FIRST COMMITTEE

46th meeting

Wednesday, 22 August 1979, at 4.05 p.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon)

Report on negotiations held by the Chairman and the co-ordinators of the working group of 21

1. The CHAIRMAN drew the attention of members to the report of the working group of 21 in document A/CONF.62/C.1/L.26, which was being circulated. Appendix A thereof contained document WG21/2 in which a number of suggestions resulting from consultations held by the Chairman and the co-ordinators of the working group of 21 appeared; appendix B contained the report of the Chairman of the group of legal experts on the settlement of disputes relating to part XI of the revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1).

2. Mr. CARÍAS (Honduras), speaking on behalf of the contact group on First Committee matters of the Group of 77, expressed that group's view that much substantive, useful and interesting work had been done with a view to concluding negotiations in 1979. However, the work was still not complete, and there had not been the same rate of progress on all items. Consequently, the group did not favour any amendment of the revised informal composite negotiating text at present on the basis of the proposals contained in document WG21/2. Those proposals could be included in a progress report, similar to that drawn up at the closure of the seventh resumed session, which would reflect the opinion of the co-ordinators but would certainly not commit the working group of 21.

3. It was hoped that progress would be made on those parts of the First Committee mini-package which remained outstanding, especially with regard to the system of exploration and exploitation. In that connexion, it was essential that there be a ceiling on production, for otherwise the package would not be viable. The group would prefer to consider amendments as a complete package as soon as possible, with a view to concluding the negotiations. It could not express any view on the substance of document WG21/2 until the next session because it needed time to consider it.

4. Mr. NAKAGAWA (Japan), commenting first on the matters which fell within the competence of negotiating group 1, said that, despite the great efforts made by the Chairman and members of that group, some of the key issues, such as the transfer of technology and the review conference, still had not been solved. He hoped that a solution satisfactory to everyone would be found at the next session. The new versions of some of the articles of annex II, as set out in document WG21/2, were a considerable improvement on the revised negotiating text, since they clarified the ambiguities and filled some of the lacunae.

5. Turning to the financial arrangements, he expressed interest in the scheme proposed by the Chairman of negotiating group 2 for payments under the mixed system; it was flexible, yet it ensured a stable income to the Authority. The new formula might serve as a basis for the future package deal on all the outstanding core issues of the First Committee, although his delegation felt that some of the figures were still not sufficiently realistic. However, it would study the proposal further.

6. With respect to the financing of the Enterprise, the desire of many delegations that it should be assured of the funds necessary to carry out one fully integrated mining project was understandable; his delegation would give careful study to the revised formula proposed by the Chairman of negotiating group 2.

7. Thanks to the untiring efforts of the Chairman, it had been possible to produce an amended version of paragraph 7 of article 161. The new scheme was interesting and an important step towards a final compromise. It was unfortunate that no agreement had been reached on the number of votes necessary for taking decisions on sensitive issues. His delegation's basic position was that the number should be such as to safeguard the legitimate interests of the countries whose nationals actually engaged in the exploitation of deep seabed mining. It could accept the new version of article 157 with respect to the powers and functions of the Authority.

8. Lastly, on the question of the settlement of disputes, he welcomed the improvements in article 168 and in the related provisions of article 187 and article 21 of annex II, as set out in document WG21/2. His delegation could support the new compromise text of article 191 on the participation of States parties in the proceedings of the Sea-Bed Disputes Chamber, as well as the new formulation on its composition set out in article 36 of annex V.

9. While there remained a number of hard-core issues which needed further negotiation, the Committee had made tangible progress. He expressed the hope that an over-all package solution would be found at the next session.

10. Mr. AL-WITRI (Iraq) expressed support for the position of principle taken by the Group of 77, as explained by the representative of Honduras, not to undertake any amendment of the revised negotiating text until the Group had had time to study the proposals in detail. While his delegation could support the proposals on a preliminary basis, it also had some criticisms. Like other members of the group of Arab States, his delegation welcomed the proposed amendment to article 147 but had reservations on the concept of the right of veto contained in the revised version of article 161, paragraph 7.

11. Mr. YARMOLOUK (Union of Soviet Socialist Republics) said that his delegation found the proposal contained in document WG21/2 on the decision-making system unacceptable as a basis for consensus; indeed, that proposal undermined any consensus. The proposed procedure introduced the concept of a blocking vote by a certain number of countries and also sought to create an artificial distinction between issues of substance and particularly sensitive issues. The suggested formula was unacceptable to his delegation, especially in view of the difficulties which would arise in

practice. An issue considered to be of lesser importance by one group of countries might well be of major importance to others.

12. He was therefore far from convinced that what were in fact unilateral proposals should replace those worked out on the basis of a compromise achieved through lengthy negotiations. Indeed, he believed that they were doomed to failure. The formula in the revised negotiating text for a three-fourths majority, representative of different social and economic systems, was flexible, well thought out, and based on objective and detailed criteria. Furthermore, it would ensure the effective functioning of the Authority. It would be impossible to reach a consensus on the new formula. The question arose whether participation in the Authority should be restricted to those States able to accept such a formula when ratifying the convention. In his delegation's view, that had to be avoided.

13. Even though it had not been possible to complete the whole package, there had been specific results on many issues, but the new versions of some of the articles proposed in document WG21/2 undermined them. His delegation, like many others, had serious fears about the over-all results of the work and wondered where it all might lead. It had consistently favoured a consensus and was always ready to co-operate with others to that end. It did not, therefore, wish to see anything done which could undermine the consensus on which the compromise proposals contained in the revised negotiating text were based.

14. Mr. MAZILU (Romania) said his delegation felt that the next text of the various articles should be studied in depth and should be the subject of a serious debate at the next session in the regional groups, the Group of 77, and the Committee.

15. In connexion with the intensive debate which had taken place on the financial implications relating to the establishment of the Authority and the importance of that question for future States parties, he requested that the Special Representative of the Secretary-General prepare a concise study to show, first, how much States would have to contribute to the administrative budget of the Authority, the Law of the Sea Tribunal and the other organs which would be established under the future convention, and, secondly, what contributions States would have to make to the budget of the Enterprise. The figures should, of course, all be based on the existing texts but should also take into account the proposals made by the Chairman in his report earlier in the meeting. Understandably, it would be difficult to give precise figures, but it should be possible to give the best estimates.

16. Mr. MOLANDER (Sweden) expressed the view of his delegation that the compromise formulae proposed in document WG21/2 might well serve as a basis for future negotiations and mark a constructive step forward. He welcomed the growing flexibility and will to compromise which had become apparent during the intensive consultations of the past two weeks. The new proposals with respect to financial arrangements ought to be acceptable to all parties. However, if any additional amendments were to be made, his delegation would find it difficult to accept any further reduction in the Authority's income.

17. The question of decision-making in the Council was a thorny one, and his delegation had long been sceptical about the blocking-vote system. Unfortunately, it was apparent that there was no possibility of reaching a consensus on the revised negotiating text. In the final analysis, the suggestions outlined by the Chairman in his report might prove to be the solution. It was easy to accept the blocking vote if a large number of issues were "free-listed".

18. At the beginning of the current resumed session, his delegation had expressed a hope that there might be some substantive discussion on the composition of the Council, and it was disappointed that no further work had been done on that important issue. Once again, the question of the representation of small- and medium-sized industrialized countries had been avoided, and that unsolved problem had not even been mentioned in the Chairman's report. His delegation had voiced its concern about that matter in the working group of 21 and had circulated a proposal which was contained in document WG21/Informal paper 1 of 9 August 1979. Nevertheless, it had abided by the judgement of the Chairman that the question of the decision-making system should be solved first, and it had therefore co-operated in the negotiations to that end. However, it had done so on the understanding that the Chairman would find time during the next session to conduct consultations with a view to ensuring adequate representation on the Council for small- and medium-sized industrialized countries.

19. The CHAIRMAN assured the representative of Sweden that there had been no attempt to avoid discussing the composition of the Council, which was one of the issues in document A/CONF.62/C.1/L.26. The only reason why it had not been discussed was lack of time.

20. Mr. ENKHSAIKHAN (Mongolia) said he felt that the working group of 21 had made considerable progress in achieving a fair and balanced compromise on the major issues before the Committee.

21. Nevertheless, his delegation had strong reservations with regard to the proposed new article 161, which he felt did not truly reflect the course of negotiations in the working group. Compared with the revised negotiating text, that text had undergone fundamental changes. Besides the numerical changes in the required majority for the adoption of decisions on questions of substance, the proposed text was based on a completely different principle of voting.

22. According to the proposed text, the questions of substance were divided into those that were "particularly sensitive" and those called simply "of substance". It was a well-established practice that all issues in international forums were divided into procedural and substantive issues. Therefore the proposed two categories in the new text would give rise to unnecessary complications. Even in the Security Council, decisions on substantive matters were not differentiated according to their degree of importance.

23. His delegation fully agreed with that of the Soviet Union that, while the questions referred to in paragraph 7 (*b*) of the proposed new article 161 might be of great importance to one group of States, those referred to in paragraph 7 (*c*) might be of great importance to others. Another difficulty would arise on whether a certain issue should be considered "particularly sensitive". All the issues that would come before the Assembly and the Council would no doubt be of great economic, political and strategic importance to all States.

24. The preliminary question of whether a matter was "particularly sensitive" would, under the proposed new article 161, be decided by the same procedure as if it were a "particularly sensitive" issue, which would amount to another veto, in addition to the veto in the Security Council. Thus, there would be five different procedures of decision-making covering, in turn, procedural issues; the preliminary question of whether an issue was procedural; issues of substance; issues of a "particularly sensitive" nature; and the preliminary question of whether an issue was "of substance" or of a "particularly sensitive" nature. Such a classification would clearly lead to more complications and might constitute a dangerous precedent for other forums. For those reasons, his delegation opposed the classification of questions of substance according to their degree of importance.

25. Another problem concerning the proposed paragraph 7 of article 161 was the two-thirds majority required in order to take decisions. The required three-fourths majority reflected in the revised negotiating text was a compromise formula between those that opted for the two-thirds majority and those in favour of the consensus or near-consensus rule. While there had been no strong opposition to the three-fourths majority formula—in fact many States and regional groups had favoured that compromise—there was clearly strong opposition to the two-thirds majority formula, which could be regarded as a step backwards.

26. With regard to the formula for the number of negative votes that would have the effect of a veto, he pointed out that the Council would not be another Security Council, where unanimity among its permanent members was essential for the maintenance of international peace and security. His delegation opposed a formula which would give veto power to certain groups of States and not to others with the result that only those groups which possessed the blocking power could influence the decision-making. The advantage of the higher required majority, namely three fourths, was that it would encourage more consultations, negotiations and co-operation among all regional and interest groups. For those reasons, his delegation could not support the new decision-making formula, which did not constitute the basis for a compromise. The three-fourths majority formula enjoyed broader support and thus constituted a sound basis for further negotiations. The issue of decision-making, in addition to its legal aspect, had highly political overtones, and realism, mutual accommodation and political will were required to settle it.

27. Mr. GÓRALCZYK (Poland), giving his preliminary comments on document A/CONF.62/C.1/L.26, said that many of the proposed new formulae were an improvement on the revised negotiating text. However, the provisions relating to the financing of the Enterprise and the decision-making process in the Council were, in his delegation's opinion, a step backwards.

28. His delegation had consistently maintained that the financing of the Enterprise should be in proportion to the benefits received from exploiting the resources. The main burden should be on those who began the exploitation as the first contractors to the Authority, since they would derive the major direct benefits. However, such ideas were not reflected in the new text of annex III, article 10, paragraph 3. On the contrary, that wording relied even more closely on the United Nations scale of contributions.

29. His delegation had indicated several times that States engaged directly in exploiting the Area or sponsoring such activities should bear a greater financing burden than others. In his delegation's view, that question did not pose any insurmountable difficulty. In the negotiations, account should also be taken of the interests of States not able to start exploitation and to derive direct benefits therefrom. The principle of the common heritage of mankind should not mean only obligations and burdens for one category of States and major benefits for others. His delegation supported the request by Romania for a calculation of the financial burdens and hoped that new formulae would be found.

30. The question of the decision-making process in the Council was a crucial political issue on which acceptance of the convention might depend. Any voting formula should not permit a single group of States to dominate the Council or block its decisions. His delegation therefore opposed the right of veto for a small number of States and believed that every regional and interest group should have some influence on the decision-making process. It regarded the text of article 161, paragraph 7, of the revised negotiating text as more satisfactory than the new proposals and would continue to support it.

31. His delegation fully endorsed the statements made by the representatives of the Soviet Union and Mongolia. It felt confident that negotiated solutions of all outstanding issues would be reached at the following session and account would be taken of the interests of all groups of States.

32. Mr. HYERA (United Republic of Tanzania) emphasized that the report contained in document A/CONF.62/C.1/L.26 was the Chairman's own report and not that of the working group of 21. Indeed, it was only a tentative progress report, not a final report submitted to the Committee. Furthermore, in that report the Chairman had made some questionable statements. There were many shortcomings in the document, and many points in it would need re-examination before it could be acceptable to the African countries.

33. Mr. GUO Zhenxi (China) said that the current session had been fruitful and document A/CONF.62/C.1/L.26 would be helpful for future negotiations. However, document WG21/2 still contained serious defects, many of which would require further negotiations.

34. Referring to the system of exploration and exploitation, he noted a trend in the new text to limit the activities of the Enterprise. It was his delegation's understanding that the major purpose of annex II was to provide the basic conditions for concluding and executing contracts, and the Enterprise, as the operational organ, could not be bound by those provisions. In his delegation's view, the Enterprise should be free to conduct its work in such a manner as it deemed appropriate. He also pointed out that certain issues had not been fully examined in the new text. It was to be hoped that in future more attention would be paid to the needs of the Enterprise and the Authority, particularly in respect of the transfer of technology.

35. With regard to the limitation of production, account should be taken of the interests of both the land-based producers and the consumers, while safeguarding the principle of the common heritage of mankind, under which the exploitation of the international sea-bed area would be in keeping with the sound development of the world economy for the benefit of all countries, particularly the developing countries. To that end, it was most important to devise an appropriate method for calculating maximum and minimum production levels. Some progress had already been made, but further negotiations were needed, and it was to be hoped that a just and reasonable solution would be found at the next session.

36. The complex question of financing arrangements was mainly a political one. On the one hand, contractors should be able to receive a reasonable return, while, on the other hand, the needs of the Enterprise and the Authority must be properly safeguarded. Consequently, the method of calculation was of major importance. In the recent negotiations, attention had been focused mainly on how to satisfy the needs of the contractors, while the needs of the Enterprise and the Authority had not received sufficient attention. In the long run, the Enterprise and the Authority could not depend for their financial resources on payments made by States parties and contractors. They should become financially self-sufficient as early as possible. At the initial stage, payments made to the Authority by contractors were of the utmost importance, since they would enable the Authority and the Enterprise to receive sufficient funds, so that the "parallel" system could be properly implemented. However, he noted a significant difference between the financial figures set forth in the revised negotiating text and those in the new text. In the latter, the method of calculation adopted was more flexible and accorded with the wishes of the contractors. The base rate for the second stage, however, seemed low. While it was necessary to give reasonable con-

sideration to the needs of the contractors, it was even more necessary to guarantee sufficient income for the Authority and the Enterprise.

37. Turning to annex III, article 10, concerning the financing of the Enterprise, he observed that under the revised negotiating text the Enterprise would not receive the necessary guarantee of funds for exploiting the first mine site. The text provided for one half of the funds to be shared by all States parties. That was unreasonable; his delegation insisted that the funds be shared by all States according to their degree of participation in the exploitation, or alternatively by the two categories of States referred to in article 161, paragraphs 1 (*a*) and (*b*).

38. As to the question of the Assembly and the Council, any provision covering the functions of the principal organs should protect the interests of the majority of States and should ensure that the whole machinery functioned normally. The proposed new text would negate the role of the Assembly. Under the proposed new article 159, paragraphs 6, 8 and 10, the use of various means to delay decisions would greatly restrict the Assembly's role. The same would apply to the Council, which could be paralysed by resort to the blocking-vote procedure.

39. In conclusion, he said that some of the other questions referred to in the Chairman's report would require further study.

40. Mr. ALDRICH (United States of America) said that he would limit his comments to the Chairman's report and to the texts contained in document WG21/2, which represented a continuation of the Committee's periodic progress towards a final agreement.

41. The text concerning the system of exploration and exploitation was a significant improvement and reflected a narrowing of disagreement, although certain issues had not been taken up at all and, in some parts of the text, many problems persisted. For example, the amendment made to article 140 at the resumed session did not help to solve the many serious problems raised by that article.

42. Among the new texts submitted, article 4 of annex II, concerning the qualifications of applicants and the sponsorship of States, raised the new problem of determining whether the Authority could inform a State that it could not sponsor one of its own nationals. The Committee might even decide that that problem would best be solved outside the framework of the convention.

43. In adding paragraph 3 to article 10 of annex II, the Committee had moved into the new area of payments to be made to the Authority. That question and related questions pertaining to the Enterprise should be discussed further.

44. The text on financial arrangements contained in article 12 of annex II provided a much better basis for a final agreement, both for mining countries and for countries that would play a role in mining through the Enterprise. However, it would be necessary in the future to decide whether that text could constitute a final compromise or whether additional changes were needed.

45. The provisions concerning the financing of the Enterprise in annex III should seek to avoid the implications of grant assistance and should focus on the different types of loans. All such payments and loan guarantees must, of course, be made in convertible currencies.

46. With regard to the work of the Council and its relationship to the Assembly, significant progress had been made at the resumed session. The question remained, however, whether the text presented by the Chairman constituted the basis for a final agreement, or whether such agreement was possible at all. Nevertheless, in view of the economic interests of States and their growing dependence on sea-bed mining for minerals, provision must be made for negotiation and compromise in order to prevent the adoption of any decision that would be contrary to those interests or to the needs arising from such dependence.

47. Regarding the provisions for the settlement of disputes, it was important for the Committee to complete its work as soon as possible. Therefore the question of assuring contractors that disputes could be referred to commercial arbitration should be the first item on the agenda of the following session.

48. Mr. WUENSCHE (German Democratic Republic) said his delegation believed that a number of the provisions contained in document WG21/2 constituted an improvement over the revised negotiating text, but, unfortunately, that was not true of all the provisions. His delegation had always sought to work in a spirit of compromise because it was convinced that a new convention on the law of the sea was needed to guarantee peaceful co-operation in that field. In order to do so, the convention must take into account the interests of all States, regardless of their political, social or economic systems. That was particularly true with regard to the completely new field of the exploration and exploitation of the sea-bed beyond the limits of the continental shelf and to the establishment of an organization as totally new as the Sea-Bed Authority, which must be an instrument of peaceful co-operation among all States. Accordingly, the vital question of determining the decision-making process of the Council of the Authority must take into account the interests of all important groups.

49. However, the revised text of article 161, paragraph 7, posed the threat that the Council might become an instrument of confrontation, first of all because, in his delegation's opinion, it was not possible to differentiate between important and less important questions, in view of the completely different interests of members of the Council. For example, all the provisions concerning the establishment of the new organization, such as article 162, paragraphs 2 (*b*) to (*e*), must be adopted by a greater majority. On the other hand, neither the principle of peaceful co-existence nor the democratization of international economic relations would be served if five or six States belonging to the same political, social and economic system were able to block decisions taken in the Council and thus impose their will on the overwhelming majority. His delegation had become convinced during the first phase of the eighth session at Geneva that the Chairman's text of article 161, paragraph 7, as contained in the revised negotiating text, constituted a good basis for achieving a compromise, and it therefore suggested that that article should be left unchanged. It could not accept the proposal currently submitted, which constituted a radical change from the original text.

50. Similarly, his delegation did not think that the new proposal regarding article 10, paragraph 3 (*b*), of annex III offered a basis for compromise. It had always believed that the financing of the Enterprise should be borne by all States, with a major part borne by those that reaped the initial benefits from sea-bed mining. The current proposal imposed an additional burden on many States which did not participate in such mining at the outset and thus would have to pay large sums without receiving any benefits. His delegation had also been unable to accept the original paragraph on that subject contained in the revised negotiating text.

51. Mr. HAAS (Federal Republic of Germany) said that, since certain important issues were not dealt with in the Chairman's report and since his Government wished to study all the provisions of part XI as a whole, he would limit himself to preliminary remarks.

52. With regard to the financial arrangements contained in section B of document WG21/2, although he appreciated the clarity with which the provisions were set forth, he would reserve comment, since his Government would wish to study

those provisions together with the financial implications they entailed. The same was true of the new paragraph 3 of article 10 of annex III; his Government would surely want to have the relevant figures before taking any final decision.

53. With regard to the Assembly and the Council, the corner-stone of a suggested voting procedure remained to be set up.

54. On the other hand, the problems concerning the provisions on the settlement of disputes were nearer to a final solution.

55. Lastly, his delegation felt that it was extremely important to find a satisfactory solution of the problem of production policy.

56. Mr. BOUTEIKO (Ukrainian Soviet Socialist Republic) said that his delegation shared the concerns expressed by the representative of the United Republic of Tanzania and other members of the Group of 77 concerning the Chairman's report. That document stated that a consensus had not been reached on a three-fourths majority for taking decisions on questions of substance. His delegation felt that that statement did not accurately reflect the results of three years of negotiations on the subject. The report further stated that the decision-making procedures contained in document WG21/2 could lead to a consensus, a statement which his delegation had difficulty accepting. Some members of the group of 21 had objected categorically to the new decision-making procedures, and almost none had supported them unconditionally.

57. With regard to the proposal for different procedures for taking decisions of differing importance, his delegation fully agreed with the comments of the representative of Mongolia. Such a distinction was artificial and unrealistic and did not accurately reflect the results of negotiations. The procedure could permit a small group of States to achieve what was essentially the right to veto. His delegation insisted that decisions should be adopted through co-operation between different groups of States.

58. The new voting procedure contained in document WG21/2 should not be included in a document of the First Committee, since it was not the result of negotiations and could undermine the Committee's work to achieve a consensus.

59. Mr. PINTO (Portugal) said that although substantial progress had been achieved, many questions were far from resolved, and therefore his delegation could not give its full approval to the Chairman's report.

60. The negotiations on the provisions concerning the way in which decisions were to be taken in the Council should be conducted very cautiously at the next session. With regard to the question of the composition of the Council, he supported the statement made by the representative of Sweden on the need to draft provisions that were more equitable for certain countries which under current provisions would be excluded from the Council. He therefore suggested that the present text be amended and that the content of the document to which the representative of Sweden had referred be reflected in the Chairman's report.

61. He also requested that the report contain a reference to the fact that a representative of the International Labour Organisation had introduced a document containing that agency's views on work conducted in the international area (A/CONF.62/83). The International Labour Organisation and the Portuguese delegation both believed that workers in the international sea-bed area must be given adequate legal protection and that provisions to that end must be included in the negotiating text. The document introduced by the International Labour Organisation also supported the proposal put forward previously by Portugal that those countries which made the largest contribution to the international labour market, for example, as migrant workers, should be considered countries representing special interests, in the same way as those already covered by the provisions of the negotiating text concerning the composition of the Council.

62. Mr. de LACHARRIÈRE (France) said that in view of the complexity of the results and the difficulty in assessing them, he would need to await instructions from his Government. He would, however, make preliminary remarks on some of the proposals contained in document WG21/2.

63. With regard to article 4 of annex II, the new paragraph concerning the sponsorship of States raised serious legal problems and should be examined by experts. The main problem lay in determining under what conditions a company or vessel had the nationality of one or another State. The same problem arose in connexion with the anti-monopoly clause.

64. His delegation had proposed new wording for articles 6 and 7 of annex II with a view to making their provisions more effective. Although its proposal had not been reflected in document WG21/2, his delegation appreciated the fact that it had been circulated and that it would be given priority at the next session.

65. Referring to article 10 of annex II, he said the new paragraph 3 implied that the Enterprise would be exempt from the payment of taxes to the Authority under article 12. In his delegation's opinion, however, the Enterprise should have the same financial obligations as other exploiting parties.

66. The text of article 12 of annex II reflected appreciable progress towards an acceptable solution, but, on that question in particular, careful examination, with exact figures, was necessary. He deplored the fact that no fixed fee had been included for applications for an exploration contract, as had been specifically requested by the French expert. He also deplored the fact that no percentage had been set for the production fee, based on the value of nodules, for non-integrated enterprises engaged only in mining. Lastly, he deplored the fact that the percentages of the production charges were still much to high. His delegation, among others, had proposed 0.75 per cent and 1.50 per cent of the value of the metals produced, instead of 2 per cent and 4 per cent as mentioned in article 12.

67. With regard to the structure of the Authority and the relationship between the Assembly and the Council, interesting improvements over the negotiating text had been made, but further negotiations were necessary before his delegation could agree to any proposed solution.

68. Referring to the provisions for the settlement of disputes, he observed that progress had been made. For example, the texts of article 168 and of article 21 of annex II had been improved. The same was true of article 36 of annex V, which now provided that members of the Sea-Bed Disputes Chamber should be named by the Law of the Sea Tribunal. On the other hand, the provisions of article 187 needed considerable improvement. Other provisions should also be thoroughly modified in order to guarantee that all parties had access to the effective and impartial settlement of disputes. Although the wording of article 188 was more satisfactory than that of the article contained in the informal composite negotiating text and although it could constitute a basis for a compromise solution, it should be amended to include disputes to which the Authority was a party and to make it possible to implement such provisions at the request of any party.

69. With regard to articles 36 and 36 (*bis*) of annex V, the selection of members of the Chamber should be extended to all members of the Tribunal, and the designation of the President of the Chamber should fall to the President of the Tribunal and the two most senior judges.

70. All in all, his delegation could express modest satisfaction at the appreciable progress made at the current session, although a great deal remained to be done.

71. Mr. REVERDIN (Switzerland), speaking on the revision of article 4 of annex II, said that the responsibility it imposed on sponsoring States created problems which needed to be studied at the next session. In his delegation's view, article 161 had been improved, although it was unfortunate that the concerns expressed by some industrialized States had not been reflected in the revision. He recalled that Switzerland had sponsored the document submitted by certain industrialized countries on that subject. The problems of those countries should be taken into consideration, so that the composition of the Council would not exclude a number of small industrialized States parties to the convention.

72. With regard to the provisions on the settlement of disputes contained in document WG21/2, he thought that many of them had been the subject of broad agreement among members of the Committee, particularly articles 168 and 187 and articles 4 and 36 of annex V. Some provisions, however, continued to cause disagreement, such as article 191, paragraph 2, as well as the procedures specified in article 188, which were too complex. In addition, paragraph 2 of that article should make it clear that a contractual dispute could be submitted to commercial or other forms of arbitration on the basis either of a clause in the contract itself or of a subsequent agreement between the parties to the dispute. Furthermore, article 188 should give clearer indication of the rules to be followed within the framework of the arbitration procedure if there was no agreement between the parties to the dispute. It was with those provisions in particular that the working group of legal experts should continue to concern itself.

73. Mr. BROVKA (Byelorussian Soviet Socialist Republic), speaking with regard to document WG21/2, said that his delegation wished to express its concern over the new version of article 161, paragraph 7, which was an unjustified deviation from the compromise that had been achieved over the past few years of the Conference's work. His delegation opposed the changes, for they were not based on a balanced set of principles that could lead to a consensus. Their incorporation could not be permitted for many reasons. The establishment of different decision-making procedures for substantive questions depending on their importance was unjustified. The practice of many international organizations, and particularly of the General Assembly, had shown that having to categorize a substantive question according to its higher or lower importance could cause serious complications. His delegation strongly opposed the inclusion in article 161, paragraph 7 (*c*), of procedures through which several Governments could block a decision in the Council. On the other hand, the retention of the provision in document A/CONF.62/WP.10/Rev.1, article 161, paragraph 7, stating that all decisions on questions of substance should be taken by a three-fourths majority of the members present and voting, met the need for co-operation among all groups of States with differing social and economic systems. Only if that provision were preserved would progress be made in establishing the Authority. His delegation wished to stress that the provisions it had objected to were not the result of negotiations and had not been supported by the entire group of 21. In view of the widespread criticism of those provisions at the current session, his delegation believed that the document should be revised.

74. His delegation agreed with the remarks made by numerous delegations, especially that of the United Republic of Tanzania, with regard to document A/CONF.62/C.1/L.26. The statement in that document that the original text of article 161, paragraph 7, could not provide a basis for consensus, while the new version could, was, in his delegation's view, in diametrical opposition to the truth.

75. Mr. GAJENTAAN (Netherlands) said that the new version in document WG21/2 of the basis for the financial terms of contract met some of the concerns his delegation had previously voiced on the need for flexibility based on the principle of "high profit, high take — low profit, low take". An agreement on the structure of that system would pave the way for successful final negotiations at the next session.

76. With regard to the financing of the Enterprise, his delegation believed that the new text of article 10 of annex III was an improvement over its previous version in so far as it recognized that all States parties should contribute in accordance with an agreed general assessment scale based upon the scale used for the regular budget of the United Nations. Other elements of the new text, however, represented an increased burden for States parties to the convention which might discourage some States from ratifying it.

77. His delegation generally supported the revisions of the provisions in annex II on the system of exploration and exploitation. It was clear, however, that much remained to be done and that future negotiations were necessary on such elements as the provisions on the transfer of technology, the review conference and the production policies of the Authority. His delegation generally accepted article 10 on joint arrangements, without prejudice to further consideration of its own proposals on that subject. The current stage of negotiations had confirmed that those proposals might still prove useful; they must, however, be considered as part of the parallel system of exploitation and must not replace it with another system.

78. The amendments on the relationship of the Assembly and the Council and on the decision-making procedure would facilitate final negotiations on the subject.

79. His delegation wished to reaffirm its support for providing training facilities for the future staff of the Authority and the Enterprise and to invite those concerned with drawing up concrete proposals for such schemes to take into account the willingness of his country's industry to give favourable consideration to participating in them.

80. Mr. TUERK (Austria) said that although the compromise suggestions contained in document A/CONF.62/C.1/L.26 were not satisfactory in every respect for his delegation, some progress had been made. With regard to article 161, paragraph 1, he said that the proposal made by his Government and others in document WG21/Informal Paper 1 had not been considered, owing to lack of time, but he hoped that it would be considered at the next session. As previous speakers had stated, the current wording of that paragraph did not meet the concerns of the small- and medium-sized industrialized countries.

81. His delegation believed that the new text of article 191, paragraph 2, was a substantial improvement over the previous one. The current formulation, however, might require additional clarification.

82. The Romanian proposal for a secretariat study on how much States would have to pay to the Authority, its subsidiary organs, the Law of the Sea Tribunal and the Enterprise would be useful, in spite of the fact that such studies had been made earlier (A/CONF.62/C.1/L.17[1] and 19[2]). In his delegation's view, it was necessary to give Governments a preliminary idea of what financial burden a State ratifying the convention on the law of the sea would have to bear.

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. VI (United Nations publication, Sales No. E.77.V.2).

[2] *Ibid.*, vol. VII (United Nations publication, Sales No. E.78.V.3).

83. Ms. CHOKRON (Israel) said that her delegation was prepared to support the Swedish proposal for a group to represent the small- and medium-sized industrialized countries. She reaffirmed her delegation's objections to the new version of article 140 contained in document WG21/2.

84. Mr. UL-HAQUE (Pakistan), speaking as the representative of the contact group of the Group of 77 and referring to document WG21/2, said that article 8 of annex II should be reworded because it deprived the Authority of the function of assessing and determining the compatibility of two mine sites offered by the contractor. The group wished to reserve its position on article 10 of that annex because an alternate text might have to be worked out. In particular, the words "in the reserved site" in paragraph 3 should be deleted because the article concerned all joint ventures, whether reserved or unreserved.

85. The Group felt that the income that would accrue to the Authority on the basis of the new wording of article 12 of annex II was too low. It also had reservations regarding the suggested tax base and tax rate and the formula for the return on investment, which it believed should be based on cost surplus over development cost. The return on investment in the double trigger was too high, and it would be difficult to reduce production charges if it were applied.

86. The new text of article 161 seemed to have aggravated disagreements and created doubts about the possibility of a consensus. That text required careful examination, and the group wished to reserve its position on that matter. With regard to the revision of article 162, paragraph 2 (*j*), he said that the wording was obscure and should be amended to make the meaning clearer.

87. Mr. FODOR (Hungary) said that his delegation was dissatisfied with certain proposals contained in document WG21/2, particularly those concerning article 161, paragraph 7. According to article 161, paragraph 1, groups of differing interests would be represented in the Council and therefore a balance of power in the decision-making process was a *sine qua non* for the Council to be effective. His delegation saw a number of negative consequences in the proposal. The incorporation of a blocking power for a small group of States would impede effective co-operation in the Council. It gave a disproportionate amount of power to certain interest groups and could thereby destroy the balance of power. It was arbitrary to differentiate between issues of substance, for under certain circumstances all such issues could be of primary importance; it would therefore be advisable to preserve the unity of the category of substantive questions and not divide them into two groups. His delegation could not accept the new version and preferred the text contained in document A/CONF.62/WP.10/Rev.1. It hoped that the principle of consensus would be respected in the future work of the Committee, and it was confident that the spirit of compromise would be preserved.

88. Mr. WOOD (United Kingdom) said that the new texts contained in document A/CONF.62/C.1/L.26 provided a sound foundation for future negotiations. Clearly, however, much remained to be done, as several major issues had not yet been resolved. The policies set forth in article 150 and article 151, paragraphs 1 and 2, required improvement in order to produce a text that would be generally acceptable to delegations. The questions of the review conference and especially of article 155, paragraph 6, was a particularly difficult one. As the Chairman had stated in his report, the provision in document A/CONF.62/WP.10/REV.1 regarding voting in the Council did not enjoy a consensus, but there had been notable developments during the current session. In his delegation's view, article 161 and article 162, paragraph 2 (*j*), formed a package, and the changes proposed in document A/CONF.62/C.1/L.26 could not be accepted until agreement had been reached on the unspecified figure in the suggested article 161, paragraph 7 (*c*). More attention needed to be devoted to the question of the Enterprise's position as compared to that of other operators, in particular its priority under article 7 of annex II, its payments under article 12 of annex II and its liability to national taxation. The question of transfer of technology also required further attention.

89. All in all, it was obvious that much remained to be done, although the current session had been a useful one and his delegation looked forward to rapid progress at the next session.

90. Mr. FRANCIS (New Zealand) said that he found the Chairman's report highly encouraging. With regard to the proposed revision of article 10 of annex III, on the way in which the Enterprise's first mine site was to be financed, his delegation had long agreed that adequate initial financing of the Enterprise was an essential part of the package being discussed in the Committee. It therefore endorsed the principle that the appropriate funds should be made available for that purpose, but it had doubts concerning the method of assessing States' contributions as described in the new proposal. In addition to the very heavy financial burden which it would impose on countries which did not expect to benefit from sea-bed mining, such as New Zealand, such a method of assessment raised a number of potentially difficult practical problems. For instance, he wondered what the financial situation of the Enterprise would be if many countries were to delay their ratification of the convention, or not to ratify the convention at all, because of the heavy financial obligation which it thus imposed on them. As he saw it, either those countries which had ratified the convention would have to make a greater contribution or there would be a serious shortfall which would hamper the Enterprise's initial operations.

91. Again, since the proposal did not indicate a fixed sum for the funds to be allocated to the Enterprise, States could not know what their eventual contribution would be. If it proved to be higher than the amount currently estimated, he wondered whether each party would have to provide more financing. Such questions should be given careful consideration by all delegations before a final decision was taken.

92. Thus, his delegation was encouraged at the progress represented by document WG21/2 but felt obliged to express its reservations on the proposed revision of article 10 of annex III until it had given the proposal fuller consideration.

93. Mr. DIOP (Senegal) expressed appreciation for the Chairman's report and the constructive work done by the Chairmen of the various negotiating groups, as reflected in that report. While he endorsed the statement made by the representative of Pakistan on behalf of the contact group of the Group of 77, his delegation found the report quite useful, despite its flaws and lacunae. Although his delegation did not endorse all the contents of the report, it nevertheless believed that the report accurately reflected the different views expressed in the course of the debate and the work done by the various negotiating groups. The Chairmen of the negotiating groups had obviously done all they could to provide an accurate account of the negotiations. Whether they had succeeded or not, their efforts were to be applauded.

94. He hoped that delegations would appreciate the excellent results achieved by the negotiating group on the settlement of disputes relating to part XI and connected issues (sect. 5, subsect. D) and that that part of the Chairman's report would be integrated into the final text intact and without amendment.

95. With regard to the other parts of the report, he hoped that the Chairman of the negotiating group on the system of exploration and exploitation would pursue the necessary consultations on the transfer of technology (art. 5 of annex II) and on the review conference (art. 155). Both those arti-

cles were of great concern to the African countries and involved two vital conditions which the group of African States had established as prerequisites for their acceptance of the parallel system.

96. With regard to the problem of decision-making in the Council, and to article 161, subparagraph (*c*), in particular, his delegation believed that any solution based on the spirit of Yalta would undermine the spirit of universality on which the voting system must be based in order to meet the legitimate hopes placed in the common heritage of mankind. He recalled the statement made by the representative of the United Republic of Tanzania on the position of the group of African States on that issue.

97. He also hoped that the Chairman of the negotiating group on production policies would take into account not only the interests of land producers and major consumers but also those of the many developing countries which were both major consumers and majors importers. Thus, with regard to articles 150, subparagraph (*d*), and 151, care must be taken not to correct an injustice by establishing a system of compensation and prevention which benefited only land producers, at the risk of creating another injustice whereby developing countries which were major consumers and importers would be caught between two major opposing interest groups. Any system of floors or tonnages must also take into account the interests of those countries which were not land producers and which hoped to develop marine exploitation.

98. With regard to financial matters, and more specifically to article 12 of annex II and article 10, paragraph 2 (*c*), of annex III, the group of African States had considered the issues involved and believed that, in accordance with the decision taken by the Organization of African Unity, the financing of the Enterprise must be the responsibility of the developed countries. That was one of the pre-conditions for the acceptance by the group of African States of the parallel system. His delegation also believed that the rate of return of 10 per cent indicated in article 12, paragraph 6 (*d*), of annex II involved elements which required greater clarification.

99. Those comments notwithstanding, his delegation wished to encourage the Chairmen of the various negotiating groups to redouble their efforts and to continue in the direction described in the report.

100. The CHAIRMAN observed that the report had produced a very fruitful exchange of views and expressed the hope that by the following session it would be possible to achieve a consensus on all the issues raised. Delegations must not feel discouraged: the international community must remember that it had a great responsibility to achieve a consensus, so that future generations could live in an atmosphere of peace and co-operation.

Preliminary report of the Secretary-General on manpower requirements of the Authority and related training needs

101. The CHAIRMAN recalled that at the 110th plenary meeting he had suggested that the Secretary-General prepare an analysis of the manpower requirements of the Authority in order to determine the training needs of developing country personnel and ascertain what institutions could offer education and training in the appropriate fields. The purpose of that analysis was to make it possible to begin such training at once, so that the developing countries could participate fully in the work of the Authority as soon as it began its operations. The Secretary-General had given a preliminary reply at the preceding session, and his preliminary report was now before the Committee.

102. Mr. ZULETA (Special Representative of the Secretary-General), introducing the preliminary report of the Secretary-General on manpower requirements of the Authority and related training needs (A/CONF.62/82) said that, since the report was only a preliminary one, no attempt had been made to establish how many officials the Authority or the Enterprise would need, and still less how the Authority's manning table would be drawn up or what kinds of professional experience would be required. Until a final text of the convention was approved or there was a more detailed discussion of the various aspects of the informal composite negotiating text, it would be very difficult to provide such an estimate. Nevertheless, some aspects relating to training needs which could influence such an estimate were touched upon in the report.

103. Basically, the report described the problems and options faced by the Authority, and by the Enterprise in particular, in order to illustrate what their future staffing needs, and hence their training needs, would be. It did not attempt to describe or evaluate the special role which countries and their enterprises operating in the area could play in the different types of training, since that would require a discussion of the obligations of sponsor States and there did not appear to be a consensus on that issue at present.

104. Being a preliminary report, the document did not deal with certain aspects, such as environmental protection, on which more detailed studies were still required. Thus, for instance, a study of environmental protection needs must be made which took into account the studies made by scientific bodies other than those mentioned in the foot-note 12, in order to have a broader overview of that issue.

105. The preliminary report, and any future studies of training needs, would have to recognize that the human resources required by the Authority must be estimated with a view not only to providing the Authority and the Enterprise with suitable personnel but also to ensuring that other components of the international machinery involved had suitable staff, particularly from the developing countries. Account must also be taken of the need for developing countries to have trained national personnel to help exploit their own marine resources.

106. The secretariat hoped that the general focus of the report would serve as a basis for more detailed consideration of the types or levels of professional training which future international machinery might require, and of how best to establish the necessary training machinery. Such an effort would demand considerable co-operation from individual countries, specialized agencies and the relevant intergovernmental organizations and would, of course, have financial implications which would have to be discussed by the General Assembly.

107. Mr. KOROMA (Sierra Leone) agreed that trained personnel would be needed not only for the Enterprise but also in the developing countries, so that the latter could exploit their own marine resources. He also agreed that the co-operation of the specialized agencies was fundamental. He understood that the Food and Agriculture Organization of the United Nations had already made studies with regard to the exploitation of the exclusive economic zone, and he hoped that the Secretary-General would be co-operating with that Organization in order to train experts to exploit the zone.

108. Mr. WOOD (United Kingdom) expressed appreciation for the Secretary-General's report. His delegation continued to take a particular interest in the question of training. It attached importance to the Enterprise being able to start operating as soon as possible after the convention entered into force. He was sure that the report would help focus on the main issues which must guide future efforts in that area.

109. Mr. ALDRICH (United States of America) said he hoped that future studies would focus on training activities in preparation for the entry into force of the convention, and he urged the Secretary-General of the Conference to pursue

efforts in that direction, focusing specifically on training problems and on possible solutions which could be found in the near future.

Amendments to article 165

110. Mr. ALDRICH (United States of America) recalled that at the preceding session the Committee had considered a number of measures which his delegation had proposed with a view to clarifying the environmental protection function of the Authority. His delegation had proposed a number of provisions in that connexion but had deferred its submission of amendments to article 165 to permit further consultations. At the current session, his delegation had consulted with other delegations on that issue and had amended its proposals to take their views into account. Thus, it was now in a position to propose amendments to article 165 which would be generally acceptable. Such amendments would include altering the title of the Legal and Technical Commission to the "Legal, Technical and Environmental Commission" and ensuring that the Commission had the power to make recommendations to the Council concerning measures to protect the marine environment. The Commission's functions would include recommending to the Council a programme for monitoring the environmental risks arising from activities in the area, and co-ordinating and implementing the programme then adopted by the Council.

111. The text of the proposed amendments to article 165 would be available the following day, and he hoped that the Chairman's report to the Conference would include a footnote to that effect and give the actual text of the proposed amendments. It was vital to ensure that deep-sea resources exploitation did not cause damage to the marine environment, and his country had learnt from its own experience that, in order to protect against such damage, a central authority must be responsible for making recommendations and for supervising the effect of exploitation activities. He hoped that delegations would consider the United States proposals carefully before the next session, so that they could be incorporated into the second revision of the negotiating text.

112. The CHAIRMAN said that the amendments proposed by the United States would be circulated shortly in document WG21/Informal Paper 4, at which point they would be discussed by the Committee.

The meeting rose at 8.25 p.m.