

DOCUMENT A/CONF.62/L.89

Report of the Chairman of the Drafting Committee

[Original: English]
[26 March 1982]

1. During the first stage (8-26 March) of the eleventh session the Drafting Committee continued its article-by-article textual review of the draft convention on the law of the sea (A/CONF.62/L.78).²¹

2. During this stage of the Conference there were 61 meetings of the language groups, 3 meetings of the co-ordinators of the language groups under the direction of the Chairman of the Drafting Committee and 1 meeting of the Drafting Committee.

3. The language groups have worked intensively on annexes III and IV. The review of these provisions has posed some serious problems for the Drafting Committee. One such difficulty is that the provisions of these annexes are of a detailed and complex nature. In reviewing these provisions the Committee was faced with the necessity of making choices between terms such as: "areas" and "sites"; "plans of work" and "contracts"; "operator" and "contractor"—all of which entailed substantive implications, both technical and legal. The absence from the Drafting Committee of many of the delegates who participated in the negotiations of these articles has impeded the progress of the Committee.

4. A further difficulty is that the Drafting Committee is now being requested to hasten the pace of its work just when

it is reviewing some of the most novel, technical and complex provisions of the draft convention. It should be recalled that in my capacity as Chairman of the Committee I stated *inter alia* at the 14th meeting of the General Committee at the fourth session of the Conference that I hoped "that every effort would be made to avoid referring drafting problems to the Committee at the last moment under great pressure. The Drafting Committee should not be asked to accomplish its work hurriedly".²¹

5. It is recommended that the work of the Drafting Committee continue during the second stage of the Conference (29 March-1 April) with a view to the early completion of its work on annexes III, IV, VI, VII and VIII, Parts XVI and XVII, preamble, article I and the transitional provision followed by the necessary meetings of the co-ordinators of the language groups and the Drafting Committee.

6. It should be noted that, pursuant to the decision taken by the Conference on 28 August 1981 (A/CONF.62/116),²² it is required that the plenary Conference process the Drafting Committee's report by 12 April. This will clearly require further intensive work by the Drafting Committee under severe time constraints.

²¹ *Ibid.*, vol. XV (United Nations publication, Sales No. E.83.V.4).

²² *Ibid.*, vol. V (United Nations publication, Sales No. E.76.V.8).

DOCUMENT A/CONF.62/L.90

Report to the plenary Conference on the recommendations of the Drafting Committee by the Chairman of the Drafting Committee on behalf of the President and the Chairman of the First Committee

[Original: English]
[26 March 1982]

At two informal meetings of the plenary Conference held on 12 and 15 March 1982, consideration was given to the recommendations of the Drafting Committee on articles 147 to 185 of the draft convention on the law of the sea (A/CONF.62/L.78).²¹

The recommendations of the Drafting Committee approved during the informal plenary meetings at the eleventh session of the Conference are set out in the addenda to the report of the Drafting Committee (A/CONF.62/L.85/Add.1 to 8), as amended by document A/CONF.62/L.85/Add.9, together comprising approximately 1,100 recommendations.

DOCUMENT A/CONF.62/L.91

Report of the Chairman of the First Committee

[Original: English]
[29 March 1982]

1. The programme of work adopted by the Conference at its 154th plenary meeting on 28 August 1981, contained in document A/CONF.62/116,²¹ prescribed that the first three weeks of the session be dedicated to continuing consultations and negotiations on pending issues. It was clear that every effort must be made to terminate the existing systems of negotiations with a view to facilitating the process of final decision-making and the adoption of a convention on the law of the sea.

2. At this critical juncture in our long and arduous endeavours, I feel duty-bound to present a report that clearly illuminates the results of our negotiating effort, in order to promote rational decisions by this Conference.

3. I should like to state from the outset that since the tenth session, no time or effort has been spared in a collective search for compromises, especially on outstanding issues, to widen still further the existing consensus contained in the present draft convention. The main driving motivation has

been the accommodation of diverse national, regional and global interests in the pursuit of a universally recognized international law of the sea.

4. The Collegium encouraged the President of the Conference to convene intersessional consultations in New York from 16 February to 2 March 1982. I had the honour of assisting him in conducting consultations on outstanding issues before the First Committee. I was particularly encouraged by the productive nature of the exchange of views which opened an important door for the negotiations just concluded last week. I wish to seize this opportunity to express my deep appreciation first to the President for his dedication and leadership; to the many delegations who attended, for their continued dedication to our common cause; and to the Special Representative of the Secretary-General and his indefatigable staff and experts, for the valuable services rendered.

5. The First Committee held two formal meetings on 9 March 1982 and 29 March 1982. During the first formal meeting, the Special Representative of the United Nations Secretary-General introduced a preliminary report entitled "Possible impact of the Convention, with special reference to article 151, on developing countries which are producers and exporters of minerals to be extracted from the Area", contained in document A/CONF.62/L.84 of 2 March 1982. Upon the request of the delegation of Zambia, the First Committee requested the Secretary-General to prepare an addendum to this preliminary report containing calculations of production ceilings under assumptions provided by the delegation of Zambia. The addendum, contained in document A/CONF.62/L.84/Add.1, was subsequently issued on 16 March 1982.

6. The second formal meeting received the report of the co-chairmen of the working group of 21, that is, the President of the Conference and the Chairman of the First Committee (A/CONF.62/C.1/L.30 of 29 March 1982).

7. The working group of 21 held 11 meetings to address the pending issues before it. I shall now attempt a brief commentary on the results of the consultations and negotiations on each of them. I also intend to place in perspective other issues brought before the First Committee and the working group of 21, notable among which were the United States proposals for amendments to the draft convention, namely the Preparatory Commission and the treatment of preparatory investments.

8. The report of the co-chairmen of the working group of 21 to which I have referred provides sufficient information on the results obtained from the negotiations on these two topics. I would strongly commend the recommendations therein as providing a sufficient basis for widespread support and possible consensus.

9. The proposals attempt in the first instance to meet the concern of the industrialized States for protection of preparatory investments by existing pioneers in the field. They also respond favourably to the issue of direct access to the resources of the Area, which is considered to be of critical importance to the industrialized States and the mining companies.

10. The special status accorded the pioneer investors also resolves a nagging problem of an early start to sea-bed mining processes both for mining companies and for the Enterprise. They also clear the way for orderly access to finance and technology for the Enterprise without the headaches and apprehensions expressed in the past.

11. The proposals provide for dispute settlement by the pioneers themselves with regard to identification of mine sites, thus adopting the central theme of those States with national legislation which desired separate agreements in declared apprehension of conflict among them. If the assertions made to the Conference to justify such agreements contain the whole truth, then I would venture to state that the arrange-

ments proposed under the present draft resolution (*ibid.*, annex I) make such a contemplated agreement unnecessary. The productive results of our collective endeavours on this subject clearly justify the appeal of the President of this Conference to the four States not to proceed with signing the agreement before the end of negotiations here.

12. The draft resolution on the Preparatory Commission has been modified to take account of the functions made imperative by the resolution of the treatment of preparatory investments (*ibid.*, annex II). Some consequential changes may also have to be made to article 308, as indicated in the report of the co-chairmen of the working group of 21.

13. My report at the end of the tenth session (A/CONF.62/C.1/L.29) drew attention to the grave problems faced by certain developing countries with regard to the production policies contained in the draft convention and especially the fundamental objectives expressed in article 150.

14. In that report, I pointed out that although we may have found a solution through the provisions of article 151, paragraph 4, time was an important factor and those States which were likely to be adversely affected would like to see machinery for an investigation set up or a study already under way before the full impact of sea-bed mining affects their industries. I suggested that the Preparatory Commission be involved in such a study, and that the States affected be closely associated both in drafting the terms of such an investigation and in the composition of such a study group.

15. I am happy to announce that the negotiations produced a proposal to the effect that the Preparatory Commission be entrusted with such responsibility. The proposal on that Commission now gives it the power to undertake such studies (paragraph 5 (i)).

16. It was also proposed by the Group of 77 (WG.21/Informal Paper 23) that article 163, paragraph 4, should have an additional sentence: "Members of the Economic Planning Commission shall include at least two representatives from the developing land-based producers." As this relates to the main body of the draft convention, I would recommend its consideration with a view to assessment of the degree of widespread support.

17. I must indicate here that the delegations of Gabon, Zaire, Zambia and Zimbabwe did not consider those proposals to be sufficient. They pointed to the lack of a necessary link between the recommendations that the Preparatory Commission proposed and a specific duty on the part of the Authority itself in that regard. They would feel happier if a provision were made in the body of the draft convention for the Authority to set up a compensation fund based on the recommendations of the Preparatory Commission. This would appropriately be expressed either in article 151, paragraph 4, or under the powers and functions of the Assembly in article 160. It was not possible to obtain consensus on that issue and I am accordingly presenting this aspect for the judgement of the plenary Conference.

18. The Australian delegation announced that the issue of unfair economic practices was still the subject of continuing consultations and consequently the working group of 21 did not deal with it appropriately.

19. The issue presented by certain medium-sized industrialized countries with regard to representation in the Council was brought before the working group of 21. The delegation of Sweden presented an informal proposal which he stated was sponsored by Austria, Finland, Greece, Portugal, Spain, Sweden, Switzerland and Turkey (document WG.21/Informal Paper 19 of 25 March 1982). The proposal called for the addition of one member from a developing country under category (d) for a total of seven members under this category; and the addition of one member under category (e) for a total of 19 members under this category.

The countries of Eastern Europe (socialist) would have at least one and other geographical regions at least two members elected under this subparagraph. They argued that the proposal would give a more adequate representation to the countries concerned and maintain a fair overall equitable geographical distribution of seats.

20. I am unable to report any consensus on this nagging issue, although much sympathy was expressed for the plight of those concerned. The substance is not just one of a sheer numbers game; it must be considered in the light of the balance in article 161, paragraph 1, as well as the consequences in the voting system in the Council contained in paragraph 7 of the same article. It would appear to me that the next alternative would be to increase the size of the Council to 48, but this has often been condemned on the grounds of efficiency.

21. Finally, I wish to address the event of the United States' return to the negotiating table this year. I believe that it is imperative to place in proper historical perspective the chronology of that return, with a view to fostering objective appraisal of the current situation at this Conference.

22. We all recall that shortly after its installation, the new United States Administration in Washington decided to undertake a comprehensive review of the draft convention, contained in document A/CONF.62/L.78.²¹ Consequently, during the entirety of the year 1981, that nation's delegation would not, on instructions, participate in our negotiations. They were to inform the resumed tenth session that, as part of the continuing review, they had come merely to consult with the membership of the Conference on perspectives developing in Washington which were adverse to the provisions contained in the informal draft convention. The purpose was, according to United States Ambassador Malone, to test the negotiability of those perspectives.

23. It is important to note at this juncture that these requests were being addressed to a Conference that had decided on a winding-up programme for its work, with a view to adopting a universal convention at its next session and the United States delegation to the Conference at its ninth session declaring a firm determination to oppose any changes to the informal draft convention. An already protracted Conference was, however, to stretch its patience and understanding unprecedentedly, virtually suspending any serious negotiations during the tenth session.

24. Full hearing was to be given to the United States delegation in spite of the programme of work. The perspectives presented showed clearly that the same old proposals that the Conference received from the United States at the first working session in Caracas were being revived, as if nothing had happened since in the negotiating process. At the end of the resumed tenth session, the United States delegation was to return to Washington expressing satisfaction with that hearing. The rest of the Conference shared in the conviction that the Americans were leaving Geneva with a tremendous reservoir of the knowledge and content of the reactions of other delegations. They were assured by the Americans that these would be taken into full account in their review process.

25. On 29 January 1982, President Reagan would announce publicly that his nation was returning to the negotiations determined to work with other nations at the Conference "to achieve an acceptable treaty". The review had been completed and, looking ahead, the President declared the United States commitment "to the multilateral treaty process for reaching agreement on the Law of the Sea".

26. The news received the welcome it deserved, even if enthusiasm for optimism was tempered with mature caution. United States Ambassador Malone's impression from his Conference contacts was that there had been "widespread

appreciation of the President's commitment to the multilateral treaty process".²³

27. This commitment was considered by most to be overriding. The declarations encouraged the Conference leadership, as well as participating member nations, to conclude that the six broad topics that the President categorized as containing "unacceptable elements" would be introduced to the Conference in a manner reflecting full cognizance of the results of the frank exchange of views with delegations in Geneva. It may well explain the large attendance at the inter-session consultations held in New York during February 1982.

28. Two interpretations could have been placed on the President's conditions for supporting the treaty. The first was that it was an ultimatum, setting out hard, inflexible terms, touching substantive issues, all of which had to be satisfied by the Conference as a price to be met for United States participation. The second was that it was an appeal for understanding, suggesting many adjustments to the draft convention within the parameters of the existing packages recognized in it. The President of the Conference and I, as Chairman of the First Committee, remained with faithful optimists in presuming the latter interpretation.

29. On 24 February 1982, the United States delegation was to circulate a 43-page document entitled "Approaches to major problems in Part XI of the draft convention on the Law of the Sea". Its purpose was introduced as to explain the problem the United States has identified with Part XI of the draft convention, to share with other delegations the range of solutions the United States had reviewed and, primarily, to elicit the advice and suggestions of others as to how best to solve those problems in the interest of developing a universally acceptable convention. It was explained that the United States was "anxious to be as flexible as possible consistent with the fulfilment of President Reagan's objectives".

30. The document addressed eight problem headings, viz. decision-making, review conference, access system, technology transfer, production limitations and policies, the Enterprise, national liberation groups, and what was called "grandfather right".

31. Once again, the United States would, in introducing this document, "solicit and welcome the view of other delegations . . . to enable us better to refine and narrow our proposals for change to Part XI". Delegations were assured that the United States did not want to delay the work of the Conference and encouraged speedy and conclusive negotiations.

32. As a result of consultations by which they obtained such views, the United States presented to a specially convened informal meeting of the First Committee on 10 March 1982 a document now generally referred to as the "Green Book", after the colour of its cover (WG.21/Informal Paper 18). It contained a multiplicity of sweeping amendments touching all the sections of Part XI and annexes II and III. The capacity of the optimists dwindled steadily and, for us, embarrassingly.

33. It was the general view at the Conference that the document called into question all substantive matters in Part XI, showing no visible evidence of the results of consultations with delegations to date. A second informal meeting of the First Committee on 12 March 1982 gave open confirmation of the reactions of delegations, which had already been liberally and frankly given in private to the United States delegation. Apart from varying degrees of solidarity expressed by some industrialized countries, all the other interest groups represented, including many Western countries, expressed the view that the "Green Book" could not possibly provide a good basis for negotiations.

²³ Speaking at the Law of the Sea Symposium, Boalt Hall School of Law, University of California on 20 February 1982.

34. The question was raised again whether the release of the contents of the "Green Book" was not an indication that the United States indeed wanted to delay the work of the Conference for many years to come. It became increasingly difficult to allay fears concerning the scope of the United States commitment to the treaty process. Speaking on 11 March 1982 at an informal meeting of the First Committee, Mr. Ratiner, an experienced United States representative, was to attempt to reassure the Conference: "At no time was it the wish of the United States to delay the work of the Conference." His delegation wanted to be sure that the book of amendments was not perceived as an ultimatum. "If anything, the reverse is true", he said.

35. To arrange an agenda for negotiations between all sides was impossible in view of the gulf between the spoken assurances and the nature of the substantive amendments. The co-chairmen of the working group of 21 explored every possible avenue for some basis for negotiating the American concerns, in spite of the fact that they were strictly not categorized in the programme of work adopted by the Conference as among outstanding issues. Opposing sides and all interest groups were brought together in private consultations, but in vain. The inflexibility in the United States' position provoked inflexibility elsewhere.

36. In the resulting hiatus, a group of heads of delegations from 11 developed countries of the West, acting in their personal capacities, encouraged by the President and me, voluntarily undertook to develop a set of proposals which they hoped might bridge the gap between the position of the United States and some of the other potential Western seabed miners on the one hand, and the Group of 77 and those who shared their concerns on the other (WG.21/Informal Paper 21 and Add.1).

37. In preparing their suggestions, these heads of delegations (now affectionately styled "the group of 11") studied President Reagan's statement of 29 January 1982. They sought means by which the problems outlined in that statement might be resolved or, at least, alleviated, without upsetting the balance of a draft convention painstakingly negotiated over eight years.

38. The central motivation of the group of 11 was clearly to foster progress towards a consensus on all issues. They made a number of proposals to the President of the Conference and to me, as Chairman of the First Committee.

39. Although the proposals address the broad critical aspects of the President's stated concerns, the United States delegation, supported perhaps with varying degrees of enthusiasm by those of the other four Western industrialized States, was not in a position to accept the proposals as a basis of further negotiations on the grounds that the list of subjects treated by them was not exhaustive. They were to insist on this in private consultations to which the Group of 77, the group of Eastern European States, China and the group of 11 were invited.

40. The Group of 77 and others were to reject the proposals as a basis for further negotiations on the grounds of what they unfortunately saw as a rejection by the industrialized States. In any case, they felt that the issues not addressed by the group of 11 in the "Green Book" were not negotiable and that they had repeatedly explained the reasons for this to the United States delegation over the past year. They would consider it a great concession in itself to agree to examine once again the issues raised in the proposals of the group of 11.

41. An appeal from the co-chairmen of the working group of 21 was considered by both sides with no constructive results. I feel duty-bound to share the content of the proposals with the entire membership of this Conference and with any interested segment of the international public because of my conviction, and I believe that of President Koh, that they truly

offer a prospect of securing and furthering widespread agreement. At least for this reason, they must not be lost.

42. The first objective enumerated by President Reagan was that the convention should not deter the development of any deep sea-bed mineral resources to meet national and world demand. The group has proposed amendments to article 150 and article 17 of annex III which they believed might make clear the purpose of the convention in that regard. They addressed the production policies mindful of the view maintained by some that the policies enumerated in article 150 seemed to state unnecessary qualifications to a principle that remains implicit. It was therefore logical to commence the list with a clear and unambiguous expression of that principle. They have therefore proposed that article 150 should begin with a statement that activities in the Area should be carried out with a view to ensuring development of the resources of the Area.

43. The second suggestion based on President Reagan's objective concerns article 155. Rather than leaving the Review Conference completely free to establish its own rules of procedure, thus condemning it to begin with time-consuming and confidence-destroying debates, it was proposed that the convention itself direct the Review Conference to apply to its decision-making the rules of procedure of the Third United Nations Conference on the Law of the Sea, especially those that enjoy the search for consensus and the prohibition against voting until all efforts of consensus have been exhausted. That suggestion seeks further review and careful evaluation of the parallel system, as part of the review process, and seeks to allay the apprehensions of those who would eventually find themselves unable to ratify the amendments emerging from the Review Conference. It was therefore proposed that the provision that States should be bound by amendments, even if they had not been accepted by them, be deleted. It was suggested that efforts be made to adopt amendments by consensus, the proposals being designed to indicate that the effectiveness and viability of the parallel system would be a likely factor in considering changes to the system of exploration and exploitation.

44. A third suggestion addressed a major political preoccupation for the United States, concerning an assured seat in the Council. While responding in principle to the general rejection of the United Nations Security Council system of permanent seats to named countries, the proposal would provide, through an amendment to article 161, a seat on the Council for the world's largest consumer of sea-bed minerals, clearly the United States, an approach to which there has been no serious opposition. Another part of the same proposal would clarify, by actually specifying the number of States likely to be elected in each geographical group contemplated by article 161, paragraph 1 (e), what in the opinion of the Conference would amount to "equitable geographical distribution of seats".

45. A proposal relating to articles 158 and 160 seeks to clarify further the principle of the separation of the powers of each of the Authority's principal organs. This is designed to allay the apprehensions of those States, especially the United States, which feel that the unqualified supremacy of the Assembly may at times interfere with the efficient management of the Authority's operations.

46. Seeking to make a fine adjustment to the balanced scheme for decision-making in the Council, a proposal would require that decisions on the budget of the Authority be adopted not by a three-quarters majority, but by a majority of three quarters plus one.

47. Other proposals address the apprehensions felt by the United States and some industrialized countries concerning the basic conditions for prospecting, exploring and exploiting set out in annex III to the draft convention. Some, such as those relating to article 1 and to paragraphs 1 and 4 (b) of

article 3, seek to clarify, through drafting changes, ideas that have already been accepted, and to that extent should not necessarily form an element in the negotiations on substance. They also have the effect of laying a foundation for the introduction of objective criteria for determining the qualification standards referred to in article 4 of annex III.

48. There is also a proposed new provision, article 4 *bis* of annex III (see A/CONF.62/L.121), for certification by sponsoring States of the qualification standard of applicants. These proposals, together with proposed changes in the first three paragraphs of article 6 of annex III specifying a procedure for the Legal and Technical Commission in its initial consideration of plans of work, seek to streamline the system for approval of plans of work.

49. Responding also to United States concerns in that sphere, several changes are proposed with respect to article 5 of annex III on the transfer of technology. These fall roughly into three categories:

(a) Inclusion of a new provision which would require a contractor to undertake a general obligation to co-operate with the Authority in its efforts to acquire technology on fair and reasonable commercial terms and conditions;

(b) Certain adjustments in paragraphs 3 and 4 of article 5 which are intended to make the contractor's technology transfer obligations somewhat less stringent and onerous by substituting an element of consent in what appeared to them a wholly mandatory and thus commercially unrealistic and legally unworkable provision; and

(c) A revision of paragraph 5 of article 5 which would make more precise the obligations of all States, and especially sponsoring States, with regard to ensuring the commercial viability of the Enterprise.

50. Finally, addressing what appeared to some to be a lacuna in the basic conditions which mention (for example in paragraph 3 of article 151), but do not lay emphasis upon, the resources of the Area other than polymetallic nodules, there is a proposal that would require the Authority, under article 17 of annex III, to adopt rules, regulations and procedures concerning the exploration and exploitation of those resources.

51. While I can quite appreciate that without the benefit of careful study of the wording of these proposals a considered response to them would be difficult, I felt I ought to share them with you. Any guidance you might wish to offer us concerning the general direction or specific content of any one of them would, however, be most welcome.

52. Without underestimating the importance the United States attaches to other questions on its list of concerns, I venture to suggest that the additional protection and guarantees sought in the draft convention would be substantially, if not adequately, met by the results of negotiations based on these proposals, especially bearing in mind proposals that the President and I have made regarding the Preparatory Commission and the treatment of preliminary investments by pioneers in the field.

53. The scope of sacrifices that have been made in the face of conflicting national interests at this historic Conference will be difficult to record adequately. Yet the fact that they were made in the interests of international understanding and of international peace and security will be vindicated by the role of our product in the workings of the future.

54. At this critical final phase that precedes momentous decisions, if the sincere and indispensable commitment to the treaty process still permeates our political will, all sides must seriously consider the price to be paid for a desirable universally recognized treaty. Subjectivity must not predominate in our contemplations, because we must be aware that it is only in the context of international law and stability that our individual nations can expect to enjoy lasting peace and progress.

55. I fully appreciate that for the Group of 77, consisting of more than 115 developing countries from across the globe with varying levels of development and needs, one more call to give up positions, painfully accepted in the sometimes idealistic or religious desire for sacrificial compromise, is a hard one indeed. In appealing equally to them all, as well as to the group of Eastern European States, the land-based producers and others, I ask no more than that their inspired ideal for the attainment of a universal convention not be tempered by the threat that some of our numbers would not at first feel able to subscribe to it. While we must continue to reject negotiating in fear, let us not hesitate to address proposed adjustments which do not adversely or seriously affect the substance of existing packages in the draft convention.

56. For the Western industrialized States, there is a fundamental duty to understand the nature and full impact of the price you too have to pay for a successful universal treaty. There is also for you the additional moral obligation at this Conference to take stock of what others may or may not have gained in the long process of seeking to protect or to give guarantees for your vital needs and interests. No single nation negotiating at a Conference as complex as this, no matter how powerful, should entertain the illusion that it is possible to emerge with full satisfaction of all it demanded, without unrealistically trampling upon the interests of many others. Let us not design our individual objectives as if we were living in another age or as if we exist in isolation from other nations on this planet.

57. I invite all five of you, France, the Federal Republic of Germany, the United Kingdom, Japan and the United States, to come with the rest of the world all the way back to Caracas and beyond. There can be no better assurances for your companies or national enterprises than in the context of arrangements contained in the draft convention and other proposals now before us. Special arrangements, fostered by fleeting solidarities in a selfish sectional course, are as legally reprehensible as they are commercially plagued with risks. No one has sought to isolate you. On the contrary, your declared interests and needs have been central to our negotiations. None of you can afford to turn your backs now on provisions you worked out and over which you joined in a consensus with other nations. In all five of your nations, there exists a civilization that sets a minimum decorum in order that you maintain your dignity and worth. You must guide one another out of the fortress in which you may be locking yourselves and rejoin the train of thought and actions which you have fostered in the past.

58. Need I tell you that it is through international law universally recognized that each one of our nations may hope to survive! The truest sustaining power of an individual derives from the collective strength of a just and viable society around him. The enduring power of any nation cannot be guaranteed by shallow contentment generated by illusions of the fleeting weaknesses of others. It too must derive from the collective strength of a just, peaceful and secure international community.

59. For the ocean space, this Conference has sought to unite our strength in consciously creating conditions of international peace and security through universal law—international law elaborated in the full glare of provocative diversities of interests and of economic and social systems. We have attempted to respond to a desperate need for harmonization of the aspirations, the interests and the needs of each people, each nation, each geographic region.

60. The results so far have met the crucial interests sought by the industrialized countries, among which are legal ocean mobility; access to critical minerals needed for development and security; and guarantees that their minority voice or voices will not be unduly silenced by the rest of a divided world, that they will be represented in all organs and in all activities and

that even investments made before and outside the convention would be protected. The list is very long.

61. The oceans may well be man's last outpost before disaster. The convention we are to adopt must be an instrument of justice to all and a haven for new forms of co-operation for harnessing our energies in a process of development. We must co-operate in every sphere of international life in pouring the waters of peace on regions of conflict or we are all condemned to the same annihilation by the same threatening conditions of global war. This breathes justification on our labours here.

62. I wish to assure all delegations that although the formal negotiating phase in our programme has ended, President Koh and I do not consider the door to be closed on further efforts at seeking consensus. On our behalf, I appeal to all delegations to undertake with us a crusade for agreements that should widen still further the scope of the consensus we have obtained so far. We must match our desire for a universal treaty with a conscious effort to ensure that we attain it.

63. I should like finally to appeal to members of the press. Freedom of the press has become a sacred norm and I cherish it. Yet you must, in reporting about our historic endeavours, be mindful of the great ethics of your profession. The opinion of the public needs to be based on sustainable facts and on correct information. There is a distinguishing feature between fact, on the one side, and comment or the opinion of a few journalists, on the other.

64. On an issue of such complexity and historic importance, it would appear irresponsible for any of us to allow comment and uninformed opinion to masquerade as information. We must not be seen to exploit the ignorance of the vast majority of the public about the issues before this Conference and the effort that has been heroically made to resolve them.

65. Many members of the press have shown restraint and ethical balance; but there are a few who still appear to seek vain fame through the abuse of a sacred power and responsibility. It is to them that my final appeal must go.

66. There are always those who, for one reason or another, must decry the creation of new international institutions. They did this for the United Nations at the San Francisco Conference; they did this at the establishment of the European Economic Community, the Organization of African Unity and kindred organizations. Let them note that the course of history cannot be changed. It is better to herald a new era of international action and explain to the public the new adjustments that novel challenges must bring, than to appear to snore in a childlike fashion through a revolution.

67. I should like, in closing, to express my profound thanks, first to you, Mr. President, for the fraternal co-operation that I have continued to enjoy while working with you. I reaffirm my determination to place my services at your disposal and at the disposal of the Conference in the difficult times ahead.

68. I wish to seize this opportunity also to recognize the tremendously helpful services of the Special Representative of the Secretary-General and the excellent staff and experts whose co-operation has sustained my spirits in the task assigned to the First Committee. I do not say this out of mere formality. It is clearly to the various delegations, especially members of the working group of 21, and those 11 Western countries who volunteered a mediating role, that my greatest thanks are due for the dedication and personal sacrifices made in the pursuit of our common goal. I sincerely hope that our labours, stretched over eight years, will result in the adoption of a convention on the law of the sea at the end of this session. Last but not least, my thanks are due to the officers of the First Committee whose friendship and guidance continue to mean so much to me.

DOCUMENT A/CONF.62/L.92

Report of the Chairman of the Third Committee

[Original: English]
[30 March 1982]

1. I wish briefly to inform the Conference on the work which has been done by the Third Committee with regard to Parts XII, XIII and XIV of the draft convention, particularly on some drafting changes. Let me reiterate for the record that the substantive negotiations of these parts of the convention, namely on the protection and preservation of the marine environment, marine scientific research and transfer of technology, were completed as I had the honour to report to the Conference at its tenth session in my report contained in document A/CONF.62/L.71.²⁴ Consequently, no meetings of the Third Committee were held at the current session.

2. At this session, we examined the recommendations of the Drafting Committee relating to specific articles within the terms of reference of the Third Committee, and put forward some drafting changes with a view to achieving the necessary harmony and uniformity of the text. As stated in my letter addressed to the President of the Conference and to the Chairman of the Drafting Committee contained in document A/CONF.62/L.88, a number of drafting changes were suggested. Some of them reflect directly the recommendations of the Drafting Committee regarding articles 194, 196, 201 and 242 while others were amendments suggested by the Chair-

man of the Third Committee after considering the recommendations of the Drafting Committee relating to articles 204, 207, 209, 210, 211, 212, 213, 214, 216, 217, 222 and 226.

3. It should be recommended further that, in order to attain harmonization amongst the different parts of the draft convention when referring to the protection and preservation of the marine environment, the phrase "protection and preservation of the marine environment" be used in the relevant provisions of Part XI, articles 145, 155 and 165, and annex III, articles 2, 13, 14 and 17.

4. With respect to article 212, paragraph 1, and article 216, paragraph 1 (b), the expression "vessels or aircraft flying their flag or of their registry" should be substituted by "vessels flying their flag or vessels or aircraft of their registry". In our view this drafting change corresponds to the fact that while aircraft are only registered in accordance with the Chicago Convention on International Civil Aviation,²⁵ vessels are identified by the flag and the registry. Such distinction may be relevant particularly in some cases when vessels are not required to fly a flag but nevertheless need a registration.

5. There might be some other matters of a drafting nature which should be considered in order to attain harmonization

²⁴ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XV (United Nations publication, Sales No. E.83.V.4).

²⁵ United Nations, *Treaty Series*, vol. 15, No. 102, p. 295.