



President: Mr. Jorge E. ILLUECA (Panama).

AGENDA ITEM 8

Adoption of the agenda and organization of work: reports of the General Committee (*concluded*)*

1. The PRESIDENT (*interpretation from Spanish*): In subparagraphs (a) and (b) of paragraph 2 of its sixth report [A/38/250/Add.5], the General Committee recommends that the General Assembly include in the agenda of the current session an additional item entitled "Commemoration of the fortieth anniversary of the United Nations in 1985" and consider it directly in plenary meeting. May I take it that the General Assembly approves that recommendation?

It was so decided.

AGENDA ITEM 31

Third United Nations Conference on the Law of the Sea: report of the Secretary-General

2. The PRESIDENT (*interpretation from Spanish*): I call on the representative of Singapore, who will introduce the draft resolution in document A/38/L.18/Rev.1.

3. Mr. KOH (Singapore): We have before us draft resolution A/38/L.18/Rev.1, which is sponsored by 52 delegations. In addition to the 37 sponsors listed in the document, the following 15 delegations have joined as sponsors: Austria, Denmark, Finland, Greece, Iceland, India, Indonesia, Ireland, Malaysia, Mali, Norway, Senegal, the Solomon Islands, Sweden and Uruguay.

4. I should like also to draw the attention of members of the Assembly to the report of the Secretary-General in document A/38/570 and Corr.1 and to the revised estimates in the proposed programme budget for the biennium 1984-1985 contained in document A/38/570/Add.1 and Corr.1.

5. I have been requested by the sponsors of draft resolution A/38/L.18/Rev.1 to introduce it. For the sake of brevity, I shall confine my remarks to the operative paragraphs.

6. In paragraph 1, the Assembly recalls the historic significance of the United Nations Convention on the Law of the Sea¹ as an important contribution to the maintenance of peace, justice and progress for all peoples of the world. How does the Convention do this? It does this in several ways. First, it promotes the maintenance of international peace because it replaces a plethora of conflicting claims by coastal States with universally agreed limits on the territorial sea, on the contiguous zone, on the exclusive economic zone and on the continental shelf. Secondly, the world community's interest in the freedom of navigation is facilitated by the important compromises

contained in the Convention on the status of the exclusive economic zone, on the régime of innocent passage through the territorial sea, on the régime of transit passage through straits used for international navigation and on the régime of archipelagic sea-lanes passage. Thirdly, the provisions of the Convention relating to the exclusive economic zone and the high seas will enhance the world community's interest in the conservation and optimum utilization of the living resources of the sea. Fourthly, the Convention contains important new rules for the protection of the marine environment from pollution. Fifthly, the Convention contains new rules on marine scientific research which strike an equitable balance between the interests of the research States and the interests of the coastal States in whose economic zones or continental shelves the research is to be carried out. Sixthly, the international community's interest in the peaceful settlement of disputes has been enhanced by the mandatory system of dispute settlement in the Convention. Seventhly, the Convention has succeeded in translating the principle that the resources of the deep sea-bed constitute the common heritage of mankind into fair and workable arrangements and institutions. Finally, though far from the ideal, we can nevertheless find elements of international equity in such Convention provisions as those relating to revenue-sharing on the continental shelf beyond 200 miles, to giving land-locked and geographically disadvantaged States access to the living resources of the exclusive economic zones of their neighbours, to the relationship between coastal fishermen and distant-water fishermen and to the sharing of the benefits derived from the exploitation of the resources of the deep sea-bed.

7. In paragraphs 2 and 3 the Assembly expresses its satisfaction at the large number of countries which have signed or ratified the Convention and calls upon States which have not done so to consider signing and ratifying the Convention at the earliest possible date. The Convention was opened for signature on 10 December 1982 at Montego Bay, Jamaica. A total of 119 countries signed the Convention on that day. The Secretary-General has stated, "Never in the history of international relations have such a large number of countries immediately signed the result of their deliberations, thereby committing themselves to act in accordance with their obligations."²

8. The number of signatories has risen to 132, and nine States, together with the United Nations Council for Namibia, have ratified the Convention. We need an additional 51 ratifications in order to bring the Convention into force. I wish, therefore, to appeal to States that have not already done so to consider ratifying the Convention at the earliest possible date, so as to allow the effective entry into force of the new legal régime for the uses of the sea and its resources.

9. In paragraph 4 the Assembly calls upon all States to safeguard the unified character of the Convention and its related resolutions.

10. In paragraph 5 the Assembly appeals to all States to refrain from taking any action directed at undermining the Convention or defeating its object and purpose. I wish to recall in this connection three of the themes that

*Resumed from the 41st meeting.

emerged from the statements of the overwhelming number of States at the concluding session of the Conference, held in December 1982 at Montego Bay.

11. The first theme is that the provisions of the Convention are closely interrelated and form an integral package. Therefore it is not possible for a State to pick what it likes and to disregard what it does not like. It was also said that rights and obligations go hand in hand, and it is thus not permissible to claim rights under the Convention without being willing to shoulder the corresponding obligations.

12. The second theme is that this Convention is not a mere codification Convention. As Bernardo Zuleta wrote:

“An examination of the character of the individual provisions reveals that the Convention represents not only the codification of customary norms, but also and more significantly the progressive development of international law, and contains the constituent instruments of two major new international organizations.”³

13. The third theme relates to the lawfulness of any attempt to mine the resources of the international area of the sea-bed and ocean floor outside the Convention. Almost all the speakers at Montego Bay expressed the view that the doctrine of the freedom of the high seas can provide no legal basis for the grant by any State of exclusive title to a specific mine site in the international area. Many believed that the principle that the international area of the sea-bed and ocean floor and the resources therein constitute the common heritage of mankind, as contained in articles 136 and 137 of the Convention, has become a part of customary international law. Therefore, any attempt by any State or group of States to mine the resources of the deep sea-bed outside the Convention will incur the condemnation of the international community, as well as grave political and legal consequences.

14. In paragraph 6 the Secretary-General is requested to give special emphasis to the work of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea.

15. In paragraph 7, the Assembly expresses its appreciation to the Secretary-General for his report and approves the recommendations contained therein.

16. The Preparatory Commission has commenced its work, and it held its first and resumed first session at Kingston, at which it elected its Chairman and other officers and concluded the elaboration of its organizational framework by allocating functions to its various organs. The Commission has decided that it will hold its second session at Kingston from 19 March to 13 April 1984 and a session of its working groups during the summer of 1984, in either New York or Geneva. For the future, the Commission will hold its regular sessions at Kingston and its working-group meetings at Kingston, New York or Geneva.

17. The Secretary-General has examined his overall responsibilities in relation to marine affairs and has proposed a new major programme on them. The programme is contained in chapter 25 of the medium-term plan for the period 1984-1989,⁴ which has been endorsed by the Committee on Programme and Co-ordination, the Economic and Social Council and the Fifth Committee of this Assembly. One recommendation is that the 18 professional posts in the Office of the Special Representative of the Secretary-General for the Law of the Sea be converted from temporary to established posts. The Office of the Special Representative will be designated as the core office responsible for the implementation of programme 1 of the major programme on marine affairs.

It will also be the core office for servicing the Preparatory Commission.

18. During the past several weeks, Asterius Hyera of the United Republic of Tanzania and I have conducted extensive consultations on the draft resolution and its related documents. As a result of those consultations I believe that the draft resolution enjoys a very wide base of support.

19. In the course of the consultations it was agreed that the following statement should be read into the record of this meeting in connection with the Assembly's approval of the recommendations contained in the Secretary-General's report:

“We note in paragraph 58 of the Secretary-General's report that, acting in conformity with resolution 37/66, he has established a second duty station for the Office of the Special Representative of the Secretary-General for the Law of the Sea at Kingston, Jamaica, to facilitate the servicing of the Preparatory Commission. Because the Preparatory Commission had not commenced its substantive work during 1983, the Secretary-General did not feel justified in deploying to the Kingston duty station the level of staff resources envisaged last year. However, given the substantive work programme to be carried out by the Preparatory Commission during 1984, the Secretary-General has stated that the additional staff allocated to the Kingston duty station will be deployed. He has also indicated in his report that he will assign to the Kingston duty station such additional staff as may be required in the light of the functions to be performed and the programme of work.”

20. On behalf of the 52 sponsors of draft resolution A/38/L.18/Rev.1, I commend the draft resolution to the Assembly for its adoption.

21. I cannot, however, conclude my statement without referring briefly to the untimely and much-lamented death of the Secretary-General's Special Representative, Bernardo Zuleta. I am sure that I speak for all my colleagues in the Third United Nations Conference on the Law of the Sea when I mourn the loss of this dear friend and colleague. Mr. Zuleta rendered a very great service to the Conference in many ways. He always succeeded in providing the Conference with the necessary facilities for work. He was the able leader of a team of Secretariat officials, many of whom, including himself, played an important role in assisting the presiding officers of the Conference. Mr. Zuleta himself was a valued adviser to the first President of the Conference, Mr. Shirley Amerasinghe, and then to me. On many occasions I requested Mr. Zuleta to conduct delicate consultations on my behalf; he never failed me. Like the name of Shirley Amerasinghe, the name of Bernardo Zuleta will for ever be linked to the United Nations Convention on the Law of the Sea.

22. In conclusion, I should like to report briefly on the Hamilton Shirley Amerasinghe Fellowship on the Law of the Sea. Colleagues may recall that the General Assembly, in paragraph 6 of resolution 36/79, established the Fellowship in memory of Shirley Amerasinghe and called on Governments, universities, philanthropic foundations and national and international organizations to contribute to the Fund. The contributions received so far are not adequate for the income to be utilized in making an award. I am pleased to inform the Assembly, however, that the Third World Foundation has agreed to provide a substantial contribution in order to make the Fellowship operational. I would therefore like to take this opportunity to appeal to Governments, organizations and individuals to consider making their contributions to

the Fellowship fund so that the first Hamilton Shirley Amerasinghe Fellowship on the Law of the Sea can be awarded in 1984.

23. Mr. OLEANDROV (Union of Soviet Socialist Republics) (*interpretation from Russian*): May I first of all express our condolences at the untimely passing of the Under-Secretary-General, Bernardo Zuleta. A renowned international lawyer and eminent diplomat, Mr. Zuleta played an extremely important part in the successful conclusion of the work of the Third United Nations Conference on the Law of the Sea and the adoption at that time of the comprehensive Convention. His memory will long remain alive among those who participated in the Conference and those who had an opportunity to work with him.

24. A year has elapsed since the United Nations Convention on the Law of the Sea was opened for signature. Like many other States, the Soviet Union attaches great importance to that comprehensive international treaty, which strengthens the legal régime for peace and co-operation on the seas. The Convention was the result of lengthy negotiations between all groups of States over a period totalling 15 years. Taking into account the legitimate rights and interests of all States and peoples of the world, the Convention resolves in a single "package" the most acute and difficult problems of the legal régime for two thirds of the Earth's surface. It determines the rights and obligations of States and establishes an orderly system of international legal regulations on the principal ways of utilizing maritime spaces and resources. The Convention also makes a considerable contribution to the strengthening of peace, security and co-operation among States on the high seas. It serves as an example of the possibility of settling by negotiations in the United Nations important global problems of concern to mankind.

25. The Soviet Union was one of the first to sign the Convention. To date, as can be seen from the report of the Secretary-General, it has been signed by 132 States. The process of ratification has begun; nine States have already deposited their instruments of ratification with the Secretary-General. All that is eloquent proof of the fact that the Convention is supported by an overwhelming majority of the States of the world.

26. An important trend in the activities of States in implementing the Convention and the decisions of the Third Conference was the work done by the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea. In accordance with the Convention and once it enters into force, there will be created the first international organization of sovereign States in history to be invested with broad possibilities for exploiting the resources of the international area of the sea-bed, which has been declared the common heritage of mankind.

27. At the first session of the Preparatory Commission, which was held in the spring and autumn of this year, the initial differences between various groups of States on questions regarding the structure of the Commission and the organization of its work were overcome. The Chairman of the Commission was a distinguished participant in the Conference, the Tanzanian statesman and Minister, Mr. Joseph Warioba. The consensus decisions adopted by the Preparatory Commission with regard to its structure, the functions of its organs, its working procedures and the question of procedure and the guiding principle for the registration of applications of pioneer investors in the exploitation of the sea-bed were in accordance with the interests of just and equitable international co-operation in the exploitation of the mineral resources of the international area of the sea-bed. It also laid the

foundations for the organizational structure, in accordance with the Convention, of the International Sea-Bed Authority and the International Tribunal for the Law of the Sea.

28. The progress made by the Preparatory Commission is of considerable importance. The sooner it begins to consider and register the applications of pioneer investors, the sooner it can derive specific material assistance from these and the sooner we can begin the exploration of that part of the sea-bed that will be set aside for the international organ. Success in the work of the Preparatory Commission will make for the speedy signing and ratification of the Convention by those countries that have not yet done so.

29. In the light of the Convention and the resolutions⁵ adopted by the Third United Nations Conference on the Law of the Sea, the Soviet Union this spring submitted to the Preparatory Commission its application to have a sector registered for pioneer activity on the sea-bed. That step is important, practical confirmation of the consistent position of the Soviet Union in support of the Convention and of the creation of the International Sea-Bed Authority. It is our hope that this example will be followed by other States.

30. The Government of one country only, the United States, has elected actively to resist and undermine the United Nations Convention on the Law of the Sea. While refusing to sign or observe the Convention, the present American Administration has stated that it nevertheless intends to establish an "exclusive economic zone" 200 nautical miles wide along the coastline of the United States and has also announced a "maritime policy" aimed at the arbitrary division and seizure by private companies of the resources of the international area of the sea-bed. In accordance with that arbitrary policy, attempts have been made to establish "mini-conventions" that would enable private United States companies and companies belonging to some of its Western allies to engage in activities on the sea-bed, circumventing the Convention.

31. It is important to emphasize that the Convention represents a comprehensive and indivisible "package" made up of interrelated and interlocking compromise agreements. It does not admit of a selective approach, observing some provisions and breaching others. States cannot choose among the Convention's provisions only those that are best suited to them or most to their liking. All the provisions of the Convention must be observed as a whole. The United States refusal to observe the provisions of the Convention relating to the sea-bed is unlawful and deprives it of any right to utilize the 200-mile economic zone established under the Convention. Most States, including the socialist and developing countries, have expressed serious concern with regard to such actions against the Convention by the United States. In a statement by the Soviet Government, it was emphasized that "the Soviet Union shares this concern and, together with other countries, firmly rejects the arbitrary policy which the United States seeks to pursue in this area".

32. The attempts of the United States arbitrarily to abstract from the Convention certain of its provisions and to jettison others are not in accord with the régime established under the Convention. Such attempts go against the legitimate interests of other States and represent a challenge to the United Nations. Such actions can only be regarded as attempts to create chaos with regard to how the maritime areas shall be used and to undermine the provisions of the Convention concerning the international co-operation and peace on the high seas. The United Nations should condemn such unlawful acts and

call for strict observance of the Convention as a single and indivisible international treaty.

33. The Soviet delegation is pleased to note that the draft resolution, which emerged from lengthy consultations under the chairmanship of Mr. Koh and Mr. Hyera, will on the whole serve to strengthen the United Nations Convention on the Law of the Sea and to develop the activities of the Preparatory Commission. The draft resolution expresses concern about unilateral actions and appeals to all States to refrain from such actions. It approves the recommendations of the Secretary-General on stimulating Secretariat activities with regard to matters related to the Convention and on servicing the work of the Preparatory Commission. The implementation of those recommendations should not lead to any increased costs or disbursement of financial or personnel resources. We would not be in favour of the creation of any new posts, and we believe that the Secretariat can and should perform its functions in this area by mobilizing all available resources and opportunities.

34. Along with a number of other delegations, the Soviet delegation has recently begun to entertain extremely serious misgivings with regard to the desirability of holding the first part of the second session this spring in Jamaica. Jamaica's participation in the aggression against Grenada, its unfriendly acts towards other countries and other actions raise the question of whether Jamaica can meet the considerable demands that, under the Convention, must necessarily be made of the country where the most important international organization on the exploitation of the resources of the sea-bed is to be located. By ignoring those demands Jamaica has associated itself with those forces that are against the Convention and are waging an open battle against the creation of the International Authority. In these circumstances the holding of the forthcoming session in Jamaica might lead to difficulties in the work of the Preparatory Commission. For that reason the Soviet delegation believes that the most desirable and productive solution would be to hold both parts of the second session at United Nations Headquarters in New York or in Geneva.

35. Mr. ROSENNE (Israel): Let me start by once again expressing our deep condolences to the family, to the delegation of Colombia, to the Office of the Special Representative of the Secretary-General for the Law of the Sea and to the Secretary-General himself on the lamented death at so early an age of Bernardo Zuleta. I knew Bernardo for many years, first as representative of his country here, especially in the Sixth Committee, and later as the Special Representative of the Secretary-General for the Law of the Sea. I know that he was looking forward very much to his duties in connection with the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea, seeing in his work there a continuation of a family tradition, his father having been president of the preparatory commission for the United Nations on which the present Preparatory Commission was so largely based. May peace be upon his soul.

36. I will start by recalling that at Montego Bay we signed the Final Act of the Conference, with a declaration which was annexed to our signature and which has been circulated by the Secretary-General, as depositary, in the usual way, so I do not need to repeat it here. But we did not sign the Convention itself. We do not wish to be rushed into a matter of considerable political and legal significance before we have been able to complete a thorough review of the Convention as a whole in the light of subsequent developments in the Preparatory Commission and elsewhere. That examination and review are still

proceeding. Our position regarding the Convention and the Final Act supplies one basic explanation of our attitude regarding the draft resolution before the General Assembly today.

37. We have studied very carefully the documents presented to us and I wish to make one or two comments. We have noted the progress—slow, it is true, but progress none the less—achieved by the Preparatory Commission this year, and we are confident that under the able guidance of its Chairman it will now be able to start dealing with the substantive problems set before it.

38. We regard chapter V of the Secretary-General's report [A/38/570 and Corr. I] as the most important, and it has to be read in the light of earlier documentation relevant to the responsibilities of the Secretary-General under the Convention. We welcome the appearance of the special publication of the accurate text of the Convention and the Final Act of the Conference, accompanied by a substantial index,⁶ and a special word of thanks is due to those who prepared that index. We also welcome the appearance of the new *Law of the Sea Bulletin*, which will be of value provided it comes out quickly and is reasonably complete and accurate. We hope that steps will be taken to ensure that it has the widest possible circulation, including distribution in academic and parliamentary circles.

39. On the questions of the official records of the Conference, we have noted that in paragraph 25.11 of the medium-term plan for the period 1984-1989⁴ it is stated that the Conference did not establish official *travaux préparatoires*, and this concept is repeated in the Secretary-General's report. We do not think that in principle it is for a plenipotentiary conference itself to establish *travaux préparatoires*, and we interpret this passage, and similar passages appearing in other documents before us today, as meaning that owing to the particular manner in which the Conference worked the official records do not permit an easy reconstruction of the legislative history of a given provision of the Convention such as can be done, say, in the case of the 1969 Vienna Convention on the Law of Treaties and indeed of most international conventions. But the Conference is quite heavily documented, as indeed is obvious from the statement in subparagraph (b) of paragraph 22 in the Secretary-General's report that a total of 20 volumes is envisaged for the complete set of official records. I am stressing that what we are talking about is the absence of *travaux préparatoires* in the commonly accepted sense, although here I must interpose in parentheses and recall that in its work on the law of treaties the International Law Commission carefully and deliberately refrained from any attempt to include any formal definition of *travaux préparatoires*. The absence of *travaux* in the sense just explained does not mean the absence of records, which are essential aids, within the limits of the general rules of international law as to their evidentiary value and opposability, to an understanding of the Convention and to what States participating in the Conference understood by any of the provisions of the Convention of special interest and concern to them. In addition, I know of at least three major projects being undertaken in three different parts of the world to attempt to prepare authoritative and responsible interpretations of the Convention. Also, there is at least one compilation of documents being produced commercially, which contains a considerable quantity of documentation from the Conference which has not been included so far in the official records. In that connection, we attach considerable importance to the various indexes and lists mentioned in paragraph 22 of the Secretary-General's report and hope that their publication, even if only in a provisional form, can be expedited.

40. The documentation before us—and I shall not trouble the Assembly with detailed citations at this stage—contains useful information and a wealth of ideas about the co-ordination of the handling of marine affairs within the United Nations context, that is, within the United Nations itself and within the specialized agencies. We would welcome the maximum co-ordination possible in this respect, of course without infringing upon the autonomy of the specialized agencies and other intergovernmental organizations. But we would like to suggest that consideration be given in due course to expanding this co-ordinating role somewhat, and the consequent diffusion of information in the *Law of the Sea Bulletin*, to cover private law activities relating to marine affairs, in the broadest sense of the term, some of which are not being conducted within the United Nations framework. The Convention rightly stresses in the preamble that the problems of ocean space are closely connected and need to be considered as a whole. In our view, this sentiment is not to be taken in too restrictive a sense and is not limited to the inter-State aspects of the law of the sea but can also extend to private law activities, most if not all of which—relating to shipping matters, carriage of goods by sea, salvage, liner conferences, admiralty law in general, marine ecology, safety of life at sea, trade union activity in marine affairs and so on—do have some point of connection with the 1982 Convention, which is often referred to as an umbrella instrument. I have been struck and unfavourably impressed, when reading some of the technical and professional literature on these private law topics, to find that there is no mention in them of what is commonly regarded as the international law of the sea, and I could say much the same about the literature on the international law of the sea, which seems to ignore the private law aspects. In the final count, the two cannot be separated.

41. I am uttering these thoughts in the hope that in coming years attention can be given to according to the Secretary-General's reporting function under article 319, paragraph 2 of the Convention a somewhat broader and more all-embracing interpretation and application. That provision, which was very carefully considered at the Conference, let me recall, requires the Secretary-General, *inter alia*, to report to all States parties, the International Sea-Bed Authority and competent international organizations—which certainly include the General Assembly of the United Nations—"on issues of a general nature that have arisen with respect to this Convention."

42. I have to recall that at the thirty-seventh session, both in the Fifth Committee and in the Assembly, my delegation voted against the proposal to include the budget of the Preparatory Commission within the general budget of the United Nations. That remains our position, and last night we abstained in the vote in the Fifth Committee. But this does not apply, of course, to the specific functions imposed upon the Secretary-General by the Convention, for which authority was given to him in resolution 37/66 last year. Our attitude towards the draft resolution now before us will also reflect that fundamental position of ours.

43. I now have to revert to another matter connected with the law of the sea that has arisen in the Organization during the last couple of weeks.

44. My delegation learned with considerable surprise from Security Council documents S/16194⁷ and S/16195,⁸ both dated 3 December 1983, that the Security Council had agreed to permit the Chairman of the so-called Palestine Liberation Organization, together with several thousands of his armed followers, and apparently with their military impedimenta, to leave Tripoli in foreign ships

which would also fly the United Nations flag "for humanitarian reasons". Our political reaction to that is found in the letters of our representative, circulated as Security Council documents on 6 and 7 December,⁹ and in the letter of Prime Minister Shamir, circulated in document A/38/717.

45. We find that position of the Security Council quite inexplicable and quite devoid of legal basis. The relevant legal provisions—whether one prefers article 7 of the 1958 Convention on the High Seas or article 93 of the 1982 Convention—clearly state that those instruments do not prejudice the question of ships employed on the official service of an intergovernmental organization flying the flag of that organization. The note submitted by the Secretariat in 1958, in document A/CONF.13/C.2/L.87, which is printed in volume IV of the official records of that Conference,¹⁰ makes it clear that the consent of the States concerned is always required and that the vessels concerned are in the service of the United Nations. The vessels on which it is now proposed to fly the United Nations flag are not employed in the service of the United Nations and they do not, therefore, come within the scope of the treaty provisions. In the circumstances, we firmly believe that there was and is no justification whatsoever in law for flying the United Nations flag on the vessels in question. The political aspects have been dealt with in the letters of our Prime Minister and our representative, to which I have already referred.

46. I do not want it to be inferred from my remarks that circumstances can never be conceived in which the use of the United Nations flag for genuine humanitarian purposes would be appropriate. The use of certain well-known and widely accepted flags for genuine humanitarian purposes, with or without the national flag of the ship, is accepted. But as far as we are aware, this is always with the agreement of all the States concerned. We cannot therefore regard this Security Council decision and the reasoning on which it was based as a valid precedent for the use of the United Nations flag for genuine humanitarian purposes.

47. With regard to draft resolution A/38/L.18/Rev.1, my delegation has noted certain positive formulations, for instance paragraph 4, in comparison with parallel formulations made during the Conference. That confirms, to some extent, the view we took and expressed during the Conference that some of the resolutions adopted with the Final Act have nothing to do with the law of the sea but are of a political character inserted for reasons of expediency. However, we do have certain difficulties with the draft resolution. For example, we cannot support the penultimate paragraph of the preamble since, as I have stated, we have never approved the financing of the expenses of the Preparatory Commission from the regular budget of the United Nations, and that position has not been changed. We do not consider that nine ratifications in a period of 12 months is exactly a cause for congratulations, and we believe that the time may be coming when consideration will have to be given to examining the cause for the slow pace of ratification of this instrument. But perhaps our debate next year will show me to have been wrong on this point. Since paragraph 5 refers to all States, it may go further than traditional calls of this nature, limited to signatory States. A call of that nature to all States applies in equal measure to all international organizations having anything to do with marine affairs or with the application of the Convention.

48. With reference to paragraph 9, we consider that the time has come to revert to earlier practice and to allocate the item to one of the Main Committees for debate and report, rather than to have this debate at an awkward

time at the very end of a strenuous session. Since in the period from 1967 to 1973 the substantive debate was always held in the First Committee, consideration should be given to resuming that practice. As we understand the development of matters in the General Assembly, it was only while the Conference itself was in progress, between 1974 and 1982, that the item was discussed directly in plenary as a routine matter, when it was presented in non-controversial terms and was limited to making arrangements for the programme for the year ahead. Experience last year and this has brought to light certain possible weaknesses in this procedure, which previous debate in a Main Committee might have alleviated.

49. In the light of these remarks, unless the draft resolution is adopted by consensus or without a vote, my delegation will abstain in all votes on it.

50. Mr. DICHEV (Bulgaria): The Bulgarian delegation also joins those who have expressed their condolences on the untimely passing away of Mr. Zuleta, who gave all his energies to promoting the work of the United Nations in the field of the law of the sea.

51. The General Assembly has before it the report of the Secretary-General on the Third United Nations Conference on the Law of the Sea [A/38/570 and Corr. 1] and draft resolution A/38/L.18/Rev.1. We would like to express our full appreciation and gratitude for the efforts made by Mr. Koh in trying to negotiate a compromise draft and for the helpful presentation of the draft.

52. We fully accept the operative paragraphs of the draft resolution for the following reasons. First, we concur with the assessment of the Secretary-General that the adoption of the Convention is one of the major achievements in the history of international relations. Secondly, we view the large number of signatures affixed to the United Nations Convention on the Law of the Sea as significant, but we feel that additional efforts are needed to consolidate the successful outcome of this multilateral effort in order to achieve the general acceptance and effective application of the new legal régime of the seas. Thirdly, we are opposed to any unilateral action in circumvention of the Convention and to any selective application of its provisions, since such actions contradict the comprehensive character of the established legal régime of the seas and disregard the fact that the problems of the ocean space are closely interrelated and need to be considered and dealt with as a whole. Fourthly, we approve of the recommendations in the Secretary-General's report, which conveys the understanding that the responsibility of the Secretary-General for the law-of-the-sea affairs entrusted to him is twofold: one responsibility of a permanent nature and another of a temporary nature.

53. The report describes, in paragraph 55, some of the permanent responsibilities entrusted to the Secretary-General under the Convention. They relate to the uniform and constant application of the Convention, to the assistance which the Secretary-General can render to Member States by providing them with information, advice and services concerning implementation of the Convention and developments relevant to the new legal régime, and to functions in regard to the promotion of co-operation within the United Nations system on matters of sea and ocean affairs. Besides that, the Secretary-General has depositary and certain reporting and administrative functions such as calling for invitations for nominations and covering meetings of the States parties.

54. The second category of the Secretary-General's functions covers those of a temporary nature. Those are the functions entrusted to him under resolutions I and II of the Conference, namely, to service the Preparatory Commission for the International Sea-Bed Authority and

for the International Tribunal for the Law of the Sea in its task of preparing draft rules and regulations and procedures. For the discharge of this task the Secretary-General has made two sets of proposals: the first concerns the status of the Office of the Special Representative of the Secretary-General for the Law of the Sea and is designed to establish the Office on a permanent basis as an integral part of the Secretariat; and the second concerns the needed manpower and the organization of the Office.

55. We accept the recommendations on institutional arrangements contained in paragraph 53 of the report of the Secretary-General. As far as resource requirements are concerned, we have some reservations and seek some clarification. Our analysis is based on the report of the Secretary-General and on the understandings reported to the Assembly at its thirty-seventh session during Mr. Koh's presentation of paragraphs 7 and 8 of resolution 37/66 [91st meeting, paras. 86-93].

56. Substantively, the understandings consisted of five points: first, it was agreed that the law of the sea secretariat should be kept at the level of staff and grades previously allocated and used, that is to say, 18 professional officers for 1983. Secondly, that secretariat should be a unified secretariat. Thirdly, it would have two duty stations: New York and Kingston, each of which initially would have nine professional staff, that is, half of the staff would remain in New York while the other half would be transferred to Kingston. Fourthly, the staff assigned to the two duty stations would be mutually reinforcing. Fifthly, the law of the sea secretariat would continue to depend upon the other departments of the United Nations Secretariat and the specialized agencies for experts in carrying out the responsibilities of the Secretary-General.

57. As is clear, the understandings mainly dealt with two problems: the composition and nature of the secretariat and its organization of work.

58. We are pleased to note in paragraph 57 of the report of the Secretary-General that no changes in the number or level of posts are requested. The only change entails the conversion of the 18 professional posts from temporary to established posts as a result of the proposal contained in paragraph 53 of the report. However, we view with some concern the request for six additional temporary professional posts, which were approved on a yearly temporary basis only for 1983. No true limits for temporary posts or plausible justification of the need for such posts are offered.

59. Mr. Koh has offered, we believe, a new understanding linked to the interpretation of paragraph 58 of the report. We feel that the new understanding departs from last year's, as well as from the intended objectives of paragraph 58. We are of the view that paragraph 58 reflects more accurately the general feelings of the participants in the work of the Preparatory Commission during 1983 than the interpretation of its intention offered by Mr. Koh. We hold this view for the following reasons.

60. First, we all agree that the Office of the Special Representative of the Secretary-General for the Law of the Sea will be entrusted with the temporary servicing arrangements for the Preparatory Commission.

61. Secondly, we all agree that the secretariat will function as a unified secretariat on the basis of the organizational arrangements established and employed for the servicing of the Conference on the Law of the Sea from 1973 to 1982, as described in paragraphs 61 to 63 of the report. We are disappointed to see that a very important section of the secretariat, namely, the Sea and Ocean

Affairs Sector of the Department of Political and Security Council Affairs, whose staff members have extensive knowledge of and experience in servicing the Conference on the Law of the Sea, has been omitted.

62. Thirdly, we all agree that the expenses of the secretariat should be kept within the existing level of expenses, because we believe that, if the secretariat has diligently functioned and served the Conference on the Law of the Sea, it will be fully within its ability to serve competently the Preparatory Commission.

63. Fourthly, we all agree that the General Assembly has never instructed the Conference secretariat how to organize itself. We do not see now any justification to go into detail and instruct the Secretary-General how to organize its offices and how to facilitate the servicing of the meetings of the Preparatory Commission. We cannot expect the Office of the Special Representative for the Law of the Sea to establish duty stations in Kingston, Geneva or any other city where meetings of the Preparatory Commission might be held. We understand the intention of the Secretary-General in utilizing the six temporary posts only if needed, only if the work load requires the use of these additional resources and only if internal resources within the Secretariat are not available. We do not believe that the additional temporary posts provided are for allocation in Kingston, and we should like to have some clarification on that matter. The notion of a unified secretariat implies one duty station where Member States can seek information or address the Secretary-General with respect to any problem which may arise as a result of the implementation of the relevant recommendations or obligations assumed under the United Nations Convention on the Law of the Sea.

64. Fifthly, the vast majority of Member States, by signing the Convention, have recognized its historic significance for the rule of law and for the maintenance of peace, justice and progress for all peoples of the world. For this reason we should like to see the speedy coming into force of the Convention. We regard the efficient and cost-effective functioning of the Preparatory Commission in discharging its mandate as a main contribution to the attainment of this objective. With this understanding in mind, we wish to put forward the following comments.

65. We interpret paragraph 12 of resolution I of the Conference on the Law of the Sea, referred to in the ninth preambular paragraph of draft resolution A/38/L.18/Rev.1, as a mere recommendation which might be adhered to, provided that facilities are available at Kingston within the requirements established by the decisions of the General Assembly for meetings to be held outside United Nations Headquarters. The financial implications of the meeting in Kingston should be given separately.

66. Our experience at the first session of the Preparatory Commission, held at Kingston, was not very encouraging. Bulgaria does not maintain a permanent representation there, and regular communication between our representatives and our capital was impossible. Some understandings were reached at Kingston without consultations with the respective capitals. Under these circumstances, the taking of decisions on the very important matters entrusted to the Preparatory Commission could be impossible. These organizational arrangements would delay considerably the work of the Commission and therefore put off for years the entry into force of the Convention. Such arrangements would play into the hands of those who oppose the Convention and are trying to destroy it. Furthermore, under the present circumstances we do not feel that the political climate in the area would be conducive to creative and beneficial work of the Preparatory Commission. The two meetings of the 1983 session of the

Preparatory Commission showed a decrease in the number of participants and in the level of representation. We can foresee a stabilization of this trend if meetings continue to be held under the same circumstances. The financial burden from our participation was greater than it would have been if the meetings had been held at United Nations Headquarters, which is more desirable.

67. The conclusion we draw is that as long as the financing of the work of the Preparatory Commission is drawn from the regular United Nations budget, access to its meetings and to its results for all who have signed the Convention as the final act of the Conference should be facilitated to the maximum extent possible. The functioning of the Preparatory Commission is not, by definition, an act of administering a multilateral treaty. That is why the costs are not borne by the parties and the servicing has been entrusted to the Secretary-General, who must enjoy full discretion in the distribution of the human and other resources within the level already allocated and used. The criteria by which the performance of the secretariat must be judged are efficiency and accomplishment.

68. For all these reasons, my delegation will support draft resolution A/38/L.18/Rev.1, approving the report of the Secretary-General, on the understanding that no additional conditions will be attached to his recommendations and no additional posts provided for.

69. The PRESIDENT (*interpretation from Spanish*): I shall now call on those representatives who wish to explain their vote before the vote on draft resolution A/38/L.18/Rev.1.

70. Mr. SCHRICKE (France) (*interpretation from French*): The extensive changes that have been made in draft resolution A/38/L.18 make it possible for my delegation to vote in favour of the revised version. As we have always advocated, this text leaves it to the Secretary-General to exercise himself his responsibilities as he performs the functions assigned to him in as economical and effective a manner as possible, in particular as regards the secretariat of the Preparatory Commission.

71. The results of the first session of the Commission have been positive. We welcome the satisfactory compromises that have been reached on questions such as the status of observers and the decision-making process. The Commission will thus be able next spring to take up substantive questions on the programme of pioneer investors, the sea-bed régime and the International Tribunal for the Law of the Sea. My delegation hopes that this work will be crowned with the same success as was experienced at the first session, so that the number of ratifications will increase and the whole of the international community will accede to the Convention.

72. The vote of the French delegation in support of the draft resolution does not, of course, alter our stand on the Convention and its various parts, as we explained it in our written statement within the meaning of article 310, which we submitted during our signature of the instrument on 10 December 1982 at Montego Bay.

73. Mr. ŞIBAY (Turkey): The views of the Turkish Government concerning the United Nations Convention on the Law of the Sea are well known and have been put on record by oral and written statements during all the sessions of the Third United Nations Conference on the Law of the Sea, including the last one, held at Montego Bay.

74. The Government of Turkey has signed neither the Convention on the Law of the Sea nor the Final Act of the Conference. Furthermore, on various occasions during the thirty-seventh session of the General Assembly we placed on record the fact that we reserved our right

not to contribute to the expenses of the machinery to be set up in accordance with the relevant provisions of the Convention and that those expenses should be borne and met by the signatories and parties to the Convention, as required by international law. Turkey also voted against General Assembly resolutions which required payments out of the regular United Nations budget to that end. For those reasons, my delegation would request that the proposal in document A/38/L.18/Rev.1 be put to a recorded vote.

75. We would like once again to reiterate and put on record that the Turkish Government reserves its right not to contribute to, and provide payments for, any and all expenditures of the United Nations emanating from the implementation of the Convention on the Law of the Sea.

76. Mr. VILLAGRA DELGADO (Argentina) (*interpretation from Spanish*): On 3 December 1982, the delegation of Argentina described in the thirty-seventh session of the General Assembly [91st meeting, paras. 98-101] how paragraph 2 of the transitional provision of the draft United Nations Convention on the Law of the Sea came to be replaced by what is today resolution III of the Third United Nations Conference on the Law of the Sea. I should like to restate the position of my Government in all its terms and to say that because of the link that some seek to establish between the text of the Convention and the declaration in resolution III, especially subparagraph (b) of paragraph 1, Argentina will not be able to sign the Convention as long as this situation continues. Consequently, we shall not participate in the vote on the draft resolution A/38/L.18/Rev.1.

77. I also wish to repeat that this does not imply that my country is adopting a negative position on the text of the Convention itself, in the drafting of which Argentina took an active part and which we consider to be the result of a major effort by the international community effectively to regulate the law of the sea.

78. Finally, I should like to pay a sincere tribute to the memory of Bernardo Zuleta, one of those who did most to establish a world legal order for the oceans. My country regrets that with his death we have lost a dedicated international civil servant, a great Latin American and a friend.

79. Miss DEVER (Belgium) (*interpretation from French*): I should like to explain briefly why my delegation will abstain in the voting on draft resolution A/38/L.18/Rev.1.

80. On the one hand, we have essentially legal reservations. The language of the sixth preambular paragraph, while not entirely identical with the language of article 18 of the 1969 Vienna Convention on the Law of Treaties, is basically a transposition thereof. Under that article, States must refrain from acts which would defeat the object and purpose of a treaty when they have signed the treaty or have expressed their consent to be bound by it. Belgium cannot accept the sixth preambular paragraph because it has not yet reached a decision on signing the Convention on the Law of the Sea. However, through our active participation as an observer in the work of the first session of the Preparatory Commission, Belgium has proved that the matter does not leave us indifferent but that on the contrary, we are particularly interested in it.

81. Because Belgium's position is not yet final, my delegation must enter reservations on the fourth preambular paragraph and on paragraph 5, which suggest that any initiative for international co-operation taken outside the framework created by the new Convention strikes at the Convention and undermines its effectiveness.

82. Still on the legal aspect, the delegation of Belgium wishes to make it clear that any interpretation which tends

to confuse customary law and the provisions of the new Convention, and consequently to place them on an equal footing, will be unacceptable to my Government. It is to be feared that the words "unified character of the Convention and its related resolutions" in the sixth preambular paragraph and in paragraph 4, may well give rise to such an interpretation.

83. Finally, Belgium's abstention is based on budgetary considerations. Although we approve of the approach that the Secretary-General should show flexibility in the assignment of staff to the Preparatory Commission, depending on how work proceeds and on the needs of the Commission, my delegation does not share the conclusion stated in the Secretary-General's report and endorsed in paragraph 7 of the draft resolution before the Assembly according to which the secretariat for the law of the sea should be continued on a permanent basis. Such a decision seems premature until the Convention on the Law of the Sea enters into force. Furthermore, the Belgian delegation is surprised that the draft resolution, in its fourteenth preambular paragraph, recalls the decision of the General Assembly at its thirty-seventh session to finance the expenses of the Preparatory Commission from the regular budget of the United Nations. In the opinion of my Government, that decision was valid for one year only and there is no overriding reason to recall it in draft resolution A/38/L.18/Rev.1.

84. Generally speaking, and in keeping with the principle of financial responsibility which greatly influences our national policies, the Belgian Government believes that expenses involved in the functioning of the institutions and organs created under the Convention must be reduced to a minimum.

85. The PRESIDENT (*interpretation from Spanish*): I wish to inform the Assembly that the delegation of Togo has joined the sponsors of draft resolution A/38/L.18/Rev.1.

86. I would inform the Assembly that at its 63rd meeting the Fifth Committee approved the revised programme budget estimates related to the activities proposed in this draft resolution.

87. The Assembly will now vote on the draft resolution. A recorded vote has been requested.

A recorded vote was taken.

In favour: Afghanistan, Algeria, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Botswana, Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Canada, Cape Verde, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic Kampuchea, Democratic Yemen, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Fiji, Finland, France, Gabon, Gambia, German Democratic Republic, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, Saint Lucia, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Syrian Arab Republic, Thailand,

Togo, Trinidad and Tobago, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Cameroon, United Republic of Tanzania, Upper Volta, Uruguay, Vanuatu, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia.

Against: Turkey, United States of America.

Abstaining: Belgium, Bolivia, Germany, Federal Republic of, Israel, Italy, United Kingdom of Great Britain and Northern Ireland.

The draft resolution was adopted by 136 votes to 2, with 6 abstentions (resolution 38/59 A).

88. The PRESIDENT (*interpretation from Spanish*): I shall now call on representatives who wish to explain their votes.

89. Mr. LINDAHL (United States of America): Once again my delegation has had to cast a negative vote on a resolution concerning the international development of the law of the sea. As in the past, we have done so with considerable reluctance. We do so primarily because of the insistence by many delegations that the Convention on the Law of the Sea and the institutions it seeks to create remain a direct fiscal responsibility of this Organization.

90. The United States, as we have stated in the past, views the Convention on the Law of the Sea as a major accomplishment in the development of international law relating to the oceans. Unfortunately, the Convention contains one part, Part XI, which runs contrary to United States policy and to that of others which share our views concerning the future development of resources on the bottom of the deep sea-bed. Therefore, the United States has not signed the Convention and will not do so.

91. The resolution just adopted by the General Assembly does two things that are of particular concern to the United States and, in our view, are inconsistent with international law and the Charter of the United Nations.

92. First, the United Nations is being requested to fund from its general budget the Preparatory Commission established by the Convention on the Law of the Sea. The United States believes that the costs of the law of the sea Preparatory Commission should be borne by those nations which are a party to the treaty. Such costs cannot be assessed against all United Nations Members as part of the United Nations budget. They do not represent legitimate expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter. In this regard, the United States has withheld its *pro rata* share of the cost to the United Nations budget which pertained to the funding of the Preparatory Commission. The United States remains steadfast in its opposition to improper assessments, and we are determined to resist such abuses of the United Nations budget and the Charter. The Preparatory Commission is established pursuant to a treaty régime separate from the Charter. It is legally independent of and distinct from the United Nations and is not answerable to the United Nations. Membership in the United Nations does not obligate any Member to finance or to otherwise support any other independent organization.

93. Secondly, this year's resolution once again speaks of the unity of the Convention on the Law of the Sea and appeals to United Nations Member States to refrain from taking action which would selectively apply provisions of the Convention. This concept is neither good law nor good policy. It is inconsistent with one of the most basic purposes of multilateral treaties: that is, the codification, and even the development, of customary law. It would also be an unacceptable limitation on the sovereignty of States in that it seeks to limit the freedom of

action of States which have not signed or otherwise consented to such limitations. States which are not signatories to multilateral treaties should not be discouraged from complying with important provisions of these instruments. Instead, non-signatories should be given every opportunity to accept the duties and the responsibilities provided for in multilateral treaties. Both the Vienna Convention on the Law of Treaties and the more fundamental need for harmony and customary international law suggest such a conclusion. Therefore, the General Assembly should avoid making pronouncements in resolutions which run contrary to existing international law and which foster confrontation instead of co-operation and conciliation.

94. The United States takes this opportunity to reiterate its commitment to co-operate with the international community on the development of international law relating to the oceans. This co-operation extends to a vast number of important principles contained in the Convention on the Law of the Sea. However, the United States will not support that part of the Convention which deals with deep sea-bed development, and the United States will continue to withhold its share of the United Nations annual assessment of the regular budget which is earmarked to Part XI of the Convention.

95. Mr. WESTPHAL (Federal Republic of Germany): My delegation abstained on the resolution just adopted. The Government of the Federal Republic of Germany has not yet made a decision on signing the Convention on the Law of the Sea. This Convention, as we all know, will remain open for signature until 9 December 1984. Our position remains open. Consequently, my Government cannot agree to any decision by the General Assembly that is prejudicial to its position. Many of the preambular and operative paragraphs of the resolution just adopted would have precisely that effect. The Federal Government will continue its active participation in the work of the Preparatory Commission. In our view, the Commission's task is to prepare for an international sea-bed régime that is functional and protects the legitimate interests of all nations.

96. My delegation recognizes the effort of the Secretary-General to exercise financial restraint in the operation of the Office of his Special Representative for the Law of the Sea. With regard to servicing the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea, we wish to state, however, that the resource requirements for the forthcoming biennium have not been limited to the necessary minimum.

97. Mr. FERRARI BRAVO (Italy): The Italian delegation abstained in the voting. While recognizing with appreciation the improvements achieved with regard to the previous draft, which were due to intense negotiations among interested delegations, we still feel that the text cannot command general acceptance, especially on the part of those States which, like Italy, have not signed the United Nations Convention on the Law of the Sea but which may do so in the future, after completion of the study of the vast and multiform implications of this important Convention. However, we recognize the need to assist the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea—in which Italy participates actively as an observer—in order to enable that Commission to discharge in the most efficient way the functions assigned to it by the Third United Nations Conference on the Law of the Sea.

98. The reasons for our abstention are to be found in various paragraphs of the resolution on which we have

objections. They relate in particular to the fourth and sixth preambular paragraphs—although we welcome the new wording of the latter—and the seventh and fourteenth preambular paragraphs. On these last two paragraphs, we recall that our delegation abstained in the vote in the Fifth Committee on the financial implications of this resolution, as we are convinced that the Preparatory Commission could have been appropriately serviced at a much lower cost. It goes without saying, however, that Italy has no objection to the seats chosen for the International Sea-Bed Authority and the Tribunal.

99. We have reservations also on paragraphs 3, 4 and 5. As in the relevant paragraph in resolution 37/66, paragraph 5 borrows language from the 1969 Vienna Convention on the Law of Treaties but uses it in a completely different context, as here we are not in the interim period between the signature and the entry into force of a convention signed by all States Members of the United Nations; rather, we are faced with a convention which has not yet been signed by many States and for which the deadline for signature has not yet expired.

100. Mr. BERMAN (United Kingdom): The reasons why my delegation abstained in the vote on the draft resolution will be well known from the discussions which took place on this item last year. The position of my Government on the new Convention on the Law of the Sea remains as stated at the thirty-seventh session [*91st meeting, paras. 159-171*—namely, that its provisions regarding deep-sea mining, including the transfer of technology, are unacceptable in their present form. By the same token, however, as also indicated last year, my Government is eager to work with the international community towards attaining improvements in those provisions leading to a more generally agreed position on the Convention. It continues to be the view of my Government that the Convention must not be used to divide States and that the search for consensus must continue. To this end, the United Kingdom has been attending meetings of the Preparatory Commission and will be taking part in its sessions next year when substantive work is due to begin. Equally, my Government's position as to signature of the Convention also remains as stated last year—namely, that a final decision will be taken at the appropriate time bearing in mind that, under its article 305, the Convention remains open for signature until December 1984. In these circumstances, it will be understood that my delegation is unable to support various ideas contained in the resolution just adopted. Our reservations as to the financial aspects have been expressed in the appropriate forum.

101. In concluding this statement, my delegation would like to associate itself with the words of condolence pronounced by the representative of Singapore on the sad death of Bernardo Zuleta. Mr. Koh spoke for us all. The condolences of the United Kingdom delegation to the Law of the Sea Conference and to the Preparatory Commission have already been conveyed directly to the widow and family.

102. Mr. VITO (Albania) (*interpretation from French*): The delegation of the Socialist People's Republic of Albania did not participate in the voting on the draft resolution for the same reasons that led it not to participate in the voting on the adoption of the United Nations Convention on the Law of the Sea, on 30 April 1982, and not to sign the Convention.

103. The present resolution contains certain provisions that we cannot support. This is true above all of the sixth preambular paragraph and paragraphs 1, 4 and 5.

104. From the very outset of the work of the Third United Nations Conference on the Law of the Sea, the Albanian delegation expressed on several occasions its Government's views and positions on the principles, rules

and provisions enshrined and contained in the Convention on the Law of the Sea. These views and positions are well known; they are clearly expressed and recorded in the official documents of the Conference. The Socialist People's Republic of Albania reserves its position on any statement made in regard to the interpretation of the provisions of the United Nations Convention on the Law of the Sea or the present state of international law.

105. Mrs. CARRASCO MONJE (Bolivia) (*interpretation from Spanish*): Bolivia is convinced that the rules set forth in the Convention are an important contribution to the law of the sea. However, it was not possible to vote in favour of the draft resolution because my Government has not yet signed the Convention.

106. We take this opportunity to express our sincere condolences to the family of Mr. Zuleta on its irreparable loss, as we have already done to the Government of Colombia.

107. The PRESIDENT (*interpretation from Spanish*): The representative of Guatemala wishes to speak in order to submit a proposal in connection with the present item of the agenda.

108. Mr. FAJARDO-MALDONADO (Guatemala) (*interpretation from Spanish*): In my capacity as the chairman of the Group of Latin American States, and expressing the feelings of the various delegations that make up the Group, I wish, with the President's permission, to submit a draft resolution [*A/38/L.47*] whose sole purpose is to give specific recognition to the work of Bernardo Zuleta, recently deceased, in connection with the activities of the Conference on the Law of the Sea. The draft resolution reads as follows:

“The General Assembly

“Pays tribute to His Excellency Mr. Bernardo Zuleta, Special Representative of the Secretary-General for the Law of the Sea, recently deceased, whose services to the Third United Nations Conference on the Law of the Sea were decisive for the elaboration of the United Nations Convention on the Law of the Sea and for the progressive development of international law and international co-operation.”

109. The PRESIDENT (*interpretation from Spanish*): In view of the nature of the draft resolution just submitted and read out by the representative of Guatemala, may I take it that the General Assembly wishes to adopt that draft resolution unanimously?

The draft resolution was adopted (resolution 38/59 B).

110. The PRESIDENT (*interpretation from Spanish*): I call on the representative of Singapore, who wishes to speak in exercise of the right of reply.

111. Mr. KOH (Singapore): I wish to reply briefly to the statements of the representatives of Turkey and the United States.

112. The representative of Turkey said, *inter alia*, that his delegation would withhold its *pro rata* share of any expenses related to the United Nations Convention on the Law of the Sea. I appeal to my colleague from Turkey to reconsider his position, for the following two reasons. First, I remind him that all Member States are under a legal duty to pay their *pro rata* shares of the expenses of the Organization, within the meaning of Article 17, paragraph 2, of the Charter. Secondly, the financial integrity of the Organization would be seriously jeopardized if each of us were to arrogate to ourselves the right to withhold our *pro rata* share of the expenses of programmes of which we disapprove.

113. In the course of his statement our colleague from the United States said that it was illegitimate to charge

the expenses of the Preparatory Commission on the regular budget of the United Nations, because such expenses fell outside the ambit of Article 17, paragraph 2, of the Charter. Most of us disagree with that view. However, since a legal doubt exists in the minds of some of our colleagues as to whether it is in conformity with Article 17, paragraph 2, to charge the expenses of the Preparatory Commission to the regular budget of the Organization, one way in which this doubt can be resolved is by asking the International Court of Justice for its advisory opinion. I wonder whether the United States would support such a proposal.

AGENDA ITEM 35

United Nations Conference for the Promotion of International Co-operation in the Peaceful Uses of Nuclear Energy: report of the Preparatory Committee for the United Nations Conference for the Promotion of International Co-operation in the Peaceful Uses of Nuclear Energy

114. The PRESIDENT (*interpretation from Spanish*): I call on the representative of Mexico to introduce draft resolution A/38/L.35.

115. Mr. MARÍN BOSCH (Mexico) (*interpretation from Spanish*): For the past six years the General Assembly has been considering the question of holding a United Nations conference for the promotion of international co-operation in the peaceful uses of nuclear energy. In 1980 a Preparatory Committee was created, and it has been meeting annually. The Committee's work has been summed up in documents A/36/48¹¹ and A/37/48 and Add.1.¹²

116. The work of the Preparatory Committee has not been easy, and, for various reasons, progress has not been very encouraging. In the circumstances, a number of delegations felt that this year the Assembly should take another course and confine itself to the adoption of a very specific resolution on the procedures to be followed in the future regarding the holding of the Conference and the work of the Preparatory Committee. The result is draft resolution A/38/L.35, which I have the honour to introduce on behalf of the delegations of Czechoslovakia and Greece and of my own delegation.

117. The preamble to the draft resolution reaffirms resolution 32/50, which the General Assembly adopted by consensus in 1977, and recalls the other resolutions on the United Nations Conference for the Promotion of International Co-operation in the Peaceful Uses of Nuclear Energy. It also takes note of the work carried out so far by the Preparatory Committee.

118. Paragraph 1 decides that the Conference shall be held in 1986. Paragraph 2 requests the Chairman of the Preparatory Committee, Mr. Pribicević, and the Secretary-General of the Conference, Mr. Mehta, to undertake immediately appropriate consultations with Member States which could facilitate the resolution of pending issues as well as the venue and the actual dates of the conference. Paragraph 3 notes with appreciation the work done by the Conference secretariat and requests the Secretary-General of the Conference to continue the preparations. Paragraph 4 decides that the Preparatory Committee shall meet for a maximum of two weeks at Vienna in June 1984 to complete its work on an agreed agenda as well as on other outstanding issues related to the Conference.

119. The Preparatory Committee is requested in paragraph 5 to submit a report to the General Assembly at

its thirty-ninth session. In the light of this report, the Assembly will consider the venue and actual dates for the Conference in 1986, as also for further meetings of the Committee. In paragraph 6, the IAEA, the specialized agencies and other relevant organizations are urged to continue to contribute effectively to the preparations for the Conference so as to achieve meaningful results from the Conference, in accordance with the objectives of General Assembly resolution 32/50. In paragraph 7 all States are urged to co-operate actively in the preparation of the Conference, and, finally, it is decided to include in the provisional agenda of the Assembly's next session an item on the Conference.

120. The sponsors hope that the Assembly will adopt this draft resolution without a vote. They believe that the spirit of conciliation that made this text possible will lead to positive results during the fifth session of the Preparatory Committee, to be held at Vienna in June 1984. They hope that, in accordance with paragraph 4, the Preparatory Committee will be able to complete its work on an agreed programme, as well as on other outstanding issues relating to the Conference. It is important to stress these matters, because there is a general understanding among delegations that further meetings of the Preparatory Committee should not be scheduled before October 1985.

121. The PRESIDENT (*interpretation from Spanish*): I call on the representative of the German Democratic Republic, current chairman of the Group of Eastern European States.

122. Mr. HUCKE (German Democratic Republic): On its own behalf and on behalf of other delegations of the socialist countries, the delegation of the German Democratic Republic would like to state the following concerning preparation for the United Nations Conference for the Promotion of International Co-operation in the Peaceful Uses of Nuclear Energy.

123. Together with a broad range of countries, we have consistently advocated effective and fruitful international co-operation in the peaceful uses of nuclear energy. We have been active participants in such co-operation on both a bilateral and multilateral basis, *inter alia*, within the Council for Mutual Economic Assistance and the IAEA. True to this consistent policy, we have supported the idea of convening the United Nations Conference for the Promotion of International Co-operation in the Peaceful Uses of Nuclear Energy. In our view, such a conference is designed to play a positive role in promoting co-operation, and it can do so provided consideration of the questions dealing with the peaceful uses of nuclear energy are closely linked to measures that will strengthen the régime for the non-proliferation of nuclear weapons.

124. The further strengthening of that régime is a basic condition for developing broad international co-operation in the peaceful uses of atomic energy. It is in keeping with the interests of all States, large and small, since the achievement of that goal is a major step in limiting the danger of nuclear war. We are convinced that if the preparation and holding of the Conference are to be successful, the IAEA must be actively involved. The Agency is the main international body ensuring co-operation among States in the peaceful uses of atomic energy, a body with vast experience in this field which can and should be used at the Conference. We believe that other international organizations in the United Nations system the activities of which are related in varying degrees to the peaceful uses of atomic energy must also make their contribution to the preparation for and holding of the Conference.

125. Our countries believe that all participants in the Conference should display flexibility in preparing and

holding it and that every possible effort should be made to adopt mutually acceptable decisions. We are ready for that and thus are acting on the assumption that the agenda and rules of procedure of such a conference must take into account the positions of all the groups of participating States, so that the Conference can work out realistic measures for further fruitful development of international co-operation in the peaceful uses of atomic energy in the interests of all States.

126. Our countries are in favour of including in the Conference agenda a wide range of problems related to various aspects of the peaceful uses of nuclear energy which are of interest to most States, including the overwhelming majority of the developing countries. Besides atomic power generation and its nuclear fuel cycle, they include the use of radioactive isotopes and radiation in such fields as industry, agriculture, medicine and science. It is quite obvious that many States, irrespective of the level of their economic development, take a direct interest in the use of radioactive isotopes and radiation.

127. The Conference, like other United Nations conferences, will be a forum attended by the largest possible number of United Nations Member States. It is the considered view of our countries that only a search for agreement through consensus can guarantee the success of such an important conference. In that context, we are gratified to note that draft resolution A/38/L.35 on this question, sponsored by the delegations of Czechoslovakia, Greece and Mexico, is a consensus-type draft resolution. Our countries attach great importance to the commonality of views of all States concerning such an important forum as the United Nations Conference for the Promotion of International Co-operation in the Peaceful Uses of Nuclear Energy. They hope that the spirit of co-operation that has emerged during the preparation of this draft resolution will continue to prevail in the course of preparing for the Conference.

128. Mr. ŠILOVIĆ (Yugoslavia): The United Nations Conference for the Promotion of International Co-operation in the Peaceful Uses of Nuclear Energy should have already been concluded, and we had expected at this session to be able to deliberate on its results, not on its preparation.

129. The transfer of nuclear technology and the use of nuclear energy for peaceful purposes are a complex political problem which has implications for international relations as well as for the social and economic development of developing countries and their independence and sovereignty. It is evident that the developing countries—first of all those which do not possess reserves of conventional sources of energy—are faced with the historical necessity of speedily introducing nuclear energy into their energy systems, regardless of all the impending difficulties. To put it simply, at the present stage they have no other rational alternative. The developed countries long ago, and rightly so, chose to do the same. We cannot bear any longer a situation in which this right is being denied the developing countries.

130. Proceeding from the view that international relations in the sphere of the peaceful uses of nuclear energy are being burdened ever more by the problems that could not be solved in the manner employed so far, Yugoslavia has concluded that the solution of those issues calls for political action. In other words, international political agreement and understanding are left as the only possibility, and therefore a conference is required to express different needs and efforts of the international community to find solutions for the complex problems arising from the development and application of nuclear technology for peaceful purposes. Such a conference should

translate into practice the obvious need of the international community to promote an undisturbed and equitable transfer of nuclear technology and to overcome the existing system of monopolies, eliminating restrictive and discriminatory practices and establishing a universally acceptable and truly democratic system of control of the uses of nuclear energy. That is the reason for our conviction that the United Nations and its system are the most appropriate instrument for the promotion of international co-operation and for reaching genuine solutions ensuring the independent, equitable and free development in this sphere of all the countries in the world. This reasoning prompted my country to launch in the General Assembly in 1977 the initiative on the convening of a United Nations conference dedicated to these issues.

131. We see the use of nuclear energy as a very complex problem which includes numerous economic, political, military, legal, environmental, moral and other aspects. For precisely that reason the issue of nuclear energy deserves particular attention and consideration, and new solutions should be sought continually, with the participation of the entire international community. Yugoslavia cannot accept the imposition of additional measures by certain individual countries or groups of countries, above all measures which would impose limitations on our independent development of nuclear energy and its application in our development programmes. My country is therefore opposed to unilateral concepts and measures which are not internationally agreed and which, under the pretext of concern for the non-proliferation of nuclear weapons, restrict the freedom of transfer of nuclear technology for peaceful purposes.

132. Yugoslavia does not deny the danger of the possibility of the proliferation of nuclear weapons, nor do we deny the crucial significance of that issue and the indispensability of its consideration and solution. However, my country sees this not as a technological issue but as a political one, which can therefore be solved on a lasting basis only by political means. The solution can only be an agreement, to be reached by all countries on an equal footing, that they will not proliferate and further develop nuclear weapons, including also the agreement of nuclear-weapon-States to cease accumulating those weapons and to start gradually reducing their number. The issue of the non-proliferation of nuclear weapons is a matter of the political responsibility of the whole international community and of each individual country, and the transfer of nuclear technology for peaceful purposes is a matter of the freedom, sovereignty and equality of all nations. No policy directed against the proliferation of nuclear weapons is viable if it is conducted at the expense of the promotion of the peaceful uses of nuclear energy, that is, at the expense of only those countries not possessing nuclear technology.

133. The practice of nuclear countries differs essentially from their proclamations. The selective approach of classifying countries as "reliable" and "unreliable", as parties and non-parties to the Treaty on the Non-Proliferation of Nuclear Weapons, as those which need nuclear energy immediately and those which might not be interested in it for some time, and so on, has led to these considerations being introduced as criteria determining the attitude towards co-operation in this field with specific countries.

134. We have been actively involved in this sphere for a long time. As a developing country seriously lacking conventional sources of energy, Yugoslavia has been compelled to introduce nuclear energy into its energy system. Yugoslavia is vitally interested in all aspects of the conditions under which it has to apply its programmes of utilization of nuclear energy and is endeavouring to improve these conditions. Therefore,

Yugoslavia approaches this problem from the standpoint of its own economic development as well as that of the development of other countries, particularly the developing ones. Free transfer of nuclear technology is of an immense and crucial significance for enhancing productivity in the world and in every individual country. It is particularly important in overcoming the gap between the developed and developing countries and in establishing and promoting the new international economic order.

135. At all four sessions the Preparatory Committee faced the same issues, and a stalemate has developed that reflects the different approaches of the supplying and receiving countries to the basic issues of the Conference. The complexity of the situation and the different approaches to the most important issues have made futile the attempts by the Preparatory Committee to find an acceptable basis for the agenda and the rules of procedure of the Conference. The two substantive issues on which agreement could not be reached were the way of dealing with non-proliferation on the agenda and at the Conference and the decision-making process.

136. The developing countries were faced with attempts to impose upon them "non-proliferation concerns" the scope of which is vague, partial and inequitable and which can only be interpreted as being those that have been agreed upon among the suppliers themselves. Such an approach is not likely to contribute to the promotion of international co-operation in the peaceful uses of nuclear energy, which could be beneficial to all and which is indicated by the title of the Conference itself.

137. Everybody, we believe, is aware that the subject-matter of the Conference includes the non-proliferation aspect. Indeed, this element is contained in General Assembly resolution 32/50, which was adopted by consensus and which is the basis for the preparatory work on the Conference and for the Conference itself. Therefore, it is understood that in elaborating the principles of international co-operation in the peaceful uses of nuclear energy this issue will present.

138. The four unsuccessful sessions of the Preparatory Committee show that there exists fundamental resistance to changing the present situation in this sphere despite the fact that the majority of the participants have pledged themselves to such changes, which would be of concurrent and mutual benefit to all interested parties. Yugoslavia considers that the political responsibility for the lack of success in the preparations for the Conference so far is borne by the technologically most developed countries members of the so-called London club. Such lack of mutual confidence, which has unfortunately been present since the beginning of the peaceful uses of nuclear energy, adversely affects all domains of deliberation on nuclear energy and all forums where this issue is being considered.

139. A new demand that the suppliers are now posing as a precondition for the convening of the Conference is agreement that it be held in 1986, that is, after the Third Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons. This clearly shows that in their approach these two important international meetings are not only related but made conditional upon each other as well.

140. My country, along with other members of the Group of 77, as I have already mentioned, does not deny the fact that the two Conferences overlap to a certain extent. However, their basic goals, the substance of the problems on their agendas and the composition of the participation in them are so different that the Conferences should not be made conditional upon each other. Therefore, we are convinced that at the next session of the

Preparatory Committee for the United Nations Conference for the Promotion of International Co-operation in the Peaceful Uses of Nuclear Energy the pending issues should be resolved and the agenda of the Conference adopted, in order to enable the preparations at the national level, necessary consultations among participating States and the work of the Conference secretariat to proceed along determined and mutually agreed lines.

141. It is encouraging that this position has been agreed upon and that the draft resolution—which it is hoped the Assembly will adopt by consensus—after long negotiations reflects this demand and the general agreement that it be implemented. My delegation expects that at the next session of the Preparatory Committee, to be held next June at Vienna, all participating countries will manifest the necessary readiness, constructive spirit and political will to achieve positive results. This would certainly have a favourable impact on the consideration of the entire nuclear complex and on each of its specific aspects and every forum which deals with it. Such a solution should not be beyond our reach.

142. The PRESIDENT (*interpretation from Spanish*): The Assembly will now take a decision on draft resolution A/38/L.35. The administrative and financial implications of this draft resolution appear in the report of the Fifth Committee in document A/38/734. May I take it that the Assembly wishes to adopt the draft resolution?

The draft resolution was adopted (resolution 38/60).

143. The PRESIDENT (*interpretation from Spanish*): I shall now call upon those delegations who wish to explain their votes.

144. Mr. SOULIOTIS (Greece) (*interpretation from French*): It is my privilege to speak as the representative of the current Presidency of the Council of the European Communities.

145. May I first emphasize that from the outset, the European Communities and their 10 member countries warmly welcomed the idea of a United Nations conference to promote international co-operation in the field of the peaceful uses of nuclear energy. We still hope that this proposal will be accepted and that the Conference will be a complete success. We accordingly believe that a proper distinction should be maintained between that Conference and the preparation and holding of the Third Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons.

146. While it is true that these Conferences have quite distinct aims, it is nevertheless true that there are underlying considerations common to both which could have far-reaching effects on the work of each. If it is well-prepared, the United Nations Conference for the Promotion of International Co-operation in the Peaceful Uses of Nuclear Energy should, in our opinion, help to define more clearly the aspirations of the developing countries in the nuclear field and endeavour to find a way of responding to them. The Ten believe that the Conference should take into account the needs of these countries with respect to the peaceful uses of nuclear energy, particularly in the fields of power, agriculture and medicine, while bearing in mind all the requirements of non-proliferation, including those involving explosive nuclear devices other than nuclear weapons.

147. The Ten would once again like to emphasize the essential role which should be played by the IAEA in all aspects of the peaceful utilization of nuclear energy.

148. Resolution 32/50 should not therefore be considered as the only basic text dealing with problems of nuclear co-operation.

149. We hope that the Preparatory Committee, which, according to the resolution which has just been adopted,

is to meet at Vienna in June 1984, will display the same spirit of conciliation and constructive effort which has enabled us to reach a consensus on this resolution. It is our belief that the informal consultations to be held before then by the President and the Secretary-General of the Conference on the basis of that resolution will have an important influence in that respect.

150. Mr. SORZANO (United States of America): My delegation, too, wishes to express satisfaction at the constructive efforts of so many in this body to develop a mutually agreeable resolution this year on the projected United Nations Conference for the Promotion of International Co-operation in the Peaceful Uses of Nuclear Energy, a resolution which the Assembly has just approved by consensus. While the text as finally agreed upon may not be ideal from various points of view, it is generally acceptable to all and is non-prejudicial to national positions on issues still to be resolved in the Preparatory Committee or to be addressed or taken fully into account at the Conference itself. It reflects the all-important spirit of compromise which has characterized efforts in this session of the Assembly on other key resolutions in the field of international co-operation in the peaceful uses of nuclear energy and nuclear non-proliferation—a spirit essential to achieving a positive outcome at the Conference itself.

151. Our respective representatives came very close to reaching a similar consensus at the fourth session of the Preparatory Committee here in New York last April on the central question of a generally acceptable agenda for the Conference, which would set out a work programme embodying participants' principal interests and concerns in the subject area, again without prejudice to national positions at the Conference. We hope and expect that the same constructive approach as is represented in today's consensus resolution will enable us to achieve mutually agreeable results at the next meeting of the Preparatory Committee, now scheduled for June 1984.

152. My Government, in common with those of so many other States party to the Non-Proliferation Treaty, will be intensively engaged, beginning in early 1984, in preparations for the Third Review Conference, to be held in August/September 1985. In accepting 1986 as the date for the Conference on peaceful uses of nuclear energy, and in also accepting the maintenance of momentum towards that Conference for the present through the convening of the fifth session of the Preparatory Committee in mid-1984, as well as through continuation of ongoing

preparations by the Conference secretariat, we would emphasize that the Review Conference will have the first priority for us in the period from now through September 1985, when it will have been concluded. We are willing to join in the work of the June 1984 Preparatory Committee. Beyond that, however, consistent with the statement introducing this resolution today, my delegation would be prepared to consider further intergovernmental preparations for the peaceful-uses Conference taking place only after the Review Conference is past.

153. My Government has long acknowledged the potential contribution that the Conference on peaceful uses of nuclear energy could make to work already under way in promoting more effective international co-operation in the application of peaceful nuclear technology to help meet development needs. We reiterate our willingness to join in a balanced and constructive effort to that end. We see today's consensus resolution as another significant step towards the kind of fruitful co-operation in this field which we all seek.

The meeting rose at 6 p.m.

NOTES

¹ *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122.

² *The Law of the Sea*, (United Nations publication, Sales No. E.83.V.5), p. xxx.

³ *Ibid.*, p. xix.

⁴ *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 6A*, annex II.

⁵ *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/121, annex I.

⁶ *The Law of the Sea*, (United Nations publication, Sales No. E.83.V.5).

⁷ See *Resolutions and Decisions of the Security Council, 1983*, p. 5.

⁸ *Ibid.*, p. 6.

⁹ *Official Records of the Security Council, Thirty-eighth Year, Supplement for October, November and December 1983*, documents S/16203 and S/16205.

¹⁰ United Nations publication, Sales No. 58.V.4, vol. IV.

¹¹ *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 48*.

¹² *Ibid.*; *Thirty-seventh Session, Supplements No. 48 and 48A*.