investor" to juridical persons of the States listed in subparagraph 1 (*a*) (i) and to juridical persons of the States enumerated in paragraph 1 (*a*) (ii)? Why should the companies of the latter States be accorded an essentially privileged position?

All these and many other questions were ignored in the conclusion of the United Nations Legal Counsel. It should, therefore, not be taken as valid and sound advice in solving the problem under consideration.

I should be grateful if you would have the text of this letter and the annex thereto distributed as a document of the Conference. It would also seem to be appropriate to issue as a document of the Conference the reply of the Secretariat to the questions posed in this letter.

(*Signed*) S. KOZYREV
Representative of the
Union of Soviet Socialist Republics
to the Third United Nations Conference
on the Law of the Sea

ANNEX

Memorandum of 21 April 1982 from the Legal Counsel to the Special Representative of the Secretary-General to the Third United Nations Conference on the Law of the Sea

I have received the request for a legal opinion contained in your memorandum of 20 April 1982. The request relates to draft resolution II (*ibid.*) governing preparatory investment in pioneer activities relating to polymetallic nodules, in particular to paragraph 1 (*a*) (ii) thereof, which contains a definition of a "pioneer investor". As presently drafted, that term is defined to cover, *inter alia*, State enterprises and private enterprises. These latter enterprises are said to be entities "comprising natural or juridical persons which possess the nationality of, or are effectively controlled by" certain specified States. While the definition does not list the "juridical persons" comprising the private enterprises concerned, it contains a footnote reference, directing attention to document ST/ESA/107 "for their identity and composition".[a] The request for an opinion concerns the competence of the Conference on the Law of the Sea to include the private enterprises involved in its definition of pioneer investors.

In response to the question you have put, it would seem useful to take into account the following points:

1. The Third United Nations Conference on the Law of the Sea is a plenipotentiary conference and, as such, it is competent to make decisions and to adopt resolutions in accordance with the rules of procedure of the Conference.

2. The rationale for making provisions for investments made by States and other entities is expressed by the co-ordinators of the working group of 21 in paragraph 15 of their report recommending draft resolution II (A/CONF.62/C.1/L.30, 29 March 1982):

> "It is a demonstrable reality that six consortia and one State have been investing funds in the development of sea-bed mining technology, equipment and expertise. The programme of their research and development has arrived at a point when they must invest substantial amounts of funds in site-specific activities. The industrialized countries representing these consortia have been demanding that the Conference and the convention on the law of the sea should recognize these preparatory investments. We feel that this is a legitimate request provided that the preparatory investments of these pioneers will be brought within the framework of the convention and provided that the interim arrangement is transitory in character.".

3. Article 153 and annex III, article 4, of the draft convention on the law of the sea envisage the carrying out of "activities in the Area" by, *inter alia*, private entities. It is therefore not inconsistent with the convention to make provisions for the participation of private entities or groupings thereof.

4. We understand that various methods have been tried with a view to finding a satisfactory way to define the term "pioneer investor" so as to meet the divergent policy objectives of the different interest groups. The present approach appears to enjoy substantial support.

5. The draft resolution does not seek to confer any immediate rights or benefits on a private enterprise without State action and consent, such rights and benefits only arising after certification of that enterprise by a State or States signatory of the convention, an application on behalf of that entity by a State to the Preparatory Commission for the International Sea-Bed Authority and registration by the Commission after it is satisfied that the enterprise meets certain conditions. Consequently, the action and responsibility of the States directly concerned is involved. In this connection, the certifying State or States stand in the same relation to a pioneer investor as would the sponsoring State to an applicant pursuant to annex III, Article 4 of the convention (see paragraph 1 (*c*), "certifying State").

6. In the circumstances just described, which engage State responsibility and consent throughout, the status of an entity or its components under the national law of the State or States in which it is established (i.e. whether it or its components are State or privately owned) is in our view irrelevant to the competence of the Conference to define the term "pioneer investor".[b]

7. It is not uncommon for agreements or arrangements between States to confer rights and benefits on both State and private commercial enterprises, one entire category being comprised of airline agreements which permit a State party to designate the enterprises to operate air routes specified in the agreement (the purpose of such designation is achieved in the draft resolution under consideration by certification by a signatory State and application by a State to the Preparatory Commission). World Bank Loan agreements constitute another category of a similar nature.

On the basis of the above reasoning, I am of the opinion that the approach adopted in paragraph 1 (*a*) (ii) of draft resolution II is legally permissible and consistent with the practice of the United Nations. Consequently, the question which was put to us should be answered in the affirmative.

[a] See *Sea-Bed Mineral Resource Development: Recent Activities of the International Consortia* (United Nations publication, Sales No. E.80.II.A.9 and Corr.1) and addenda. This document was issued in 1980 for the purpose of public information. On the basis of available information, this document reported on activities conducted by, *inter alia*, "four commercially-oriented consortia": the Kennecott Group, Ocean Mining Associates, Ocean Management Inc. and the Ocean Minerals Company.

[b] To avoid misunderstanding, in view of the complex procedures contemplated, it might be more logical to refer to the entities listed in paragraph 1 (*a*) as "prospective pioneer investor".

DOCUMENT A/CONF.62/L.134

Letter dated 24 April 1982 from the representative of Venezuela to the President of the Conference

[*Original: Spanish*]
[*25 April 1982*]

In our statement to the 158th plenary meeting of 30 March 1982 we explained the difficulties which Venezuela had with articles 15, 74 and 83 and article 121, paragraph 3, of the draft convention and also the problems of interpretation arising from article 298.

In order to facilitate the conclusion of the Conference, we did not wish to reopen the long and difficult negotiations on the substantive and procedural aspects of the delimitation of marine and submarine areas between States with opposite or adjacent coasts. We merely submitted an amendment to arti-

cle 309 which would allow reservations to articles 15, 74 and 83 and paragraph 3 of article 121. We also proposed to make a statement, at an appropriate time, on our interpretation of article 298.

In our statement to the 168th plenary meeting of 15 April 1982 we explained briefly the meaning and scope of this amendment and we pointed out that it reflected the position invariably maintained by Venezuela.

It should be added at this time that, as clearly stated in the footnote to article 309 of the draft convention, this article is provisional and its final drafting is subject, on the one hand, to the conclusion of discussions on outstanding substantive issues and, on the other, to the achievement of consensus during these discussions. The substantive consideration of the articles to which our amendment relates has now concluded and the desired consensus has not been reached. It is therefore appropriate and timely to consider now the amendment to article 309 so as to allow reservations to those provisions which present serious difficulties for some delegations.

It must be recalled, above all, that the power to make reservations is the rule and not the exception as regards multilateral conventions. This is clear from article 19 of the Vienna Convention on the Law of Treaties,[32] of 1969. Suffice it to read, for example, the multilateral conventions drawn up by the United Nations, or under its auspices, on questions previously studied by the International Law Commission. We shall observe that most of these conventions do not contain provisions concerning reservations and hence they allow them implicitly, in accordance with international law. In practice, as may be easily verified, many reservations have been made to these conventions.

Of these conventions, 11 in all, only three allow reservations solely to determined articles. These conventions include: the Geneva Convention on the Continental Shelf of 1958,[33] article 12, paragraph 1, of which states: "At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1 to 3 inclusive."; the Convention on the Reduction of Statelessness of 1961,[34] which states in article 17, paragraph 1, that "At the time of signature, ratification or accession, any State may make a reservation in respect of articles 11, 14 and 15", and in paragraph 2 of the same article that "No other reservations to this Convention shall be admissible"; and finally the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents,[35] of 1973, which allows in article 13 reservations to the provision contained in paragraph 1 of this article.

In opposing our amendment, some delegations have argued that the possibility of making reservations would be inconsistent with the system followed by the Conference of seeking, as far as possible, solutions by consensus, and also inconsistent with the "gentleman's aggrement" of 16 November 1973, which appears as an appendix to the rules of procedure of the Conference. In our opinion, this argument is not valid. While we agree that the ideal solution would be a convention adopted by consensus of the participating States, there is no doubt that the rules of procedure and the "gentleman's agreement" envisage the possibility of adopting the voting procedure once the efforts to achieve consensus have been exhausted. In fact, the possibility of making reservations to certain provisions which present serious difficulties for some delegations would make it unnecessary to vote and would allow the convention to be adopted by consensus.

Other delegations have opposed our amendment because they consider that the possibility of making reservations to articles concerned with the delimitation of marine and submarine areas will affect the unity and integrity of the convention. We do not share this view either. The experience of the Conference clearly shows that only a limited number of delegations have taken part in the discussions and negotiations on the question of delimitation. It is a well-known fact that some 50 delegations participated actively in the two interest groups which were established to discuss this problem. If we examine the composition of these groups we may clearly identify the States with unsolved problems of delimitation and with divergent positions. As we have already pointed out, these are essentially bilateral problems which interest only a limited number of States. The statements made against our proposal, some of them particularly vehement, show clearly that this is a question which is of special interest and direct concern to these States and not to the large majority of States participating in the Conference.

Some delegations have said, in a clearly exaggerated manner, that our proposal would "undermine" the convention. However, it is obvious that the reservations which we propose to allow would have a limited effect exclusively confined to a few States. They would not substantially affect any of the basic elements of the convention which, by their nature and aim, must be universal in scope.

If it is not possible to make these reservations or to change the wording of the articles to which our amendment refers, we shall not be able to become parties to the convention. This would adversely affect the universality so desirable at a conference of this kind and, in the final analysis, no State would benefit, because Venezuela would not be subject to provisions of a treaty of which it is not a party.

In paragraphs 31 and 32 of the report you submitted to the 174th plenary meeting on 23 April, it was stated that, as a result of your consultations concerning the amendments to articles 309 and 310, the conclusion had been reached that there are no prospects of reaching an acceptable solution regarding these amendments. We did not take part in these consultations but we hope that, in view of the arguments put forward here, we may achieve during these final moments of the Conference a satisfactory solution of this problem.

Both in the preparatory stage of this Conference and in the 10 years during which the Conference has lasted, we have given more than enough proof of our genuine desire to achieve a universally acceptable convention on the law of the sea. Obviously, therefore, the amendment submitted by Venezuela has no other aim but to facilitate our participation in a convention to whose elaboration we have contributed our modest efforts in a broad spirit of compromise.

I would request you, Mr. President, to have this communication circulated as an official document of the Conference.

In thanking you in advance for your attention to this request, I reiterate our assurances of our highest consideration and appreciation.

(*Signed*) A. AGUILAR
Representative of Venezuela
to the Third United Nations Conference
on the Law of the Sea

[32] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5).
[33] United Nations, *Treaty Series*, vol. 499, No. 7302, p. 312.
[34] *Ibid.*, vol. 989, No. 14458, p. 176.
[35] See General Assembly resolution 3166 (XXVIII), annex.