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Held at Headquarters, New York,
on Tuesday, 10 December 1985, at 10.30 a.m.

President: Mr. HEPBURN (Vice-President) (Bahamas)

- Law of the Sea: [36]

  (a) Report of the Secretary-General
  (b) Draft resolution

85-64658/A 6786V (E)

In the absence of the President, Mr. Hepburn (Bahamas), Vice-President, took the Chair.

The meeting was called to order at 11 a.m.

AGENDA ITEM 36

LAW OF THE SEA

(a) REPORT OF THE SECRETARY-GENERAL (A/40/923)

(b) DRAFT RESOLUTION (A/40/L.33)

The PRESIDENT: I call on the representative of Kenya, who wishes to introduce draft resolution A/40/L.33.

Mr. MUDHO (Kenya): Under agenda item 36, entitled "Law of the sea", the General Assembly has before it this morning draft resolution A/40/L.33, which is sponsored by 53 States. Two other sponsors not listed in that document are Singapore and Thailand, and other representatives may wish to add their names.

On behalf of the delegations of the sponsoring States, I have the honour, for which I am grateful, to introduce the draft resolution. As with similar draft resolutions in the past, it is the product of exhaustive consultations among interested delegations. It is, of necessity, a compromise draft which represents no more than the common denominator of many differing interests and does not, therefore, purport to meet all expectations. I wish first to thank all those delegations that took part in the negotiations on the draft resolution for their co-operation and spirit of accommodation.

This is the third time that the General Assembly has had to address such a draft resolution following the adoption, in Montego Bay, Jamaica, of the United Nations Convention on the Law of the Sea. The subject is, therefore, not new; nor, in fact, is most of the content of the draft resolution.

(Mr. Mudho, Kenya)

As is customary, the preambular paragraphs recall the relevant resolutions of the General Assembly on the subject and the principles underlying the Convention.

Operative paragraph 1 once more recalls the historic significance of the United Nations Convention on the Law of the Sea as an important contribution to the maintenance of peace, justice and progress for all peoples of the world.

Operative paragraph 2 expresses the satisfaction of the General Assembly at the increasing number of ratifications, now totalling 25, deposited with the Secretary-General. The draft resolution refers, in its second preambular paragraph, to 24 ratifications, but since its preparation the number of ratifications has increased to 25. I ask representatives to note this change, which brings the draft resolution into conformity with the report of the Secretary-General (A/40/923).

Operative paragraph 3 calls upon all States that have not yet done so to consider ratifying or acceding to the Convention at the earliest possible date to allow the effective entry into force of the new legal régime for the uses of the sea and its resources.

Operative paragraph 4 calls upon all States to safeguard the unified character of the Convention and related resolutions adopted therewith.

Operative paragraph 5 takes note of the Declaration of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal. I wish to draw the attention of representatives to the report of the Secretary-General (A/40/923) and in particular to paragraphs 109 to 112, which deal with the substance of the Declaration and the Chairman's statement on its adoption.

Operative paragraph 6 calls upon States to desist from taking actions which undermine the Convention or defeat its object and purpose. This operative

(Mr. Mudho, Kenya)

paragraph refers to any actions that may have been carried out, or might be contemplated for the future, aimed at adversely affecting the Convention or defeating its object and purpose.

Operative paragraph 7 calls upon States to observe the provisions of the Convention when enacting national legislation, in order that such legislation not purport to exclude or to modify the legal effect of the provisions of the Convention.

Operative paragraph 8 calls for an early adoption of the rules for registration of pioneer investors in order to ensure the effective implementation of resolution II of the Third United Nations Conference on the Law of the Sea, including the registration of pioneer investors. It is hoped that the Preparatory Commission will be able to adopt as soon as possible the rules for registration of pioneer investors, thereby ensuring effective implementation of resolution II, including the registration of pioneer investors.

Operative paragraph 9 expresses the appreciation of the General Assembly for the effective execution by the Secretary-General of the central programme in law of the sea affairs under chapter 25 of the medium-term plan for the period 1984-1989. It is encouraging to note that the activities outlined therein have continued to be implemented effectively and efficiently. The Secretary-General, through his Special Representative, Ambassador Satya Nandan, and his team, has done a commendable job on matters concerning the law of the sea, and deserves, I believe, our appreciation and encouragement.

Operative paragraph 10 further expresses the General Assembly's appreciation for the report of the Secretary-General in response to General Assembly resolution 39/73 and requests the Secretary-General to continue the activities outlined

(Mr. Mudho, Kenya)

therein, as well as those aimed at strengthening the new legal régime of the sea, special emphasis being placed on the work of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea, including the implementation of resolution II of the Third United Nations Conference on the Law of the Sea. As representatives will recall, resolution II deals with the protection of preparatory investments in pioneer activities related to polymetallic nodules.

By operative paragraph 11 the General Assembly would approve the programme of meetings of the Preparatory Commission for 1986. During the coming year the Preparatory Commission is scheduled to hold its regular session in Kingston, Jamaica, from 17 March to 11 April, and to hold a summer meeting in Geneva, Kingston or New York. It is now customary for the Preparatory Commission to decide on the venue of its summer meeting during its spring meeting. Therefore, the venue of the summer meeting will be decided by the Preparatory Commission during its spring session, in Kingston, next year.

(Mr. Mudho, Kenya)

Operative paragraph 12 calls upon the Secretary-General to continue to assist States in the implementation of the Convention and in the development of a consistent and uniform approach to the new legal régime thereunder, as well as in their national, subregional and regional efforts towards the full realization of the benefits therefrom, and invites the agencies and bodies within the United Nations system to co-operate and lend assistance in these endeavours.

This is an important responsibility of the Secretary-General and becomes particularly significant as States proceed to implement the Convention, especially in relation to areas under national jurisdiction. It is important that the Secretary-General should provide advice and assistance to States in order that State practice may develop in a coherent and uniform manner consistent with the Convention. It is equally important that States be enabled to derive maximum benefit from the Convention and incorporate development of marine resources within their overall national development programmes.

In operative paragraph 13 the General Assembly requests the Secretary-General to report to the General Assembly at its forty-first session on developments relating to the Convention and on the implementation of the present resolution, while in operative paragraph 14, the last in the draft resolution, the General Assembly decides to include this item on the agenda of its forty-first session.

Let me at this stage make a few remarks regarding the United Nations Convention on the Law of the Sea. The Convention seeks to create and develop international law where it was admittedly lacking or was in a state of confusion; it lays a sound foundation for harmonious uses of the oceans and for effective co-operation in the uses of a vast international area; it establishes conditions for justice and prosperity for all; and it establishes machinery for the peaceful settlement of disputes, actual and potential. In doing so, it offers a singular

(Mr. Mudho, Kenya)

opportunity for preventing an otherwise very likely eruption of world conflicts, the dimensions and consequences of which could not but be unfortunate.

It should be stressed that the Convention is a product of exhaustive negotiations spanning many years and a genuine attempt to balance differing interests. It has improved developing countries' prospects of deriving benefits from the resources of the sea for their development and at the same time it makes a fairly generous concession to the more economically developed States.

Having been involved personally in the negotiations in several sessions of the United Nations Conference on the Law of the Sea, I am convinced that there is no alternative to the present text of the Convention and that there can be no alibi for not becoming a party to it or for not respecting the package that we all worked so hard to achieve.

I wish, therefore, on behalf of the sponsors - and I believe I am also voicing the sentiments of many delegations here - to join the Secretary-General in expressing our satisfaction at the increasing number of ratifications being deposited with him. We hope that the 60 ratifications required for entry into force of the Convention will be attained in the near future and we also believe that, as the Secretary-General observed on 10 December 1982 when the Convention was open for signature in Montego Bay, that the Convention has indeed irreversibly transformed the political map of the world and that future developments in the law of the sea will doubtless revolve around it.

In conclusion, I wish to reiterate what I said when I started my statement that this draft resolution is the product of exhaustive consultations among many interested delegations. It is the result of compromises reached in those consultations and it is a sincere and practical attempt to balance differing viewpoints. It does not attempt to reflect fully the views of any one State or

(Mr. Mudho, Kenya)

single group of States, but is a reflection of varying interests. As such, I would appeal to all delegations not to reopen the consultations that culminated in the draft resolution before them by making statements departing from its spirit and letter. Such statements would only serve as a provocation for statements espousing contrary points of view. This would endanger the delicate consensus now existing on the draft resolution. I am confident delegations would not like to see that happen.

With these remarks, I commend the draft resolution to the General Assembly, and hope that it will receive the Assembly's overwhelming, if not unanimous, support.

Mr. LUPINACCI (Uruguay) (interpretation from Spanish): Uruguay is one of the sponsors of draft resolution A/40/L.33, on the law of the sea, which concerns the most important achievement in the work of codification and progressive development of international law carried out by the United Nations or under its auspices.

The United Nations Convention on the Law of the Sea, which was adopted by a vast majority of States and which, at the end of the period during which it was open for signature, had received 159 signatures, was the culmination of a gigantic effort to prepare a genuine code of the sea including all aspects relating to the use of the seas and the oceans and their soil and subsoil, the exploration, exploitation, conservation and development of its living and non-living resources, marine scientific research and the protection of the marine environment - in short, the regulation of all of man's activities in maritime spaces, whether undertaken by States, international organizations or, depending on circumstances, public or private enterprises or individuals.

(Mr. Lupinacci, Uruguay)

Despite the growing and overwhelming support which the Convention has received, as mentioned in draft resolution A/40/L.33, we must note the fact that a small but important group of States has not yet signed it.

Furthermore, we cannot disregard certain attempts to undermine the régime established by the Convention, especially that applicable to the area of the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the area, which, as proclaimed in General Assembly resolution 2749 (XXV), are the common heritage of mankind.

Draft resolution A/40/L.33 rightly expresses serious concern about this.

(Mr. Lupinacci, Uruguay)

It is appropriate to recall the Declaration adopted on 30 August this year by the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea. That Declaration states that the only régime for exploration and exploitation of the area and its resources is that established by the United Nations Convention on the Law of the Sea and related resolutions adopted by the Third United Nations Conference on the Law of the Sea; and that any claim, agreement or action regarding the area and its resources undetaken outside the Preparatory Commission which is incompatible with the United Nations Convention on the Law of the Sea and its related resolutions shall not be recognized.

My delegation is in agreement with the contents of that Declaration, which reflects the opinion of the vast majority of the States members of the international community - an opinion repeatedly expressed in various forums beginning with the Third United Nations Conference on the Law of the Sea, embodied in documents issued by many States or groups of States, including the Group of 77, and shared by a large majority of the delegations participating in the work of the Preparatory Commission.

The attempts referred to in the Declaration could cause incalculable damage to the stability of international relations, thus endangering the prospects of fulfilling our goal of ensuring peaceful and harmonious relations among States in the maritime spaces. In the first place, those attempts not only undermine the régime provided for in the Convention for the area of the sea-bed, but also undermine the Convention as a whole, whose overall unity is seriously affected. The Convention establishes a legal order that co-ordinates the many, oft-times opposing, interests of States in regard to the seas and oceans. That co-ordination is achieved by means of a delicate balance in watching over those interests, both

(Mr. Lupinacci, Uruguay)

of States and of the international community as a whole, in accordance with given principles and priorities. That delicate balance is changed or broken when one part of the unified order of the Convention is damaged.

Thus, what is actually threatened is the possibility of effectively establishing that legal order of the seas that guarantees their just and rational use and their equitable development, and therefore guarantees peace. But there is another kind of damage that is done - that is, the sense of frustration felt by the United Nations and the international community about their efforts to make progress on the path to international peace and security.

The full and world-wide implementation of the legal order of the seas so carefully worked out over almost a decade is an objective that tests the ability of the Organization to fulfil its fundamental purposes.

It is not my delegation's purpose to paint a gloomy picture; rather, we wish to draw attention to these risks. But we must also highlight the positive elements that have become increasingly evident since the approval of the Convention.

First, there is the support of an increasing number of States and entities. That is clearly manifested in the 159 signatures and the 25 ratifications deposited with the Secretary-General. My delegation wishes to announce that Uruguay has already begun its internal constitutional procedure that will lead to the ratification of the Convention.

The yearly increase in the number of ratifications of the Convention, which already constitute 40 per cent of the number necessary for the Convention's entry into force, is certainly another positive element. Furthermore, even before its entry into force, the Convention is having a considerable influence on all aspects of the law of the sea as well as on maritime subjects in general. This is pointed out in the interesting report by the Secretary-General contained in document

(Mr. Lupinacci, Uruguay)

A/40/923 of 27 November 1985. My delegation is well aware of the amount of work that this report reflects, especially in regard to the activities of the Office of the Special Representative.

The Convention has indeed had a very significant impact on the practice of States. That is reflected in the adoption of national laws including concepts and tenets of the Convention, as well as in the reaching of agreements and the adoption of declarations and other bilateral and regional instruments.

Special mention should be made of the field of the peaceful settlement of disputes between States on maritime questions. The formulas embodied in the Convention have been taken into account in agreements that have been reached as a result of conciliatory procedures or arbitral or judicial awards. Specifically, the International Court of Justice - as is mentioned in the Secretary-General's report - has been backing certain relevant provisions of the Convention, giving them more concrete form through its interpretations and developing a jurisprudence specifically related to the delimitation of maritime zones, in particular the exclusive economic zone and the continental shelf.

Similarly, we should mention the existence of many new developments in the law of the sea, with respect to which the Convention has served as a catalyst or provided inspiration or momentum. These developments extend from the peaceful uses of the sea, the safety of navigation or the conditions for the registry of vessels - of special importance in determining the responsibilities of the users of the sea - to the prevention and control of pollution of the marine environment from various sources, fisheries management, the development and protection of species or maritime scientific research and technological development.

It is obvious that the adoption of the Convention, which was preceded by an intensive negotiating process, has highlighted the oceans' importance to the development of peoples and in many of them has contributed to the shaping of a greater awareness of the possibilities and a genuine maritime mentality.

(Mr. Lupinacci, Uruguay)

There has also been a very positive response by international organizations, especially those within the United Nations system, as reflected in their programmes, information and activities.

The Secretary-General's report gives us, in particular, a broad view of the important work done by the Office of the Special Representative, which has been considerably expanded to meet the requirements of Governments and institutions that request its assistance by way of advice and studies as well as in servicing the Preparatory Commission and developing a very useful system of information on the new law of the sea, including interesting publications and a fellowship programme.

Uruguay attaches special, indeed overriding, importance to the work of the Preparatory Commission and, in particular, to the early adoption of the rules for registration of pioneer investors, without detriment to the preparation of the norms, rules and procedures of the organs of the Authority and those relating to the exploration of the sea-bed and the exploitation of its resources; the study of measures and criteria applicable to the adverse consequences that mineral extraction from the sea-bed could have on developing States now producing such minerals from their soil; and the preparation for the establishment and functioning of the Enterprise as well as the International Tribunal for the Law of the Sea.

(Mr. Lupinacci, Uruguay)

In voting in favour of draft resolution A/40/L.33, Uruguay wishes to reiterate its conviction with regard to the historic importance of the United Nations Convention on the Law of the Sea and to express the hope that at the earliest possible moment the few States which have not yet done so will sign the Treaty and that ratifications will continue to increase rapidly so that its entry into force and universal acceptance and application will be a reality in the not too distant future, thus ensuring the basis for peaceful, orderly and fruitful coexistence among all States as regards the oceans.

Mr. STEFANINI (France)(interpretation from French): First of all, my delegation would like to avail itself of this opportunity to pay a tribute to Chairman Warioba. His recent appointment as Prime Minister of his country attests to his eminent qualities. He has shown them in an outstanding manner in leading the Preparatory Commission's work. It is to a great extent thanks to him that the Commission was able to do a great deal of work since 1983 - something that we welcome.

My delegation is pleased that the results were achieved through consensus - a goal which we feel is more necessary than ever.

It is that same spirit that enabled us once again this year to reach a compromise on the draft resolution on the law of the sea, which will enable France to vote in favour of it.

My delegation hopes that the next session of the Preparatory Commission will allow for a pragmatic solution, acceptable to all interested parties, to problems raised by the implementation of resolution II on the protection of pioneer investments.

(Mr. Stefanini, France)

We welcome in this connection the fact that the draft resolution gives due attention to this question by devoting to it both a preambular and an operative paragraph. Operative paragraph 8 calls for the early adoption of the rules for registration of pioneer investors in order to ensure the effective implementation of resolution II, especially with regard to registration of pioneer investors.

The registration of requests made to date by four pioneer investors are, indeed, a decisive step in making progress in the Commission's work and the establishment of a Convention system on the law of the sea.

My delegation would like to make it clear that our vote in favour of the draft resolution does not at all change our position on the Convention and its various parts, in particular as expressed in the written declaration, under article 310, which we deposited in Montego Bay on 10 December 1982.

We also note that the draft resolution takes note of the Declaration adopted by the Preparatory Commission on 30 August 1985. Without taking any stand at this stage, we should like to continue to reserve our position on the provision of that Declaration according to which the only régime applicable to the exploration and exploitation of the Area and its resources is that established by the Convention on the Law of the Sea and the resolutions attached thereto.

Furthermore, my delegation believes that the provisional arrangement on questions relating to the ocean floor, signed on 3 August 1984 by eight countries including France, does not in any way fall into the category of agreements under paragraph 1 (B) of the Declaration of 30 August 1985 to which I have just referred. This arrangement, which is only to avoid any possible conflicts in overlapping among its signatories, is completely compatible with the spirit of the prerequisites for the registration of the request France made with the Preparatory Commission on 3 August 1984.

(Mr. Stefanini, France)

My delegation will continue to take an active part in the Preparatory Commission's work in the open-minded spirit it has always manifested and in the hope that we may be able to set up a system to which the international community as a whole will agree.

Mr. YAKOVLEV (Union of Soviet Socialist Republics)(interpretation from Russian): The strengthening of the rule of law in the world and co-operation in the seas in accordance with the 1982 United Nations Convention on the Law of the Sea is a major task for the Organization.

In reflecting mutually acceptable compromise agreements taking into account the interests of all groups of States and all peoples, the Convention settles in one "package" the most serious and complex questions of a legal system for the seas and oceans. It defines the rights and obligations of all States and establishes a unified streamlined system for international legal settlement of all basic types and forms of the use of the resources of the world's seas. The Convention serves as an example for settling, through negotiations within the United Nations, important and complex global problems of concern to mankind. It makes an important contribution to the strengthening of peace, security and co-operation among States on the seas.

No doubt, the Convention is an important achievement of the international community in recent decades. Its implementation is in keeping with the aspirations of all peoples and helps to make the world's oceans a zone of peace and co-operation in the interests of present and future generations.

The Soviet Union, like other socialist countries, has consistently supported the United Nations Convention on the Law of the Sea and is firmly in favour of its strict and scrupulous observance by all States of the world and for the implementation of a comprehensive legal system for co-operation in the world's oceans as established by the Convention.

(Mr. Yakovlev, USSR)

The Soviet Union was one of the first to sign the Convention, and we attach special importance to the fact it has now been signed by 159 States in the world - almost all, with only one exception - from five continents. In essence, that means the complete isolation and condemnation by the world community of those forces which, for their narrow and selfish interests, are boycotting the Convention and attempting to continue to undermine through unilateral and arbitrary activities the agreed upon Convention régime for the sea-bed and ocean floor. So far 24 States have ratified the Convention.

The implementation and strengthening of the Convention régime for the world's oceans involves the vital interests of all groups of States, all countries and all peoples. However, some States continue an irresponsible policy: they are attempting through highhanded activities to undermine the Convention's provisions and to violate the spirit and the letter of the Convention package of basic agreements. In refusing to observe the provisions of part XI of the Convention on the régime for the international sea-bed Area, some States are attempting to use provisions in the Convention on the economic zone and on the continental shelf, among others, which are agreeable to them.

At the same time, there are other States which have expressed their dedication to the Convention. However, in signing, or even ratifying, the Convention they are entering reservations and adopting national legislation in violation of the spirit and the letter of important provisions of the Convention. It is quite obvious that such activities are leading to an undermining of the Convention and doing harm to the Convention régime for the ocean floor. Those who are for such trends are virtually following a selective approach to the Convention; they do not want to take into account the fact that the Convention does not allow for such reservations and interpretative statements.

(Mr. Yakovlev, USSR)

All such unilateral attempts connected with the arbitrary seizure of the ocean floor or changes in the Convention régime for archipelagic waters and the economic zone are unlawful. We must recall that the Convention is a unified and indissoluble package of compromise agreements among all States and it does not allow for the use only of advantages to the detriment of other obligations and requirements provided for in the Convention. Outside the Convention, outside what has been established in its specific and general régime for the sea-bed, any unilateral acts in establishing a régime for the sea-bed and the use of its resources cannot be considered as legal. Unilateral activities and arbitrary declarations in violation of the Convention today reflect imperialist policy in dividing up and in appropriating the sea-bed and its resources. The irresponsible and adventurist nature of such a policy is shown by the fact that it undermines the very bases of the use of the world oceans as a sphere for international communications, trade and co-operation, and it does harm to the interest of all countries, including those that are carrying out such a policy.

A specific example of such a policy is the refusal of the United States to sign the Convention and the arbitrary activities concerning the sea-bed carried on by that country. As we all know, the National Oceanic and Atmospheric Administration of the United States Department of Commerce has begun to grant licences to a number of consortia for the development of manganese nodules in sectors of the international Area of the sea-bed in the Pacific Ocean.

The Soviet Union's view of the arbitrary activities of the United States administration in relation to the world's oceans, in particular to the international Area of the sea-bed, is well known.

The USSR has not recognized and does not recognize any such activities by anyone which are not in accordance with the United Nations Convention on the Law of the Sea and which exploit in an arbitrary manner the resources of the international

(Mr. Yakovlev, USSR)

area of the sea-bed. The granting of licenses by the United States authorities for sectors of the international Area in violation of the Convention, outside the Preparatory Commission for the International Sea-Bed Authority, is unlawful and conflicts with the will and the interests of the overwhelming majority of Member States.

The granting of such licenses is in essence an attempt by the United States Administration to take upon itself the functions and powers of the Prepartory Commission, which was established by the Third United Nations Conference on the Law of the Sea.

It appears from the foregoing that the United States Administration, in granting licenses for the exploitation of the resources of the sea-bed beyond national jurisdiction, is attempting to implement the separate agreement between the United States and others of its allies of 3 August 1984 on the arbitrary distribution of sectors of the international Area of the sea-bed, and thus to carry out activities, in violation of the Convention, involving the uncontrolled use of the resources of the international Area of the sea-bed, to the detriment of the interests of all other States.

In response to such arbitrary activities of the United States and some of its allies the Preparatory Commission for the International Sea-Bed on 30 August 1985 adopted a Declaration which expressed deep concern at the fact that some States had undertaken activities which undermine the Convention and which are in violation of the mandate of the Preparatory Commission. The Preparatory Commission recalled article 137 of the Convention, which provides that:

> "no state or natural or juridical person shall claim, acquire or exercise rights with regard to the minerals recovered from the Area except in accordance with this Part [Part XI] of the Convention" (A/CONF.62/122).

(Mr. Yakovlev, USSR)

This Declaration of the Preparatory Commission clearly states that the régime established by the sea-bed Convention is a unified régime for the exploration and exploitation of the international Area and its resources. In accordance with the Declaration, there can be no recognition of any claim, agreement or action regarding the Area and its resources which is made or concluded or undertaken outside the framework of the Preparatory Commission which is incompatible with the United Nations Convention on the Law of the Sea and its related resolutions. The Declaration rejected any such claim, agreement or action as being wholly illegal.

The Declaration is an important political and international legal document. It reflects the will and the interests of the overwhelming majority of Member States, which uphold the strict observance and implementation of the United Nations Convention on the Law of the Sea. The Declaration deals a serious blow to the policy of the arbitrary dividing up and seizure of the sea-bed, and the policy of undermining the Convention and the activities of the Preparatory Commission. The Declaration strengthens the Convention and the régime established therein for the international Area of the sea-bed and deprives of any legal basis the activities of those States which are attempting to effect an arbitrary seizure of the resources of the international Area. In accordance with the Declaration, there is not nor can there be any parallel régime. This must be recognized by those Western Powers which have not signed the Convention. They have no other course but to take a realistic position with regard to the Convention on the Law of the Sea and the work of the Preparatory Commission for the International Sea-Bed Authority.

Great tasks have been entrusted to the Preparatory Commission for the implementation of the provisions of the Convention. The Commission has done a great deal of work in the year 1985. Of special significance is the speedy registration of applications by the first group of pioneer investors. This has

(Mr. Yakovlev, USSR)

become practically a first step towards the realization of the régime established by the Convention for the use of the resources of the international sea-bed Area and opens up prospects for the establishment of the International Authority.

However, the question of the registration of applications for the first group of pioneer investors is being held back in every possible way by those countries whose companies take part in transnational corsortia which are registered in the United States. Those countries have signed the Convention and in accordance with resolution II of the Convention can make applications for sectors of the sea-bed before the Convention comes into force. However, they have been demanding that applications from the first group of claimants be considered only after the first group have settled possible disputes on the limits of sectors not only among themselves, but with all other potential claimants who have not yet applied. In practice, agreement to that demand would mean the need to settle disputes with States which have not made applications to the Preparatory Commission, and whose companies, through transnational corporations, have illegally received, outside the Convention, licences from the United States authorities for sectors of the international Area of the sea-bed.

Such an approach is directed against the Convention. It strengthens the parallel régime for the arbitrary seizure of the sea-bed through the issuing of the above-mentioned illegal licenses.

Such an approach is something we cannot agree with because it leads to the undermining of all the work of the Commission. The claims of consortia and their representatives are unlawful. As was pointed out in its Declaration of 30 August 1985, the Preparatory Commission should not accept any applications covering their activities, in particular, for settling disputes concerning the limits of sectors of the sea-bed for the first group of pioneer investors.

(Mr. Yakovlev, USSR)

Another trend in the activities of the Preparatory Commission is the drafting of rules, regulations and procedures on the activities of the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea. This work is of great importance in ensuring that these international organizations established by the United Nations Convention on the Law of the Sea can carry out their functions effectively and promptly as soon as the Convention enters into force. We should point out that this work, even though it is perhaps advancing more slowly than expected, is making headway. Of course we should then make sure that the newly established international organizations must operate economically, so that the cost of maintaining them does not become a heavy burden for States parties to the Convention. Especially important is the approach that decisions which entail financial obligations for States which have ratified the Convention on the Law of the Sea should be taken by consensus in the International Sea-Bed Authority. Otherwise it is impossible to contemplate the establishment of a vital and viable International Authority.

As we see it, the compromise draft resolution submitted for the consideration of the General Assembly, A/40/L.33, is designed to make further efforts in the United Nations to support the Convention on the Law of the Sea, and opposes the policy of arbitrary seizure and unlawful declarations. This is of great significance to the strengthening of the rule of law the world over and for co-operation on the high seas. The draft instructs the Preparatory Commission to speed up the registration of applications for the first group of pioneer investors and also to advance its work on the appropriate rules and procedures. It refers to the work of the Secretariat in servicing the work of the Preparatory Commission and in carrying out activities under the Convention. The Soviet delegation supports this draft resolution.

Mr. TREVES (Italy): Developments relating to the law of the sea during this year can be divided into two groups: those connected with the activities of the Preparatory Commission for the International Sea-Bed Authority and the International Tribunal for the Law of the Sea, and those that concern other marine activities.

As regards the developments in the Preparatory Commission, we are happy to note that the atmosphere in the plenary Commission and in the four sub-commissions has been constructive and that considerable progress has been made in the understanding of the problems and of the positions of the various delegations, as well as in the elaboration of draft rules. There were, however, also some developments that troubled this otherwise very positive phase of the work of the Preparatory Commission and to which I shall come later.

As far as the developments relating to other marine activities are concerned, a most useful guide for considering them is the report of the Secretary-General (A/40/923). That report must be highly praised for the wide range of information it conveys in a compact form and for its accuracy. It certainly is the most authoritative and complete survey of what is going on in connection with the law of the sea in the world.

Starting from the information contained in the report, one observation comes immediately to our mind, namely, that the provisions of the Convention on subjects different from sea-bed mining are exercising a deep influence on the practice of States and of international organizations.

Notwithstanding some problems that emerge from the declarations made by some States upon signature or ratification and from the objections with which those declarations have been met by other States, one can say that by and large the Convention is succeeding in keeping the claims of States within the limits set in its provisions. Thus we read with interest that while as many as 22 States still have territorial seas of more than 12 miles - although we note that, in some cases

(Mr. Treves, Italy)

the concrete rules applied beyond 12 miles do not differ from those applicable to an exclusive economic zone - such legislation pre-dates the adoption of the Convention. And it is also very interesting to note that many newly introduced laws on such subjects as the territorial sea, innocent passage, the economic zone and the continental shelf follow closely the provisions of the Convention. It is, moreover, particularly significant that the International Court of Justice has taken clear cognizance of the impact on customary law of various provisions of the Convention.

As interesting as these general aspects are the developments, reflected in detail in the Secretary-General's report, concerning activities in various multilateral frameworks in connection with implementing various specific provisions or groups of provisions of the Convention. Particularly significant, it seems to us, are the activities on maritime safety and navigation, on conditions for registration of ships, on fixed and mobile offshore installations and on the modification of various existing instruments on marine pollution in order to take into account the provisions of the United Nations law of the sea Convention, as well as the conclusion of new instruments in the same field. Various intergovernmental organizations such as the International Maritime Organization (IMO), the International Labour Organisation (ILO) and the United Nations Environment Programme (UNEP) are involved in that effort.

We also take note with interest of the developments on piracy mentioned in the report. To those one must add the resolution recently approved by IMO on measures to prevent unlawful acts that threaten the safety of ships and the security of ships and their passengers at sea and, especially, the developments that will follow within the IMO from the resolution on international terrorism adopted yesterday by the General Assembly. That resolution requests the International Maritime Organization to study the problem of terrorism aboard or against ships

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with a view to making recommendations on appropriate measures. Those might include a widening of the scope of the law of the sea Convention's articles on piracy.

The information in the report about fisheries commissions all over the world and fisheries in general is also very interesting. As members of the European Community, however, we should have liked this information to be completed with an analysis of the fisheries provisions of the Third Lomé Convention, signed on 8 December 1984 by the 10 member States of the European Community and by 65 States of Africa, the Caribbean and the Pacific. It may suffice to say that this Convention contains 10 detailed articles on fisheries and that it is directly inspired by the fisheries provisions of the law of the sea Convention. Indeed, in article 50 one reads the following:

> "Co-operation in this field shall promote the optimum utilization of the fishery resources of ACP States, while recognizing the right of land-locked States to participate in the exploitation of sea fisheries and the right of coastal States to exercise jurisdiction over the living marine resources of their exclusive economic zones in conformity with current international law and notably the conclusions of the Third United Nations Conference on the Law of the Sea."

We cannot conclude our examination of the Secretary-General's report without taking note with appreciation of the work of the Office of the Special Representative of the Secretary-General for the Law of the Sea. We are looking forward to seeing the analytical studies on the travaux préparatoires concerning various aspects of the 1982 Convention, as well as the list of multilateral treaties relevant to the law of the sea that is also announced. We think, moreover, that the initiative concerning publication of a master file of the official documents of the Third United Nations Conference on the Law of the Sea is

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excellent. That publication will be very helpful to Governments and scholars. We warmly recommend that the publication of that master file be very soon followed by the also announced master file of the unofficial documents, which, as is well known, are as numerous as they are important for understanding the development of the negotiations that led to the adoption of the final text of most provisions.

The Law of the Sea Bulletin is a very useful information instrument. We wish that it had been expanded to include all or most of the documents mentioned in the report.

We read with particular interest the paragraphs on the law of the sea information system. It seems to us that the data contained in that system and made easily retrievable constitute an important research and information tool and that ways and means of making them widely accessible should be studied.

As an introduction to the consideration of some developments in the Preparatory Commission that we do not consider to be fortunate, let me state once again the general position of Italy concerning the law of the sea Convention.

Italy signed the law of the sea Convention on 7 December 1984. We remain convinced that the Convention represents a major step in the codification and progressive development of that branch of international law. We orient our practice in harmony with those aspects of the Convention that in our opinion already correspond to generally accepted law, and in accordance with our obligations as member States of the European Community. Indeed, the European Community is entitled to become a party to the Convention and has signed it. We have transferred to the Community powers in certain areas covered by the Convention, as indicated in the detailed declaration on the nature and extent of the powers transferred made by the Community upon signature and in the other detailed declarations that will be made in due course in accordance with the provisions of annex IX of the Convention.

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Our policy is also so shaped as not to defeat the object and purpose of those provisions of the Treaty that are not binding because of their mere conventional nature. As regards the provisions on deep sea-bed mining, in accordance with the declaration Italy made upon signature, we endeavour to eliminate the considerable flaws and deficiencies we see in them through our action in the Preparatory Commission. This action aims at working out a system for the exploration and exploitation of the deep sea-bed based on sound commercial principles and which would take into account the interests of all groups of States participating in it.

In the light of the foregoing, Italy cannot consider with favour the development which occurred with the adoption, on 30 August, by the Preparatory Commission of the International Sea-Bed Authority and the International Tribunal for the Law of the Sea, of the declaration which is contained in document LOS/PCN/72. Upon its adoption, the Chairman of the Preparatory Commission noted that:

> "a number of delegations, while appreciating the preoccupation of that majority, could not give support to the declaration because of their concerns about some aspects of the substance and the effect of the declaration".
>
> (A/40/923, para. 112)

The Italian delegation is one of those delegations. It seems important to explain here why we could not give our approval to the declaration of 30 August 1985.

First of all, the declaration declares "wholly illegal" any claim, agreement or action regarding the area and its resources undertaken outside the Preparatory Commission which is incompatible with the United Nations Convention on the Law of the Sea and its related resolutions. Although there is nothing in Italy's present or past practice that corresponds to such claims, agreement or action, we wish to

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state firmly that in our opinion the Preparatory Commission is not a court of law and that it should not pass judgement on the legality of the behaviour of any State. This becomes even more evident if one considers the mandate of the Preparatory Commission as set forth in resolutions I and II of the Third United Nations Conference on the Law of the Sea.

Secondly, the declaration includes a reference to the Declaration contained in General Assembly resolution 2749 (XXV) which Italy approved in 1970. This reference is incomplete and thus misleading. It is, of course, true that the Declaration proclaims in its paragraph 1 the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction as the "common heritage of mankind". But it is also true, and to our mind as significant, that in paragraph 9 the same Declaration states that:

> "On the basis of the principles of this Declaration, an international régime applying to the area and its resources and including appropriate international machinery to give effect to its provisions shall be established by an international treaty of a universal character, generally agreed upon". (resolution 2749 (XXV), para. 9)

It is Italy's earnest hope that the provisions on deep sea-bed mining of the United Nations Law of the Sea Convention will become such a treaty. That is one of the reasons why we have signed it.

In our opinion this is not, however, the case at the moment, for various reasons. The most important is of course that the Convention is not yet in force and that, as such, it cannot bind States.

One must add that even when the Convention enters into force for a number of States, it will obviously not be binding on those States that will not have ratified it or acceded to it. Only when a vast majority of States, including all

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major groups and shades of interest in deep sea-bed mining, will have become party to the Convention, will it become the "treaty of a universal character, generally agreed upon" mentioned in the 1970 Declaration of the General Assembly. Only then will it become meaningful to talk of the régime "established" by the Convention for sea-bed mining as the "only régime".

In order for this to come into effect, the "deficiencies and flaws" of the deep sea-bed mining provisions which we, as well as others, mentioned while signing the Convention - and which are the main reason why some important maritime States have chosen not to sign it - must be eliminated.

The best way for the Preparatory Commission to work for the objective of making the United Nations Law of the Sea Convention the "truly universal" achievement mentioned as an objective last year by the Secretary-General of the United Nations - in other words, the best way to make it the treaty of a universal character generally agreed upon, mentioned in the Declaration of 1970 - is to work out rules, regulations and standards that can help to make the deep sea-bed mining parts of the Convention a viable system for the exploitation of the deep sea-bed in accordance with sound commercial practices and principles. This, as already indicated, is the direction in which Italy is working within the Preparatory Commission. And, I may add, this is the only direction to be taken if the work of the Preparatory Commission is to encourage ratification by all signatories, including those with interests in sea-bed mining, and also make those States that have not signed reconsider their attitude regarding the Convention.

The adoption of a document such as the declaration of 30 August goes in the opposite direction. Its divisive character hinders, rather than helps, the endeavours to obtain a sea-bed mining régime that can be accepted by all members of the Preparatory Commission, and that can attract non-members, thus making it truly universal.

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Coming to another aspect of the activities of the Preparatory Commission, we are fully aware that one of its main tasks is to see that pioneer investors start working on the sea-bed, thus applying the most innovative provisions of resolution II. In order to obtain this result, applications by pioneer investors will have in due course to be registered in conformity with the relevant rules whose discussion is still pending before the Preparatory Commission.

We wish in this connection to pay tribute to the Chairman of the Preparatory Commission, and now Prime Minister of Tanzania, Mr. Jo Warioba, for his constructive efforts to facilitate the process of elimination of overlapping claims, a process whose conclusion is a preliminary requirement for registration.

The time in which companies will find it economically feasible and interesting to make the major investments for going into pioneer and exploration activities on the sea-bed does not, however, seem to be near in the present economic situation. There is, consequently, no hurry. The prevailing consideration should be to conduct the process of elimination of overlapping claims in a way that can be wholly satisfactory for the national interests of all the pioneer investors mentioned in resolution II, as well as being faithful to the spirit of the same resolution.

As we said in a letter sent to the Chairman of the Preparatory Commission on 2 April and contained in document LOS/PCN/62, our position is still that, in order faithfully to respect resolution II, conflicts due to overlapping claims should be solved by all potential claimants. In this connection, we take note with interest of contacts between potential claimants, some of which are reflected in the report of the Chairman of the Preparatory Commission after the Geneva session, document LOS/PCN/L.27, in which Mr. Warioba indicates that the scope of his consultations with delegations on this matter has been widened. We consider this as a very promising sign for future developments.

Mrs. DIAGO (Cuba) (interpretation from Spanish): The United Nations Convention on the Law of the Sea, which was drafted under the sponsorship of this Assembly, has been signed by 159 States, thus demonstrating the interest which the international community attaches to that instrument and also its unprecedented universal character. Cuba has ratified the Convention and we urge those States which have not yet done so to do the same with a view to having the new legal order relating to the use of the sea enter into force.

We have carefully noted the Secretary-General's report (A/40/923) on developments relating to the United Nations Convention on the Law of the Sea and the activities of the Office of the Special Representative of the Secretary-General and the departments and agencies of the United Nations Secretariat in this field.

I should like now to refer to the activities of the Preparatory Commission set up in April 1982, under resolution I of the Conference, which has made progress in its difficult task despite the delaying tactics and difficulties brought about by certain countries which have been trying to impede its work.

Once again the General Assembly is confronted with a violation of international law by the Government of the United States. That is the only meaning that one can attach to the fact that the United States Department of Commerce has licensed four international consortia, headed by Yankee monopolies, to proceed to do prospecting work in the international area of the Pacific sea-bed, which has been registered with that Department, granting them exclusive rights. That measure is a flagrant violation not only of the international régime for the exploitation of the resources of the seabed, as laid down by the United Nations Convention on the Law of the Sea but also of the Declaration of Principles adopted by the General Assembly in 1970 in resolution 2749 (XXV), which solemnly declared that the sea-bed and the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the area, were the common heritage of

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mankind and that the area should not be subject to appropriation by any means by States or persons, which is already customary law.

As the Assembly is aware, the Preparatory Commission of the International Sea-Bed Authority and the International Tribunal for the Law of the Sea is the only body authorized to license pioneer investors. That is why the Preparatory Commission, in a well-grounded statement at its recent session, strongly denounced the action of the United States Government in the following terms:

"The only régime for exploration and exploitation of the Area and its resources is that established by the United Nations Convention on the Law of the Sea and related resolutions adopted by the Third United Nations Conference on the Law of the Sea;

"Any claim, agreement or action regarding the Area and its resources undertaken outside the Preparatory Commission which is incompatible with the United Nations Convention on the Law of the Sea and its related resolutions shall not be recognized.

"The Declaration rejected 'such claim, agreement or action as a basis for creating legal rights and regards it as wholly illegal'. (A/40/923, paras. 110 and 111)

Since the signing of the United Nations Convention on the Law of the Sea the General Assembly has adopted resolutions calling on all States to desist from taking actions which undermine the Convention or defeat its object and purpose. However, policies of unilateral acts and claims which bypass the Convention continue to be followed today by some States, which can only impair the instrument and the legitimate interests of other States. These actions are once again repudiated and rejected by our country. Cuba, interested in safeguarding the character of the Convention and its related resolutions, once again joins in sponsoring the resolution on the item, presented to this Assembly in document A/40/L.33.

Mr. GARVALOV (Bulgaria): In the past ten years the issues relating to the law of the sea have acquired major importance. The rapid advances of science and technology and the increased economic importance of the sea and its resources have contributed greatly to this. We note with satisfaction that the United Nations has lived up to the new challenges of international discourse and played a crucial role in their legal regulation. The elaboration of the new United Nations Convention on the Law of the Sea marked a particularly important stage in the process of the progressive development of international law and its codification. The drafting of the Convention took more than a decade. As a result of those lengthy efforts, a document was worked out which gained extremely broad support, as evidenced by the 159 signatures.

The Bulgarian delegation shares the view that the Convention on the Law of the Sea is of historic significance as an important contribution to the maintenance of international peace, justice and progress for all peoples of the world. That is why we are seriously concerned at certain attempts to undermine the Convention, to belittle its importance or circumvent its provisions.

We are on the threshold of concluding the present stage of the progressive development and codification of the law of the sea, as our immediate goal now is the successful fulfilment of the tasks before the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea. Basically, those tasks encompass the finalization of mechanisms and procedures for the uses of the resources of the sea-bed on the basis of, and in compliance with, the régime established by the Convention on the Law of the Sea.

In this connection, I should like from the very outset of my comments concerning the work of the Preparatory Commission in 1985 to express the support of the Bulgarian delegation for the Declaration adopted at the summer session of the Commission, which was held in Geneva from 12 August to 4 September 1985 (LOS/PCN/72).

(Mr. Garvalov, Bulgaria)

Last year we witnessed actions undertaken by certain States in an attempt to initiate the exploration and exploitation of the resources of the sea-bed, proclaimed as the common heritage of mankind, outside the framework established by the United Nations Convention on the Law of the Sea, as well as to create a régime parallel to the one provided for in the Convention. Those activities affect an area which was proclaimed as the common heritage of mankind as early as 1970, in recognition by the international community of the premise that no single State might claim or exercise sovereignty or sovereign rights over such an area except in accordance with the United Nations Conventioin on the Law of the Sea.

The Declaration, presented by the Group of 77 and later adopted by the Preparatory Commission, rejected attempts at undermining the Convention on the Law of the Sea. The Declaration recognized the régime established by the Convention and the related resolutions of the Third United Nations Conference on the Law of the Sea as the only régime of exploration and exploitation to be applied to the area and its resources.

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The Declaration does not recognize any actions, agreements or claims outside the framework of the Preparatory Commission because they are incompatible with the Convention and the related resolutions. They are considered to be completely illegal in the Declaration and as a basis for any legitimate rights and any such agreements, actions or claims are rejected. Guided by its traditional policy of support for the Convention on the Law of the Sea, the People's Republic of Bulgaria welcomes and fully endorses the Declaration of 30 August 1985.

At the same time, I should like to point out that the problems arising from the implementation of part IX of the Convention pertaining to the international area and the related resolutions I and II cannot be resolved by condemning separate action alone. It is necessary to take the first practical steps to establish the régime of the common heritage of mankind. That means it is necessary to compile a register of the first group of pioneer investors as soon as possible and to eliminate their disagreements regarding the overlapping of their tracts. The Preparatory Commission can play an important role in resolving existing difficulties. The registration of pioneer investors can serve as an additional barrier to those States that are guided in their action only by their narrow and selfish interests. Registration will demonstrate the vitality and effectiveness of the régime established by the Third United Nations Conference on the Law of the Sea. That is why we consider the registration of the first group of pioneer investors to be an immediate task of the Preparatory Commission at its next session.

Another important issue is the need for strict and comprehensive observance and implementation of the Convention's provisions. A selective application of its provisions is incompatible with the preservation of the unified character of the Convention and its related resolutions. In our view, it is inconsistent with the object and the purpose of the Convention. Therefore, we must not recognize as

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legal the declarations made upon signing, ratifying or acceding to the Convention which have as their objective the modification or exclusion of the legal effect of particular provisions, in violation of Article 309 and 310 of the Convention.

In conclusion, I should like briefly to touch on the question of the venue of the summer sessions of the Preparatory Commission. According to information provided by the Secretariat, if a session were held at Kingston it would cost much more than if it were held in Geneva. Past experience has shown that sessions held in Geneva are attended by a greater number of representatives of the States Parties. One should also take into consideration the fact that a large number of States have no diplomatic missions in Kingston, which impedes the activities of their delegations and hence the work of the Preparatory Commission itself. Therefore, the Bulgarian delegation considers it appropriate that the summer sessions of the Commission be held in Geneva.

Mr. SWINNEN (Belgium) (interpretation from French): When Belgium signed the International Convention on the Law of the Sea on 5 December 1984, it expressed its confidence in the work of codification and in the progressive development of one of the major areas of international law. It acknowledged, in fact, the positive contribution of the Third Conference on the Law of the Sea to the strengthening of legal security as well as to the promotion of international co-operation in that field. The decision to sign was made despite our continuing doubts and questions over a number of provisions, in particular those pertaining to the exploration and exploitation of the sea-bed, a subject on which the Convention was most innovative.

Those same doubts prevent Belgium from considering ratification of the Convention here and now. In fact, it feels that the conditions required by the Declaration of Principles in resolution 2749 (XXV) of 17 December 1970

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unfortunately have not been met as yet. That Declaration stipulated that the new régime applicable to the area beyond the limits of national jurisdiction should be established by an international treaty of a universally acceptable character.

It must be noted that as yet there has been no unanimity on the 1982 Convention. However constructive the work that I mentioned a while ago may have been, it has remained incomplete because it has not yet been supplemented by positive agreements which the Preparatory Commission on the International Sea-bed Authority and for the International Tribunal for the Law of the Sea is attempting to formulate. The results of that work, which will be an indivisible part of the Convention itself, will be acceptable to the extent that they take into account the clearly understood self-interest of the largest possible number of States, including those with special experience of the exploration and exploitation of the sea-bed.

It should be clearly understood that Belgium remains attached to the principle proclaiming the sea-bed as the common heritage of mankind. Its position was reaffirmed in the statement made by Belgium at the time of the signing of the Convention. The régime for part XI and its annexes III and IV, as pointed out in that statement, however, does not appear to have chosen the quickest, most appropriate means of achieving the desired result, and risks jeopardizing the success of the high-minded endeavour which Belgium continues to encourage and support.

There is no need to repeat here what we believe to be the drawbacks and imperfections of the régime as set out in part XI. I should, however, like to reaffirm the Belgian Government's hope that these drawbacks and imperfections might be corrected by rules, regulations and procedures to be elaborated by the Preparatory Commission, with the dual intention of facilitating acceptance of the

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new régime by the whole of the international community and allowing for the genuine exploitation of the common heritage of mankind to the benefit of all, and preferably to the benefit of the least privileged countries.

In signing the Convention on the Law of the Sea, we have also chosen to take an attentive and constructive part in the work of the Preparatory Commission, work the quality and serious nature of which will largely contribute to the success of the new régime. The more the Commission is able to accomodate the legitimate interests of all involved and to lay the groundwork for an economically viable régime, the more attractive and acceptable it will make the new Convention to those who have not yet acceded to it, as well as to those who still hesitate to ratify it.

We are happy to note that the Preparatory Commission has achieved progress in several respects and that a calm and co-operative climate, motivated by a real desire to achieve consensus, has prevailed in almost all its bodies.

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However, we cannot conceal our disappointment over the adoption, on 30 August last, of a Declaration stating that the only régime for exploration and exploitation of the Area and its resources is that established by the United Nations Convention on the Law of the Sea, and that any claim, agreement or action of this kind as a basis for creating legal rights is regarded as wholly illegal. The content of that Declaration is legally questionable as the Convention has not yet entered into force, and even less so has it created or formulated customary law on the exploitation of the sea-bed. The Declaration, furthermore, is politically harmful because it has introduced an element of division and controversy, which is not likely to speed up the effective implementation of the Convention.

My delegation was among those which insisted that the point of view of the minority be reflected in an explanatory statement of the Chairman. Consequently, that statement contains the following paragraph:

> "I note that a number of delegations, while appreciating the preoccupation of the majority, could not give support to the declaration because of their concerns about some aspects of the substance and the effect of the declaration." (A/40/923, para. 112)

Although consensus was lacking on the Geneva Declaration, it was not removed from the draft resolution before us. We cannot fail to have the impression that the United Nations General Assembly is being used as an appeals body to increase the authority of a document whose political and controversial nature does not really square with the specific mandate of a technical Commission.

We are still of the view, here in New York as we were in Geneva, that the Declaration of 30 August 1985 will not help to dispel the concern and hesitation of States about the viability and credibility of the system, which would seem to be so difficult to set up.

We remain convinced that the Preparatory Commission wishes to succeed in the complex task entrusted to it, but to do so it must avoid any action which might

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tarnish its prestige and reduce the chances of consolidating the Convention on the Law of the Sea, and ensuring its universal acceptance as the only valid régime.

Belgium is very well aware that each and every one of us bears an enormous responsibility in the endeavour on which we have embarked. We understand the impatience, especially of the developing countries, for the rapid implementation of resolution II on preparatory investment in pioneer activities relating to polymetallic nodules. My delegation shares the view that this resolution, however important it might be, cannot be considered as an end in itself and cannot serve as a pretext to slow down or postpone the implementation of the new convention régime.

Nevertheless, it is also important not to lose sight of the fact that any precipitous action and any agreement concluded in a hasty manner will not serve the objective we have set ourselves.

In this connection the Belgian delegation would like to pay special tribute to Chairman Warioba for his patient and intelligent efforts to facilitate solutions which should enable us to solve problems among applicants whose claims to mining sectors overlap. My delegation is particularly gratified by the fact that Mr. Warioba extended the scope of his consultations with delegations and that he agreed with all interested parties that intensive efforts would be made to solve outstanding problems. All this is brought out quite clearly in the report of the Chairman to the Preparatory Commission, in document LOS/PCN/L.27 of 3 September 1985, and I should like to quote the following passage:

> "We agreed on a timetable and the procedure to be followed so as to continue consultations between now and the next session. During that intersessional period the parties concerned will meet and, as they have agreed, will make determined efforts to solve problems. They will also have a meeting with the Chairman before the next session."

There can be no doubt that this agreement does not pertain exclusively to the first group of four pioneer investors referred to in paragraph 1 (a) (i) of

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resolution II, but refers to all pioneer investors covered by that resolution. My delegation subscribes fully to this arrangement, which was already given concrete form by the negotiations of 4 September 1985 at which Belgium was represented.

We hope that such consultations will continue and that the Chairman of the Preparatory Commission will be in a position, at the beginning of the next session, to submit a detailed statement to the Commission on the progress achieved. However, should the enlarged consultations arrangement not be respected, Belgium will have to go back on the position explained in the letter which the Head of the Belgian delegation sent on 2 April 1985 to the Chairman of the Preparatory Commission, in which it is stated that disputes should be settled among all current and potential applicants before any steps are taken to implement resolution II. A solution in which all potential applicants do not participate might even discourage potential applicants who are still hesitant about acceding to the Convention.

I am emphasizing this point because of the considerable importance we attach to it, and also because the report of the Secretary-General does not seem to mention this development, which took place in Geneva last summer. The report gives the impression that there were arrangements only between the first group of applicants and Mr. Warioba. It is silent about the new fact that the second group agreed, at the request of Mr. Warioba, to seek solutions jointly with the first group and that this arrangement had already begun in Geneva.

The comments I felt compelled to make on the report do not at all affect our appreciation of the document as a whole. More than in previous years, this document is a mine of information and gives us an idea of the scope and importance of developments which have taken place on the Convention on the Law of the Sea. Furthermore, we welcome the many useful activities which the Law of the Sea team continues to carry out under the capable guidance of the Special Representative, Ambassador Nandan, whose objectivity is one of his many qualities, and I cannot conclude without expressing the profound gratitude of my delegation to him.

Mr. DJOKIC (Yugoslavia): Consideration of the item on the law of the sea is particularly important in this anniversary year of the United Nations, since the United Nations Convention on the Law of the Sea, adopted in 1982, is one of the major achievements of the work of the world Organization in the past 40 years. It is yet another convincing proof of the irreplaceable role of multilateral negotiations under the auspices of the United Nations in regulating relations in the interdependent world of the present day.

The Convention is an exceptionally important instrument not only from the legal but also from the political and economic point of view. It establishes a uniform legal régime and regulates almost all activities on three quarters of the surface of the Earth. It is the result of years of long, patient negotiations with the participation on a basis of equality of all members of the international community and reflects the interests of the majority of countries. It is, above all, the expression of their determination to ensure the existence of mechanisms for the peaceful uses of the oceans and the seas, thus reducing the areas of confrontation and contributing to the strengthening of peace and security in the world.

The universality of the Convention is reflected also in the fact that it has been signed by 159 of the countries and entities referred to in its article 305 (1).

My delegation is particularly gratified to be able to announce at this anniversary session of the General Assembly that the Assembly of the Socialist Federal Republic of Yugoslavia ratified the United Nations Convention on the Law of the Sea on 27 November this year. The instruments of ratification will soon be deposited with the Secretary-General.

From the beginning of the negotiations Yugoslavia was an active proponent of the preparation of a new Convention on the Law of the Sea. It was always our position that it should reflect new tendencies in international relations,

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particularly the concept of the common heritage of mankind and the need for the establishment of new, more just economic relations in the world. We consider that these basic requirements found their place in the compromise text that was adopted as a package deal three years ago.

As at the Third United Nations Conference on the Law of the Sea, Yugoslavia participated in a constructive spirit and in good faith, together with other developing countries and the majority of other countries, in the work of the Preparatory Commission for the International Sea-Bed Authority and the International Tribunal for the Law of the Sea.

We consider that it is necessary to speed up the negotiations in the Preparatory Commission and to create conditions for the timely application of the provisions of the Convention, particularly part XI and the appropriate annexes, following its entry into force. In order to establish the régime of the Convention, it is of crucial importance to start the process of registration of pioneer investors as soon as possible. It is above all necessary that all countries abstain from unilateral actions which could jeopardize the régime for the exploration and exploitation of the international sea-bed area established by the Convention and the related resolutions. In this connection, my delegation wishes to underline the importance of the Declaration which the Preparatory Commission adopted at its last session. It is to be expected that all countries, including those that have not yet signed the Convention, will show good will and thus contribute to the realization of what we jointly agreed here in the United Nations in 1982.

We hope that the number of 26 ratifications will soon be exceeded so that in the near future we shall reach the necessary 60. The entry into force of the United Nations Convention on the Law of the Sea would be a concrete, direct

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contribution to the strengthening of the legal order, to the safety and security of the oceans and the seas and to the preservation of the common heritage of mankind. Therefore, we whole-heartedly support the appeal in the draft resolution on which we are about to take action calling upon all States that have not done so to consider ratifying or acceding to the Convention at the earliest possible date.

Mr. van LANSCHOT (Netherlands): The Kingdom of the Netherlands is of the opinion that the United Nations Convention on the Law of the Sea constitutes, within the framework of the law of the sea, a major effort in the codification and progressive development of international law. We still hope that the Convention will become universally acceptable in the future and will thus become a useful means for promoting co-operation and stable relations between all countries. We continue to attach great importance to the goal of achieving a generally acceptable régime for the management of the world's oceans and their resources. We shall therefore vote in favour of draft resolution A/40/L.33. This, however, does not mean that my country can associate itself with each and every paragraph of that draft resolution.

The Netherlands voted in favour of the Declaration of Principles contained in resolution 2749 (XXV), which was adopted by the General Assembly in 1970 and which is mentioned in the draft resolution before us. Paragraph 9 of the Declaration of Principles states that an international régime applying to the so-called area and its resources and including appropriate international machinery is to be established by an international treaty of a universal character "generally agreed upon". This "general agreement" is, as we all know, yet to be achieved. In these circumstances it would not be correct to state that the Convention has established an exclusive régime for the area and for the exploitation of its resources. For this reason, the Netherlands delegation to the Preparatory Commission, together

(Mr. van Lanschot, Netherlands)

with some other delegations, could not support the Declaration adopted by the Preparatory Commission on 30 August 1985 and referred to in the draft resolution which is now before us. In the view of my delegation, this Declaration purports to interpret the legal effects of the Convention in a way not in harmony with an established principle of international law, namely, that a treaty or convention is binding only when it has entered into force and only in respect of the States parties to it. Our position in this respect is reflected in the statement which the Chairman of the Preparatory Commission, Mr. Warioba, read out at the time of the adoption of the Declaration. Members will find this statement in paragraph 112 of the Secretary-General's report on the law of the sea.

While part of the Convention on the Law of the Sea contains provisions that are to be considered binding because they fall within the realm of customary law, this is clearly not the case with respect to the part of the Convention relating to deep-sea-bed mining. For this reason, my delegation cannot associate itself with those paragraphs in the draft resolution which seem to present the régime relating to the Area and its resources as generally accepted by and binding on all States.

My country is one of the signatories to the Convention, which is a clear indication of the importance we in the Netherlands attach to the Convention. We sincerely hope that the Preparatory Commission will be able to reach agreement on conditions for the implementation of the sea-bed mining régime which are generally acceptable, thus enabling all States to accept the Convention eventually. For its part, the Netherlands will spare no effort in contributing to the successful outcome of the work of the Preparatory Commission.

(Mr. van Lanschot, Netherlands)

I should now like to make some comments on the Secretary-General's report on the law of the sea.

My delegation has examined with particular interest chapter V of the report, which describes the work of the third session of the Preparatory Commission, a body in which we actively participate as a member. Allow me to make a clarification with regard to paragraphs 116 and 117 of the report. Those two paragraphs deal with the implementation of resolution II.

Paragraph 116 says that the question of overlapping claims has been the subject of consultations undertaken informally by the Chairman, especially with the three applicants whose application areas in the North-East Pacific Ocean overlap - namely, France, Japan and the Soviet Union. Paragraph 117 recalls that it was decided at the Geneva meeting that these consultations would be pursued during the intersessional period. In our view, these two paragraphs are ambiguous in that they fail to specify clearly that the consultations undertaken informally by Mr. Warioba involved more applicants than those mentioned in paragraph 116.

We should like to recall that at the end of the second meeting of the Preparatory Commission in 1984 some delegations, among them the Netherlands delegation, sent letters to the Chairman of the Preparatory Commission in which they explained their position on that very question of overlapping claims which is also dealt with in paragraph 116 of the Secretary-General's report. The letter of the Netherlands delegation has been circulated as document LOS/PCN/60 of 26 April 1985. For us, the so-called Warioba understanding of August 1984 was a res inter alios acta. Given the position expressed in its letter, the Netherlands was grateful to the Chairman of the Preparatory Commission for widening the scope of his consultations by including, among others, those delegations that had sent these letters. This important development was reflected in the report of the

(Mr. van Lanschot, Netherlands)

Chairman of the Preparatory Commission as contained in document LOS/PCN/L.27, but has not, much to our regret, been reflected clearly enough in the chapter of the Secretary-General's report dealing with the implementation of resolution II.

Notwithstanding the fact that we are not very happy with paragraphs 116 and 117, we think that the Secretary-General's report as a whole is once again a well-prepared and very informative paper and we want to take this opportunity to express our appreciation to the Special Representative of the Secretary-General for the Law of the Sea and to his staff for the excellent quality of their work.

Mr. R. M. KHAN (Pakistan): On behalf of the Group of 77 of the Preparatory Commission for the International Sea-Bed Authority and the International Tribunal for the Law of the Sea, I have the privilege and the honour of making a statement on agenda item 36, "Law of the sea".

The General Assembly has before it the draft resolution circulated in document A/40/L.33. This is the third year that the Assembly has addressed itself to such a draft resolution.

The draft resolution, secured through intensive negotiations, represents a compromise. The Group of 77 has accepted it once again in a spirit of co-operation and accommodation, despite the fact that it falls short of the reasonable and justifiable expectations of the Group. In supporting the draft resolution on behalf of the Group of 77 of the Preparatory Commission, I wish to give the background of the process which led to the adoption of the Convention, with a view to highlighting the principles to which the Group attaches vital importance. I would comment also on some recent developments that threaten to undermine the régime - which is a matter of deep concern to the Group.

The General Assembly adopted, in 1970, the Declaration of Principles that proclaimed, inter alia, that

(Mr. R. M. Khan, Pakistan)

"The sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction ..., as well as the resources of the area, are the common heritage of mankind". (resolution 2749 (XXV), para. 1)

That resolution was adopted without a dissenting opinion, which indicated beyond any doubt the importance attached to this principle by the international community.

The Declaration of Principles solemnly proclaims the principles of international law applicable to the common-heritage area and prohibits any State from exercising sovereignty or sovereign rights over any part of the area. No State or person, natural or juridical, is legally entitled to claim, exercise or acquire rights with respect to the area or its resources incompatible with the international régime to be established and the Declaration of Principles. Consequently, even before the adoption of the Convention, the area was protected against national appropriation, claims and the exercise of rights.

The Declaration was followed by the holding of the Third United Nations Conference on the Law of the Sea, which entailed extensive negotiations, with universal participation and vast investment in terms of time, money and patience.

The adoption of the Convention in 1982 was thus the cherished outcome of an unprecedented human endeavour in codifying international law on the seas.

With that background, it is hardly necessary for me to emphasize the fact that it is this Convention which establishes the legal régime for the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction, as well as the resources of the area. The fact that there have been 159 signatures and 25 ratifications in this short period since the adoption of the Convention testifies to the significance and universality of the Convention. The Group of 77 therefore reaffirms its position in categorical terms that it considers the Convention to be the only legal régime governing all activities in the area. Any

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other basis for asserting rights will have no legal authority and must be firmly rejected. The Convention confirms the principle of common heritage of mankind and lays down an elaborate system for the governance of the resources found within the area which constitutes the common heritage. The very title and the concept make it amply clear that the area and its resources are the common property of the international community and cannot be claimed and exploited by a State or a group of States outside the régime of the Convention. Any State or States assuming such a right would do so in violation of the rights of the international community. The Group has not recognized and will not recognize or acquiesce in such claims or actions undermining or defeating the international régime set forth in the Convention for the area.

In this context, the Group of 77 has noted with deep concern a serious development. In the course of the past year two States have issued licenses to their consortia permitting the exploitation of resources of the area which constitutes the common heritage of mankind, and we believe that one other State is preparing to follow suit. Although these States had accepted the common-heritage principle as contained in the Declaration of 1970, they continued to demand concessions for the sake of general agreement. The Group exercised maximum flexibility to accommodate their demands and made important concessions, in the hope that the ultimate instrument would meet the acceptance of those States also. To our dismay, the recipients of such privileged treatment still decided to remain out of the régime. Not only that: they have now taken practical steps to undermine this régime.

(Mr. R. M. Khan, Pakistan)

We are greatly concerned at this gross disregard of the principle to which the Group attaches the highest importance. We voiced that concern in a Declaration adopted by the Preparatory Commission at its session held in Geneva this year.

The issuance of licences, in disregard of the principle of the common heritage of mankind, undermines the Convention's régime and runs counter to the position of the 159 signatory States. While we reaffirm our resolve to work for upholding the Convention's legal régime, we express the hope that those States will not allow the situation to deteriorate to a point which would lead to the total erosion of the order which has been painstakingly established through the Convention. Simultaneously, we hope that they will show deference to the objectives espoused by the signatories to the Convention for the peaceful uses of the oceans.

We attach great importance to the activities of the Preparatory Commission. We note with satisfaction the efficiency with which the Commission has continued its work and the progress it has achieved so far. We are confident that the Commission will be able to formulate rules for the registration of pioneer investors. We also hope that the problem of the overlapping of pioneer areas will soon be resolved. I take this opportunity to assure the Assembly that the Group of 77 of the Preparatory Commission has worked single-mindedly, and will continue to do so, for the early accomplishment of the tasks before the Commission.

We have taken note with interest of the report submitted by the Secretary-General on activities relating to the law of the sea and of the major programme on marine affairs carried out in 1985, as set forth in chapter XXV of the medium-term plan for the period 1984-1989.

We commend the manner in which those activities have been carried out by the Office of the Special Representative of the Secretary-General for the Law of the

(Mr. R. M. Khan, Pakistan)

Sea. I acknowledge, with appreciation, the effective work and support extended by the Office of the Special Representative in providing assistance and advice to many delegations and intergovernmental bodies and meetings.

In conclusion, allow me to state once again that the draft resolution before the Assembly is the product of a compromise; it does not reflect fully the strong views that the Group of 77 holds on actions in regard to the Area. Each year there have been actions militating against the régime established by the Convention which call for a strong reaction from the Group; nevertheless, the Group has exercised moderation with a view to preserving the integrity of the régime which is in the interest of all signatory States. We firmly believe that all signatory States have a duty to protect and strengthen the régime and oppose any action that would undermine it.

Mr. KIRSCH (Canada): Canada continues to see in the Convention on the Law of the Sea the only viable means by which to bring certainty, stability and international co-operation to the law of the sea. Although the goal of a universally acceptable régime for the management of the world's oceans and their resources has unfortunately not yet been achieved, we are greatly encouraged by the work that the Preparatory Commission accomplished this year.

Largely as a result of the availability of detailed papers by the Preparatory Commission's secretariat, the Preparatory Commission has been able to focus in 1985 - perhaps for the first time - on a number of concrete issues in the various areas of its work. In some of those areas, through the continued co-operation of all participants and observers, the number of issues to be addressed has been signficantly narrowed and the remaining unresolved issues have been more clearly identified.

(Mr. Kirsch, Canada)

Rather than comment in detail on the progress of work in the plenary and the various commissions - which is described concisely and accurately in the latest report of the Secretary-General (A/40/923) - I shall emphasize here the realistic and constructive spirit in which most of the Preparatory Commission's activities took place this year.

It is clear that participants have begun to develop a better understanding of each other's positions and of the various objective constraints under which the Preparatory Commission is operating. It is also increasingly appreciated that those constraints are bound to have a practical impact on our approach to the mechanisms and rules to be put in place if we are to develop a comprehensive régime which will actually benefit all mankind. The increasing spirit of co-operation that is being demonstrated within the Preparatory Commission is for us a cause of great satisfaction and optimism. It is indeed the only possible approach if the process is to lead to a large number of ratifications of the Convention, including those of signatories with interests in sea-bed mining, and to attract the participation of those who have remained ouside the system so far.

In this connection, for Canada it is a continuing source of regret that some States are still not participating in the development of a sea-bed mining régime under the Convention on the Law of the Sea. We hope that those States will eventually reconsider their position and, as a first step, share with the Preparatory Commission the considerable expertise that they possess and from which the international community would benefit immeasurably. It is a fundamental tenet of Canada's position that truly universal participation in the law of the sea system is essential if the sea-bed régime is to function effectively for the benefit of all mankind and if the Convention on the Law of the Sea as a whole is to

(Mr. Kirsch, Canada)

serve as a generally recognized and uniformly applied legal régime - a régime that the international community clearly requires in the long term.

The Preparatory Commission itself, however, does not always take positions that are necessarily conducive to such an outcome. The report of the Secretary-General gives prominence in its section V on the work of the Preparatory Commission to a Declaration that was adopted on 30 August 1985. We understand the reasons that led some States to submit that Declaration for adoption by the Preparatory Commission at its Geneva meeting. Nevertheless, my delegation does not consider the adoption of that instrument - which a number of delegations could not support - as beneficial either to the Preparatory Commission process or to the Convention on the Law of the Sea as a whole.

(Mr. Kirsch, Canada)

In our view, this type of action may undermine our collective efforts to achieve through our substantive work a régime that is viable and universally acceptable. We are concerned that such statements, which contain legally questionable and politically unwise elements, may contribute to widening the gap between those who have signed or ratified the law of the sea Convention and those who have not and, equally important, to creating increasingly difficult problems for some of the signatory States that are currently making every effort to make a positive contribution to the law of the sea system through their substantive, legal and political support.

The last element I wish to touch upon this morning in this debate is the general question of the resolution of overlapping claims and the registration of the applications of pioneer investors. This question is not within the mandate of the Preparatory Commission. It is the responsibility of the pioneer investors themselves. The resolution of overlapping claims is nevertheless of direct interest to the Preparatory Commission since it is a prerequirement for registration. My delegation welcomes the efforts that have been made so far by all the signatory States that are identified as pioneer investors or prospective certifying States in resolution II in order to develop a comprehensive approach to the resolution of overlapping claims. We particularly welcome the fact, noted in the report of the Chairman of the Preparatory Commission but overlooked in the report of the Secretary-General, that consultations on these questions have now been widened. My delegation also wishes to express its particular appreciation to the Chairman of the Preparatory Commission, Mr. Warioba, now Prime Minister of the United Republic of Tanzania, for the demanding but highly constructive role he has been playing and continues to play in that process.

(Mr. Kirsch, Canada)

We express the hope that these efforts will be pursued with due diligence, taking into account the absolute necessity to achieve a settlement that is acceptable to all especially interested States and, of course, to the Preparatory Commission as a whole. This is an extremely difficult enterprise, which must be conducted with great care and deliberation to be successful. While recognizing and encouraging the early settlement of this question - and of registration itself - so that the Preparatory Commission can fully carry out all parts of its mandate, we wish to inject here a note of caution against the temptation to apply undue pressure on this process, pressure which could lead to hastily reached decisions and have counter-productive effects. Sea-bed mining is still a long way ahead, largely for economic reasons. There is no real reason now to impose artificial deadlines. Patience and prudence are required now, but are likely, in our view, to pay a handsome dividend in the long run.

The work of the Preparatory Commission this year has been the best and the most productive so far. My delegation is encouraged by this development and expresses the hope that efforts in the same direction will continue and that any action that might undermine these efforts will be carefully avoided in the future.

Mr. JESUS (Cape Verde): The great importance of the 1982 United Nations Convention on the Law of the Sea has been highlighted time and again, as it has been also by the speakers today, and its adoption has been presented as an example of what can be achieved in complex international negotiations when States are politically motivated to find a peaceful solution for collective problems. Portrayed as the most important legal instrument after the Charter ever negotiated by the international community, the Convention undeniably, as is stated in its very preamble, is "an important contribution to the maintenance of peace, justice and progress for all peoples of the world". This, in addition to the fact that the

(Mr. Jesus, Cape Verde)

Convention established a balanced protection of the various interests of different countries, explains the overwhelming and unprecedented support that it has enjoyed since the very first day it was opened for signature.

This success did not come about easily, as we may be led to believe. The record and the history of the Conference which negotiated the Convention bear witness to the fact that it was the result of painstaking efforts and of a complex network of mutual concessions. In this sense, the Convention is in fact an instrument which protects the interests of all of us and represents the best compromise possible for the different national claims and interests. It is therefore incumbent upon us, the international community in general and the signatories to the Convention in particular, to do our utmost to defend and strengthen it since, under the present circumstances, it provides the only framework for the peaceful use and exploitation of the resources of the oceans.

Following the adoption, without dissent, of resolution 2749 (XXV) of the General Assembly, which declared the area of the sea-bed and the ocean floor beyond the limits of national jurisdiction, as well as the resources of that area, to be the common heritage of mankind, the Convention on the Law of the Sea established an international régime to govern the exploration and exploitation of the common heritage resources. I am sure there is no need to remind members of the Assembly of the important, and I would say decisive, role played by the developed countries in the negotiation of that régime, and I abstain also from reminding members of the enormous amount of flexibility shown by developing countries during the "quid pro quo" process which led to the régime of the common heritage of mankind. That is why we would have hoped that, in accordance with good faith in the negotiations, no nation would question the validity of the compromise achieved during the negotiation of the sea-bed régime. This is all the more so for those countries

(Mr. Jesus, Cape Verde)

which have signed the Convention and are, therefore, legally banned by the Vienna Convention on the Law of Treaties, not to take any action at the national or international level which might jeopardize or defeat the purposes of the Convention. Some views have been voiced here today - not totally new to us - in which representatives of some signatory States, instead of defending the Convention from attempts to undermine it as their signatory status would seem to imply, have rather shown complacency for those who, by facts and deeds, have created some difficulties and brought about some legitimate concerns to the majority of the international community.

(Mr. Jesus, Cape Verde)

These concerns were justifiably the object of a Declaration adopted at the last Geneva meeting of the Preparatory Commission, the content of which has been questioned by some countries on legal grounds. We ourselves could argue in favour of the legality of such content. That, in fact, was the point. It seems to us, however, that the real problem resides elsewhere.

What astonishes us is that those who are against the Geneva Declaration are those who are supposed to support the Convention, because of their signatory status. One must bear in mind that the interests of all nations in maritime affairs must be taken care of equally and that their protection should not be predicated upon the level of development or the economic or military strength of countries. The rule of law, dear to us all, particularly those who legitimately fly high the flag of democracy as a supreme value, should at all times govern our actions and deeds. And the rule of law here is respect for the principle of the common heritage of mankind, today considered a principle of customary international law. Therefore, States should refrain from claiming, exercising or acquiring rights with respect to the Area and its resources except in accordance with the international régime set forth in the Convention. Even if one does not agree with the premises or specifics of the sea-bed régime or is not a party to the Convention, one is therefore bound to respect the common heritage principle and, as a consequence, its corollary, which prohibits national appropriation of the resources of the Area.

I have heard here today arguments according to which the United Nations Convention on the Law of the Sea does not establish the only international legal régime for the international sea-bed. To my delegation and to the overwhelming majority of countries part XI of the Convention and the related annexes are the sole régime for the international sea-bed. This position is totally in accordance with the 1970 Declaration of Principles, which, as already stated, after declaring

(Mr. Jesus, Cape Verde)

the Area and its resources the common heritage of mankind, affirming that no State or person, natural or juridical, shall claim, exercise or acquire rights with respect to the Area or its resources incompatible with the international régime to be established. That régime, as we all know, was negotiated at the Third United Nations Conference on the Law of the Sea and is contained in the Convention. Therefore, other régimes would be in contradiction with the Declaration of Principles; they should not be recognized and their establishment should be discouraged.

It is no secret that some countries have attempted to undermine the principle of the common heritage of mankind as applied to the sea-bed beyond national jurisdiction and the régime therefor established in the Convention. We, along with the overwhelming majority of countries, consider this to be a dangerous path which, if it were followed, could lead only to confusion and open conflict, thus endangering international peace and security. We hope that those that still nurture that kind of tendency will understand that we are better off with the Convention whatever its shortcomings, than without it. I am sure that if all the action of signatories is consistent with their legal obligation not to undermine the Convention, we shall succeed in giving effect to this peaceful framework for co-operation in the use and sharing of the oceans as set forth in the United Nations Convention on the Law of the Sea. By so doing we shall be preserving our planet from being engulfed in conflicts which instead of co-operation would bring destruction to us all.

We are glad to see the work of the Preparatory Commission for the International Sea-Bed Authority and the International Tribunal for the Law of the Sea being advanced. Step by step the tasks entrusted to the Preparatory Commission have been carried out in a positive way which gives promise of a successful final result. We are fully aware of some of the difficulties posed by the implementation

(Mr. Jesus, Cape Verde)

of the pioneer régime, including the registration of pioneer investors. We think, however, that those difficulties are surmountable if real efforts are made by those directly interested in that régime and in registration. For our part, we pledge our full co-operation in helping to achieve a satisfactory result within the framework of the Convention and resolution II.

We are also pleased by the commendable efforts being made by the United Nations Office for the law of the sea.

In this regard it is with great satisfaction that my delegation takes note of the various and manifold forms of maritime activities referred to in the report presented to us by the Secretary-General. Those activities being carried out by Governments and various organs and bodies of the United Nations system clearly demonstrate that the Convention provides a realistic legal régime the implementation of and respect for which does not have to wait for its entry into force. In fact, the success of the United Nations Convention on the Law of the Sea depends on its responsiveness to the changing needs of the world. So far the Convention has proved adaptable to the changing needs of the management of the oceans.

Draft resolution A/40/L.33, is, as stated by the representative of Kenya here today, a compromise between the interests of different countries and groups of countries. Certainly it does not take fully into account the position of developing countries, since it was designed to be a draft resolution which could command the support of all signatories to the Convention. In the process of its negotiation a great deal of flexibility and accommodation was displayed by the developing countries with the aim of strengthening the prospect of co-operation among all countries in maritime affairs within the legal framework set forth in the Convention. This openmindedness, which has been characteristic of the developing countries throughout the negotiations in the Third United Nations Conference on the

(Mr. Jesus, Cape Verde)

Law of the Sea, and in the ongoing negotiations in the Preparatory Commission, must be reciprocated in the same degree for the benefit of all.

Mr. HAYASHI (Japan): At the outset, my delegation would like to express its deep appreciation to the Secretary-General and his Special Representative for the Law of the Sea, Mr. Safua Nandan, for preparing the report in document A/40/923. The report covers in a comprehensive manner recent developments relating to the Convention on the Law of the Sea, as well as the activities of the law-of-the-sea secretariat. In addition to being an extremely useful source of information, it is excellent testimony to the valuable work being undertaken by the law-of-the-sea secretariat in numerous aspects of the law of the sea.

I should like to take this opportunity to pay a high tribute to Mr. Jo Warioba, the Chairman of the Preparatory Commission, for his able leadership of the Commission and the tireless efforts he has been making in contributing to solving the difficult issues before it. We also wish to congratulate him most sincerely on his recent assumption of the post of Prime Minister of his country.

My delegation did not intend to participate this morning in the debate on this item. However, in view of the statements made by certain delegations concerning the Preparatory Commission's Declaration of 30 August 1985, my delegation feels obliged to make the following brief statement.

As indicated in the footnote to operative paragraph 5 of the draft resolution before us, the Declaration of 30 August must be looked at together with the statement which the Chairman made at the time of its adoption. That statement, reproduced in paragraph 112 of the report of the Secretary-General (A/40/923), recalls a particularly unique situation in which, after difficult and delicate negotiations, the Preparatory Commission was able to approve the document. As the Chairman stated, "a number of delegations" - and that included my own - "could not give support to the declaration".

(Mr. Hayashi, Japan)

It is one thing, and no one can deny it, for the Preparatory Commission to be conducting its business on the assumption that the United Nations Convention on the Law of the Sea will become the sole régime applying to the deep-sea-bed Area. It is quite another, however, to argue that the Convention has established under international law the only régime valid, erga omnes, with respect to the Area.

My Government has been making its best efforts in the Preparatory Commission with a view to securing universal acceptance and effective functioning of the Convention so that a situation may be brought about in which the Convention enters into force with the blessing of the entire international community as the only really workable régime for the deep-sea-bed Area.

Only through our joint genuine efforts to achieve that goal can the international community attain a truly viable and universal régime for the sea-bed and its resources. This is exactly what is needed today in the Preparatory Commission. It would be really regrettable if the confrontation which has surfaced recently led to the disruption of such co-operative efforts.

The PRESIDENT: We have heard the last speaker in the debate on this item. I shall now call on those representatives who wish to explain their vote before the voting on draft resolution A/40/L.33. I remind delegations that, in accordance with General Assembly decision 34/401, explanations of vote are limited to 10 minutes and should be made by delegations from their seats.

Mr. ALBORNOZ (Ecuador) (interpretation from Spanish): Ecuador has not signed the Convention on the Law of the Sea because it does not fully reflect the fundamental rights and interests of Ecuador. However, Ecuador contributed to a large extent, together with developing coastal countries, to the formulation and inclusion of important principles in support of their rights, especially those pertaining to the existing living natural resources of their seas up to a 200-mile limit, regardless of custom, as long as the species are in their marine

(Mr. Albornoz, Ecuador)

environment, as well as their sea-bed under national jurisdiction. Ecuador has also consistently reiterated and continues to reiterate its position of solidarity concerning the right to exploit and use for the purposes of trade, according to the principle of the common heritage of mankind, of marine zones beyond the national jurisdiction of coastal countries. Therefore, we cannot accept any unilateral exploitation that would weaken that principle directly or indirectly.

Consequently Ecuador will not participate in the voting on the draft resolution on the law of the sea.

Mr. GUNEY (Turkey) (interpretation from French): The views and position of the Turkish Government on the Convention on the Law of the Sea are well known. They were given on several occasions and are to be found in the official documents of the Third United Nations Conference on the Law of the Sea.

That Conference was convened with a view to achieving, through codification and progressive development, a complete, viable régime generally acceptable for the law of the sea. Turkey, for its part, throughout the Conference spared no effort in order to achieve that goal. It is regrettable none the less that the final result of the Conference, the Convention on the Law of the Sea as a whole, did not meet the wishes of the international community, nor did it command a consensus of all States taking part in the Conference, since the Convention was voted upon and was adopted by a majority vote.

While we note that some provisions of the Convention do not fully reflect the rights and basic interests of our country, the delegation of Turkey, along with some other States, was compelled to vote against the Convention, and the Turkish Government's position with regard to the Convention on the Law of the Sea remains unchanged. On the basis of that position of principle, Turkey voted against resolutions 37/66 of 3 December 1982, 38/159 of 14 December 1983 and 39/73 of 13 December 1984. It will do the same for the draft resolution in document A/40/L.33.

As for the financial and budgetary implications of the draft resolution, the Turkish delegation opposes, and opposed in the Fifth Committee, the inclusion of the budget of the Preparatory Commission in the overall budget of the United Nations. We believe that expenditures involved in the implementation of this Convention, including the costs of financing the Preparatory Commission on the Law of the Sea, are not the financial responsibility of the United Nations, as understood in paragraph 2 of Article 17 of the Charter. They should not,

(Mr. Guney, Turkey)

therefore, be included in the overall budget of the United Nations but should be borne by the signatory States or States Parties to the Convention in question.

The PRESIDENT: The Assembly will now begin the voting process and take a decision on draft resolution A/40/L.33, to which Congo has added its name as a sponsor. A recorded vote has been requested.

A recorded vote was taken.

In favour: Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burma, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic Kampuchea, Democratic Yemen, Denmark, Djibouti, Dominican Republic, Egypt, El Salvador, Ethiopia, Fiji, Finland, France, Gabon, Gambia, German Democratic Republic, Ghana, Greece, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Philippines, Poland, Portugal, Qatar, Romania, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Tanzania, Uruguay, Vanuatu, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe

Against: Turkey, United States of America

Abstaining: Germany, Federal Republic of, Israel, Peru, United Kingdom of Great Britain and Northern Ireland, Venezuela

Draft resolution A/40/L.33 was adopted by 140 votes to 2, with 5 abstentions (resolution 40/63).*

The meeting rose at 1.40 p.m.

*Subsequently the delegations of Guatemala and Papua New Guinea advised the Secretariat that they had intended to vote in favour.