself made a very pertinent remark in that respect in specific relation to the housing scheme:

"Unfortunately, from the time of the signing of the agreement between the Mauritius Government and the British Government the cost of housing in Mauritius has risen approximately 500%". (Prosser Report. Para 19)

Mr Prosser made that remark in 1976 and the money was distributed in March 1978.

3. Throughout his Report, Mr Prosser placed emphasis on the necessity to find an urgent solution to the problem, because of the terrible conditions in which he found the Ilois when he visited Mauritius. In para 24 of the Report he says:

"The fact is that the Ilois are living in deplorable conditions which could be immediately alleviated if action is taken on the lines I have suggested".

Cash compensation was effected almost two years after Mr Prosser had written his Report.

4. Your Committee feels that it is very unfortunate that Government promised that additional funds would be made available in the Resettlement Scheme being proposed by Mr Prosser but no such additional financial assistance has been forthcoming.

5. There is a serious lack of information on the nature of disbursements that were effected since the grant became available in 1972. The Ilois do not seem to be at all aware of the details of these disbursements.

Your Committee was also not at all satisfied with the approximate way in which interest on the account was worked out. In our opinion total interest accrued on the account, should have been much higher.

6. The survey carried out in January 1977 was not comprehensive enough. A number of Ilois were left out for some reason or another.

7. Your Committee feels that the Ilois were not presented with a housing scheme worked out in concrete terms nor were the advantages of such a scheme over straight cash payment sufficiently stressed. It is normal that for persons, who have been living in deplorable conditions for such a long time cash compensation represented immediate relief. But as it was rightly pointed out by the Prime Minister's Office in the Foreword to the Prosser Report, the recommendations in the Report, especially the housing scheme would have been „ in the long term interest of the people concerned “.

8. Finally, Your Committee is concerned that it has not been confirmed whether Government has so far made any *formal* and *official* request for further financial assistance despite the fact that the majority of the Ilois are still living in deplorable conditions.

V. NABABSING,
Chairwoman.

3rd October, 1980.

EXTRACT FROM DEBATES NO. 27 OF 14 DECEMBER 1965

DIEGO GARCIA — SALE OR HIRE (No. A/33) Mr J. R. Rey (Moka) asked the Premier and Minister of Finance whether he will make a statement on the question of the *sale or hire* of the Island of *Diego Garcia* to either the United Kingdom Government or to the Government of the United States of America or to both jointly and state what is the price offered by the would-be purchasers and what is the minimum price insisted upon by the Government of Mauritius?

Mr Forget on behalf of the Premier and Minister of Finance :—

I would refer the Honourable Member to the following communiqué issued from the Chief Secretary's Office on 10th November on the subject of the Chagos Archipelago, a copy of which is being circulated. In discussions of this kind which affect British arrangements for the defence of the region in which Mauritius is situated, there could, in the Government's view, be no question of insisting on a minimum amount of compensation. The question of the sale or hire of the Chagos Archipelago has not arisen as they were detached from Mauritius by Order in Council under powers possessed by the British Government.

(COMMUNIQUE)

EMBARGOED FOR RELEASE UNTIL 2000 HOURS LOCAL TIME
WEDNESDAY 10TH NOVEMBER

Defence facilities in the Indian Ocean

In reply to a Parliamentary Question the Secretary of State made the following statement in the House of Commons on Wednesday November 10th:

" With the agreement of the Governments of Mauritius and the Seychelles new arrangements for the administration of certain islands were introduced by an Order in Council made on the 8th November. The islands are the Chagos Archipelago, some 1,200 miles north-east of Mauritius, and Aldabra, Farquhar and Desroches in the Western Indian Ocean. Their population are approximately 1,000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of the Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and U.S. Governments, but no firm plans have yet been made by either Government. Compensation will be paid as appropriate. "

The cost of compensating the Company which exploits the plantations and the cost of resettling elsewhere those inhabitants who can no longer remain there will be the responsibility of the British Government. In addition, the British Government has undertaken in recognition of the detachment of the Chagos Archipelago from Mauritius, to provide additional grants amounting to £ 3 m. for expenditure on development projects in Mauritius to be agreed between the British and the Mauritius Governments. These grants will be over and above the allocation earmarked for Mauritius in the next period of C. D. and W. assistance.

The population of the Chagos Archipelago consists, apart from civil servants and estate managers, of a labour force, together with their dependents, which is drawn from Mauritius and Seychelles and employed on the copra plantations. The total number of Mauritians in the Chagos Archipelago is 638, of whom 176 are adult men employed on the plantations.

SURVEY OF ILOIS

Year of Arrival

<i>Locality</i>	<i>No. of families</i>	<i>30's</i>	<i>40's</i>	<i>50's</i>	<i>60's</i>	<i>70's</i>	<i>Unknown</i>
1. Baie du Tombeau	5	—	—	4	1	—	—
2. Bois Marchand	2	—	—	—	2	—	—
3. Beau Bassin	9	—	4	3	1	1	—
4. Cassis	94	—	1	17	61	14	1
5. Cité La Curo	22	—	1	3	7	10	1
6. Docker's Flat	40	—	—	6	11	23	—
7. Grand River North West	5	—	—	2	3	—	—
8. Le Hochet	5	—	—	—	4	1	—
9. Les Salines	51	—	1	6	35	8	1
10. Pointe aux Sables	31	—	2	11	14	1	3
11. Pailles	16	—	2	—	10	4	—
12. Port Louis	4	—	—	—	2	2	—
13. Petite Rivière	26	—	—	9	12	3	2
14. Roche Bois	225	3	7	28	139	35	13
15. Ste. Croix	10	—	—	2	7	1	—
16. Other areas	12	—	1	—	10	1	—
TOTAL	557	3	19	91	319	104	21

SURVEY OF ILOIS

Population according to Age-Group

<i>Locality</i>	<i>No. of families</i>	<i>Under 5</i>	<i>5-12</i>	<i>12-18</i>	<i>Adults</i>	<i>Over 60</i>
1. Baie du Tombeau ...	5	3	7	3	7	—
2. Bois Marchand ...	2	—	1	—	5	—
3. Beau Bassin ...	9	3	6	15	22	3
4. Cassis ...	94	67	82	49	181	17
5. Cité La Cure ...	22	24	27	14	64	3
6. Docker's Flat ...	40	31	48	30	107	4
7. Grand River North West ...	5	1	2	5	10	—
8. Le Hochet ...	5	1	6	8	10	—
9. Les Salines ...	51	43	44	19	94	10
10. Pointe aux Sables ...	31	24	38	22	72	7
11. Pailles ...	16	14	8	8	22	3
12. Port Louis ...	4	3	8	1	8	2
13. Petite Rivière ...	26	14	22	28	55	5
14. Roche Bois ...	225	130	210	117	370	45
15. Ste. Croix ...	10	11	16	6	13	1
16. Other Areas ...	12	9	18	9	28	1
TOTAL ...	557	378	543	334	1068	102



ANNEX IV

				Rs
Amount received on 28.10.72	...	...	...	8,666,666.67
Disbursed in 1972-73	...	...	...	83.33
Balance on 30.6.73	...	...	...	8,666,583.00
Disbursed in 1973-74	...	...	...	112,402.00
Balance on 30.6.74	...	...	...	8,554,181.00
Disbursed in 1974-75	...	...	...	15,175.00
Balance on 30.6.75	...	...	...	8,539,006.00
Balance on 30.6.76	...	...	...	8,539,006.00
Disbursed in 1976-77	...	...	...	24,103.00
Balance on 30.6.77	...	...	...	8,514,903.00
Disbursed July 77 to December 77	...	...	...	4,010.00
Balance on 31.12.77	...	...	...	8,510,893.00

			Rs
28.10.72 to 30.6.73 (246 days) — $246 \times \frac{6}{365} \times \text{Rs } 8,666,583$	=		350,462
1.7.73 to 30.6.74 = $\frac{365}{100} \times \text{Rs } 8,554,181$	=		513,250
1.7.74 to 30.6.75 = $\frac{100}{100} \times \text{Rs } 8,539,006$	=		512,340
1.7.75 to 30.6.76 = do "	=		512,340
1.7.76 to 30.6.77 = $\frac{100}{100} \times \text{Rs } 8,514,903$	=		510,894
1.7.77 to 31.12.77 = $\frac{184}{365} \times \frac{6}{100} \times \text{Rs } 8,510,893$	=		257,425

TOTAL ... 2,656,711

Amount received	...	8,510,893 (after disbursement)
Interest to 31.12.77	...	2,656,711
		<u>11,167,604</u>

31st December, 1977

M. NALLETAMBY
Accountant-General

DEED OF ACCEPTANCE AND POWER OF ATTORNEY

This is the Deed of me (1).....
and the adult members of
 my family who have hereunto subscribed their names and seals.

I am an Ilois who left that part of British Indian Ocean Territory known
 as (2).....in the ship (3).....
on the.....day of.....19.....
 never to return. My family who came with me then are (4).....

.....and the following children:—
Adult children's names *Addresses* *Dates of Birth*

Infant children's names *Addresses* *Dates of Birth*

We know that the United Kingdom Government has already paid the Mauritian Government £650,000 for the resettlement of the Ilois people who came to Mauritius following the setting up of British Indian Ocean Territory and has offered to make available a further £ 1,250,000 for the purpose provided it is accepted by the Ilois in full and final settlement of all claims whatsoever upon the United Kingdom Government by the Ilois arising out of the following events:—the creation of British Indian Ocean Territory, the closing of the plantations there, the departure or removal of those living or working there, the termination of their contracts, their transfer to and resettlement in Mauritius and their prohibition from ever returning to the Islands composing British Indian Ocean Territory (the events) and of all such claims arising out of any incidents or circumstances occurring in the course of the events or out of the consequences of the events, whether past, present or to come ("their incidents circumstances and consequences").

So that this money may be paid to help the Ilois.

ANNEX V—*continued*

1. We appoint Bernard Sheridan of 14 Red Lion Square, London WC 1 as our Attorney in accordance with S. 10 of the Powers of Attorney Act 1971 and in particular we authorize him to receive the £ 1,250,000 on behalf on the Ilois in such instalments and amounts and subject to such conditions as he in his absolute discretion and without need to make further reference to us, may agree with the United Kingdom Government.
2. We appoint him as our solicitor to act on our behalf in relation to all matters connected with the payment of the £ 1,250,000 and I, (5)..... authorize him to act on ehalf of my infant children named above as their next friend.
3. We accept the money already paid to the Mauritian Government and the money to be paid to Mr Sheridan as aforesaid in such instalments as he shall agree in full and final settlement and discharge of all our claims however arising upon the United Kingdom Government (both upon the Crown in right of the United Kingdom and the Crown in right of British Indian Ocean Territory) and upon its servants, agents and contractors in respect of the events, their incidents, circumstances and consequences and we further abandon all our claims and rights (if any) of whatsoever nature to British Indian Ocean Territory.
4. We understand accept and agree that by entering into this Deed we shall not be able to sue the United Kingdom Government in respect of the events, their incidents, circumstances and consequences and hereby covenant not to do so.
5. We agree that all questions concerning the validity and construction of this Deed and any disputes arising upon it shall be governed by English law and justifiable only in English Courts.

-
- (1) Insert name and address of head of family
 - (2) Insert name of Island
 - (3) Insert name of ship and date of leaving BIOT
 - (4) Insert name and address of wife
 - (5) Insert name of head of family

L'Île Maurice base de la Réserve Stratégique Britannique

Au cours d'une interview qui a été diffusée, hier soir, dans le programme "London Calling Mauritius", M. David Windsor, de l'Institut des Etudes Stratégiques de Grande Bretagne a parlé de la possibilité pour Maurice de servir de base à une brigade de la Réserve Stratégique du Royaume-Uni.

Les récents troubles en Est-Afrique, au Bornéo, à Aden ont mis en relief l'impérieuse nécessité pour le Gouvernement britannique d'avoir des troupes disponible dans un rayon qui ne soit pas trop éloigné des foyers de troubles afin qu'elles puissent se porter le plus rapidement possible au secours des Gouvernements de ces territoires si ces derniers font appel à leur aide.

Il est difficile pour ces troupes de se rendre avec la rapidité voulue de la Grande Bretagne au Bornéo, par exemple. Si des bases peuvent être créées dans des régions assez rapprochées des centres possibles de troubles, la situation serait grandement améliorée.

Maurice est bien placé dans ce sens, située comme elle l'est, à un angle d'un triangle, dont les deux autres angles sont Aden et Singapour. Une brigade de la Réserve Stratégique, stationnée à Maurice, pourrait se rendre rapidement dans un pays membre de la Fédération de Grande Malaisie, à Aden ou dans les territoires est-africains. De plus, notre dépendance, Diego Garcia, possède un port naturel immense qui pourrait abriter des unités de la Marine Royale.

M. Windsor a dit que les autorités britanniques étudient attentivement cette possibilité. Le stationnement d'une brigade de la Réserve Stratégique à Maurice, de même que l'utilisation de la rade de Diego Garcia comme base pour la marine britannique, donnerait de l'emploi à un grand nombre de Mauriciens et aiderait à résoudre, du moins en partie, notre problème de chômage.

The Economist—July 4, 1964

So the search has properly been on for a well-situated, sparsely populated, politically unexplosive haven in the Indian Ocean. Eyes, logarithms and compasses have been turned to Mauritius and to the Seychelles; the pointers suggest that there is a good deal to be said for one of the island dependencies of Mauritius, one at least of which does have a natural harbour and was used during the second world war. Mauritius is politically calm: its party leaders have agreed to form an all-party government and to discuss internal self-government some time after October, 1965.

But even under these moderately propitious stars, is it up to Britain alone once again to set about the job of looking for a reasonably secure base east of Suez? There has been endless argument about what an Indian Ocean base is for: a stepping stone to south-east Asia; a mounting post for peace-keeping operations like the useful east African ones in January; a guard against Arab take-over bids like the Iraq-Kuwait incident in 1961; a warning eye on British oil interests. The point is not so much which of these functions survive scrutiny—the first and second look the sounder ones—but that Sir Alec Douglas Home, Mr Wilson and Mr McNamara all agree that collectively they justify a military effort.

L'île Maurice et la nécessité d'une base dans l'Océan Indien

Les alliés occidentaux sont à la recherche d'une base, d'un marchepied entre l'Europe et l'Australie et l'Extrême Orient.

Cette nécessité a donné lieu à un marchandage dans les coulisses, entre Washington et Whitehall au sujet de l'établissement d'une base importante, sur une île de l'Océan Indien.

Le choix semble devoir se porter sur l'île Maurice, située à 500 milles à l'est de Madagascar.

Une des propositions britanniques serait à l'effet que les USA aident à établir une base importante dans l'Océan Indien dont le double but de servir de poste de relais aux Britanniques et de ravitailler une flotte américaine de porte-avions.

Les Américains, de leur côté, ont laissé entendre qu'un engagement américain dans l'Océan Indien pourrait être conditionnel à l'appui que la Grande Bretagne donnerait au plan américain pour une force nucléaire mixte au service de Nato.

L'île Maurice, ou l'une de ses dépendances est le choix le plus plausible —non seulement pour des raisons logiques et stratégiques: ce pays jouit d'une certaine stabilité politique. Il a une population de 550,000, faite en grande partie d'Indiens introduits par les Français et les Anglais, et qui a atteint un stade d'harmonie politique et multiraciale tel que l'indépendance pourrait lui être accordée demain n'étaient le manque de devises étrangères et un lourd problème de chômage. En fait, c'est exactement le genre de pays qui bénéficierait de l'argent et de l'emploi additionnels qu'une base militaire importante y déverserait.

(APPENDIX 'A 4')

London. (00.55) August 30. New American bases being sought on British islands in the Indian Ocean were "purely and simply to provide radio-communication link," official sources said here tonight.

"But," the sources added, "they could, of course, be extremely useful as forward staging points for troops."

High-level discussions are now taking place between the United States and British Governments to consider the usefulness of various islands which might be used. A British survey ship is in the Indian Ocean and experts are studying the possibilities.

The sources said they were looking for a small island on which to set up a small American relay station. This would provide better communications between United States forces in the.....

"If we find one big enough and if we could lay down a runway without spending millions on it, we could have a first-class base for troops," an authoritative source said.

(APPENDIX 'A 5')

London (08.33) Aug. 31 The Daily Telegraph stated here today that co-operation between Britain and America over the use of remote but, by modern requirements, strategically based islands as defence posts of various kinds, was long overdue.

This Conservative daily said it would be 'short-sighted' to limit the co-operation to the Mauritius dependency of Diego Garcia—"the use of which by the American Navy as a Polaris communications centre is under discussion between the two countries."

The Telegraph continued: "There are several reasons why America now needs these posts in parts of the world, such as the Indian Ocean, where at present she has none.

"Her Polaris fleet is expanding fast. She wants to be better equipped for getting forces and military aid very quickly to possible trouble spots.

"One contingency might be a renewed Chinese attack on India. Others might arise from increasing Russian and Chinese activities in Africa.

"Britain has the islands strewn about. America has the forces and the money. Britain is over extended and cannot take full responsibility for new commitments just because the only possible bases happen to be British islands. The case for co-operation in some form is overwhelming."

The Telegraph stated that no doubt a howl of indignation against "Anglo-American imperialism" would arise from the Communist countries at "any such precautionary measures."

It added: "This will be joined by most of the Afro-Asian countries, although perhaps with less conviction by those who are aware of Communist activities and their own need for disinterested help in a crisis.

"In fact the islands in question are inhospitable, with populations of a couple of hundred people, who would certainly welcome and benefit from an American presence."



The Economist**A Vacuum to fill**

.....

The east African operations of last January, which saved the governments of Kenya, Tanganyika and Uganda from their mutinying armies, were models of what can be done. It does not take much imagination to think of three or four places in this rickety reach of the globe where the same call for help may be heard again. This may give offence, but is it not possible in Ceylon, or Persia, or somewhere in the Persian Gulf, or somewhere on the east coast of Africa again?

This is presumably the thought that lies behind the present Anglo-American search for a communications centre (and maybe something more) in the Seychelles or one of the Mauritius dependencies. The difficulty lies in winning Afro-Asian acceptance of the British share in this operation.

The Indian Ocean is the only large part of the world where the United States does not already bear the main burden of looking after western interests. It cannot be expected to bear the whole extra weight of trying to preserve stability between Nairobi and Singapore too; and British knowledge of the area, and the present deployment of British forces, make it common sense for Britain to help out. But Britain's surviving colonial entanglements—particularly the Aden entanglements in the north-west—still cause suspicion. This is why it is essential to explain as clearly as possible the distinction between the colonial period, which is now very near its inevitable end, and the quite different aims Britain and America hope to pursue together in the vastly changed conditions of the post-colonial period.

.....

Des Mauriciens à Londres protestent

There are persistent reports in the London press that joint consultations are at present being held between the British and American Governments for the setting up of certain bases in the Indian Ocean. Allegedly the Government of Mauritius is being consulted on the question. We are being told that these bases will be used for a communications system, but the implication is so serious that Mrs Bandaranaike of Ceylon has felt it necessary to issue a statement expressing concern about the matter and the Indian Government has deftly proposed a nuclear-free zone in the Indian Ocean.

I feel sure that the Governments of India and Ceylon would not have been unduly worried if the discussions were merely for the installation of innocuous communication centres. I draw the conclusion, and voice the apprehension of hundreds of Mauritians in London, that the Anglo-American discussions are a conspiracy to find surreptitious ways for inaugurating a cluster of military bases on our soil and on other islands in the Indian Ocean with all the cold war concomitants that these entail.

The danger inherent in the presence of military bases in any part of the world cannot be ignored and there are too many glaring examples for us to be apathetic to the situation. The attitude of our leaders has not yet been made public but I have a strong suspicion that somehow the British Government will attempt to link this question of bases with the granting of Independence.

Let us make it clear to our elected representatives that we are not going to allow Mauritius to become a pawn on the Chessboard of the Big Powers. The presence of military bases on our soil will endanger our national security, for in the event of any war there is not one single military installation that will be immune from retaliatory measures. If it is true, as has been openly suggested in the London press, that in reality these bases will be used mainly for operations in Malaysia and South East Asia, then we shall find ourselves involved in an unholy alliance which tends to exacerbate an already tense situation fraught with unprecedented danger.

There will undoubtedly be sophisticated arguments in favour of allowing these bases to operate, on the grounds that they would bring employment and foreign capital to help us out of our present economic plight. These arguments would banish morality from the field of politics and must be rejected as despicable pragmatic logic in the most repulsive form of Machiavellism.

We are not prepared to pawn our lives for the benefit of a few crumbs of bread.

APPENDIX 'A 7'—*continued*

If our leaders consider that the affairs of our country can only be administered by leasing our land for doubtful military enterprises then they ought to say so to the people and in no uncertain terms: I trust our people will not be easily duped.

We do not wish to become a partner in the gigantic conflict between East and West. What we require from all the nations of the world is to be allowed to pursue our destiny in peace and friendship. Our internal problems are exacting enough and we will have to pool all the energy we can muster to bring about their solution.

I call upon all responsible citizens and particularly the intellectuals, writers, journalists and artists who have a special responsibility, being the guiding light of our nation, to do everything in their power to awaken and arouse the national consciousness to this dangerous threat.

Tell our political leaders that if it is their intention to mortgage our national security for questionable economic advantages, then we shall not rest at all until the danger is removed.

The Economist—January 16, 1965

Strategies West and East

Here the Indian Ocean has been a relative gap, and it happens that Britain still possesses in it and in the south Atlantic various islands which might be made into useful staging-posts. A joint Anglo-American survey has been made of a possible chain of such posts on Ascension Island, Aldabra or another island in the Seychelles, Diego Garcia in the Chagos Archipelago, and an island in the Cocos group, the administration of which was prudently transferred some years ago from Singapore to Australia. This scheme would give British and American forces convenient access to Singapore and Australia, either by way of Aden or across, or round, southern Africa, by a route relatively immune to political hazards. There are, however, one or two possible political hazards to be surmounted first. The islands are insignificant bits of sand or coral and barely inhabited; still Aldabra is administered from the Seychelles and Diego Garcia from Mauritius, and each would need to be detached by, presumably, an Order in Council and administered from London, to make the investment of putting runways and other installations on them seem a reasonable bet.

(APPENDIX 'A 9')

London. 23.55 April 5. (1965) The Government was asked in the House of Commons today what approaches had been made to the Government of MAURITIUS regarding certain facilities for an Anglo-United States base in the Indian Ocean.

Mrs Eirene White, Colonial Under-Secretary, replied that the Premier of MAURITIUS (Dr S. Ramgoolam) was consulted in July last about the joint survey of possible sites for certain limited facilities that was then about to begin.

She added: "In November, the Council of Ministers, who had been kept informed, were told that the results of the survey were still being examined and that the Premier would be consulted again before an announcement was made in London or in Washington."

MAURITIUS, an island in the Indian Ocean, was ceded to Britain by France in 1814.

**THE WASHINGTON POST****Sunday, May 9, 1965****ENGLAND, U.S. PLAN BASES IN INDIAN OCEAN***by Robert Eastabrook**Washington Post Foreign Service*

London, May 8. Plans for developing a series of joint Anglo-American military facilities on largely uninhabited islands in the Indian Ocean have received preliminary approval by Britain's Labor Government.

The initial outlay for acquiring necessary real estate in remote island dependencies of the British Colonies of Mauritius and the Seychelles has been estimated at \$28 million.

This would include the cost of buying out and moving the few indigenous inhabitants.

Discussions have been under way for a year about a chain of communications and staging sites, relatively invulnerable to anticolonial agitation, to assist peacekeeping operations in South and Southeast Asia as well as Africa if necessary.

In January the United States relayed a list of six to eight recommended locations based upon a survey made by an American team aboard a British ship last summer.

Navy Seeks Site

First on the priority list is Diego Garcia, a Mauritius dependency in the Chagos Archipelago 1000 miles south-west of Ceylon. Funds are already assured for a Navy communications relay station on Diego Garcia. The American request, however, is that the entire Chagos Archipelago be acquired.

Before plans can be carried further, Britain must approach local authorities in Mauritius and the Seychelles in order to transfer administrative responsibility to London for the Chagos and other faraway dependencies.

Some urgency attaches to this step because constitutional talks looking to possible early independence for Mauritius are scheduled for this fall, and it will be necessary to complete the transfer beforehand.

APPENDIX 'A 10'—*continued*

Any fears that the British Labour Government might not be enthusiastic about the Indian Ocean scheme have been delayed by the enthusiasm with which new ministers have taken up the idea. It dovetails with the "East of Suez" defence concept of Prime Minister Wilson.

Foreign Secretary Michael Stewart, Defence Secretary Denis Healey and Navy Minister Christopher Mayhew are particularly impressed with the possibilities. The government is under heavy pressure, however, to economise on military expenditures.

No precise arrangement has been made for sharing the initial cost, but Britain reportedly expects the United States to bear the larger portion. How much Britain can devote to development of the actual military facilities will be determined in part by a broad defence review now under way.

Inadequate Water

Such development may be relatively expensive in some instances because some of the islands lack adequate water or are surrounded by coral. But whatever the eventual American share, many diplomats as well as military men consider the cost well warranted because the opportunity to obtain such secure sites may never recur.

In addition to the Chagos Archipelago, other sites under consideration include the Aldabra islands, a dependency of the Seychelles 300 miles north-west of Madagascar, where Britain wants an air field; the Farquhar Islands, also a Seychelles dependency 150 miles north-east of Madagascar; the Agalega Islands, a Mauritius dependency 500 miles north-east of Madagascar, and the Australian-owned Cocos Islands 500 miles south of Sumatra.

American officials emphasize that the Indian ocean facilities would be primarily logistical and would not be intended as full-scale bases with garrisons. They could nevertheless be used for servicing or staging conventional air, sea and ground forces.

In response to a recent question in Parliament, Wilson denied that any submarine basis are contemplated in the area. Even though the Indian Ocean facilities would not be large, however, their presence would be potential reassurance to governments that might be intimidated by Chinese nuclear weapons.

APPENDIX 'A 10'—*continued*

Although no one likes to talk about abandonment of the big British base at Aden, some planners are thinking about an alternative. The official position is that the question of the future of the Aden base will be negotiated when the Federation of South Arabia becomes independent in 1968.

Present thinking is that either Britain or the United States would assume individual responsibility for the operation of each particular site, but that all such facilities would be available for use by both countries.

No Formal Request

No formal request for transfer of the dependencies has yet been made to the governments of Mauritius or the Seychelles, although officials were advised of the military survey.

Similarly the Australian government has not yet been approached for facilities in the Cocos Islands, but no difficulty is anticipated in view of the extensive Australian cooperation with Britain and the United States.

In the case of Mauritius the situation becomes delicate because of internal political disagreement over whether the 720 square mile territory with a population of 700,000 should opt for full independence or some lesser status in the Commonwealth.

Transfer of the dependencies could become a bone of contention, although some Mauritians believe that the military facilities would benefit the area.

Actually the far-removed dependencies are attached to Mauritius only for convenience of administration. The total population of all such lesser dependencies is under 2000.

With the Seychelles there is less of a problem because the 45,000 people are not so far advanced towards independence. This colony (where Archbishop Makarios of Cyprus spent a period in exile during the mid-1950s) lacks air connections.

Officials here suggest that agreement to build an airport as an aid to communications and tourism might ease the transfer of the dependencies.

APPENDIX 'A 10'—*continued*

The idea of American planners has been wherever possible to buy out indigenous inhabitants of the islands selected for military use and move them elsewhere. British or American nationals would then be brought in to staff the facilities.

In the case of Diego Garcia it would be necessary to purchase one foreign-owned coconut plantation. Transfer of the 664 residents of the Cocos Islands is not contemplated, however. Cocos already has a civil airport that is a stop on the route between South Africa and Australia.

Perhaps because of cost, British authorities have regarded the transfer of population as less important. Although they acknowledge that military facilities on the Indian Ocean islands might stimulate new "colonialism" propaganda charges, they believe that it probably would be possible to operate them with the local production remaining.

Les U.S.A. proposent Rs 135 m pour militariser les dépendances de Maurice et des Seychelles

Les Etats Unis sont fin prêts pour l'installation de bases militaires dans les dépendances de l'île Maurice et les Seychelles. Des fonds ont déjà été votés pour une station de relais télégraphiques destinée à la marine. La station serait située à Diego Garcia. Des experts sont arrivés à une estimation précise: Rs 135 millions, pour le coût initial de l'acquisition des terres nécessaires et le déplacement (avec dédommagement) des habitants de ces terres. Ils sont au nombre de 2000.

Toutefois, les Etats Unis ne peuvent aller de l'avant. Il faut d'abord obtenir des gouvernements mauricien et seychellois le transfert du contrôle administratif des territoires convoités au gouvernement de Londres. Dans les milieux américains on pousse à la roue pour que le transfert ait lieu avant la conférence constitutionnelle de septembre prochain.

Londres d'accord

Le gouvernement travailliste britannique a donné son accord préliminaire au projet de création d'une chaîne d'installations militaires anglo-américaines dans des îles de l'Océan Indien. C'est Robert H. Estabrook du Washington Post Foreign Service qui l'a affirmé récemment.

Il déclare par ailleurs que le nouveau gouvernement a accepté cette idée avec enthousiasme et que Michael Stewart (Affaires Etrangères), Denis Healey (Défence) et Christopher Mayhew (Marine) ont été impressionnés par les perspectives du plan. Il précise que le gouvernement britannique, sous la pression de difficultés économiques, voudrait économiser sur le budget militaire et s'attend à ce que les U.S.A. financent en grande partie le projet.

Un chapelet de stations

1. La première priorité militaire est Diégo Garcia, dépendance mauricienne de l'archipel des Chagos à 1,000 milles au sud-ouest de Ceylan. Mais les conseillers U.S. voudraient que l'archipel entier soit acquis. Les autres possibilités sont: 2. les îles Aldabra, dépendances des Seychelles, à 300 milles au nord-ouest de Madagascar, où la Grande Bretagne voudrait créer un aéroport. 3. les îles Farquhar, dépendances des Seychelles, à 150 milles au nord-est de Madagascar. 4. les îles Agaléga (Maurice) à 500 milles au nord-est de Madagascar et 5. les îles Cocos, possession australienne à 500 milles au sud de Sumatra.

APPENDIX 'A 11'—*continued***La menace chinoise**

Robert Eastabrook rapporte que les bases ne seraient pas dotées de garnisons mais serviraient au transit et au déploiement des forces de l'air, de mer et de terre. Même des installations de deuxième ordre seraient une garantie tangible de protection pour les pays qui pourraient être intimidés par la force nucléaire chinoise.

Aden abandonné en 1968

Personne ne parle ouvertement de l'abandon de la grosse base britannique à Aden mais certains conseillers en stratégie pensent à une alternative. Ce n'est qu'en 1968, lorsque la fédération de l'Arabie du Sud deviendra indépendante, que l'Angleterre négociera l'avenir de la base d'Aden.

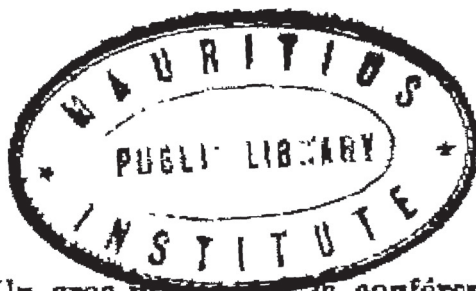
La tactique américaine

A en juger par ce que rapporte ce correspondant américain, la tactique américaine consiste à minimiser la nature des liens entre Maurice et ses dépendances. Ainsi, il est allégué que ces îles dépeuplées ne représentent rien. Les U.S.A. ont évidemment intérêt à sous-estimer la valeur de nos dépendances.

La procédure préconisée par les "cerveaux" américains est d'acheter les droits des habitants d'îles choisies pour leur valeur militaire et les transférer ailleurs pour faire du repeuplement anglo-saxon.

Une base en deux temps

Par ailleurs, de source britannique, on croit savoir que M. Robert McNamara, Secrétaire d'Etat américain à la défense, est tombé d'accord pour commencer la construction des installations à Diégo. Celle-ci, d'abord une station de communications américaine, pourrait devenir éventuellement une base d'arrière-garde anglo-américaine, si la base d'Aden est perdue.



Un gros problème à la conférence du Commonwealth: le dilemme des bases.

Wilson décidera-t-il sans Ramgoolam?

La question de l'installation de bases dans l'Océan Indien (à Diego Garcia notamment) sera soulevée à la conférence des Premiers ministres du Commonwealth qui se réunit actuellement.

L'installation d'une base militaire dans une de nos dépendances touche de près notre pays. Or, Sir Seewoosagur Ramgoolam, Premier, n'assiste pas à la conférence des Premiers ministres du Commonwealth. L'île Maurice, colonie, n'a pas été invitée par le gouvernement britannique.

Toutefois, nous pensons que Sir Seewoosagur ou un délégué averti de notre gouvernement comme M. Maurice Paturau devrait, pour une fois, être à Londres afin de pouvoir discuter à l'échelon individuel de cette importante question avec les représentants des gouvernements du Commonwealth qui participent à la conférence.

Notre correspondant particulier à Londres rapporte dans une dépêche en date du 17 juin, date de l'ouverture de la conférence des Premiers Ministres du Commonwealth:

"La Grande Bretagne discutera avec ses partenaires du Commonwealth de la possibilité de l'installation de bases militaires dans les îles de l'Océan Indien".

Il poursuit et dit que la presse britannique de dimanche dernier a fait mention de consultations que M. Harold Wilson, Premier Ministre britannique, a eues ce jour-là avec ses *senior ministers* à Chequers, pour préparer la voie.

"For straight talking later this week to Prime Ministers Conference on Britain defence dilemma".

La Grande Bretagne demandera à l'Australie et à la Nouvelle-Zélande de l'aider dans sa tâche de défendre le monde libre. Ces deux pays ont intérêt à la défense de l'Extrême Orient et de l'Asie en raison de la menace nucléaire chinoise.

Les points suivants seront soulevés avec les membres qui participeront à la conférence du Commonwealth et qui ont été mis en avant par M. Denis Healey, ministre de la Défense de Grande Bretagne.

(1) La défense du Sud Est asiatique et de l'Inde peut être assurée par une force mobile dépendant d'avions de transport ou par une chaîne de bases militaires dans l'Océan Indien. Les bases sont-elles moins chères et meilleures?

APPENDIX 'A 12'—*continued*

(ii) Un avion de transport coûte £ 60 millions et un investissement de £ 25 millions est nécessaire tous les 5 ans, pour lui permettre d'être opérationnel.

(iii) Pour les bases militaires dans les îles, les avions F 111 seraient choisis.

(iv) Le nombre de soldats nécessaires pour maintenir une base.

Notre correspondant particulier précise qu'une des inquiétudes exprimées par la presse britannique est la suivante:

"Can Island bases in Indian Ocean cover the oil rich Sheikdoms of the Persian Gulf and enable Britain to close the costly and politically difficult base at Aden?"

Il faut toutefois préciser ici que la question militaire sera traitée "as a side line issue" avec les ministres du Commonwealth.

Le progrès des territoires britanniques vers l'indépendance et leur admission dans le Commonwealth est un des sujets qui sera discuté au cours de la 14e réunion des chefs de gouvernements du Commonwealth, qui a commencé à Londres avant-hier (jeudi) 17 juin 1965).

Cette question ainsi que certaines autres sont inscrites sur l'agenda. Elles furent toutes acceptées par les représentants des 21 pays membres, après qu'ils aient été reçus par le Premier ministre britannique, M. Harold Wilson.

Les autres sujets à l'ordre du jour consistent en une revue de la situation politique et économique dans le monde et la création du secretariat du Commonwealth. La question de l'immigration sera aussi soulevée.

BASE BRITANNIQUE DANS L'ARCHIPEL DES CHAGOS

La Grande Bretagne veut retrancher les Chagos de l'administration de Maurice

Opposition de Sir Seewoosagur Ramgoolam qui propose une location La défense à l'Est d'Aden

Pour ceux qui ont suivi de près l'évolution de la situation politique et militaire en Arabie du Sud, la déclaration faite à Londres par le Secrétaire d'État aux colonies, M. Anthony Greenwood, annonçant que l'Arabie du Sud doit être indépendante avant la fin de 1966, n'a pas été une surprise.

La presse britannique avait fait état de l'évolution de cette situation. Un journal britannique, l'ECONOMIST, avait même conclu que, pour pouvoir contenir la Chine en profondeur à l'Est d'Aden, la métropole pourrait être amenée à porter son choix sur "une île de l'Océan Indien".

Nous sommes en mesure d'annoncer, aujourd'hui, que ce projet britannique a pris corps.

Le gouvernement de Maurice a été mis en présence, tout récemment, d'une proposition formelle de Londres à ce sujet.

Cette proposition est la suivante:

La métropole offre de faire acquisition de l'Archipel des Chagos pour y établir des bases aériennes. Nos dépendances deviendraient ainsi une zone d'atterrissage.

Une condition importante est attachée à cette proposition: l'île Maurice accepterait que l'Archipel des Chagos soit retranché de sa dépendance.

Londres a offert de déplacer à ses frais les habitants de ces îles—trois cents ou quatre cents familles—pour les replacer, en les dédommageant, à Agaléga.

Le gouvernement britannique n'a encore présenté aucun prix ferme de dédommagement au gouvernement mauricien. On en ignore le montant exact.

APPENDIX 'A 13'—*continued***Ramgoolam: pas de retranchement**

A ces propositions, Sir Seewoosagur Ramgoolam a objecté que l'archipel des Chagos soit retranché de la dépendance de Maurice. Le Premier, leader du Parti Travalliste, veut plutôt d'un bail, condition qui, à ses yeux, viendrait grossir les revenus de Maurice.

A cette objection de Sir Seewoosagur, Londres opposerait, croyons-nous savoir, une objection de taille pleine d'enseignement: non retranché de la dépendance de Maurice, l'archipel des Chagos, devenu base aérienne britannique, continuerait à dépendre des aléas d'un gouvernement mauricien.

La métropole pourrait donc être bientôt placée devant une alternative fort embarrassante pour elle: (a) ou bien imposer sa décision en la déguisant, comme il convient en pareille circonstance, d'une procédure *ad hoc*; (b) ou bien céder à l'objection de Sir Seewoosagur et reviser toute la question.

Sir Seewoosagur se trouve, de ce fait, dans une situation clé. Il est peu probable qu'il puisse abandonner ainsi des dépendances mauriciennes et ses objections, il faut l'en féliciter, sont, cette fois, celles d'un esprit avisé dont la circonspection est pleine de sagesse. Aucun Mauricien ne pourrait lui donner tort en la conjoncture.