THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

OFFICIAL RECORDS

Volume XII

SUMMARY RECORDS OF MEETINGS

PLENARY MEETINGS: 117th TO 120th MEETINGS
GENERAL COMMITTEE: 47th TO 50th MEETINGS
FIRST COMMITTEE: 46th MEETING
THIRD COMMITTEE: 41st TO 43rd MEETINGS

DOCUMENTS

Resumed Eighth Session: New York, 19 July-24 August 1979

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INTRODUCTORY NOTE

The Official Records of the Third United Nations Conference on the Law of the Sea comprise the following 12 volumes:

First and second sessions: volumes I-III.

Third session: volume IV.

Fourth session: volume V.

Fifth session: volume VI.

Sixth session: volumes VII and VIII.

Seventh session: volumes IX and X.

Eighth session: volumes XI and XII.

The agenda of the Conference and the allocation of the items included in the agenda appear in paragraph 40 of document A/CONF.62/ L.8/ Rev.1 (see vol. III). The rules of procedure of the Conference have been issued as a United Nations publication (Sales No. E.76.I.4).

For the list of delegations participating in the eighth session, see documents A/CONF.62/INF.10 and Corr.1 and A/CONF.62/INF.11 and Add.1.

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol in the text indicates a reference to a United Nations document. The Conference documents bear the symbol A/CONF.62/ . . .

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PLENARY MEETINGS

117th meeting

Thursday, 19 July 1979, at 10.25 a.m.

President: Mr. H. S. AMERASINGHE

Opening of the resumed eighth session

1. The PRESIDENT declared open the resumed eighth session of the Third United Nations Conference on the Law of the Sea.

Organization of work

2. The PRESIDENT recalled that the objective for the seventh session had been the completion of all substantive discussions for production of a draft convention and the revision of the informal composite negotiating text.[1] The seventh session had ended without effecting such a revision.

3. The approved organization of work for the eighth session had had as its objective the conclusion of informal negotiations and revision of the informal composite negotiating text. The Conference had also agreed that, following the revision, the question of formalizing the revised informal composite negotiating text would be considered before the end of the eighth session.

4. At the eighth session, the Conference had decided on a further innovation in its procedure: it had agreed that, as the problems of the First Committee were different in character and scope from those of the Second and Third Committees, it was necessary, before the issues concerning all three committees reached a stage when the actual task of revision should be undertaken, that all such negotiations as were still required in the attempt to resolve existing difficulties as far as possible should be conducted in a group of manageable size representing the interests involved. A group of 21 delegations, in addition to the Chairmen of negotiating groups 1, 2 and 3 and the group of legal experts on the settlement of disputes relating to part XI, had been established to co-ordinate, without review or alteration, the results achieved in the three negotiating groups, determine outstanding issues and find acceptable solutions.

5. Through the zeal and persistence of the Chairman of the Committees and the Chairmen of the negotiating groups, and with the co-operation of delegations, it had been possible to prepare a first revision of the informal composite negotiating text (A/CONF.62/WP.10/Rev.1), issued after the suspension of the eighth session. With the presentation of that revised text, the Conference had reached a new phase in its work.

6. He also drew attention to his letter of 29 June 1979 addressed to delegations and containing proposals regarding the work of the resumed session. He requested delegations to consider the proposals and, after consultation with one another in regional and other interest groups and between such groups, to communicate their conclusions to him. In the meantime, negotiations would proceed in the same groups as before.

7. He had indicated in paragraph 3 of the letter that it would be most desirable to devise a procedure that would enable the three co-ordinators, namely, the Chairmen of negotiating groups 1, 2 and 3, to conduct further consultations and negotiations on the issues which had originally been allocated to their respective negotiating groups and which had already formed the subject of negotiations in the working group of 21.

8. In the tentative schedule of meetings attached to the letter, reference was made to meetings of the group of 21. The Chairman of the First Committee, who was also the Chairman of negotiating group 3, would be free to decide, in consultation with the Chairmen of negotiating groups 1 and 2, whether the time allocated to the group of 21 could best be used for meetings of the separate negotiating groups or for meetings of the group of 21 itself.

9. The innovation that he had suggested was that, if the negotiating groups deemed it necessary in the interest of efficiency and expeditiousness to conduct more intensive negotiations in smaller groups before taking their results to the working group of 21, the working group might establish such smaller groups for that purpose.

10. As he had stated in paragraph 3 of his letter, the adoption of the system of alternate members would permit the appropriate representation of the special interests involved in the particular matter that happened to be the subject of negotiation in any of those groups at any particular time. He had also indicated that the group of legal experts on the settlement of disputes relating to part XI would need time for the negotiations. The results of their work would, as before, be presented to the Chairman of the First Committee for consideration in the working group of 21, which co-ordinated all First Committee matters.

11. The tentative schedule was subject to revision, and the Chairmen or any others who wished to suggest certain revisions should bring them to his notice and to the notice of the Special Representative of the Secretary-General, so that suitable adjustments could be made in the schedule.

12. In paragraphs 6 and 7 of his letter, he had suggested the establishment of a group of legal experts to consider the technical aspects of the final clauses and the establishment of a preparatory commission which would deal with all matters requiring attention between the signing of the convention and its entry into force and relating to the administrative and other measures to be taken for the convening of the first meeting of the Assembly, the establishment of the Authority and other relevant matters. He requested delegations to consider the matter and conduct consultations between geographical groups and between other interest groups, so that he could present a proposal that was generally acceptable to the Conference. The group of legal experts could be established after there had been preliminary consideration of those questions, particularly the question of final clauses, in informal plenary meetings.

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

13. The Conference would have to work with a deep sense of urgency. From all sides he had had indications that the patience of Governments was nearing exhaustion. If, therefore, negotiations on the hard-core issues — without excluding consideration of other issues — were to be concluded, every effort must be made to complete the work of the negotiating groups and the group of 21, or any similar groups that were established, by the end of the third week of the resumed session. The strain imposed on the Chairmen of the Committees and of the negotiating groups was heavy, and their responsibility was formidable. It was owing to their perseverance and diligence and the assistance they had received from delegations that it had been possible to achieve even the amount of success that could be put on record thus far.

14. In conclusion, he said that the most serious problem of all was that of giving shape, form and substance to the concept of the common heritage of mankind. The difficulties that existed arose, in his view, out of the sharp differences that were found between most of the industrialized countries and the developing countries regarding the interpretation of that concept. Under the so-called parallel system, a compromise had been devised between the two conflicting interpretations, but to give effect even to that compromise, it was necessary to carry out further negotiation on many problems, such as the financing of the Enterprise, the financial terms of contract which would offer inducement to investors while providing tangible financial return to the Authority, and the manner in which decisions were to be taken in the Council, which would be the Authority's executive organ.

15. The idea of a single entity exploiting the common heritage of mankind — a vast natural resource which none could claim or appropriate — on behalf of mankind, and for the benefit particularly of its less privileged sector, was a bold concept. The success of such an unprecedented endeavour would transform the spirit and pattern of international relations from one of ceaseless divergence and conflict to one of enduring fraternity and co-operation.

16. Mr. UPADHYAY (Nepal) recalled that at the seventh session his delegation had introduced a proposal on a common heritage fund (A/CONF.62/65)[2] which the President, in his explanatory memorandum contained in document A/CONF.62/WP.10/Rev.1, had cited as requiring further negotiation during the resumed eighth session.

17. While the proposal had not been formally discussed at the Conference, it had been the subject of a great deal of informal discussion. Furthermore, a working group consisting of India, Nepal, Pakistan, Oman, Singapore and Sri Lanka had been established by the group of Asian States to examine the implications of the proposal. That group, he understood, would be meeting very soon. However, he suggested that in order to provide an appropriate forum of the Conference in which the proposal could be considered, the Conference should decide to establish a working group to consider the proposal and other outstanding issues.

18. The PRESIDENT welcomed the fact that a working group had been established within the group of Asian States to consider the proposal on a common heritage fund. As to the suggestion to set up a separate working group within the Conference, he wished to hold consultations on the matter, since it was necessary to avoid a proliferation of working groups.

19. Mr. ENGO (United Republic of Cameroon), speaking as Chairman of the First Committee, said he felt that the tentative schedule of meetings attached to the President's letter of 29 July 1979 should not be considered too rigidly with regard to the work of the First Committee. While the working group of 21 was expected to conclude its work within the first three weeks of the resumed session, the first week had almost ended, leaving it only two weeks to complete its work.

20. Furthermore, he urged that, as far as possible, matters should not be referred to bodies other than the working group of 21; to do so would merely delay the work. He therefore suggested that it would be far more productive if the working group of 21 were allowed to continue using the informal methods it had devised, in order to facilitate progress in its work.

21. The PRESIDENT said that nothing in his proposal was inconsistent with allowing the working group of 21 the latitude to decide on the way in which it wished to proceed with its negotiations.

22. He suggested that the meeting should adjourn to enable the working group of 21 to proceed with its work.

The meeting rose at 10.50 a.m.

[2] *Ibid.*, vol. IX (United Nations publication, Sales No. E.80.V.6.).

118th meeting

Thursday, 23 August 1979, at 4.35 p.m.

President: Mr. H. S. AMERASINGHE

Organization of work for the ninth session

1. The PRESIDENT drew attention to the General Committee's recommendations on the organization of work for the ninth session in document A/CONF.62/BUR/12, as amended by document A/CONF.62/BUR/12/Add.1, together with oral amendments. He observed that the question of the programme of work for the rest of the eighth session — the first item in docuemnt A/CONF.62/BUR/12—had been overtaken by events and that the addendum applied only to the organization of work for the ninth session.

2. With regard to the eighth amendment, the representative of Brazil had suggested at the 49th meeting of the General Committee that delegations should be asked to address themselves in the general discussion during the fourth week to the substance of the existing informal composite negotiating text and to avoid making comments on questions of a general nature.

3. The new text to be added on page 5 of the English text should appear under the heading "Final stage" and not "Fourth and final stages", as in document A/CONF. 62/12/Add.1. The period of ten days referred to in the third sentence included the eight days mentioned in the first sentence, plus a two-day grace-period for the submission of formal amendments. Lastly, in the final subparagraph, the words "the rules of procedure and" should be added after the words "having due regard to".

4. Mr. KRISHNADASAN (Swaziland) said that if the new text to be inserted on page 5 was to be headed "Final stage", the reference in the final subparagraph to "the subsequent stages" should be amended.

5. The PRESIDENT said that the necessary consequential amendments would be made. If there was no objection, he would take it that the Conference wished to adopt the report of the General Committee, as amended (A/CONF.62/88).

It was so decided.

Statement on behalf of the group of coastal States

6. Miss CABRERA (Mexico), speaking on behalf of the group of coastal States, said that the group had noted with surprise and concern the recent media reports that the United States Government had ordered its Navy and Air Force to undertake a policy of deliberately sending ships and aircraft into or over the disputed waters of nations that claimed a territorial limit of more than three miles.

7. That policy, which, in its essentials, had been confirmed by officials of the United States Government, was contrary to customary international law, in accordance with which the great majority of States exercised full sovereignty in their territorial seas up to a limit of 12 nautical miles, subject to the right of innocent passage. It was also at variance with the understanding prevailing at the Conference on the Law of the Sea, which recognized the validity of such a practice.

8. The group had taken note of the clarification subsequently provided by United States authorities to the effect that there had been no order to challenge in an aggressive manner the claims of other nations. However, it considered the assertion by the United States that the régime of the high seas commenced beyond the three-mile limit to be an anachronism.

9. The group of coastal States had also taken note of the reassurances given by the same official source that the United States position at the Conference on the Law of the Sea had not changed and of the elements which, according to that source, should be combined within the context of an over-all package deal. The group reaffirmed its determination to continue working towards the early adoption of a generally acceptable comprehensive convention on the law of the sea and hoped that all States would refrain from taking any action which might adversely affect their relations with other States or the success of the Conference.

10. Mr. VALENCIA-RODRÍGUEZ (Ecuador) said that his country's President and Minister for Foreign Affairs had, in recent statements, condemned the action of the United States Government as being contrary to peaceful coexistence and as an attack on the sovereignty of States. His delegation had associated itself with the statement made on behalf of the group of coastal States in the interests of consensus but wished to place on record its disagreement with the assertion that customary international law supported the claim of a 12-mile territorial sea. The Hague Conference of 1930 and the Geneva Conference of 1958 and 1960 had demonstrated that there was no generally accepted norm regarding the breadth of the territorial sea. The only thing that was certain in customary international law was that the breadth of the territorial sea varied from three to 200 miles in accordance with the unilateral proclamations of States. Accordingly, more than 25 years earlier, Ecuador had proclaimed its territorial sea to be 200 miles wide and, in so doing, it had violated no provision of international law whatsoever.

11. Mr. RICHARDSON (United States of America) said that his delegation was surprised and distressed that press reports, which were themselves distorted, had caused such a stir at the Conference, where the views of the United States with respect to navigation and overflight were well known to all participants. Press reports notwithstanding, those views had not changed. The activities of the United States on the seas were fully in keeping with its long-standing policy and with international law.

12. At the same time, it remained the firm position of his delegation that a comprehensive convention on the law of the sea offered by far the best, and perhaps the last, opportunity to establish a universally agreed and conflict-free régime governing all uses of the world's oceans and their resources. His delegation had indicated that it could accept a 12-mile territorial sea, coupled with transit passage of straits used for international navigation, as part of an over-all package deal. In that connexion, he noted that the group of coastal States had reaffirmed its determination to continue working towards the early adoption of a generally accepted comprehensive convention. The Conference should not be diverted from the common goal of all participants by a debate on the very differences that had compelled Governments to enter into negotiations in the first place. The Conference provided a forum for bridging those differences, and his Government continued to be firmly dedicated to that objective.

3. Mr. ARIAS SCHREIBER (Peru) said that his delegation shared the feelings and legitimate concerns of the group of coastal States concerning the unfortunate episode involving the United States Government. On 12 August, his country's Minister for Foreign Affairs had made a statement condemning the United States action as inopportune in view of the ongoing negotiations at the Conference and as reflecting a position which had been overtaken both by events and by the development of international law. Official United States statements, including the statement just made by the United States representative, which reaffirmed unacceptable positions concerning the territorial sea and the régime of the high seas, only partially allayed the concerns of his delegation. In the view of the vast majority of States, the high seas began beyond the 200-mile limit. His country exercised jurisdiction and sovereignty over the seas and the subsoil thereof up to a distance of 200 miles from its shores, without prejudice to the freedom of navigation.

14. On 18 August, the Ministers for Foreign Affairs of Chile, Colombia, Ecuador and Peru had issued a joint statement protesting against the United States policy and reserving the rights of their Governments against any violation of the maritime zone in which they exercised sovereignty and jurisdiction, without prejudice to freedom of navigation. That statement had been circulated as document A/CONF.62/85.

15. Mr. de la GUARDIA (Argentina) said that as a representative of one of the three countries named in the press reports to which the representative of Mexico had referred, he wished categorically to reaffirm the validity of his country's rights in respect of the maritime areas under its national sovereignty. Argentina's position was supported by long-standing practice and the existing state of customary international law. His country was prepared to defend its rights against any State which challenged them. It was convinced that it was fully justified to require prior authorization for the passage of warships through its territorial waters. His delegation had consistently maintained that position at the Conference and had supported a proposal to that effect submitted by the delegation of China in the earlier part of the session at Geneva. The language of the statement made on behalf of the group of coastal States had not been aggressive but had merely reaffirmed the rights of the members of the group.

16. Mr. LOVO-CASTELAR (El Salvador) said that his country, although it was a member of the group of coastal States and shared the concerns of the group over the recent press reports, did not agree with the statement that international customary law supported a 12-mile territorial sea. He agreed with the representative of Ecuador with regard to the conclusions to be drawn from the outcome of the Hague and Geneva Conferences. El Salvador had, since 1950, exercised

sovereignty over a band of sea extending to 200 miles from its coasts, without prejudice to the freedom of navigation in that zone.

17. Mrs. NGUYEN NGOC DUNG (Viet Nam) endorsed the statement made on behalf of the group of coastal States. Her Government's view was that the recent action by the United States Government constituted a violation of international law and practice and an attack on the sovereignty of coastal States. Her Government categorically rejected the United States position and would take appropriate measures to protect its full sovereignty over the territorial sea, continental shelf and other maritime zones under its jurisdiction.

18. Mr. CALERO RODRIGUES (Brazil) stated for the record that his country's interpretation of existing customary international law was the same as that given by the representatives of Ecuador and El Salvador.

19. Mr. TOLENTINO (Philippines) associated his delegation with the criticism of United States policy expressed by previous speakers. State practice had long ago eliminated the three-mile limit. If some States wished to maintain that limit, they were free to do so, but they could not impose it on others.

20. Mrs. de BARISH (Costa Rica) reaffirmed the support of her delegation for the statement made on behalf of the group of coastal States and drew attention to her Government's views on the subject, as set out in detail in a letter dated 15 August 1979 addressed to the President of the Conference, circulated as an official document under the symbol A/CONF.62/81.

21. Mr. KOZYREV (Union of Soviet Socialist Republics) expressed regret at the fact that the statement made by the representative of the United States contained no refutation or denial of the press reports in question. The group of coastal States was therefore justified in its anxiety, to which the Soviet delegation was sympathetic. On the other hand, it was a matter of some concern that attempts had been made by some speakers to justify the 200-mile limit on the basis of the results of the first United Nations Conference on the Law of the Sea held at Geneva in 1958, the purpose of which had in fact been to fix the limit of territorial waters at a distance of between 3 and 19 miles. Moreover, in the course of the proceedings of the current Conference, more than 100 States had spoken in favour of the 12-mile limit. That had to be borne very clearly in mind in any discussion of the regrettable news which had appeared in the press regarding the orders given to the United States Air Force and Navy.

22. Mr. SAMPER (Colombia) expressed support for the statement made on behalf of the group of coastal States. The Colombian Government had, individually and jointly with the other countries of the South Pacific Permanent Commission, stated that any attempt to ignore the validity of the new institutions concerned with the sea, especially as it affected Latin America, was unacceptable. It reserved its rights with regard to any violations and called for solidarity in the defence of mutual interests.

23. Mr. KE Zaishuo (China) expressed the full support of his delegation for the statement made by the representative of Mexico on behalf of the group of coastal States. He said it was the basic position of his Government that no international law existed establishing a uniform limit to the breadth of the territorial sea, the delimitation of which was a matter of State sovereignty. It had consistently maintained that foreign warships could not enter territorial waters unless they gave prior notice of their intention and received the consent of the coastal State in question. In the light of that policy, his delegation could not but express some concern at the recent press reports mentioned in the statement of the group of coastal States. It had noted the statement made by the representative of the United States and hoped that, in future, no action would be taken which adversely affected or threatened the sovereignty of the coastal States or the smooth operation of the Third Conference on the Law of the Sea.

24. Mr. MAZILU (Romania) said that, in the opinion of his delegation, the territorial sea up to a limit of 12 miles was an integral part of national territory, and the innocent passage of warships through the territorial sea was subject to the prior authorization of the coastal State.

25. Mr. FERRAO (Angola) expressed the support of his delegation for the statement made on behalf of the group of coastal States and said that it was unacceptable that any State should take unilateral action which could prejudice the outcome of the Conference.

26. Mr. FERNÁNDEZ BALLESTEROS (Uruguay) stated that his Government reserved its right over its territorial waters, as enshrined in its own legislation, which was in keeping with customary international law.

Place and date of the ninth session

27. Mr. ZULETA (Special Representative of the Secretary-General) said that, in the light of the decision of the Conference to hold its next session in two stages and of the advisability of avoiding any clash with meetings of bodies established under the Charter, which, because they took priority, could affect the provision of adequate services, the secretariat suggested that the first part of the ninth session should take place in New York from 3 March to 4 April 1980, and the resumed ninth session at Geneva from 28 July to 29 August 1980, subject, of course, to the agreement of the Committee on Conferences and the endorsement of the General Assembly.

28. While there was room for some flexibility with regard to those dates, he reminded members that the first regular session of the Economic and Social Council would begin during the week of 7 April 1980 and that its second regular session, to be held at Geneva, would not be concluded until the end of June.

29. Mr. CARÍAS (Honduras), speaking on behalf of the Group of 77, asked whether it would be possible for facilities to be made available for some three and a half to four days before the beginning of the first part of the session, in order to allow for consultations in the contact group. To accommodate those consultations, he proposed that the opening of the session might be delayed until 5 or 6 March.

30. The PRESIDENT said that he would prefer not to shorten the session in that way, especially since its work would have to be concluded before the Easter holiday. It was his understanding that facilities could be made available for consultations on 27, 28 and 29 February.

31. Mr. CARÍAS (Honduras), speaking on behalf of the Group of 77, said he hoped that the needs of that Group would be taken fully into account in drawing up the programme of work for the session, so that it would be able to take its full part in the first stage of negotiations.

32. Mr. ENGO (United Republic of Cameroon) inquired whether similar facilities would be available from 27 February for meetings of regional or interest groups.

33. The PRESIDENT assured the representatives of Honduras and the United Republic of Cameroon that every effort would be made to meet the wishes of all groups.

34. Mr. KOH (Singapore) inquired of the Special Representative of the Secretary-General whether facilities could be made available for the resumed ninth session to take place in New York.

35. Mr. ZULETA (Special Representative of the Secretary-General) confirmed that facilities could be provided and stated once again that any decision taken by the Conference in that regard would require the endorsement of

the General Assembly, since a change would have to be made in the calendar of conferences. That applied equally, whether the resumed session was to be held at Geneva or in New York.

36. Mr. EVENSEN (Norway) said there was wisdom in holding the first part of the session in New York and the second at Geneva.

37. Mr. STAVROPOULOS (Greece) pointed out that facilities at Geneva were inadequate, especially since there were no voting machines.

38. The PRESIDENT said it was his understanding that some arrangements could be made at Geneva if it became necessary to resort to a vote, although that might involve some travelling.

39. Mr. KOROMA (Sierra Leone) suggested that the dates of the sessions of the Economic and Social Council might be changed, in view of the fact that the General Assembly had decided to give priority to the Third United Nations Conference on the Law of the Sea.

40. The PRESIDENT said that that was out of the question; the Conference could never take precedence over a body such as the Economic and Social Council, established under the Charter. He believed that for logistical reasons it might be better to hold the resumed session in New York rather than at Geneva.

41. Mr. KOH (Singapore) proposed that, for the convenience of delegations, for reasons of economy and ease of communications with Governments, and also because of availability of voting machines, both parts of the ninth session should be held in New York. He had examined the list of representatives attending the current session and had found that 242 of them were based in New York and only 14 at Geneva. While that situation might be altered somewhat when the session was held at Geneva, there would nevertheless be a preponderance of representatives from New York. Moreover, far more Member States had missions in New York than at Geneva and that could be an important factor at the resumed session, when it might be necessary for delegations to communicate rapidly with their Governments. Since the secretariat of the Conference was also based in New York, that city clearly offered economies in terms of travel and expenses. Although he very much hoped that voting would not be necessary, the possibility of the need for a vote could not be excluded. It was true that facilities for voting did exist at Geneva, but they were at some distance from the Palais des Nations.

42. He hoped the President and other representatives would find his arguments for holding both parts of the session in New York persuasive.

The meeting rose at 6 p.m.

119th meeting

Friday, 24 August 1979, at 10.45 a.m.

President: Mr. H. S. AMERASINGHE

Place and date of the ninth session (*concluded*)

1. The PRESIDENT recalled that it had been agreed that the ninth session would be divided into two parts, each to last five weeks. The first part would be held from 3 March to 4 April 1980, and would be preceded by informal meetings of working groups on 27, 28 and 29 February. The second part would be held from 28 July to 29 August, at which time, as agreed, the work of the Conference was to be completed and the text of the convention approved. If there was no objection, he would take it that there was agreement on that timetable.

It was so decided.

2. The PRESIDENT noted that there was, however, some disagreement as to whether the first part of the session should be held at Geneva and the second in New York or vice versa, or whether both parts should be held in New York. Among the reasons put forward for holding both parts in New York was the lack of voting machines at Geneva; however, there were voting machines at Geneva, but they were at the International Conference Centre and not at the Palais des Nations, which meant that the delegates would have to move to the Centre in order to use them. If it was agreed that the second part of the session should be held in New York, account must also be taken of the problems of accommodation which would arise from the fact that the Democratic Party would be holding its convention there.

3. Mr. GAYAN (Mauritius) said there were very compelling reasons for holding both parts of the session in New York. Delegations must be able to work on equal terms, with facilities for communicating with their respective capitals, and that caused problems for countries which did not have missions at Geneva. Consideration should also be given to the problem of voting and the fact that the need to move to the International Conference Centre would cause delays in taking decisions.

4. Mr. ARIAS SCHREIBER (Peru) said that, although the most productive sessions so far had been those held at Geneva, his delegation was inclined to favour holding part of the session in New York and part at Geneva. In any event, the matter could be put to a vote.

5. Mr. ADIO (Nigeria) said that, while his delegation had favoured the holding of a single eight-week session, it had agreed to the proposal to divide the session into two parts as a compromise solution. With regard to venue, it would prefer the entire session to be held in New York.

6. Mr. PINTO (Portugal) said it was clear that better results had always been obtained at Geneva and, while New York had its attractions, the important thing was to reach agreement on a convention. In his view, there was no need for a vote, since the Conference had always taken its decisions by consensus.

7. Mr. EVRIVIADES (Cyprus) said that he preferred the holding of both parts of the session in New York.

8. Mr. GOERNER (German Democratic Republic), speaking on behalf of the group of Eastern European States, said that the group favoured Geneva as the place where most progress could be made. However, as a compromise, it would agree to the holding of one part of the session in New York.

9. Mr. ORREGO VICUÑA (Chile) said that the Conference should take into account the availability of services and facilities which would advance its work. His delegation would prefer the first part of the session to be held at Geneva and the second in New York.

10. Mr. KOROMA (Sierra Leone) agreed that the sessions held at Geneva had so far produced the best results. The

atmosphere in New York was not conducive to serious negotiations. He would prefer the first part of the session to be held at Geneva and the second in New York.

11. Mr. LUPINACCI (Uruguay) said that a part of the session should be held in each city, and working conditions at Geneva were better in the summer; accordingly, the second part of the session should be held there and the first in New York. As to the problem of voting machines, perhaps the inconvenience of having to move in order to use the machines would result in the Conference's resisting the temptation to take votes and making greater use of consensus.

12. Mr. de la GUARDIA (Argentina) emphasized that he was speaking only for his own delegation and said that, if the session was to be divided into two parts, one part should be held at Geneva and the other in New York.

13. Mr. ENGO (United Republic of Cameroon) noted that the Conference had so far alternated its sessions between New York and Geneva. With regard to the argument that the Geneva sessions had been more productive, he pointed out that the results obtained at Geneva had been based on prior negotiations in New York, so that it was difficult to draw any conclusions on that point. Members must leave aside considerations of personal convenience and consider the problem objectively. Whenever the Conference had before it an official document, members would have to consult closely with their Governments, and many countries which did not have delegations at Geneva would be deprived of the services they received in New York from their missions, with all the resulting expense and confusion.

14. In addition, it should not be forgotten that the conference facilities available in New York were lacking at Geneva, particularly with regard to voting.

15. Mr. LUKABU-K'HABOUJI (Zaire) said that one part of the next session should be held at Geneva. A country's attendance at a meeting did not depend on whether or not it had representatives in a particular city.

16. Mr. KOH (Singapore), speaking on a point of order, proposed that the debate should be closed and that the question should be decided by vote.

17. The PRESIDENT explained that the vote proposed by the representative of Singapore would only be indicative and would in no way constitute a precedent for the Conference's work.

18. If there was no objection, he would take it that the proposal of the representative of Singapore was adopted.

It was so decided.

A vote having been taken, it was decided that one part of the ninth session of the Conference should be held in New York and the other at Geneva.

19. Mr. EVENSEN (Norway) proposed that, since the Democratic Party convention was to be held in New York in July and August 1980, the first part of the ninth session should be in New York and the second at Geneva, so as to avoid the accommodation problems that would inevitably arise in New York in the second half of the year.

20. The PRESIDENT said that, if there was no objection, he would take it that members agreed to the proposal of the representative of Norway.

It was so decided.

21. Mr. ABOUL KHEIR (Egypt) said that, since it had been decided that the second part of the next session would be held at Geneva, the secretariat should be requested to take appropriate measures, in collaboration with the Swiss Government, to ensure that all the necessary services would be available in that city.

22. Mr. ZULETA (Special Representative of the Secretary-General) gave an assurance that the secretariat would take the necessary measures to facilitate the work of the Conference as much as possible. In addition to requesting the collaboration of the Swiss Government, the secretariat would carefully consider the possibility of obtaining the collaboration of specialized agencies and non-governmental and other organizations having their headquarters at Geneva. The secretariat would make every effort to see that the agreed time-table was adhered to so that the goal of adopting a convention as envisaged by the Conference might be achieved.

23. After a procedural discussion in which Mr. KRISHNADASAN (Swaziland), Mr. UL-HAQUE (Pakistan), Mr. GAUCI (Malta), Mr. EVENSEN (Norway), Mr. DIOP (Senegal) and Mr. ADIO (Nigeria) took part, the PRESIDENT suggested that the Conference should hear the report of the Third Committee.

Report of the Third Committee

24. Mr. YANKOV (Bulgaria), speaking as Chairman of the Third Committee, read out his report on the results of negotiations on part XIII of the revised negotiating text (A/CONF.62/WP.10/Rev.1) during the resumed eighth session (A/CONF.62/L.41).

25. Mr. de la GUARDIA (Argentina) said that his delegation had constantly supported a régime under which the consent of the coastal State would be a prerequisite for the conduct of any research project in any of the maritime areas that were subject to the sovereignty or jurisdiction of the coastal State. On that basis it had accepted part XIII of the negotiating text, which, although not fully meeting its expectations, provided a compromise formula safeguarding that basic principle. The report by the Chairman of the Third Committee contained a number of proposals which he believed could be of assistance in reaching final agreement at the next session on the pending issues, particularly the proposals for a new article 246 *bis* and for the addition of a paragraph 2 in article 264. His delegation reserved its position regarding those texts, which would be given careful consideration by his Government with a view to the resumption of negotiations at the next session.

26. His Government felt strongly that it was desirable that the future convention on the law of the sea should have the acceptance and support of the greatest possible number of States. It had therefore maintained a constructive attitude throughout the Conference and had co-operated in reaching consensus, that being the only practical approach if the convention was to command the support of all parties with legitimate interests and if order and peace in international relations were to be effectively achieved.

27. Mr. CALERO RODRIGUES (Brazil) said that, as the Chairman of the Third Committee had pointed out in his report on the work undertaken at the seventh session of the Conference,[1] part XIII of the negotiating text represented a good prospect for a compromise on the over-all package of marine scientific research, and any attempt to amend the existing texts in substance could be justified only with substantive support by delegations most interested in the consideration of the outstanding issues. In spite of the overwhelming support for the maintenance of the compromise embodied in the informal composite negotiating text, the majority of the members of the Committee had given one delegation an opportunity to present proposals to amend part XIII. Discussions on those proposals had been exhaustive during the first part of the current session, when substantial support for the negotiating text and for the maintenance of the delicate balance achieved with regard to part XIII had once more been made evident.

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XI (United Nations publication, Sales No. E.85.V.6.), document A/CONF.62/L.34.

28. At the beginning of the resumed session, his delegation and the Group of 77 had been confronted with a situation in which a few delegations were again calling in question the régime for marine scientific research on the continental shelf and the régime for the settlement of disputes relating to the interpretation and implementation of the convention with regard to marine scientific research. Further discussions had been held, and for a third time the commitment of the overwhelming majority to the informal composite negotiating text had been asserted; thus, it could have been expected that the conclusion of the Committee's work would be considered, without mutilating the results of a five-year effort. None the less, the Conference was now challenged with a number of proposed amendments which were not the result of negotiations among all interested delegations and had been all but unknown until the last minute in the Third Committee. Moreover, the records of the last two meetings of the Committee clearly showed that most of those proposals had lacked the support that was indispensable to provide a reasonable prospect for a consensus.

29. The proposed establishment of a dual régime for marine scientific research on the continental shelf, as implied in the compromise formula suggested for article 246 *bis*, went beyond the scope of the Committee's competence; it not only lacked a juridical basis but undermined rights acquired by States under the 1958 Geneva Convention on the Continental Shelf.[2] The adoption of such a régime would necessarily require a political decision at the highest level of the Conference.

30. His delegation furthermore failed to understand the scope of the proposed new paragraph in article 253, which was both technically incorrect and contradictory, to say the least, with its reference to section 2 of part XV. The wording suggested for article 255 lacked important qualifications which would bring its content in line with the consent régime itself. Although his delegation would study carefully the proposed new paragraph of article 264, it would support a formulation which made it explicit that the exercise of the rights conferred upon the coastal States in article 246, as well as the discretion to terminate a research project, would not be subject to any compulsory dispute settlement procedure.

31. His delegation could not contemplate substantial modifications of the compromise contained in the negotiating text, which was the result of an enormous effort by the majority who had, from the beginning, supported the consent régime for marine scientific research in areas of national jurisdiction. At the stage which had now been reached, it made no sense to renegotiate upon negotiated texts, or to consider specific parts of the negotiating text without considering the over-all package.

32. His delegation could not support but did not challenge the Chairman's inclusion in his report of formulae which were personal proposals and, as such, required further negotiations before they could, if ever, satisfy the criteria specified in paragraph 10 of document A/CONF.62/62.[3] It would be best to keep them in abeyance, along with other informal proposals which had been submitted on those matters, for further study as delegations might deem appropriate in the future. They touched upon such fundamental issues that any other course of action would be detrimental to the progress of the Conference and to the integrity of the future convention itself.

33. Mr. ATAIDE (Portugal) said he agreed with the Brazilian delegation that it would have been preferable not to introduce any amendments into part XIII, although he felt that, where the question of marine research was concerned, some points would still have to be modified in order to reach an agreement acceptable to all. His delegation had no major problems with the new versions of articles 242, 247 and 255, but it had some objections to articles 246 *bis*, 249 and 264.

34. In the case of article 253, his delegation had serious objections, since what was submitted was an addition, and not merely an amendment. His delegation could not accept the article with the wording proposed, because it considered it essential that the full sovereignty of the coastal State should not be affected in any way. Portugal was prepared to facilitate scientific research in the waters unders its jurisdiction to the maximum extent possible, but a basic prerequisite for that was that the rules established should be universally respected. From that standpoint, and in the interests of conciliation, it could accept paragraph 1 of article 253 in its present version. However, the new paragraph 2 should, in its view, be worded in such a way as to establish clearly that, where the country or organization wishing to conduct research did not comply with the conditions agreed upon with the coastal State, the latter would have the right, after giving due notice, to require the suspension or cessation of activities without having to allow the offender enough time perhaps to achieve its objectives without the consent of the coastal State.

35. Mr. KOZYREV (Union of Soviet Socialist Republics) said that, although not all the problems of marine scientific research had been resolved, the Conference had made progress towards a consensus on some issues, such as measures to facilitate marine scientific research and assist research vessels (art. 255).

36. With regard to the régime for research on the continental shelf beyond 200 miles from the economic zone, he was in favour of a more flexible approach. The Chairman of the Third Committee had offered a basis for a compromise solution. Under normal conditions, coastal States would authorize marine research activities beyond 200 miles if it was not exploiting natural resources in those areas and did not intend to do so in the near future. Although that compromise formula submitted by the Chairman was not identical with the proposal made by the Soviet delegation at Geneva, the Soviet Union could join in the consensus if a majority considered it acceptable.

37. It was encouraging that agreement had been reached on the question of suspension or temporary interruption of research. A final appraisal of the compromise texts could, of course, be made only in the light of the results of the work of all the committees and negotiating groups.

38. Mr. ARIAS SCHREIBER (Peru) said that he had serious objections to the compromise formulae proposed by the Chairman for articles 246 *bis*, 249, 253 and 264. In his view, doubt should not be cast on the right of the coastal State to require the immediate cessation of scientific research activities that were being conducted in violation of the provisions of the convention. That point must be expressly incorporated in the text if any real compromise formula was to be arrived at.

39. With regard to the text of the report, it seemed to him that there was an omission in paragraph 4; the words "and to introduce minor amendments in other articles" should be added at the end of the paragraph. That would reflect the fact that the proposal contained in document MSR/5 was not concerned solely with amending article 254 but also referred to a number of other articles.

40. In the first sentence of paragraph 8, it would be better to use the wording "a good number of the representatives", instead of referring to "most" of them. Similarly, in the second sentence, the wording "a like number of delegations" or "a number of delegations" should be used instead

[2] United Nations, *Treaty Series*, vol. 499, No. 7302, p.312.

[3] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4).

of "certain delegations", so as to reflect the fact that there had been a good deal of disagreement during the debate.

41. Subject to its reservations regarding the articles he had mentioned and the amendments he had proposed to the text, his delegation could accept the report.

Site of the International Sea-Bed Authority

42. Mr. UL-HAQUE (Pakistan), speaking as Chairman of the group of Asian States, recalled his letter of 19 April 1979 (A/CONF.62/73),[4] which had stated that the three candidates for the site of the future International Sea-Bed Authority, namely Fiji, Jamaica and Malta, should be considered on an equal footing. The letter had also pointed out that the Conference had never adopted a decision on where the Authority should have its headquarters. He therefore wished to emphasize that any revision of the negotiating text must reflect the principle of equal treatment for all the candidates.

43. Mr. GAUCI (Malta) said that the present article 156, paragraph 3, did not present an accurate picture of the actual state of affairs and should not even have been inserted in the text.

44. From the procedural point of view, neither in General Assembly resolution 2750 C (XXV) nor in the list of subjects and issues relating to the law of the sea approved on 18 August 1972 by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction[5] did the question of the location of the site of the Authority appear as a separate issue. Indeed, up to the present, the Conference had not decided to take up the matter or to allocate it to any of its committees; consequently, it had been beyond the competence of the First Committee to propose a text on the location of the site of the Authority. Malta had been surprised by the insertion of that text in the single negotiating text when it had first appeared in 1975,[6] before anyone had had the chance to study it and despite the results of the consultations that had preceded its presentation. Its surprise had originated not only from the fact that article 20, paragraph 3, should not have been inserted, but more particularly because its phrasing had discriminated in favour of one candidacy to the detriment of others.

45. Despite Malta's justified representations, that element of discrimination had been maintained. Although the informal composite negotiating text[7] was an informal text, the inclusion of the paragraph had a psychological effect and the foot-note inserted in the revised version (A/CONF.62/WP.10/Rev.1) at the insistence of Malta did not remove the discrimination.

46. The true state of affairs was that the Conference should now be at the stage where it could envisage creating certain mechanisms to determine how the choice of the site would be made, after a general exchange of views. Since the Conference had not gone beyond that stage, it should not give the impression that it had. Up to the present, three developing countries were offering themselves as the site for the Authority. Those countries were equally sovereign and, in the absence of any decision to the contrary by the Conference, they were entitled to be accorded identical treatment in the text before the Conference, independently of whatever support each might claim to have.

47. When the question where the Authority should be located came up for debate, Malta would explain in detail the advantages which it believed the site should offer and would then accept the decision of the Conference, provided that it was democratically adopted. What was required at the current stage was that all the candidates should be given equal treatment, and that could best be done by a decision of the Conference to include the three candidates in the text of article 156, paragraph 3, or else to remove that article, which was the course his delegation would prefer.

48. The method selected gave rise to considerations of a legal nature, since it meant considering whether it was necessary or desirable to include in the constituent instrument of an organization a clause providing specifically for the location of its headquarters. One consideration was whether it was desirable for a State which might or might not be a party to the convention to be chosen for the site; another was whether the possibility should not be foreseen of amending the convention if a change in the location of the headquarters became necessary. Malta had carried out a survey of a number of constituent instruments, from which it appeared that the general practice, when it came to the selection of a location, was to maintain flexibility; in other words, the tendency was not to specify the seat of the organization in the constituent instrument, leaving it to the plenary organ to make the decision.

49. He referred to three documents before the Conference, each supporting a neutral text; they were documents A/CONF.62/73 and 76,[4] in which the Chairmen of the group of Asian States, the group of Arab States and the group of Western European and other States requested equal treatment for the three candidates and consequently that article 156, paragraph 3, should be revised or deleted. In his delegation's opinion, those documents indicated the widespread desire for fairness and objectivity in the Conference.

50. An amendment to article 156 should not in any way be tied to the procedures envisaged in document A/CONF.62/62. The programme of work adopted by the Conference referred to matters which had already been discussed at great length and in respect of which changes could determine the success or failure of the Conference. The issue he was raising was completely separate. The deletion or amendment of article 156, paragraph 3, of the revised negotiating text would have no effect on any substantive problem.

51. Summing up, he said that, from the procedural point of view, the First Committee had never been asked to deal with the location of the seat of the Authority and, therefore, its pronouncement in that regard was *ultra vires*. The Conference meeting in plenary session should decide at the current stage to correct the text, so that it reflected accurately the situation. A number of regional groups and two of the candidates had requested that such a correction be made. The change was not one contemplated under the provisions of document A/CONF.62/62, since it would not affect the meaning, scope or interpretation of the convention. Lastly, it was within the sole competence of the Conference to decide on the rectification of the present text and on the procedures whereby consideration of the substantive issue could be taken further.

52. Mr. RATTRAY (Jamaica) regretted that the question of the site of the Authority was being raised at the current stage and the time was not being used to discuss more important questions. He expressed surprise that procedural matters were at present being aired in view of the fact that the issues relating to the machinery and powers of the Authority had been assigned in 1975 to the First Committee and delegations had not raised objections in that regard. It was indisputable that the provision in article 156 of the informal composite negotiating text indicating that the Authority would have its seat in Jamaica reflected widespread and substantial support.

53. The candidacy of Jamaica as site of the Authority had been supported by the Group of 77, the group of African

[4] *Ibid.*, vol. XI

[5] *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21*, para. 23.

[6] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10), document A/CONF.62/WP.8.

[7] *Ibid.*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

States, the group of Asian States, and the group of Latin American States. Moreover, various Governments of the group of Western European and other States had given the Government of Jamaica written assurances of their support.

54. As was indicated in paragraph 10 of document A/CONF.62/62, no changes should be made in the negotiating text unless it was considered that they greatly improved the prospects for consensus owing to widespread and substantial support in the Conference. Mentioning in the text the names of various possible sites or omitting reference to the seat of the Authority would not be conducive to arriving at a consensus; on the contrary, it would be detrimental to a consensus.

55. Jamaica was prepared to have a roll-call vote on the matter, since it was sure that it would receive sufficient support to be designated the site of the Authority. Moreover, the reference in the text to the location of the seat—a provision which had been the object of criticism — had plenty of precedents.

56. Mr. de la GUARDIA (Argentina), speaking on behalf of the group of Latin American States, said that the group not only continued to support the candidacy of Jamaica as the site of the Authority, but it opposed any proposal to amend the informal composite negotiating text designed to remove the reference to Jamaica. Thus it confirmed once more the communication addressed to the President in April 1979 on that subject. The inclusion of Jamaica in the text had been approved by consensus at Caracas and Nairobi and that consensus had been reaffirmed on various occasions. The group of Latin American States had no evidence to support a statement that the consensus no longer existed.

57. Mr. SAQAT (United Arab Emirates), speaking on behalf of the group of Arab States, said that, at the end of the first part of the session, the Chairman of the delegation of the United Arab Emirates had sent to the President of the Conference, on behalf of the group, a communication which, in accordance with the resolution adopted by the League of Arab States, reflected the group's support for the candidacy of Malta as the site of the Authority. Article 156 of the revised negotiating text referred to Jamaica as the country in which the seat of the Authority would be located, even though there were two other candidates and the Conference should treat all candidates equally.

58. Mr. NANDAN (Fiji) confirmed that his Government had offered to accommodate the seat of the International Sea-Bed Authority in Fiji.

59. His delegation considered that the only reasonable and equitable course of action would be to give equal treatment in the negotiating text to all three candidates, as had been requested by the group of Asian States, the group of Arab States and the group of Western European and other States in the communications sent to the President of the Conference.

60. His delegation's request for equal treatment was based on two considerations: the basic consideration of fairness, and the fact that the location of the seat had never been negotiated by the Conference and that consequently the Conference at no stage had selected Jamaica, just as it had not selected Fiji or Malta. Much had been made of the fact that five years earlier the Group of 77 had indicated a consensus on one candidate—Jamaica—before other States had had an opportunity to offer themselves as candidates. Any commitment made at that time was obviously premature. If the Conference had ignored developments during the past five years, it would never have reached its present stage of progress. Such was the case also with the question of the site. There had been a fundamental change in circumstances since 1974. First, two other members of the Group of 77 had declared themselves candidates. Secondly, two important groups — the group of Asian States and the group of Arab States — had expressed their view that all three candidates must be treated equally. Consequently, it was misleading to pay lip-service to a consensus which was now illusory because of the changed circumstances.

61. Reference had been made to the procedure for revising the negotiating text and it had been said that that procedure must be applied uniformly and not in a discriminatory manner. He was surprised that the word "discriminatory" had been used when the very exclusion of Fiji and Malta was in itself discriminatory. The procedure envisaged in document A/CONF.62/62 must be interpreted in its proper context. It was clear that the procedure related to substantive matters and applied in the context of negotiations on the outstanding key issues identified in that document. The Conference had agreed to adopt the procedure described in paragraph 10 of document A/CONF.62/62 because the issues in question were extremely sensitive and were substantive matters of legislation and codification. The matter of the location of the seat of the Authority or of any other organ could not be placed on the same footing as the provisions of the negotiating text dealing with such substantive matters as the system of exploitation, financial arrangements, the economic zone or the continental shelf. It was absurd to insist that the same criterion must be applied to the location of the seat as to the substantive provisions which had been arduously negotiated. His delegation therefore hoped that the Conference would realize that it would be perpetuating a gross injustice if it did not now revise the text of article 156, paragraph 3, of the revised negotiating text.

62. He suggested that the secretariat provide the Conference with information as to the established practice with respect to the selection of the headquarters of various institutions.

63. Mr. WOLF (Austria), speaking on behalf of the group of Western European and other States, recalled that the letter of 25 April 1979 to the President of the Conference stated that the group had discussed paragraph 3 of article 154 of the negotiating text and considered that all the candidates which had offered to accommodate the seat of the future Authority should receive equal treatment, and that it would be preferable not to mention any of the candidates in the negotiating text.

The meeting rose at 1.20 p.m.

120th meeting

Friday, 24 August 1979, at 3.35 p.m.

President: Mr. H. S. AMERASINGHE

Report of the Third Committee (*concluded*)

1. Mr. JAGOTA (India) commended the Chairman of the Third Committee on his success in resolving some of the thorny issues relating to marine scientific research. With regard to the amendment to article 246 *bis*, as set out in the Chairman's report (A/CONF.62/L.41), his delegation regarded subparagraph (*a*) as an interpretative clause referring to paragraph 3 of article 246 of the revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1) and would therefore have no difficulty in accepting it. However, it wished to reserve its position on the amendments to the substantive clauses of article 246 *bis* (subparas. (*a*) and (*b*)), which amended article 246 in the light of the so-called "dual régime" for marine scientific research. His Government would give careful study to those proposed amendments during the intersessional period and would make its views known at the next session. Similarly, his Government wished to reserve its position on the amendment to article 253. Since his delegation favoured the retention of the existing provisions of paragraph 2 of article 296, it could not, at the present stage, agree to the amendment to article 246.

2. Mr. LUPINACCI (Uruguay) expressed appreciation for the tireless efforts of the Chairman of the Third Committee. His delegation had hoped that the informal negotiations on marine scientific research could be considered to have been concluded in view of the substantial support which the Chairman had noted in paragraph 2 of his report, referring to the first part of the eighth session. Without wishing to prejudge any reservations which his Government might make on some of the amendments at a later stage, he expressed disagreement with the Chairman's assessment of the outcome of the negotiations, which could be inferred from the title of the annex to his report. The proposed amendments had not emerged from the intensive negotiations but had been suggested by the Chairman on the basis of his personal assessment of those negotiations. His delegation had reservations on some of the formulations, particularly those relating to subparagraph (*b*) of article 246 *bis* and to article 253, on which a large number of delegations had voiced objections. In that connexion, he wished to reiterate his Government's firm position that marine research in zones under the jurisdiction of any coastal State must, in all cases, be subject to the prior consent of that State. Any marine scientific research activity in any part of such a zone had to be governed by the consent mechanisms set forth in the informal composite negotiating text.

3. He stressed that any reservations his delegation might have regarding some of the articles would not, of course, affect its willingness to co-operate in ensuring the successful outcome of the work of the Third Committee.

4. Mr. McKEOWN (Australia) said that the report contained some significant proposals which his delegation believed could offer a good basis for the work of the Third Committee at the next session. However, the Chairman's statement in paragraph 8 of his report that some of the formulations had acquired widespread support and could be considered as generally acceptable was a little premature inasmuch as the proposed amendments had only been available for a few days and Governments had not had any opportunity to consider them. Pending that consideration, he reserved his delegation's position. In his view, all the Chairman's proposals should be considered at the next session on an equal basis.

5. Mr. AL-WITRI (Iraq) expressed gratitude to the Chairman of the Third Committee for his efforts to reach compromise formulae. The position of the group of Arab States on marine scientific research, namely, that the jurisdiction of coastal States should not extend beyond the 200-nautical-mile limit and that such activities should be subject to the provisions governing the high seas and the system of exploration and exploitation of the Authority, was well known. For that reason, his delegation had reservations about the proposed amendment to subparagraph (*b*) of article 246 *bis*. The Third Committee should in any case await the outcome of the negotiations in the Second Committee, which would have a bearing on that article, before reaching a final decision. His delegation reserved the right to oppose any amendment submitted to the Third Committee which could adversely affect the land-locked and geographically disadvantaged States, whose rights should be stated in the relevant provisions of the convention.

6. Mr. CLINGAN (United States of America) expressed appreciation to the Chairman of the Third Committee for his report but noted that the compromise formulae contained in the annex to that report did not meet all the concerns of his delegation. However, since his delegation recognized that those formulae were the outcome of lengthy negotiations and reflected the needs of some other delegations, it would respect the principles of the negotiating process and could agree to the compromise formulae if other States found them acceptable.

7. Mr. SMØRGRAV (Norway) said that the Third Committee had gone a long way towards satisfactorily resolving the issues within its purview. He presumed that it was owing to lack of time that the amendments proposed in the Chairman's report had not been submitted for consideration by the Committee. The Chairman's assessment in paragraph 8 of his report was somewhat optimistic, to say the least, and his delegation shared the views expressed by the representative of Peru in that regard.

8. In his opinion, there would never be a consensus on article 246 *bis*, and, inasmuch as that article had not been thoroughly discussed in the Committee, the proposal contained in the annex to the Chairman's report could not be considered a compromise formula. In the view of his delegation, the Chairman's assessment contained in paragraph 6 of his report did not reflect the facts.

Report of the First Committee

9. Mr. ENGO (United Republic of Cameroon), speaking in his capacity as Chairman of the First Committee, reported on the work of that Committee at the current session (see A/CONF.62/L.43).

Report of the Second Committee

10. Mr. AGUILAR (Venezuela), speaking in his capacity as Chairman of the Second Committee, reported on the work of that Committee at the current session (see A/CONF. 62/L.42).

Report of the Drafting Committee

11. Mr. BEESLEY (Canada), speaking in his capacity as Chairman of the Drafting Committee, introduced the Committee's report (A/CONF.62/L.40).

12. The future work of the Drafting Committee fell into three parts. First, he noted that yet another list of recurring

words and expressions (Informal Paper 2/Add.1) remained to be dealt with. While the language groups had submitted reports on that paper, the co-ordinators had not yet begun work on it. Secondly, it might be useful for the Drafting Committee to review a version of the revised informal composite negotiating text which incorporated its recommendations. Thirdly, the time might have come from the Committee to initiate a preliminary article-by-article review of the revised negotiating text.

13. In conclusion, he noted that the possibility of holding an intersessional meeting of the Drafting Committee had been raised. Since, however, the Committee had not yet produced a second revision of the negotiating text, he did not recommend such meetings. On the other hand, provision should be made, if possible, for intersessional meetings of the language groups.

Report of negotiating group 7

14. Mr. MANNER (Finland), speaking in his capacity as Chairman of negotiating group 7, read out the report of the group (NG7/45).

Report of the group of legal experts on final clauses

15. Mr. EVENSEN (Norway), speaking in his capacity as Chairman of the group, read out the latter's report (FC/16) and drew attention to the draft text contained in the annex to that document.

Report of the group of legal experts on the settlement of disputes relating to part XI

16. Mr. WUENSCHE (German Democratic Republic), speaking in his capacity as Chairman of the group, introduced the latter's report (A/CONF.62/C.1/L.26, appendix B).

Report of the President on the work of the informal plenary meeting of the Conference on the settlement of disputes

17. The PRESIDENT introduced his report (A/CONF. 62/L.45) and said that the informal plenary meeting had considered the proposals submitted by Switzerland and the Netherlands (SD/1). The drafting clarification of article 284, paragraphs 1, 2 and 3, made by the President had been found acceptable, as had the proposal in document SD/1 regarding the termination of conciliation proceedings by either party where the conciliators themselves had been appointed but failed to appoint the chairman of the commission (annex IV, art. 3, para. 4). The question of the permissible number of national conciliators seemed to require further consultations; he had suggested that consideration might be given to incorporating aspects of the provisions of both A/CONF.62/WP.10/Rev.1 and SD/1 by permitting each party to appoint one national unless the parties agreed otherwise. With regard to the listing of the alternative forums in article 287, paragraph 1, the Netherlands and Swiss delegations had indicated their willingness to consider withdrawing their proposal. The other proposals made by the two delegations in document SD/1 had been withdrawn.

18. As a consequence of the redrafting of article 296 by negotiating group 5, article 298, paragraph 1 (*b*), would need to be redrafted to bring it into line with the new structure of article 296. The changes suggested in the report of the Chairman of the group of legal experts on the settlement of disputes relating to part XI could perhaps be accepted by the Conference without the need for separate consideration. The outstanding issues referred to by the Chairman of the group in his report must be dealt with at the first stage of the ninth session, and appropriate provision had been made in the decisions taken by the Conference on the programme of work for that session. The Conference must take note of the dispute settlement provisions on the question of marine scientific research, as referred to in the report of the Third Committee. Finally, he proposed that, since all the matters falling within the competence of negotiating group 7 were closely interrelated and the Chairman of the negotiating group had not presented any new formulation which would satisfy the conditions laid down in document A/CONF.62/62,[1] the question should not be discussed further at the present stage.

Report of the President on the work of the informal plenary meeting of the Conference on final clauses

19. The PRESIDENT introduced his report (A/CONF. 62/L.44) and said that the plenary Conference had held 11 informal meetings on final clauses between 23 July and 23 August 1979. It had discussed the relevant subjects and issues in two categories: those likely to prove controversial and those that could be considered non-controversial. After a preliminary discussion of the non-controversial items, it had been agreed that they should be referred to the group of legal experts on final clauses with the mandate to examine the technical aspect of the final clauses and the establishment of a preparatory commission and, taking into consideration the discussions in the informal plenary meeting, to prepare draft texts without seeking to resolve the political issues involved.

20. Subsequently, the controversial items had been taken up and discussed in the informal plenary meeting. The discussion on those items had been summarized in documents FC/3 to 7, 9, 11, 13 and 17.

21. Two items remained unfinished, namely, the question of participation in the convention and the establishment of the preparatory commission, both of which would be taken up at the next session.

22. Mr. CALERO RODRIGUES (Brazil), speaking on a point of order, noted that most of the reports submitted were not as yet available to delegations in all languages; he asked whether they would be made available at the current meeting and whether they would be distributed directly to delegations as soon as they were available.

23. Mr. LUPINACCI (Uruguay) pointed out that there was an error in the Spanish text of article 188 in appendix A, section D, of document A/CONF.62/C.1/L.26. The Spanish version of paragraph 1 (*b*) of the article should be brought into line with the English and French versions to the effect that an *ad hoc* chamber could be established upon the request of any party to the dispute.

24. Mr. CASTILLO-ARRIOLA (Guatemala) said that his delegation strongly supported the view that participation in such an important convention as that on the law of the sea should be open only to sovereign States.

25. The PRESIDENT reminded the representative of Guatemala that it had been agreed that no further statements relating to matters of substance would be made.

26. Mr. ZULETA (Special Representative of the Secretary-General), replying to the questions raised by the representative of Brazil, said that all reports submitted to the plenary meeting would be distributed as soon as they became available in all languages. Inasmuch as some had been submitted just before the current meeting, it was not physically possible to complete translation and reproduction before the end of the meeting.

27. Mr. ABOUL KHEIR (Egypt) said that the error referred to by the representative of Uruguay with regard to article 188 existed in the Arabic text as well.

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4).

28. Mr. de LACHARRIÈRE (France) said that the French versions of most of the documents were no longer available, which made work extremely difficult. He requested that additional copies be made available immediately.

29. Mr. NJENGA (Kenya), speaking on a point of order, proposed that since the President had stated that it was his intention not to give any delegation the floor to speak on a matter of substance — a decision which he supported — and since few of the documents were available, the meeting should be adjourned.

30. The PRESIDENT noted that the sense of the meeting seemed to be strongly in favour of the proposal made by the representative of Kenya.

31. Mr. ARIAS SCHREIBER (Peru), speaking on a point of order, said that it was his understanding that the Kenyan proposal on adjournment referred to the consideration of reports and not to other matters on which delegations might wish to make statements. In particular, the representative of Honduras had an important statement to make on behalf of the Group of 77.

The meeting was suspended at 5.50 p.m. and resumed at 6.35 p.m.

Statement by the Chairman of the Group of 77

32. Mr. CARÍAS (Honduras), speaking on behalf of the Group of 77, read out a statement prepared by the latter's group of legal experts on unilateral legislation concerning mining of the sea-bed (A/CONF.62/89).

33. Mr. ALDRICH (United States of America) said that his delegation had already presented its position, most recently on 28 August and 15 September 1978[2] and on 19 March 1979,[3] with regard to the enactment of national legislation designed to regulate the conduct of deep sea-bed mining and exploration and exploitation activities undertaken beyond the limits of national jurisdiction. His Government rejected the contention that such legislation would be illegal and potentially disruptive to the Conference. It should be remembered that United Nations General Assembly resolutions, irrespective of the majorities by which they were adopted, were not legally binding on any State in the absence of an international agreement that gave effect to such resolutions and that was in force for the State concerned. There existed nothing in customary or conventional international law that precluded Governments from acting to regulate activities of their citizens or that forbade Governments or private persons or entities access to the sea-bed beyond the limits of national jurisdiction for the purposes of exploring for and exploiting the resources there. If the Conference succeeded in producing a treaty that established an international régime for the regulation of such exploration and exploitation, the States for which that treaty was in force would forgo the exercise of the freedoms of the high seas in question. However, for States not bound by such a treaty there were no legal impediments to those activities. Legislation currently being contemplated in the United States would, of course, by its own terms be superseded by a treaty in force for the United States. Legislation designed to establish a regulatory régime for deep sea-bed mining was compatible with the aims of the Conference as they had emerged in the course of the negotiations. It was widely recognized that commercial recovery of deep sea-bed hard mineral resources could not realistically begin until the middle of the 1980s, which was far beyond the date that the Conference had set for itself for completion of the convention. The legislation therefore posed no threat to the orderly establishment of an international régime to regulate deep sea-bed mining activities. In the meantime, legislation was needed if the sizeable investment required for the continued development of technology was to be made.

34. The United States had no intention of disrupting or adversely affecting negotiations currently under way. It should, however, be realized that the United States would not agree to an unworkable international régime simply because it had no alternative means of access to the resources it needed. An acceptable convention must provide assured and non-discriminatory access to deep sea-bed resources for States and entities sponsored by States on reasonable terms and conditions and with security of tenure for miners.

35. Mr. PIRZADA (Pakistan) said that the decision not to attempt further revision of the revised informal composite negotiating text at the current session was wise, since a number of the elements of the over-all package were not available and a piecemeal approach could not be followed. Delegations would need to study the new text in detail before they could give their considered views on them. With regard to the system of exploration and exploitation, article 5 of annex II, on transfer of technology, needed to be improved and strengthened. The question of joint arrangements needed to be clarified and expanded, and a mutually acceptable production control formula was urgently required.

36. The new financial arrangements proposed by the Chairman of negotiating group 2 would reduce the over-all income of the Authority by approximately $250 million per mine site, a shortcoming that would have to be rectified. With regard to the Council, decision-making and composition were still outstanding issues which would have to be resolved. With regard to dispute settlement, he thought that the first and subsequent elections to the Tribunal should be held at a regular session of the Assembly of the Authority and did not require a specially convened meeting of the States parties to the convention. With regard to the delimitation of the continental shelf and the exclusive economic zone, his delegation strongly supported application of the principle of equity in delimitation, mutually agreed interim arrangements and binding third-party procedures for dispute settlement.

37. With regard to Third Committee matters, his delegation felt that marine scientific research should promote scientific knowledge for the benefit of mankind, but a coastal State must have the right to withhold consent to a project if the latter conflicted with its vital interests. Similarly, a coastal State had the right to require that an ongoing research project be suspended or terminated if it was found to be in violation of the relevant provisions of the convention or was prejudicial to the security and vital interests of the coastal State. The rights and discretion of coastal States to withhold consent to marine scientific research under certain circumstances and to suspend or terminate an ongoing project in its exclusive economic zone or continental shelf could not be made subject to dispute settlement procedures. He warned that any proposals which might bring about fundamental change in the portion of the draft convention dealing with marine scientific research would upset the delicate balance already achieved and would result in reopening the whole package.

38. His delegation favoured the step-by-step approach leading up to the formalization and final adoption of the convention in 1980 along the lines approved by the Conference at the 119th meeting.

39. The PRESIDENT reminded the representative of Pakistan that he had requested delegations not to speak on matters of substance.

40. Mr. TORRAS DE LA LUZ (Cuba), speaking on a point of order with the support of Mr. ADIO (Nigeria), urged the President not to recognize any further speakers and to

[2] *Ibid.*, vol. IX (United Nations publication, Sales No. E.79.V.3), 109th plenary meeting.

[3] *Ibid.*, vol. XI (United Nations publication, Sales No. E.80.V.6), 110th plenary meeting.

adjourn the meeting in accordance with the proposal made by the representative of Kenya, which the Conference had accepted.

41. Mr. UPADHYAY (Nepal), speaking on a point of order, said that his delegation had not opposed the Kenyan proposal, but now that the meeting had resumed it wished to speak.

42. Mr. FLEISCHHAUER (Federal Republic of Germany) said that his delegation agreed with the decision not to make statements on the reports submitted by the various committees and negotiating groups but wished nevertheless to respond to the statement made by the representative of Honduras.

43. Mr. RAOELINA (Madagascar) said that many delegations were not in favour of adjournment and that there must be equity in the treatment of delegations. Some delegations wished to speak and should have the right to do so before closure.

44. The PRESIDENT said that it had been agreed that delegations would not speak on matters of substance, and a proposal had been made to adjourn the meeting. He felt that the proposal was supported by a majority of participants, but, in order to be absolutely certain, it would be best to hold a vote.

The proposal was adopted by 57 votes to 9, with 6 abstentions.

Closure of the session

45. The PRESIDENT said that the Conference had had a strenuous session and had now reached a critical stage. The conduct of all countries interested in seeing the successful conclusion of the Conference must be consistent with the professed desire of all to arrive at a convention on the law of the sea which was universally acceptable. He believed that more co-operation and mutual accommodation would be required during the coming final stage. He reminded delegations that the first set of formal amendments should be submitted by the final day of the first part of the ninth session in New York and further amendments by the first day of the resumed session at Geneva.

46. Mr. KOZYREV (Union of Soviet Socialist Republics), speaking on a point of order, said it was his understanding that the decision taken by the meeting to adjourn implied that the consideration of other reports would be deferred until the beginning of the resumed session at Geneva.

47. The PRESIDENT said that consideration of the Third Committee's report had been completed and the reports of the First and Second Committees and of the negotiating groups would be taken up at the beginning of the ninth session. After thanking delegations for their hard work and co-operation in moving the Conference forward, he declared the session closed.

The meeting rose at 7.20 p.m.

GENERAL COMMITTEE

47th meeting

Monday, 13 August 1979, at 9.55 a.m.

Chairman: Mr. H. S. AMERASINGHE

Organization of work

1. The CHAIRMAN said that he had received a request from the Chairman of the Group of 77, the representative of Honduras, who was not a member of the Committee, to be allowed to attend the Committee's meetings. If he heard no objection, he would take it that the Committee agreed to grant that request.

It was so decided.

2. The CHAIRMAN suggested that the Chairmen of negotiating groups 5 and 7, the representatives of Greece and Finland respectively, who were not members of the Committee either, should be allowed to participate in the work of the Committee.

It was so decided.

3. The CHAIRMAN stated that one of the negotiating groups would be unable to complete its work by 15 August, as originally planned, which meant that the results of the discussions in the negotiating groups could not be taken up in the committees on 16 and 17 August. He therefore suggested that all the negotiating groups be free to continue with their work until the afternoon of 17 August, if necessary.

4. With regard to the procedure to be followed in making a further revision of the informal composite negotiating text, he reminded the Committee that the decision adopted by the Conference as referred to in document A/CONF.62/62[1] had empowered the collegium to decide whether proposed revisions of the text satisfied the criteria established for their incorporation in the text. Of course, the Conference would have to determine the procedure it wished to follow in the case of a second revision; however, he believed that the procedure applied in the preparation of the first revision (A/CONF.62/WP.10/Rev.1) had proved to be efficient and expeditious.

5. Any new texts for inclusion in the second revision would have to be submitted in good time, and it was doubtful whether the revised text could be produced before the end of the current session. It was possible, however, that the paper could be produced just after the end of the session.

6. It had been suggested that the current session should be the last at which "hard-core" issues were negotiated. The view had been expressed that the second revision should be submitted to the plenary Conference for consideration and improvement, in the form of negotiated changes, before the "formalization" of the text, that is, acceptance of the draft text as a formal document, to which amendments could be proposed only in a formal manner through negotiations conducted at the plenary level. The forthcoming revision would thus be treated as a final draft convention, but the decision to treat it as such would have to be taken by consensus if progress was to be made at the desired rate.

7. In his view, the Committee should not set its sights too high. It should aim at examining the revised text during the first week of the following session and then considering the final clauses so that the final draft would be ready by the end of the second week. Even after a final, formal draft had been prepared, however, the negotiating procedure should continue.

8. Regarding the following session, the view had been advanced that, if that session was to be the final one, ample time should be allowed. A session of eight or even 12 weeks had been suggested. The secretariat was not yet in a position to provide any details of possible venues.

9. Since the Chairmen of the regional groups must have time to ascertain their members' views on his suggestions, he further suggested that consultations be allowed to take place during the following two days, after which he would meet with the Chairmen and establish a date for the next meeting of the General Committee.

10. Mr. ARIAS SCHREIBER (Peru) asked whether the process of "formalization" referred to by the Chairmen would preclude further negotiations in the committees.

11. The CHAIRMAN said that the arrangements he had outlined would not rule out the possibility of amendments being moved and decided upon in the committees.

12. Mr. CALERO RODRIGUES (Brazil) asked how the time remaining in the current session would be spent, and what course the Chairman would follow if it proved that the regional groups had objections to the arrangements he had proposed.

13. The CHAIRMAN said that, if there were objections to his suggestions, he would convene a meeting of the General Committee on the morning of 17 August.

14. Assuming that his suggestions were accepted, negotiations in the negotiating groups would be concluded by Friday, 17 August. The first two days of the following week would be devoted to the committees, which would be receiving the reports from the negotiating groups and taking action on them; then the plenary Conference would meet to consider the reports from the committees. Work on such matters as the settlement of disputes, and final clauses, would continue throughout.

15. Mr. CARÍAS (Honduras), speaking on behalf of the Group of 77, said that he had taken note of the Chairman's suggestions concerning the organization of work for the remainder of the current session. The Group of 77 was concerned to ensure that the impetus which the negotiations had

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4).

gained at the current stage would not be lost. Delicate negotiations were still under way, particularly with regard to part XI of the draft convention. The Group therefore agreed that the deadline for the negotiating groups should be extended by two days.

The meeting rose at 10.20 a.m.

48th meeting

Wednesday, 22 August 1979, at 10.15 a.m.

Chairman: Mr. H. S. AMERASINGHE

Organization of work

1. The CHAIRMAN invited the representative of Finland, as Chairman of negotiating group 7, the representative of Greece, as Chairman of negotiating group 5, and the representative of Honduras, as Chairman of the Group of 77, to take part in the meeting.

2. He read out a note which he had prepared concerning the programme of work of the Conference for the rest of its eighth session and concerning proposals in regard to the work of the ninth session (A/CONF.62/BUR.12), and drew attention to an error in paragraph 3, where the words "the seventh session" should be replaced by "the first part of the eighth session". He suggested that the Committee consider the note paragraph by paragraph and comment on whether the second revision of the informal composite negotiating text should be effected at the end of the current session or immediately thereafter.

3. Mr. ENGO (United Republic of Cameroon), speaking as Chairman of the First Committee, said that that Committee still had to meet to consider the results of the consultations and negotiations which had been held. As it seemed to him difficult to decide whether the second revision should be effected at the end of the current session or immediately afterwards, he proposed that no decision be taken until more information was available.

4. The CHAIRMAN said that the Conference could take a decision on the question on Friday, 24 August.

5. Mr. KOZYREV (Union of Soviet Socialist Republics) supported the Chairman's suggestion and pointed out that it was unlikely that the second revision of the negotiating text could be completed at the current session. The results which had been achieved, including those in the First Committee and the group of 21, did not constitute an adequate basis for effecting the revision, and issues had been raised which, if not resolved, might destroy everything that had been agreed on. Instead of dealing with the second revision of the text in the General Committee, it would be better if that task were entrusted to the President of the Conference and the Chairmen of the Committees. Lastly, paragraph 5 of document A/CONF.62/BUR.12 should be deleted.

6. Mr. THOMPSON-FLORES (Brazil) said the contact group of the Group of 77 for the First Committee had concluded that at the current stage it lacked the information it would need in order to submit a proposal to the First Committee. Moreover, although the proposals submitted in the group of 21 were interesting, some of them were extremely complicated and more time was needed to consider them before expressing an opinion as to whether they should be included. Consequently, the text should not be revised at the current session.

7. Mr. SEALY (Trinidad and Tobago) said that the Group of 77 had not decided on its position with regard to the procedure proposed in the last sentence of paragraph 8 of document A/CONF.62/BUR.12. In addition, a number of countries, including some of the industrialized countries, had said that they needed more time to study the proposals put forward in the group of 21. That being so, he did not think it was possible to determine which of the revised formulations satisfied the criteria specified in paragraph 10 of document A/CONF.62/62.[1]

8. He emphasized the importance of preserving such results as had been achieved so far, and said that the next discussion should be of a purely preliminary nature, so that each Government could study the proposals of other countries or groups. Existing proposals should not be regarded as the only possible basis for the inevitably brief debates during the remainder of the current session.

9. Mr. ADIO (Nigeria) supported the text of paragraph 8 of document A/CONF.62/BUR.12.

10. Mr. EVRIVIADES (Cyprus) said that the second revision of the negotiating text could be effected by the procedure proposed in paragraph 8. Any revision should take into account paragraphs 10 and 11 of document A/CONF.62/62.

11. Mr. UL-HAQUE (Pakistan) supported the views expressed by the representatives of Trinidad and Tobago and Brazil. Discussions in plenary meetings of the Conference were not sufficient to enable the presidential team to determine which of the proposals that had been made commanded general support in the Conference. In his view, all the proposals should be set out in an annex without specifying which of them were acceptable, and he therefore proposed that the words "that satisfy the criteria specified in paragraph 10 of A/CONF.62/62" should be deleted from paragraph 8.

12. As for the possibility that the Chairmen of the committees might, with the agreement of their respective committees, indicate in their reports that certain proposals satisfied the criteria mentioned in document A/CONF.62/62, he pointed out that the Group of 77 was unable to take a position on any of the texts which had been proposed but felt that the requirements for drawing up an acceptable set of provisions had not been met.

13. Mr. KOH (Singapore) said that he was in general agreement with the statements made by the representatives of Pakistan, Trinidad and Tobago and Brazil and with the proposal that no reference should be made to the criteria specified in document A/CONF.62/62, paragraph 10.

14. Mr. RAOELINA (Madagascar) said that the work of the First Committee had been particularly difficult, and his delegation would oppose giving any formal status to the proposals put forward in the group of 21. All proposals should be included in the President's report for consideration at the next session.

15. Mr. BEESLEY (Canada), speaking as Chairman of the Drafting Committee, said it must be made clear at what point in the proposed plan for the ninth session the Drafting Committee was to begin work. In the time-table proposed in doc-

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4).

ument A/CONF.62/BUR.12, paragraph 10, no mention was made of the Drafting Committee at the third, fourth and fifth stages, and it should be made clear that that did not mean that the Committee would be deprived of its functions.

16. The CHAIRMAN explained that the Drafting Committee would have to perform the tasks assigned to it under the rules of procedure and that the text of the draft convention would not be final until the Committee had approved it.

17. Mr. ARIAS SCHREIBER (Peru) considered that the proposals made should be incorporated in annexes to the reports on the work done at the current session so that they could be studied at the following session, during the second stage outlined in paragraph 10 of document A/CONF.62/BUR.12. He therefore proposed the following amendment to the last part of paragraph 8: "the incorporation in a memorandum of the formulations proposed at this session, to be considered by the Conference at the next session in accordance with the procedure indicated under the heading 'Second stage' in this document".

18. Mr. YANKOV (Bulgaria) pointed out the need for officially recording the progress made by the Conference at the current session so as to ensure that the work of the following session would begin from that point and that there would be no backtracking. He therefore proposed that the last part of paragraph 8 be amended to read "the incorporation in a memorandum of the reports of the committees on the results of the work done at the current session, including the proposals contained therein".

19. As for the wording proposed by the representative of Peru, he pointed out that at its ninth session the Conference would continue its work in accordance with the proposed time-table, the first stage being devoted to the final clauses and to finding compromise solutions to outstanding issues so as to prepare the new revision of the negotiating text. The general debate scheduled for the second stage should deal with the second revision of the text and not the first revision, otherwise nothing would be accomplished during the first two weeks of the first stage.

20. Mr. ARIAS SCHREIBER (Peru) said that at the following session the procedures followed thus far need not necessarily be applied. A somewhat easy-going approach had been adopted, based on partial and informal compromises that had meant losing sight of the draft as a whole. The informal character of the work had enabled delegations to oppose the proposals formulated without giving serious and valid reasons. The results of the informal negotiations must be utilized during the second revision, but only after formal debate in which delegations stated their reasons for accepting or rejecting each proposal.

21. The proposed procedure would, in his opinion, lead to the opposite result. During the first stage there would be a second revision of the text based on fragmentary suggestions and on the assessment made by the chairmen of the possibilities of achieving a consensus on each proposal. Only later on, after the second revision had been effected, would there be a formal debate the results of which would not be reflected in the draft but would serve only to bring to light the positions and objections of the participants. For those reasons, he disagreed with the representative of Bulgaria.

22. Mr. YANKOV (Bulgaria), speaking on a point of order, said that in paragraph 8, which referred to the programme of work for the remainder of the current session, it would be possible to delete the last part and simply state that the memorandum would contain the reports of the committees on the work accomplished at the current session, including the relevant proposals. The questions raised by the Peruvian delegation and his own delegation could be considered when paragraphs 9 and 10 were discussed in connexion with the organization of work for the ninth session.

23. Mr. ABOUL KHEIR (Egypt) said that the reports submitted by the chairmen of the committees and of the negotiating groups could not be considered at that stage as a revision of the negotiating text but should be incorporated, with the proposals that had been made, in a memorandum to be sent to delegations for study and discussion at the ninth session before proceeding with the second revision.

24. Mr. SAMPER (Colombia) said that he saw no reason for deleting the reference to paragraph 10 of document A/CONF.62/62. It might be possible to combine the proposals of Bulgaria and Peru, which did not seem to be diametrically opposed, but in any event the reference to document A/CONF.62/62 should be maintained.

25. Mr. THOMPSON-FLORES (Brazil) said that he supported the solutions proposed by Pakistan and Bulgaria. The problem presented by the reference to document A/CONF.62/62 lay in the fact that the reports in question had not been considered either by the committees or by the Group of 77. Since it was not possible to apply the criteria specified in paragraph 10 of document A/CONF.62/62, the reference to that paragraph, contained in paragraph 8, would have to be deleted.

26. Mr. ENGO (United Republic of Cameroon) endorsed the comments of the representative of Brazil and said that the best solution would be to adopt the procedure followed at the seventh session at Geneva; that is, the President should prepare a detailed document outlining the current situation for the information of delegations.

27. Mr. EVRIVIADES (Cyprus) said that, while he understood the concern expressed by some delegations, he endorsed the Colombian proposal to maintain the reference to paragraph 10 of document A/CONF.62/62.

28. Mr. ALDRICH (United States of America) said that it was not necessary to do that, since the second revision would not be effected by the end of the current session.

29. The CHAIRMAN appealed to the delegations of Colombia and Cyprus not to insist on maintaining the reference to document A/CONF.62/62 which, as had just been pointed out, was unnecessary. The most appropriate solution might be that suggested by Mr. Engo.

30. Mr. SAMPER (Colombia) said that he understood the Peruvian proposal to mean that there would be serious negotiations in a general debate, in the light of which the revision of the text would be undertaken, applying the criteria specified in paragraph 10 of document A/CONF.62/62.

Organization of work for the ninth session

31. Mr. BAILEY (Australia) said that the time-table proposed for the various stages of the ninth session was rather ambitious, since the preparation of a revised text at the beginning of the session might prove to be a laborious task. It would be more realistic to prepare a formal text during the six-week session and to convene another six-week session for the fourth and fifth stages.

32. Mr. ORREGO VICUÑA (Chile) said that the ninth session would require at least 10 weeks, divided into two parts comprising, respectively, the first to third stages and the fourth and fifth stages. If an attempt was made to cover all the stages in a single session lasting eight weeks, there would be a repetition of the situation prevailing during the current session in which various groups met simultaneously, thus creating difficulties for small delegations that were short of staff.

33. Mr. NJENGA (Kenya) pointed out that agreement needed to be reached on a binding time-table that would cover all the stages. His delegation would prefer to have a single session lasting eight weeks. He stressed that the time-table adopted must be strictly adhered to.

34. The CHAIRMAN asked delegations to consider the possibility of completing the first four stages in a period of six weeks.

35. Mr. ABOUL KHEIR (Egypt) was in favour of agreeing on a binding time-table in order to complete all the work in a single session. Experience showed that if more than one session was planned, work might be postponed unnecessarily until the last minute. With regard to the duration of the single session, eight weeks seemed reasonable, although it might be advisable for the General Assembly to authorize the Conference to extend its session by one or two weeks, if necessary. Before proceeding to the fourth stage, it would be best to suspend the session for one week so that delegations could hold consultations and receive instructions from their Governments in order to propose official amendments.

36. Mr. DJALAL (Indonesia) announced that his Government had proposed that the next session of the Asian-African Legal Consultative Committee should be held in Indonesia in April 1980. In view of the fact that questions concerning the law of the sea would be among the main items on that Committee's agenda, it was especially important that there should be no overlapping with the ninth session of the Conference.

37. The CHAIRMAN said that if the ninth session of the Conference began in February, it could not overlap with the meeting of that Committee.

38. Mr. SEALY (Trinidad and Tobago) agreed that it was necessary to set time-limits for the work of the ninth session. However, in his opinion, an eight-week session in 1980 would not be sufficient, and another session would have to be held to complete the decision-making process.

39. Mr. ARIAS SCHREIBER (Peru) said that the time had come to agree on clearly defined and binding stages for the work of the Conference, so that the Caracas convention could be signed at the end of the following year. However, he felt that the eight-week time-table proposed by the President was insufficient, and agreed with the representative of Chile that 10 weeks would be needed, since the final stage was bound to be slow. Although, ideally, a single session should be held, it would be more realistic to divide it into two parts and, at the end of the first part, to submit the draft convention and official amendments so that Governments could consider them before taking any decisions. In that way, it would be possible to avoid the problems and expenses that would arise if, half-way through the Conference, representatives were obliged to notify their Governments of the amendments submitted.

40. The procedure established should be definitive and, once the first stage was completed, negotiations could not be reopened.

41. Mr. POWELL-JONES (United Kingdom) said that, although it was essential that the Conference should have a definite time-table for the ninth session, it should be flexible in its work and should not preclude the possibility of making changes if they became necessary.

42. In his opinion, the period provided for the first stage in paragraph 10 of the note by the President was not sufficient, and it would be more realistic to allow three or four weeks for the work of the First Committee.

43. With regard to the second stage, it was understandable that delegations should wish to place their position on record in order to ensure that there was adequate documentation of the preparatory work for the convention. Nevertheless, the formal statement mentioned as part of the second stage should be made either immediately before or immediately after the adoption of the convention so as to ensure that the last phase of the negotiations was not disrupted.

44. The CHAIRMAN, referring to the need for flexibility, pointed out that, during both the first and second stages, negotiations would be held not only in the First Committee but also in the other committees.

45. With regard to the proposal made by the representative of the United Kingdom, he pointed out that the main purpose of holding a formal debate before the final revision was precisely to ensure that the positions of delegations were placed on record before the revision was undertaken.

46. Accordingly, he hoped that the representative of the United Kingdom would not insist on his proposal.

47. Mr. GOERNER (German Democratic Republic) agreed that a definite time-table, covering separate stages, should be drawn up. Considering the meagre results of the current session, if the different stages proposed in paragraph 10 of document A/CONF.62/BUR.12 were to be completed, there would have to be greater collaboration, stricter discipline, and machinery to facilitate compromise solutions.

48. In any case, his delegation was not sure that all the proposed stages were necessary; moreover, the possibility of shortening the working procedure in the final stages should be considered. He therefore suggested that the Conference consider the time-table proposed by the President at the beginning of the following session, after delegations had had an opportunity to study the President's memorandum on the results of the current session.

49. Lastly, he stressed that it was necessary, especially in the final stages of the work of the Conference, that the principle of deciding basic issues only on the basis of a consensus should prevail.

50. The CHAIRMAN said that it would be possible to devote part of the following session to preparing a time-table for the work of the Conference, and he asked the representative of the German Democratic Republic not to insist on his proposal. With regard to the need to operate on the basis of a consensus, the possibility of invoking the rules of procedure and of having to take a vote could not be ruled out.

51. Mr. KOZYREV (Union of Soviet Socialist Republics) said that too much time had been spent on consideration of the time-table. He therefore suggested that the Committee should proceed to discuss how the ninth session of the Conference should be organized and that representatives should take advantage of the interval between the sessions to study the memorandum to be submitted by the President on the work of the current session.

52. Mrs. MUTUKWA (Zambia) agreed that a time-table was needed, but felt that it should be very realistic so that it could be strictly adhered to. The two weeks envisaged for the first stage were insufficient. The negotiating phase would have to continue during the ninth session. Moreover, it was necessary to avoid an overlapping of the revision and negotiating processes. In her opinion, at least four weeks would be required for the first stage, whereas one week should be sufficient for the second stage provided that the deadlines set were strictly observed.

53. Mr. ENGO (United Republic of Cameroon) said he favoured the adoption of a strict time-table during the current session. It was essential that Governments should know that the following session would be the final one and that their delegates should come prepared to adopt a final decision. He shared the view of the representative of Zambia that the first stage was too ambitious, and felt that three weeks would be needed in order to carry out the work scheduled for that stage.

54. On the other hand, he noted that the President of the Conference had requested in his note that a formal debate should be held on the revised informal text, especially during the second stage. As their statements would appear in the summary records of the meetings, delegations would have the tendency to submit proposals that were of a maximum benefit to their countries and it would be more difficult to

attain a consensus. All progress achieved so far was the result of informal negotiations. If it was essential that there be a general debate, he recommended that it should be informal and should be held for one week during the second stage.

55. The CHAIRMAN said that holding two debates in plenary meeting, one informal and the other formal, would result in duplication of effort. He wished to suggest that the proposed formal debate be held during the second stage, that the last paragraph concerning the first stage be deleted and that the revision be effected at the end of the formal debate.

56. Mr. ENGO (United Republic of Cameroon) stressed that it would be unproductive to hold a formal debate, which, moreover, he did not consider absolutely necessary. Unlike informal debates, formal meetings were of no advantage.

57. The CHAIRMAN said he felt that a formal debate should be held in plenary meeting.

58. Mr. MARSIT (Tunisia) said that it was essential to hold a formal debate on the negotiating text.

59. Mr. AL-WITRI (Iraq) supported the President's proposals in paragraphs 9 and 10 of his note. With regard to the second stage, he felt that it was necessary to leave sufficient time to debate the revised text before adopting it as a final document. Perhaps the proposed limit of 15 minutes to be allowed to each speaker was insufficient time, since delegations had to place their positions on record.

60. Mr. LUKABU-K'HABOUJI (Zaire) shared the view of the Kenyan delegation that one session should suffice in order to finalize the work of the Conference. He felt that the duration of the first stage provided for in the President's note was insufficient, since it would not be possible to carry out all the scheduled work in two weeks. With regard to the second stage, he shared the view of the United Kingdom representative concerning the time at which it should take place. On the other hand, he felt that the position of the representative of the United Republic of Cameroon was justified, since formal debates impeded the adoption of flexible positions, a situation which would be particularly hazardous during the second stage. Delegations would put forward formal proposals which they would reconsider during the third stage, and it would be necessary to start again from the beginning. Lastly, he requested the Chairman to ensure that documents were distributed in the various official languages so that delegations could participate in the debate on an equal footing.

61. The CHAIRMAN said that, in accordance with current practice, documents must be issued simultaneously in all the relevant languages, and he gave his assurance that that rule would in future be strictly complied with.

62. Mr. KOZYREV (Union of Soviet Socialist Republics) observed that the General Committee had not yet adopted a decision concerning the proposed plan or the stages envisaged in the time-table. He was not sure that it was appropriate to decide on a plan with so many stages and, in his view, it would be preferable to establish general guidelines for the conduct of the ninth session of the Conference.

63. The majority had established their position in the gentlemen's agreement and it would be appropriate to adhere to that agreement and adopt the draft convention by consensus.

64. He proposed that a general recommendation on the conduct of the following session should be submitted to the plenary Conference and that the General Assembly should be requested, in convening that session, to authorize the Conference itself to extend its duration if necessary. Work could thus be concentrated on the proposals of the Chairmen of the committees and the negotiating groups.

65. The CHAIRMAN observed that the majority seemed to feel that a time-table should be set for the work of the following session and recalled that in the gentlemen's agreement it had been expressly laid down that efforts to attain a consensus should not conflict with the rules of procedure.

66. Mr. EVRIVIADES (Cyprus) said that it was essential to ensure the preparation of a draft acceptable to all delegations, and the procedure that had been proposed was the only effective solution. Although the time-table was demanding, it could be adopted on condition that provision was made for a certain flexibility and that the total length of the session was extended; one single session should be held even if it had to be a long one.

67. Mr. RAOELINA (Madagascar) also felt that the ninth session should be held without interruption. In his view, the first stage of the proposed time-table should last three weeks and the General Assembly should authorize the Conference to extend the duration of the session.

68. Mr. SYMONIDES (Poland) considered that it was necessary to adopt a programme of work with set stages. It was possible that a period of eight weeks was insufficient for the ninth session. It would be necessary for the debate scheduled for the second stage to be held simultaneously in all the Committees and not only in plenary meeting. Another solution would be to merge the second and third stages.

69. Mr. YOLGA (Turkey) said that he agreed that two weeks would not be sufficient time in which to complete the first stage of the proposed plan. Efforts were well advanced to find compromise formulae that would solve various problems, and a final attempt should be made. He therefore proposed that the first stage should last for four weeks.

70. In his opinion, delegations required an official and permanent record of their statements; otherwise, it would be difficult to interpret the text finally adopted. The work of the Conference in the second stage should be placed officially on record.

71. Mr. ABOUL KHEIR (Egypt) pointed out that the second paragraph on the first stage was unclear. According to the text, the Chairmen of the committees, assisted by the Chairmen of the established negotiating groups and the group of legal experts on part XI, should conduct the necessary consultations within their respective spheres of competence in order, to the extent possible, to reach compromise solutions on outstanding issues. It was not clear whether the consultations were to be held among a limited number of delegations; that procedure did not seem adequate to his delegation, for it was only through consultations among all delegations that the necessary degree of consensus for adopting the proposed amendments to the official text could be obtained.

72. Mr. UL-HAQUE (Pakistan) associated his delegation with the comments made by the representative of Egypt. The outstanding issues were extremely important and a broad consensus would be required in order to achieve a valid agreement on them.

73. The plans for the second stage seemed to imply that a third revision would be made before the negotiating text became a final Conference document. His delegation believed that the second and third revisions could profitably be combined into one. Although he agreed with the delegations that had stressed the need for terminating the work of the Conference in 1980, he recognized that that might prove impossible. In his delegation's view, a period of six weeks would be required for the first three stages.

74. The CHAIRMAN explained that the second revision would be the last one. With regard to the scope of the consultations that the Chairmen of the Committees and negotiating groups were to carry out, it was up to them specifically to determine who would participate in those consultations,

since there would be no reason to restrict them to small groups or to hold them at the informal level.

75. Mr. ADIO (Nigeria) said that he did not agree that a flexible position must in principle be adopted with regard to the separate steps required to complete the work at each stage. In any case, his delegation could not countenance spending more than three weeks on the first three stages, nor a session of more than eight weeks to complete all the work.

76. Mr. de LACHARRIÈRE (France) drew attention to the dangers of excessively rigid planning and the imposition of inordinate obligations, because such a procedure could discredit the very idea of obligation. He proposed that the flexibility required in planning work at the different stages should be kept in mind. Nevertheless, it was necessary to decide very precisely whether one or two sessions should be held, and how long they would be in either case.

77. Mr. RICHARDSON (United States of America) said he was confident that the work could be completed within the proposed stages. He agreed with those who had suggested the need for some flexibility in the planning of the work in each stage. He further stressed the need for preserving the unofficial atmosphere of the informal negotiations. Once the text had been appropriately amended or revised and the final draft convention became available, there would be time to make official statements which would be reflected in the summary records.

78. Mr. ARIAS SCHREIBER (Peru) said that excessive flexibility was what had brought the Conference to its current situation.

79. The opinion seemed to be prevalent that the Conference should have three weeks for the first stage instead of the two weeks called for in the President's note.

80. He proposed that, after the fourth paragraph concerning the first stage, the first paragraph relating to the second stage should be included and that the beginning of that paragraph should be amended to read "At the beginning of the fourth week . . .".

81. That paragraph would then be followed by the existing final paragraph on the first stage, which would be amended to read: "Half-way through the fifth week the President and the Chairmen of the Committees, assisted by the Chairman of the Drafting Committee and the Rapporteur-General within their respective spheres of competence, should prepare the next and final revision of the informal composite negotiating text." Then the revised text would be considered with a view to making it a final document, the committees would study it and formal amendments would be sumbitted, a process which would take about six weeks. An additional four or five weeks would be needed for consideration of the formal amendments, attempts to arrive at a consensus and the adoption of the relevant decisions.

82. Finally, he disagreed with the United States representative regarding the formal or informal nature of the negotiations. In his view, a record must be kept of the views of the various delegations, for that was the only way that the second revision of the negotiating text would gain widespread acceptance.

83. Mr. BAILEY (Australia), referring to the 15-minute limit on speakers mentioned in the first paragraph concerning the second stage, asked whether a decision had to be taken on that issue at the current session. With regard to the proposal in the same paragraph that delegations could present written statements to be included in the official records of the Conference, he wished to know whether delegations would be able to comment on those statements in plenary meeting.

84. The CHAIRMAN said he hoped that a decision would be reached at the current session on his suggestion of a 15-minute limit on speakers.

85. With regard to the second question by the representative of Australia, he suggested that delegations should submit their written statements far enough in advance to be distributed, enabling the participants to make statements in plenary meeting.

The meeting rose at 1.15 p.m.

49th meeting

Thursday, 23 August 1979, at 10.20 a.m.

Chairman: Mr. H. S. AMERASINGHE

Organization of work for the ninth session *(continued)*

1. The CHAIRMAN submitted document A/CONF.62/BUR/12/Add.1, containing a series of amendments to that part of his note referring to the organization of work for the ninth session, to take account of the comments made by various delegations.

2. Mr. ARIAS SCHREIBER (Peru) said that the amendments submitted by the President met the concerns expressed by various delegations at the previous meeting. Two basic premises had to be borne in mind when considering the work of the final session: first, that the work of the Conference would have to be arranged in such a way as to ensure its completion in 1980, and, secondly, that decisions would be taken preferably by consensus, having regard to the gentlemen's agreement. If that proved impossible, the relevant provisions of the rules of procedure would apply.

3. Some, but not all, developed countries would wish the next session to be conducted with the same flexibility and informality as had hitherto been the case, so that they could prolong the negotiations at will and give final consent only at the end of the session, when there would be no time to implement the rules of procedure of the Conference and it would be forced to accept the conditions imposed by those countries or run the risk of ending up without a convention. That would clearly damage the interests of the developing countries, and his delegation reiterated its flat rejection of the use of such a procedure. Where it was impossible to take a decision by consensus, it would request that the matter should be put to the vote, following the normal procedure, and decided by a simple majority, in accordance with article 39, paragraph 3, of the rules of procedure.

4. Mr. UPADHYAY (Nepal) said that the amendments proposed by the President were acceptable to his delegation. He stressed that it would be useful to hold the session in two parts, the first for the purpose of detailed consideration of all outstanding issues. He recalled that his delegation had submitted two informal proposals to negotiating group 6 (NG6/15) and to an informal meeting of the Second Committee (C.2/Informal meeting/45) which had been sponsored by nine countries. In his note (A/CONF.62/BUR/12), the President had proposed that during the first three weeks of the ninth session the Chairmen of the Committees, assisted by the Chairmen of the established negotiating groups, should con-

duct the necessary consultations within their respective spheres of competence in order to reach compromise solutions on outstanding issues. Since his delegation considered its proposals to be among the outstanding issues, and given the interest which they had aroused, he proposed that extensive negotiations should be held on them during the first three weeks of the next session, either in negotiating group 6 or in some other form.

5. Mr. ENGO (United Republic of Cameroon) said that the formulation "subsequent stages" in the proposed amendments was somewhat vague. In any case, he would like the Committee to decide on the precise programme of work and exact dates of the resumed ninth session. Although the African countries were not opposed to the idea of a certain flexibility, they had expressed a preference for a single session that was uninterrupted, save for a short suspension to allow delegations to consult their Governments and discuss any textual changes among themselves. However, if the majority supported the holding of the session in two stages, then exact details of the programme of work for the resumed session would have to be worked out to ensure that the rules of procedure could be implemented and the Conference concluded on the date planned.

6. The CHAIRMAN said that "subsequent stages" referred solely to the process of taking decisions. The decision on those stages would have to be taken at a plenary meeting on the first day of the resumed session, on the basis of a prior recommendation from the General Committee.

7. Mr. RICHARDSON (United States of America) said that the statement he had made at the previous meeting seemed to have given rise to a misunderstanding which he wished to clear up. According to the representative of Peru, the developed countries had apparently conspired to prevent the developing countries from placing their official positions on record. As far as he knew, no developed country, much less his own, harboured such an intention.

8. Referring to the second stage foreseen in the President's note, he said that a clear distinction had to be made between the discussion on the revision of the text and those statements to be placed on record in official documents, but not directly connected with the items under consideration. Certainly, delegations should be given the opportunity to make statements to be recorded in the official documents, but only once the draft convention had been approved. The process of preparing a second revision was something very different. The proceedings would be informal since the rules of procedure would not have been applied, and the Conference would not have a draft convention before it. For that reason, the discussion should be restricted to items on which revisions had been proposed. If the second stage was to be made formal and the submission of written statements allowed, there would be a danger of confusing it with the stage when delegations could make formal statements on issues not directly related to the revision of the text. That might hold up the revision process and the approval of a revised text, as well as the stage when the rules of procedure would be applied. For those reasons, he had, at the preceding meeting, questioned the appropriateness of making formal statements at the second stage. It was the Conference which would have to decide on the time to be allocated. If a date was fixed for the conclusion of discussions on the revised text, the Conference would be free to keep to it or not, as it deemed necessary. No group of countries could control that. Finally, he stressed that his delegation was anxious to see the discussions concluded and a convention adopted as soon as possible.

9. The CHAIRMAN said that he had already explained the reasons which had led him to propose a formal debate before the second revision. However, as the United States representative had suggested, once a draft convention was available, nothing stood in the way of holding a formal debate that would be part of the process of exhausting every attempt to reach a consensus.

10. Mr. MARSIT (Tunisia) said that the prime objective was to formulate a convention as soon as possible. Even though he understood that certain countries wished to employ every means of reaching a consensus, which seemed to have become illusory, he asked the developed countries to appreciate the situation of the developing countries, especially the least advanced ones. As could be verified, the majority of the participants absent from the current session were, precisely, developing countries.

11. The Conference had to adopt a specific programme of work. If at Caracas 10 weeks had been sufficient, in the next session 10 weeks ought also to suffice. The developing countries favoured holding a single eight-week session, with the possibility of suspending it for one week. He asked all delegations to take into account the material, physical and economic difficulties that would face the developing countries, especially if that session were to be divided into two parts.

12. The CHAIRMAN urged the representative of Tunisia to accept a split session. Although 10 weeks had no doubt sufficed in Caracas, the situation and the atmosphere of the deliberations at that time had been very different. A 10-week session would place an intolerable burden on delegations.

13. Mr. ABOUL KHEIR (Egypt) asked the Chairman how he planned to proceed with holding consultations during the first stage if all the delegations were to participate in them.

14. He also wished to know if the session would be adjourned before or after the formal submission of amendments to the informal composite negotiating text, and what the Chairman's suggestions were with regard to the period of time during which deliberations would be suspended.

15. The CHAIRMAN said that, in the text dealing with the first stage, he had inserted a special reference to the need for participation in the consultations by all delegations, since objections had been raised to holding consultations during that stage only within small groups.

16. With regard to the Egyptian representative's second question, he reiterated that the session would be suspended after amendments to the negotiating text had been submitted. The period of suspension of the deliberations would be a time of apparent inactivity.

17. Mr. KE Zaishuo (China) said that if the ninth session was to be productive a definite time-table should be established. He agreed that the session should be suspended once the draft convention had been prepared, since in that way delegations could consult their respective Governments, which should have sufficient time to study the draft so as to formulate the necessary amendments and suggestions.

18. He therefore wished to know how long the deliberations would be suspended. Although the coming session should not be too long, enough time was needed to complete the necessary work.

19. The CHAIRMAN said that deliberations would be suspended for about four months, between April and the end of July 1980.

20. Mr. EVRIVIADES (Cyprus) said that he concurred with Peru's approach, which he considered very constructive. Cyprus felt that only one uninterrupted 10- to 12-week session should be held before the signing of the convention at Caracas the following year. However, it would not insist on that position if the Conference decided on a split session.

21. Mr. UL-HAQUE (Pakistan) said that he agreed with the changes introduced by the President, which reflected the opinions expressed at the preceding meeting by the majority of delegations. However, the President had suggested that, in the middle of the fifth week, the plenary Conference

should begin to consider whether it would give formal status to the informal composite negotiating text, and that 8 or 10 calendar days should be devoted to studying the formal amendments. Experience had shown that the Conference would not be able to decide in one meeting whether to give formal status to the negotiating text, a process which could take up the entire fifth week. On the first day of the sixth week, the delegations would submit amendments and the debate would last 10 more days.

22. Allowing only one day for the submission of formal amendments in the first part of the session would also present difficulties; that would, in fact, militate against the purpose of suspending the session, which was to give delegations time to study the amendments they wished to have incorporated in the text. He therefore suggested that the first part of the session should conclude with the formalizing of the text at the end of the fifth week and at the beginning of the second part, which would last four or five weeks, amendments should be submitted in the first two or three days, to be followed by the debate.

23. The CHAIRMAN said that the main reason for holding a formal discussion before the second revision was to simplify the formalization of the revised text. If any disagreement arose over the contents thereof, the necessary decisions could be taken in the final stage.

24. Mr. FLEISCHHAUER (Federal Republic of Germany) agreed with the changes in paragraph 10 proposed by the President and suggested that the session should be suspended immediately after the decision was taken to give the text the status of a formal conference document, before a first reading had been begun, in order to allow Governments time to decide whether they wished to submit amendments.

25. MR. LUKABU-K'HABOUJI (Zaire) said that, although his country was not in favour of dividing the ninth session into two parts, it was willing to co-operate and to accept the sacrifices that would entail, provided that the next session would be the last. He also asked the President to clarify whether the session would be suspended before the text was given the status of a formal conference document or after amendments had been submitted.

26. The CHAIRMAN said that the session would be suspended after the revised informal composite negotiating text had been given the status of a formal conference document. With regard to the discussions in the Committees, he explained that those amendments on which no final decision had been taken would be examined at the beginning of the resumed session, as part of the final stage. Under the circumstances, he thought that the second part of the session would inevitably last six weeks. If delegations needed to consult their Governments regarding any of the amendments submitted, the appropriate changes would have to be made in the programme of work.

27. Mr. MAHIOU (Algeria) said that, in general, his delegation had supported the President's first note. As a result of the opinions expressed, many changes had been made. His delegation was prepared to view them in a spirit of co-operation, so long as the basic guidelines set forth in the first note were not altered and the duration of the session was not unduly extended. Although his delegation would have preferred a single, uninterrupted session, it would not object to its being divided into two parts, if a maximum duration was set for each part.

28. After noting that the objectives of the second part of the session were somewhat vague, he stressed the need for all delegations to hold consultations before the final stage, at which a definitive decision would be taken on the draft convention.

29. The CHAIRMAN said that the first part of the session would last six weeks and the second, four weeks. The session would be suspended after the revised negotiating text had been given the status of a formal draft convention. During the first part of the session, the Committees would start their discussion of the draft convention and would consider the formal amendments. The point at which the session was suspended would depend on the calendar of conferences and the amount of time Governments needed in order to examine the final draft convention. The second part of the session would begin at the end of July or the beginning of August; in any case, the Conference should conclude its work in August.

30. Mr. BAILEY (Australia) was in favour of dividing the session and of setting a strict time-table for the completion of the work of the Conference at the end of the second part of the session. He asked whether it would be possible to submit amendments during the second part of the session, since some Governments might wish to do so, after they had examined the text carefully during the suspension of the session.

31. The CHAIRMAN said that delegations would also be able to propose amendments during the second part of the session, during the debate in plenary meeting.

32. Mr. KOZYREV (Union of Soviet Socialist Republics) said that experience had shown that the programme of work would need to be re-examined during the ninth session.

33. On the other hand, he asked whether the Conference was not showing a lack of respect towards the United Nations itself, for, despite the fact that the General Assembly had endorsed the President's statement referring to a gentlemen's agreement, it had been suggested that that General Assembly resolution should be ignored or that it should be somehow distorted. His delegation therefore supported the statement of the representative of Tunisia regarding the way in which the Conference should proceed with its work.

34. His delegation had stated repeatedly that it would strive to fulfil the task of the Conference, namely, to reach a broad agreement which would be acceptable to all States, not only to a group of them, and which would make it possible to organize peaceful co-operation among States in that particular field.

35. On the basis of those observations, he suggested that, under the heading "Second Stage" a sentence should be added to reflect the gentlemen's agreement endorsed by the General Assembly and to reiterate that the Conference should seek to adopt, by consensus, a convention that would be acceptable to all.

36. Mr. ARIAS SCHREIBER (Peru) said that he endorsed the President's suggestion that delegations should be entitled to propose formal amendments in the Committees before the end of the first part of the session and, for a previously agreed upon period which could last for one week, during the second part. In that way, the two positions would be reconciled and Governments would have sufficient time to consider the draft convention and proposed amendments as well as to prepare, during the suspension, the amendments they would present in the second part of the session. It would be useful to include in the President's note a paragraph specifying that the second part of the session would be devoted exclusively to taking decisions on the draft convention in accordance with the rules of procedure of the Conference and the gentlemen's agreement.

37. Mr. CALERO RODRIGUES (Brazil) said that, although his delegation would prefer the next session to be uninterrupted, it would accept the President's suggestion to divide it. With regard to the proposed programme of work, he hoped that during the week of debate in formal session, the general debate at Caracas would not be repeated, for that would serve no useful purpose. He further hoped that delegations, rather than making statements of general policy,

would confine their remarks to specific points for inclusion in the revised text.

38. The suspension of the session in the middle of the debate in the Committees would not be logical. It would be preferable to have the suspension immediately after the formalization of the informal composite negotiating text and to postpone the entire process of taking decisions until the second part of the session. The President had said that the Conference would have 8 to 10 days during the first part of the session for debate in the Committees, which meant that six weeks would be needed to complete the whole process of taking decisions in the Committees and in plenary meetings of the Conference. If a suspension were to be held in the middle of the debate in the Committees, the second part of the session would duplicate the work that had already been done.

39. The 8 or 10 days proposed by the President for the Committees to examine the draft convention at the end of the third stage would not be enough. The process of taking decisions in the Committees and the plenary Conference would require six weeks, and that period could not easily be divided into two parts as proposed in the time-table under discussion. The length of the process would clearly depend on the amendments submitted and some amendments might destroy the whole package. In order to avoid that situation, delegations might agree not to amend the basic aspects of the agreement.

40. The CHAIRMAN explained that he had suggested a period of 8 or 10 days as the time necessary to consider amendments at the end of the third stage. With regard to the length of the session, although work would be suspended immediately after the informal composite negotiating text had been formalized, the first part would take up no less than five weeks. He was convinced, however, that the decision-making process would require an additional five weeks. The session would thus consist of two parts of five weeks each.

41. Mr. ABOUL KHEIR (Egypt) supported the proposal made by the representative of Peru that formal amendments should be submitted at the beginning of the resumed session. It might be preferable for the Committee to take a decision at the end of the first part of the session as to the submission of formal amendments in the second part.

42. The CHAIRMAN explained that the reason for submitting amendments before the suspension of the session was to allow time for Governments to study them. He therefore requested delegations to agree to that procedure.

43. Mr. ABOUL KHEIR (Egypt) said that in any case Governments should be able to submit additional formal amendments once they studied the amendments submitted during the first part of the session. A time-limit of three or four days after the beginning of the second part of the session could be fixed for that purpose.

44. Mr. SEALY (Trinidad and Tobago) said that, although he did not oppose the suspension of the session once the informal composite negotiating text had been formalized, he was strongly in favour of beginning the decision-making process towards the end of the first part of the session. Nevertheless, if the majority insisted on postponing the beginning of that stage, he would go along with it.

45. Mr. MOMTAZ (Iran) said that he believed that the amended time-table would facilitate the work. Although he did not endorse the idea of a split session, he was prepared to support the proposal as long as it was clear that the two final stages would in fact precede the signing of the convention.

46. Mr. GOERNER (German Democratic Republic) said that the changes in the President's note had fully met his delegation's concerns. At the preceding meeting he had stated his delegation's position with regard to the final stages of the Conference. He supported the Soviet Union's proposal that specific mention should be made of the gentlemen's agreement, which should guide the work of the ninth and final session.

The meeting rose at 1.05 p.m.

50th meeting

Thursday, 23 August 1979, at 3.50 p.m.

Chairman: Mr. H. S. AMERASINGHE

Organization of work for the ninth session (*concluded*)

1. The CHAIRMAN drew attention to document A/CONF.62/BUR/12/Add.1, containing changes to his note in document A/CONF.62/BUR/12, concerning the programme of work for the rest of the eighth session and proposals in regard to the work of the ninth session.

2. Mr. ABOUL KHEIR (Egypt) deplored the fact that document A/CONF.62/BUR/12/Add.1 was not yet available in Arabic.

3. Mr. ZULETA (Special Representative of the Secretary-General) expressed the apologies of the secretariat for the fact that the Arabic version was not yet available, despite every effort. The secretariat continued to adhere strictly to the principle that no document would be circulated that was not available in all working languages unless the Conference decided otherwise.

4. Mr. MARSIT (Tunisia), supported by Mr. de LACHARRIÈRE (France), requested that all steps should be taken to ensure that documents were circulated simultaneously in all working languages.

5. The CHAIRMAN also expressed his regret at the delay in issuing the Arabic version of the document, which was due to technical reasons beyond the control of the Conference secretariat. Since, however, the Arabic version was now being circulated, he wished to proceed with the consideration of the document.

6. He observed that the question of the programme of work for the rest of the eighth session had been overtaken by events and that the addendum applied only to the organization of work of the ninth session.

7. With regard to amendment 8, concerning the second stage, he felt that, as suggested by the representative of Brazil at the 49th meeting, delegations should, in the formal discussion in plenary meetings address themselves to the substance of the revised informal composite negotiating text, and should avoid commenting on questions of a general nature. However, that was not an injunction, merely an exhortation.

8. Referring to amendment 17, he pointed out that the side heading should be amended to read "Final stage" and that the period of 10 calendar days referred to in the text included

the period of eight days mentioned, plus two days' grace to facilitate the attainment of general agreement.

9. Mr. ARIAS SCHREIBER (Peru) suggested that the words "rules of procedure and the" should be inserted before the words "gentlemen's agreement" in amendment 17.

10. The CHAIRMAN agreed that a reference to the rules of procedure should be inserted.

11. Mr. KOZYREV (Union of Soviet Socialist Republics) formally proposed adoption of the Committee's recommendations to the Conference in documents A/CONF. 62/BUR/12 and Add.1.

The recommendations in documents A/CONF.62/BUR/12 and Add.1 as orally amended, were adopted.

The meeting rose at 4.25 p.m.

FIRST COMMITTEE

46th meeting

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amendments to article 165

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

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

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

The meeting rose at 8.25 p.m.

THIRD COMMITTEE

41st meeting

Tuesday, 21 August 1979, at 3.35 p.m.

Chairman: Mr. A. YANKOV (Bulgaria)

Report by the Chairman

1. The CHAIRMAN appealed to representatives to endorse the general assessments and concrete proposals contained in his report (A/CONF.62/C.3/L.33) and thereby further to advance the negotiations.

2. During the current session, negotiations had focused on those issues that had remained pending after the Committee had concluded its work in April 1979 at Geneva, namely, the régime for the conduct of marine scientific research on the continental shelf beyond 200 miles from the baselines from which the breadth of the territorial sea was measured and the problem of the settlement of disputes relating to the interpretation or implementation of those provisions of the convention which concerned marine scientific research. Other substantive issues were still pending; those were, *inter alia*, the facilities and assistance to be rendered to research vessels, the need to make the results of research internationally available, the conditions governing the suspension or cessation of research, the need to assist research vessels in preventing or controlling damage to the health and safety of persons or to the marine environment, the modalities of marine scientific research conducted under the auspices of an international organization and the rights of neighbouring land-locked and geographically disadvantaged States.

3. Because of the nature of the key issues still pending and the late date at which work had begun, the negotiations had been intensive and had been conducted under pressure. The procedure of considering specific amendments article by article, followed at previous sessions, had been combined with an issue-oriented approach. He had sought to involve all interested delegations, and from the views they had expressed there had emerged compromise formulae which had a substantial degree of support and provided a reasonable basis for consensus.

4. The compromise formulae suggested with regard to the various articles were as follows:

Article 242

The following sentence should be added:

"In this context, without prejudice to the rights and duties of States under the present Convention, a State in the application of the present Part shall provide when appropriate other States with a reasonable opportunity to obtain from it, or with its co-operation, information necessary to prevent and control damage to the health and safety of persons and the environment."

Article 246 bis

The following new article, the title and placement of which were to be determined by the Drafting Committee, should be added:

"For the purposes of article 246:

"(*a*) The absence of diplomatic relations between the coastal State and the researching State does not necessarily mean that normal circumstances do not exist between them for purposes of applying article 246, paragraph 3;

"(*b*) The exercise by the coastal State of its discretion under article 246, paragraph 4 (*a*), shall be deferred and its consent shall be implied with respect to marine scientific research projects undertaken outside specific areas of the continental shelf beyond 200 miles, from the baselines from which the breadth of the territorial sea is measured, which the coastal State has publicly designated as areas in which exploitation or exploratory operations, such as exploratory drilling, are occurring or are about to occur;

"(*c*) The coastal State shall give reasonable notice of such areas."

Article 247

In line 1, "intergovernmental" should be added after "global".

Article 249

Paragraph 1 (*d*) should be redrafted to read as follows:

"(*d*) If requested, provide the coastal State with an assessment of such data, samples, and research results or assist in their interpretation;".

In paragraph 1 (*e*), "subject to paragraph 2" should be deleted.

Paragraph 2 should be redrafted to read as follows:

"2. The present article is without prejudice to the conditions established by the laws and regulations of the coastal State for the exercise of its discretion to grant or withhold consent pursuant to article 246, paragraph 4, including requiring prior agreement for making internationally available the research results of a project of direct significance for the exploration or exploitation of natural resources."

Article 253

The title should be redrafted to read as follows:

"Suspension or cessation of research activities".

In the first line of paragraph 1, "suspension or" should be inserted before "cessation".

Subparagraph (*a*) should be redrafted to read as follows:

"(*a*) The research activities are not being conducted in accordance with the information communicated as provided for under article 248 upon which the consent of the coastal State was based and compliance is not secured within a reasonable period of time;".

A new paragraph 2 should be added, as follows:

"2. The coastal State may require cessation of research activities if the conditions provided for in paragraph 1 are not complied with within a reasonable period of time after suspension has been invoked, subject to any proceedings which may have been instituted pursuant to section 2 of Part XV."

Article 255

The article should be redrafted to read as follows:

"States shall endeavour to adopt reasonable rules, regulations and procedures to promote and facilitate marine scientific research activities beyond their territorial sea and, as appropriate, to facilitate, subject to the provisions of their internal law, access to their harbours and promote assistance for marine scientific research vessels, which comply with the relevant provisions of the present Part."

Article 264

A new paragraph 2 should be added, as follows:

"2. Disputes arising from an allegation by the researching State that, with respect to a specific project, the coastal State is not exercising its right under articles 246 and 253 in a manner compatible with the provisions of the present Convention shall be submitted, at the request of either party and notwithstanding article 284, paragraph 3, to the conciliation procedure described in annex IV, provided that the Conciliation Commission shall not call in question the exercise of the discretion to withhold consent in accordance with article 246, paragraph 4."

5. In conclusion, he said that if those proposals received broad support, the Committee could now regard the substantive negotiations within its terms of reference as concluded. He hoped that those results would constitute a very important contribution by the Committee to the positive outcome of the Conference.

6. Mr. KATEKA (United Republic of Tanzania) said that since he had not received the Chairman's report until that afternoon, he could only make preliminary comments on the provisions it contained. He reminded members of the Committee that at a previous session, when many delegations had believed that the articles discussed had been ready for submission, a few delegations had felt so strongly a need for further consideration that the Committee had agreed to reconsider certain articles. Substantive amendments had then been made, and those articles had subsequently been considered at a number of sessions. The results of the intensive negotiations held during the current session were now being submitted as compromise formulae.However,certain delegations had not yet had an opportunity to comment on some of the issues relating to marine scientific research.

7. For example, with regard to article 264, the suggested addition of a new paragraph 2 introduced the concept of compulsory reconciliation. That concept might be considered if other proposed provisions were eliminated. In that connexion, article 246 *bis*, subparagraph (*a*), was not necessary, since if relations between a coastal State and a researching State were based on hostility, it was obvious that research would not be conducted.

8. With regard to article 246 *bis*, subparagraph (*b*), he said that his country did not have a continental shelf beyond 200 miles; if that subparagraph was acceptable to other members, he would not comment further.

9. With regard to articles 249 and 253, his delegation would need more time to study the proposed provisions, and it reserved its right to comment at a later time.

10. The purpose of the amendments proposed with regard to article 253 had perhaps been to clarify the original informal composite negotiating text. However, his delegation could not understand the amended provisions.

11. Referring to article 264, he said that his delegation would reluctantly accept the proposed text if it would offset the unacceptable aspects of the provisions contained in articles 246 and 253.

12. Thus, his delegation still had reservations about some of the amendments proposed by the Chairman and he hoped that those amendments would be considered further before being incorporated into the revised negotiating text.

13. Mr. ARIAS SCHREIBER (Peru) said that although some problems concerning pending issues had been identified and the wording of some articles had been improved, the amendments proposed by the Chairman should be examined further to ensure that they had the support of all members of the Committee. He therefore wished to present his delegation's observations on each of the proposed amendments.

14. His delegation had no remarks to make with regard to article 242.

15. With regard to article 246 *bis*, subparagraph (*a*), he agreed with the representative of the United Republic of Tanzania that it should be explained that the absence of diplomatic relations was not due to a state of hostilities. Perhaps that idea was reflected in the use of the word "necessarily", but, in his opinion, further clarification was needed on that point. With regard to article 246 *bis*, in general, if the delegations most directly affected supported those provisions, his delegation would concur.

16. Article 247 presented no problems for his delegation.

17. Referring to article 249, he suggested that at the end of proposed paragraph 2 the word "or" should be replaced by the word "and", because if a project had significance for either the exploration or the exploitation of natural resources, that was sufficient to require that the results be made internationally available.

18. Article 253 did not present any problems, except in the proposed new paragraph 2, which, in his delegation's opinion, examined only one of two possible hypotheses in which coastal States could require the suspension or cessation of research activities. No mention was made of the hypothesis in which a coastal State had clear evidence that research was being deliberately conducted in a manner clearly incompatible with the provisions of the convention. In such cases, the coastal State must be able to require the cessation of research activities immediately, without having to allow any time to elapse. He therefore proposed that the new paragraph 2 should be amended to read as follows:

"The coastal State may require cessation of research activities if it has evidence to sustain that this has been conducted in a manner clearly incompatible with the provisions of the present Convention or if the conditions provided for in paragraph 1 are not complied with within a reasonable period of time . . .".

Unless the hypothesis thus described was included in paragraph 2, his delegation would oppose the paragraph outright.

19. He noted an important omission from the new article 255. Since only research activities conducted in accordance with the convention should be permitted, he proposed that the words "conducted in accordance with the present Convention" should be added after the words "marine scientific research activities". Such an addition would be consistent with the views expressed during the discussions.

20. His delegation regarded the Chairman's formulation of article 264, paragraph 2, as a significant step forward. However, referring to the proviso at the end of the paragraph, he wondered what would happen in the case of the exercise of discretion to require cessation of research activities in accordance with article 253. It would seem that, in the case of cessation resulting from a flagrant violation by the researching State or from failure to comply with the provisions within a reasonable period of time, the researching State, having acted in notorious bad faith, should not have the right to other conciliation procedures. He therefore proposed the addition, at the end of the new paragraph 2, of the words "or to demand the cessation of research activities in accordance

with article 253". Without such a clarification, his delegation would oppose the paragraph.

21. Lastly, his delegation had presented some very simple proposals relating to articles 242, 248 and 249 which had not even been mentioned, let alone considered, and its proposal concerning article 254 remained pending. In such circumstances, he did not see how the Committee's work could be regarded as completed as the Chairman had intimated.

22. He greatly regretted that his delegation could not support the proposed formulations, which satisfied only certain delegations.

23. Mr. ATAIDE (Portugal) said that in general the amendments proposed by the Chairman had his delegation's support. Difficulties arose, however, in connexion with paragraph 2 of article 253, the wording of which was inconsistent with paragraph 1.

24. The coastal State should have the right to impose cessation or suspension. The milder wording of paragraph 2 was illogical, and his delegation could not accept it.

25. Mr. AL-HAMID (Iraq) congratulated the Chairman on his proposed new formulations, most of which faithfully reflected the majority views expressed during the negotiations. Some amendments, however, served the interests of only certain States and could not be regarded as compromise formulae. His delegation therefore reserved the right to submit subamendments. Consequently, the Chairman's comments with regard to the conclusion of the Committee's work at the current stage were somewhat premature.

26. Mr. FIGUEIREDO BUSTANI (Brazil) said that his delegation regarded the negotiating text as a basic consensus document which enjoyed his delegation's support and that of the Group of 77 as a whole. The amendments put forward by the Chairman greatly affected some aspects of the package deal that had been achieved. It was his delegation's understanding that no new compromise formulae had emerged from the negotiations, which had been intensive. The amendments read out by the Chairman had not been discussed in the plenary Committee, and his delegation had not had the opportunity to consider them.

27. The new article 242, with some further drafting changes, might be an improvement on the article in the revised negotiating text, but his delegation could accept the latter as it stood.

28. With regard to article 246 *bis*, subparagraph (*b*), he recalled that there had been exhaustive discussions concerning scientific research on the continental shelf but no consensus had emerged.

29. As to article 249, the proposed new formulation of paragraph 1 (*d*) failed to take account of the fact that developing countries were not on the same level in scientific and technological terms as researching States and therefore would not have the opportunity to learn to assess the data. Paragraph 2, as redrafted, also presented certain difficulties because of its restrictive approach, as had been clearly pointed out by the representative of Peru.

30. One of the most difficult problems for his delegation concerned article 253. While his delegation was ready to consider the idea of suspension or cessation, the matter had not been discussed exhaustively. The proposed paragraph 2 was merely a proposal by one delegation which apparently had not received support.

31. With regard to article 255, his delegation supported the views expressed by the representative of Peru.

32. As to article 264, his delegation was prepared to examine the new proposal but felt that it could be further improved.

33. He suggested that the Chairman's proposals be examined in detail at a later stage, since time was needed to consider their effect on the over-all package.

34. The CHAIRMAN pointed out that all the issues covered by his report had been discussed in the Committee but acknowledged that not all the proposals which had emerged during consultations had been discussed. Further consideration of the articles in part XIII of the negotiating text was a matter for the Conference to decide.

35. Mr. SMØRGRAV (Norway) said that his delegation had accepted most of the proposals put forward by the United States delegation and other delegations, but it could also accept the negotiating text as it stood. That also applied to the Chairman's proposals.

36. However, his delegation had reservations concerning article 246 *bis*, subparagraph (*b*), and would prefer a different wording at the end thereof.

37. Mr. MALIK (Pakistan) congratulated the Chairman on his proposals, which in certain respects represented a major step forward. His delegation could support the new wording of articles 242 and 247. Similarly, the new article 249, with the amendment proposed by Peru to paragraph 2, was a welcome improvement.

38. In certain areas, however, the proposed amendments would substantially alter the nature of the package in respect of that part of the convention. His delegation therefore had great difficulty in accepting them. That applied particularly to the question of implied consent embodied in the new article 246 *bis*, subparagraph (*b*), and that issue might require further negotiations. Referring to subparagraph (*a*), he said that the question raised by the representative of the United Republic of Tanzania concerning the distinction between the absence of diplomatic relations and a rupture of relations needed to be clarified.

39. As to article 253, he recalled that a consensus had been reached to the effect that the right to terminate marine scientific projects after consent had been given, in the event of any flagrant violation of the convention or a threat to the security of the State, would not be questioned and that the relevant wording would be retained intact.

40. His delegation could accept the new article 255, with the addition proposed by Peru to the effect that facilities would be given to scientific research vessels if their activities were in accordance with the convention and that otherwise general maritime law or customary international law would operate.

41. As to article 264, he agreed with the representative of Peru that provision should also be made for the coastal State to terminate a research project that was prejudicial to its interests. With such an amendment, the new article 264 would be acceptable to his delegation.

42. Mr. EITEL (Federal Republic of Germany), commending the Chairman on his efforts, said that his country, as a researching State, was committed to the principle of freedom in all fields of scientific research. He therefore supported the efforts of many researching States to improve the wording of the negotiating text without upsetting the delicate balance between the positions of the coastal State and the researching State, with a view to providing a workable basis for effective co-operation that would benefit both sides and mankind as a whole.

43. His delegation was not completely satisfied with the results. The key issues concerning the régime for marine scientific research on the continental shelf beyond the 200-mile limit and the settlement of disputes in accordance with article 264 had not been completely resolved. His delegation maintained that a substantially more liberal régime for marine scientific research was needed in the case of the outer shelf than in the case of the exclusive economic zone. Ac-

cordingly, it had proposed the exemption of basic research from a consent régime. Furthermore, it had supported proposals concerning resource-related research, aimed at accommodating the interests of coastal and researching States in a way that deferred the full implementation of the consent régime until the coastal State had taken steps to exploit the resources of the continental shelf. His delegation was pleased to note that at least those proposals were reflected in the Chairman's draft. It regretted, however, that basic research was still subject to the consent régime. His delegation hoped that the negotiations on the various controversial points would be resumed.

44. As to the settlement of disputes, his delegation was not entirely satisfied with the outcome of the discussions. It was committed to the principle of comprehensive and effective compulsory judicial settlement of disputes. Such a settlement would be more in line with the inner balance of the negotiating text, which did not explicitly grant the coastal State any sovereign or exclusive rights with regard to marine scientific research in the exclusive economic zone and on the continental shelf.

45. With regard to article 253, no progress had been made in achieving a better balance in the provisions concerning the protection of research projects commenced with the consent of the coastal State; nor had progress been made in safeguarding the international availability of research results, under article 249. However, his delegation reserved its position until it had examined the new texts more closely.

46. Referring to article 242 concerning the promotion of international co-operation, his delegation noted with interest the widespread support for incorporating the substance of the revised proposal relating to article 242 *bis* into document MSR/2/Rev.1. It would be an important further improvement if the main element of that proposal were combined with the version of article 242 proposed by the Chairman. He also drew attention to the alternative text of article 244 *bis* contained in that same document; his delegation could support either text.

47. Mr. McKEOWN (Australia) said that while there was insufficient time to consider the Chairman's proposals at length, he hoped that they would facilitate the task of reaching a consensus on marine scientific research. Having only recently seen the proposals, his delegation could offer only preliminary comments.

48. With regard to article 242, the proposed additional sentence seemed to be an improvement on previous versions and deserved support.

49. As to article 246 *bis*, his delegation welcomed the Chairman's proposal that such a provision might become a paragraph within article 246. With regard to subparagraph (*a*), his delegation interpreted the words "does not necessarily mean" as suggesting that the absence of diplomatic relations might or might not mean that normal circumstances existed and that that question depended on the particular situation. His delegation regarded subparagraph (*b*) as a compromise proposal and interpreted the existing position under international law to be that all research undertaken on the continental shelf was subject to the consent of the coastal State. His delegation recognized, however, that what was needed was a formulation which met the concerns of both the researching State and the coastal State. The underlying concept reflected in the Chairman's proposal was that marine scientific research might be facilitated if the application of the full consent régime was deferred in areas other than those specifically designated for exploration and exploitation operations. The assumption was that the coastal State would progressively declare areas of its continental shelf open for exploration and exploitation and that it had absolute discretion to do so whenever it deemed it appropriate. That was a most interesting proposal, which appeared to depart from existing law and which perhaps went even further than the proposals made by Australia in that area. His delegation would therefore give it serious consideration.

50. His delegation was able to support article 255 in the negotiating text and felt that the new version suggested by the Chairman entailed significant changes. The question of access to ports touched closely on the sovereignty of coastal States and had implications going far beyond the régime for marine scientific research. He noted, however, that the Chairman's proposals were presented as a compromise, and his delegation would consider them in that light.

51. His delegation's position on the compulsory settlement of disputes was well known. In other parts of the draft convention, exceptions to that principle had been recognized in matters touching upon the sovereign rights of coastal States. The Chairman's proposal concerning article 264 offered better prospects of achieving consensus and was closer to meeting the very diverse positions of delegations than any previous text. Accordingly, his delegation was prepared to give serious consideration to it on the understanding that it represented a compromise on a particularly difficult issue.

52. Mr. PFIRTER (Argentina) said that his delegation had repeatedly stressed the undesirability of making substantial changes in the articles relating to marine scientific research in the negotiating text. Argentina was among the countries which would be most affected by a discontinuation of the negotiations on some of the important issues discussed at the current session. His delegation had consistently supported the search for solutions which would strike a fair balance among all the legitimate interests of States with regard to marine scientific research and had, in the interests of general acceptability, even agreed to compromises entailing difficult choices. A balance between all legitimate interests would, in the view of his delegation, be the best guarantee that the future convention would enjoy the support of all States. Such support was fundamental if the convention was to contribute effectively to peace and order in international relations. Those considerations would guide his Government in determining its position on the Chairman's proposals. He was confident that the Chairman would assist the Committee in deciding which amendments should be accepted, with a view to ensuring general acceptance of the future convention.

53. Mr. LUPINACCI (Uruguay) said that his delegation supported the informal composite negotiating text as it stood and that consequently its acceptance of any amendments would entail certain concessions. The text in its present form struck an adequate balance among the interests of all States, and it was necessary to determine which amendments did not radically alter that balance. For example, some of the Chairman's proposals relating to researching States, while perhaps reflecting a slightly different viewpoint, served only to strengthen guarantees already recognized in the text and, accordingly, were acceptable. His delegation had no difficulty in supporting the Chairman's proposal concerning article 242. The addition of the new phrase served to improve the text.

54. As to article 246 *bis*, his delegation felt that the absence of diplomatic relations mentioned in subparagraph (*a*) should not be regarded as the sole factor in determining whether abnormal circumstances existed between the two parties. Where no diplomatic relations existed, account should be taken of other factors affecting relations between the researching State and the coastal State. On that understanding, his delegation could support the Chairman's proposal regarding subparagraph (*a*).

55. He sought confirmation of his understanding that the provisions of article 252 applied to the implication of the coastal State's consent provided for in subparagraph (*b*) of

article 246 *bis*. If his interpretation was correct, that fact should be made explicit in the paragraph.

56. Subparagraph (*c*) of article 246 *bis* needed to be further developed, and he suggested that the words "at any time" be added at the end of the sentence. It might also be desirable to add a provision in subparagraph (*c*) which would guarantee reasonable extensions of consent already granted.

57. The comments made by the representative of Peru on the proposed redrafting of article 253 were apposite. In that connexion, he sought clarification concerning the meaning of the phrase "subject to any proceedings which may have been instituted pursuant to section 2 of part XV" in the new paragraph 2. It was his understanding that the parties were obligated to have recourse to conciliation only if they had concluded an express agreement to that effect. Accordingly, he suggested that the word "instituted" be replaced by the words "agreed to by the parties". Subject to that amendment, his delegation could accept the Chairman's proposal.

58. He had no serious objections to the proposal relating to article 255 but felt that the addition of the words "conducted in accordance with the Convention", as proposed by the representative of Peru, would help to make the text clearer and improve its chances of general acceptance.

59. His delegation was prepared to agree to the inclusion of a new paragraph 2 in article 264 but felt that subparagraph (*b*) of the negotiating text should be amended by adding the words "or to suspend" after the word "terminate".

60. Mr. YTURRIAGA BARBERÁN (Spain) said that, while understanding the time constraints under which the Committee was working, he wished to protest against the presentation of an important report containing proposals for the amendments to the negotiating text in only one working language at the very meeting at which members were being asked to take a decision. Although members had agreed to a high degree of flexibility in order to expedite the Committee's work, certain minimum standards had to be observed. The fact that the report of the negotiating groups had not been made directly to the Committee had also complicated the situation.

61. The Chairman's proposals fell into three categories. First, there were those which had been discussed and accepted in the Committee, such as the suggested amendment to article 247, which his delegation had no difficulty in accepting. Second, there were proposals relating to issues which had been discussed in the Committee without ever reaching the stage of being formulated as concrete proposals. Lastly, there were issues that had never been raised in the Committee itself, such as those dealt with in the Chairman's proposals relating to article 246 *bis* and article 264. His delegation was not currently in a position to take a stand on the latter proposals. His comments on the other proposals would, of necessity, be of a preliminary nature.

62. As to article 242, his delegation had no difficulty in accepting the Chairman's proposal, but he pointed out that not all the proposals put forward by Peru in document MSR/5 had been taken into account.

63. He agreed with the representative of Peru that the Chairman's proposal with regard to article 253 did not seem to reflect the results of the negotiations at the session. The coastal State should, depending upon the circumstances of non-compliance by the researching State, have the option of either suspending or requiring the cessation of research activities and should not be limited to requiring cessation alone. Accordingly, he proposed that the words "and compliance is not secured within a reasonable period of time" should be deleted in paragraph 1 (*a*). In addition, the new paragraph 2 was unacceptable to his delegation.

64. With regard to paragraph 254, his delegation had repeatedly urged the deletion of all references to geographically disadvantaged States. In that connexion, he agreed with the representative of Peru that the issue had not been fully discussed and that the negotiations should be pursued. In the circumstances, his delegation was not prepared to accept article 254 as it stood.

65. Article 255 similarly did not reflect the outcome of the discussions at the session. It was necessary to add the words "to be conducted in accordance with this Convention" after the word "activities". His delegation could not accept the inclusion of the words "subject to the provisions of their internal law", since the article dealt with the practical arrangements for the granting of access to harbours and not with the right of access *per se*. An international obligation should not be subordinated to the domestic law of a State.

66. He endorsed the suggestion made by the representative of Brazil that the Chairman's proposals should be considered at the next session and that no decision should be taken on them at the current stage.

67. The CHAIRMAN recalled the difficult circumstances in which the report had been processed, and he hoped that delegations would appreciate that time constraints had made it impossible to have the report translated into all the official languages in time for the meeting. The Conference could hardly be accused of adopting decisions hastily when the media and even Governments were becoming increasingly impatient with the slow pace of the negotiations.

68. Mr. LIU Hanhui (China) observed that the Chairman's proposals seemed to have a number of positive features but also involved a number of problems which required more detailed consideration. In view of the fact that his delegation had not received the text of the report in Chinese, and given the pressure of time, it could not comment on the substance of the proposals at the current stage.

69. Mr. YUSUF (Somalia) said that many of the Chairman's proposals reflected the results of intensive negotiations and hence could be considered a step forward in efforts to improve the prospects for wider acceptance of the negotiating text. Many of the proposals, however, had been considered only as possible compromises, and agreement on them had not yet crystallized. In addition, many of the proposals had important implications for the over-all régime governing marine scientific research and the total package embodied in the informal composite negotiating text, which enjoyed widespread support. The Committee should not, therefore, be hasty in concluding its work.

70. He was dismayed to see the proposal for a new paragraph 2 of article 253 in the Chairman's report, since, to his recollection, that issue had not been discussed in the Committee. Coastal States had the right to require the cessation of research activities irrespective of whether they had invoked the right to suspend those activities at an earlier stage. The two rights were independent, and coastal States had the right to invoke either right whenever the researching State failed to comply with articles 248 or 249. Article 253 should be redrafted to reflect that fact.

71. He shared the concern expressed by the representative of the United Republic of Tanzania with regard to article 246 *bis*, subparagraph (*a*).

72. With regard to article 249, he endorsed the Peruvian proposal to replace the word "or" with the word "and" in paragraph 2. He also agreed that the words "conducted in accordance with the Convention" should be added in article 255.

73. As to article 264, the word "right" should be replaced by the word "rights", since not one but several distinct rights were involved.

74. Mr. ABD-RABOUH (Egypt) said that the Chairman's report was based on a spirit of optimism, but his delegation opposed certain aspects of it. It disagreed particularly with

the statement that negotiations would soon be concluded and that all the new texts in the report represented a broad basis for agreement. His delegation agreed with the proposed revisions of articles 242, 247 and 255, although it felt that the new texts involved fresh concessions from the coastal States. The remaining articles, as revised in the Chairman's report, had not been sufficiently negotiated in other committees, and his delegation reserved the right to comment on them later.

75. Mr. WULF (United States of America) said it was well known that his delegation would have preferred a régime for marine scientific research in the exclusive economic zone and on the continental shelf different from that currently reflected in document A/CONF.62/WP.10/Rev.1. The amendments in the Chairman's report were extremely modest in scope and did not entirely satisfy the aspirations of his delegation. However, they were the product of intensive negotiations and reflected the needs of other delegations. His delegation would therefore accept the proposals if others did.

76. With regard to article 246 *bis*, his delegation believed that it should appear as a separate article. Subparagraph (*a*) of that article did not raise the problem expressed by the representative of the United Republic of Tanzania. He shared the view of the representative of Uruguay that the phrase "does not necessarily mean" did allow for a circumstance wherein the absence of diplomatic relations could mean that normal circumstances did not exist. The point was in determining whether circumstances were normal. The over-all relationship between the researching State and the coastal State should be considered, not just the absence of diplomatic relations. The concerns expressed on that point might be met by clarification from the Chairman. His delegation could not agree with the interpretation given by the representative of Uruguay to article 246 *bis*, subparagraph (*b*).

77. Mr. VALLARTA (Mexico) said his delegation interpreted the Chairman's report to mean that if, after mature reflection, Governments wished in the future to renegotiate the text, the Third Committee would then be able to study the work done at the current session. His delegation therefore accepted the text as being the culmination of the work that had been done so far but as being held over for future study as well.

78. Referring to article 246 *bis*, he said that the system it embodied affected the principle of the unity of the continental shelf as it currently existed in international law. With regard to article 264, his delegation would have preferred that the system of peaceful settlement of disputes be applied to every case except those involving the discretion of the coastal State to withhold its consent and the termination of a project when the researching State failed to comply with its obligations. In his delegation's view, the text was unclear on that point.

79. Mr. GLOVER (United Kingdom) said that the provisions relating to marine scientific research contained in document A/CONF.62/WP.10/Rev.1 were the result of intensive negotiation and, although the text was balanced, it was imperfect. His delegation had repeatedly asserted that efforts should be made to reduce the imperfections but retain the fundamental balance, and it believed that part XIII of the document should contain an explicit consent régime to deal with resource-related research on the continental shelf. That important element must be retained in any changes made in the current text. The Chairman's proposals did not contradict that principle; the interests of the coastal States were protected, and at the same time marine scientific research beyond the exclusive economic zone could be conducted with a measure of freedom until the coastal State should wish actively to exploit its sovereign rights. With regard to article 255, his delegation had said often that it regarded that provision as unnecessary but was glad that the question of facilitating access to ports had been settled satisfactorily.The proposal on that had been amended to make clear, as all would be aware, that it might not always be appropriate to give access—for example, having regard to the nature, characteristics and uses of the harbour or port concerned. In conclusion, the report contained useful changes clarifying the text and did not upset the balance of the informal composite negotiating text.

80. Mr. HAFNER (Austria) said that the current text did not coincide with the original ideas of his delegation on how marine scientific research should be regulated. The revisions, however, represented a useful contribution and could serve as a basis for an over-all consensus on the regulation of marine scientific research.

81. The CHAIRMAN, replying to a question by the representative of Uruguay, said that the substantive comments made by delegations required further study and that for the time being he wished merely to take note of them.

The meeting rose at 6.30 p.m.

42nd meeting

Wednesday, 22 August 1979, at 8.20 p.m.

Chairman: Mr. A. YANKOV (Bulgaria)

Report by the Chairman (*continued*)

1. The CHAIRMAN invited the Committee to continue consideration of the proposals contained in his report (A/CONF.62/C.3/L.33) on the results of negotiations on part XIII of the revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1). It was encouraging to note that during the discussions the proposals concerning the main substantive issues had, in principle, received general support, despite strong objections from certain delegations with regard to some issues. Some drafting changes had also been suggested.

2. Mr. TIWARI (Singapore), commending the Chairman on his efforts, said that his delegation wished to offer its preliminary comments on the Chairman's proposals.

3. In article 242, the addition of a new sentence appeared to benefit all concerned, and should find general acceptance.

4. He agreed with the Chairman's suggestion that article 246 *bis* could form part of article 246. With regard to subparagraph (*a*), some delegations had suggested certain drafting changes, which could be incorporated. As to subparagraph (*b*), however, he felt that further consultations were necessary.

5. He had no difficulty with the drafting change proposed for article 247, but reserved his comments on article 249, on which there had been insufficient discussion.

6. While the new title proposed for article 253 caused no serious problems, the proposed new paragraph 2 might require further consideration.

7. He reserved his delegation's position on the proposed new article 255, which might be too far-reaching.

8. Lastly, he noted that the new paragraph 2 of article 264, while not an ideal solution, was probably the best compromise that could be achieved between coastal and researching States.

9. Mr. WALKATE (Netherlands) said that, since the Chairman's proposals represented a package, it was not appropriate to comment on all the articles separately. While some did not reflect his delegation's wishes, others seemed to improve part XIII, which laid down a régime with which his delegation could go along with only reluctantly. The package seemed to be worthy of serious study before the next session, when final decisions would have to be taken.

10. He had great difficulty with the new paragraph 2 of article 264. His delegation could go along with nothing less than the compulsory and binding settlement of disputes over the rights and obligations set forth in the convention. He noted in that connexion that the jurisdiction of the coastal State in respect of marine scientific research did not encompass sovereign rights; the system proposed in paragraph 2 was therefore extremely difficult to accept, based as it was on the assumption that sovereign rights were at stake. The fact was that the coastal State exercised no exclusive rights in the exclusive economic zone, as could be seen from a comparison of articles 245 and 246 of the revised negotiating text.

11. Although it did not underestimate the value of a good system of conciliation, his delegation regretted that new inroad into the system for dispute settlement provided for in part XV.

12. Mr. FERRER (Chile) said that he wished to put before the Committee his delegation's first impression with regard to the Chairman's proposals. Some of the amendments merited approval. With regard to others, however, his delegation agreed with the views expressed at the previous meeting by the representatives of Peru, Brazil, Uruguay and Spain. On the procedural aspect, his delegation agreed that the proposed text could not be regarded *a priori* as ready for inclusion in the new revision of the negotiating text. However, the effort had been useful in that it might facilitate achieving a final consensus at the next session. In that connexion, he noted that the coastal State had yielded some of its jurisdiction, making it easier to safeguard scientific research in its patrimonial sea.

13. He hoped that in future it would be possible to work on the basis of the balance achieved in the revised negotiating text with a view to reaching final agreement.

14. Mr. DIA MASSAMBA (Zaire) said that his country had legitimate ambitions to participate in marine and scientific research programmes for the purposes of development. Giving his delegation's preliminary comments on the Chairman's report, he said that the proposed addition to article 242 was acceptable, since it improved the text.

15. Article 246 *bis*, subparagraph (*a*), was difficult for his delegation to accept without further study; it might need to be reworded, in view of the practical difficulties that might arise in its implementation.

16. The proposed addition to article 247 was an improvement, and was therefore acceptable to his delegation.

17. Referring to article 253, he felt that a better compromise formula should be found.

18. His delegation supported the position of the Group of 77 to the effect that the revised negotiating text constituted a balanced text and that any proposal that might upset that balance was unacceptable.

19. Mr. BOHTE (Yugoslavia) said that, owing to lack of time to study the Chairman's proposals, his delegation could merely indicate its preliminary reaction to them. At first glance, it would appear that they departed significantly from the position taken by the Group of 77, which had stated its support for the corresponding provisions of the revised negotiating text.

20. The proposals concerning articles 242 and 247 were acceptable to his delegation, which could also support the proposed new wording of article 255, provided the Peruvian amendment was accepted.

21. The other proposals, however, appeared to change the balance of the revised negotiating text. With regard to article 246 *bis*, his delegation was not sure whether the placing of that article should be left to the Drafting Committee, as the Chairman had suggested.

22. With reference to the régime for scientific research on the continental shelf, his country favoured a wider international area as being the common heritage of mankind, and felt that the International Sea-Bed Authority should have greater competence with regard to marine scientific research on the sea-bed beyond the 200-nautical-mile limit than that implied in the proposed article 246 *bis*, particularly subparagraph (*b*). Furthermore, that subparagraph entailed discrimination among States in terms of their stages of development.

23. Referring to article 253, he said his delegation had understood from the negotiations that the coastal State would be given a choice between suspension and cessation of research activities. However, under the new paragraph 2, cessation was dependent upon prior suspension and other conditions; those two procedures were not on the same footing. He agreed in that regard with the representatives of Peru and Spain.

24. As to article 264, he agreed with the representative of Peru that a reference to cessation should be included in the new paragraph 2.

25. Lastly, his delegation would like the opportunity to discuss the proposals in document MSR/5, which deserved support.

26. Mr. MARZIOTA DELGADO (Cuba) expressed regret that document A/CONF.62/C.3/L.33 had not been distributed in Spanish until just before the current meeting and fully supported the comments by the representative of Spain concerning the need to make documents available in good time in all the working languages.

27. His delegation agreed that the revised negotiating text represented a consensus reached after many years of negotiation, and supported the position of the Group of 77 in that regard. Offering preliminary comments on the Chairmen's proposals, he said that his delegation supported those which related to articles 242 and 247, as well as article 253, paragraph 1, provided the word "or" in the first line was replaced by the word "and". It could also accept the proposed redrafting of article 255 either as it appeared in the Chairman's report or with the Peruvian amendment, on which there seemed to be a consensus.

28. However, his delegation found the proposed article 246 *bis* redundant, and supported the views expressed by the Tanzanian representative and other speakers; the matter should be left to the discretion of each State, which exercised sovereignty in that respect.

29. His delegation felt that some progress had been made, and hoped that the work would continue on the basis of a consensus.

30. Mr. TIKHONOV (Union of Soviet Socialist Republics) noted that the Chairman's proposals enjoyed fairly wide support. His delegation agreed that they were largely of a compromise nature and should make it easier to achieve a consensus on part XIII.

31. His delegation had no difficulty with article 242. However, with regard to article 246 *bis*, subparagraph (*a*), it saw

no pressing need for a special definition of the words "normal circumstances"; but if the majority of delegations did not object to the proposal, his delegation would not stand in the way of a consensus. In any case, the words "not necessarily" seemed to be more suitable than other proposals put forward. As to subparagraph (*b*), although his delegation was not entirely satisfied with the proposal, it recognized that the wording was the result of intensive negotiations in which diametrically opposed views had been expressed. It would therefore not object to the proposal, regarding it as a compromise on which the majority of delegations might be able to agree.

32. He had no objections to the proposals concerning articles 247, 249 and 253.

33. With reference to article 255, his delegation was satisfied that it represented a compromise position. He agreed, however, with the representatives of Peru and Spain concerning the need to include a reference to the fact that the research in question was research carried out in accordance with the convention. Lastly, the new paragraph 2 of article 264 would be accepted by his delegation in a spirit of compromise.

34. When the Chairman's proposals were considered in the plenary Conference, his delegation would be prepared to support them, with the proviso that part XIII, concerning marine scientific research, was part and parcel of the over-all package relating to the law of the sea, and his delegation's final position would depend on the outcome of the work in other organs and in the Conference as a whole. Since some questions remained pending in other Committees and groups, his delegation might find it necessary to revert to the question of marine scientific research.

35. Mr. DADA (Nigeria) noted that some progress had been made, largely as a result of the skillful way in which the Chairman had directed the negotiations. Improvements had been made in some provisions of the revised negotiating text, such as articles 242 and 247. However, his delegations felt that the revised negotiating text, as it stood, was more satisfactory in respect of certain issues relating to marine scientific research on the continental shelf beyond the 200-mile limit. With particular reference to article 246 *bis*, his delegation could not accept the concept of implied consent which it reflected.

36. His country favoured the conciliation procedure set forth in the revised negotiating text and opposed compulsory dispute settlement. While it appreciated that the new paragraph 2 of article 264 appeared to narrow the gap between two opposing views on dispute settlement, it nevertheless continued to maintain that any dispute arising from the conduct of research for peaceful purposes and in the interest of all mankind should be settled amicably, using a conciliatory procedure. It hoped that consideration would be given to that view before a final compromise formula was arrived at.

37. Mr. MANANSALA (Philippines) regretted that lack of time had prevented a thorough study of the Chairman's proposals. His delegation felt that the existing provisions on marine scientific research contained in the revised negotiating text were, by and large, acceptable, and that some of the new formulations upset the delicate balance which that text represented.

38. Stating his delegation's preliminary views on the proposals, he said that the compromise formula in article 246 *bis*, subparagraph (*a*), and the addition to article 247 could be considered improvements. The proposed redrafting of article 249 was also acceptable.

39. His delegation had reservations, however, about the new sentence proposed for article 242; it preferred the Cuban formulation set forth in document MSR/5 concerning the information necessary for the health and safety of persons and the environment.

40. It also had reservations concerning the new paragraph 2 of article 253 and the proposed redrafting of article 255.

41. Lastly, his delegation could not accept article 246 *bis*, subparagraph (*b*), and the new paragraph 2 of article 264.

42. Mr. CÓRDOVA (Ecuador), giving his preliminary comments on the Chairman's proposals, the Spanish version of which had only just been distributed, regretted that some of the formulae were unacceptable. He pointed out that the Chairman's report was the outcome of negotiations in small interest groups to which the large majority of delegations had not been invited.

43. His country had frequently expressed serious objections to part XIII of the revised negotiating text, having in mind the need to safeguard the rights of the coastal State. The revised text omitted what some countries regarded as vital rights. Consequently, his delegation had serious misgivings concerning the new formulae which, in the context of the existing imbalance in the revised negotiating text, further weakened the rights of the coastal States.

44. The proposed new paragraphs of articles 253 and 264 were cases in point; in that regard he supported the amendments proposed by Peru. The new paragraph 2 of article 253 omitted a reference to non-compliance with the convention resulting from a deliberate act which, if its consequences were harmful, would constitute an act of bad faith; that omission would prevent the coastal State, despite the gravity of the infraction, from requiring, in accordance with its rights and interests, the immediate cessation of research.

45. In his delegation's view, there were two forms of non-compliance with the convention: either negligence or a flagrant violation in bad faith in which the damage caused was the unequivocal result of an intention. It would be unjust and absurd to retain in the new paragraph wording which would benefit certain interests and omit wording which would benefit all interests. His comments also applied to the new paragraph 2 of article 264, under which the right of the coastal State to require cessation of research could not be questioned by the Conciliation Commission. The determination of non-compliance and of the motives underlying it fell within the exclusive jurisdiction of the coastal State. If the article was to have some degree of acceptability, it must be reworded in the light of the clarification proposed by the representative of Peru. Pertinent suggestions had been made by other delegations, especially that of Uruguay, which had referred to the scope of article 246 *bis*, subparagraph (*b*), vis-à-vis the implied consent provided for in article 252. That suggestion had his delegation's support.

46. However, some of the proposed new formulae aggravated the existing imbalance in the revised negotiating text to the detriment of the coastal State, to say nothing of the fact that the successive texts, by virtue of the *sui generis* procedures imposed, had systematically omitted reference to essential rights upheld and defended by many delegations, including his own, which had not been invited to participate in the interest groups and which had not been given sufficient time to analyse the proposals. His delegation objected to the progressive encroachment upon the rights of the coastal States — especially developing countries, which lacked economic, technological and military power — by small pressure groups which possessed a monopoly of economic and technological power and which sometimes even resorted to military threats.

47. His delegation therefore deeply deplored the outcome of the negotiating process. Although the current stage of the Committee's deliberations was about to be concluded, he wished to make it absolutely clear that the negotiations would continue in future in the open and cover the entire

complex package, and it was in that context that the proposals put forward, the proposals omitted and the proposals yet to be formulated should be considered.

48. Mr. BENTEIN (Belgium) said that, although his delegation had not yet grasped the precise import of all the amendments proposed by the Chairman, at first reading they appeared to be acceptable in that they made the revised negotiating text more balanced.

49. However, his delegation had difficulties with the new paragraph 2 of article 264, concerning the settlement of disputes, the tortuous style of which reflected the circumstances in which the text had been formulated. At a later stage it would be necessary to make a more detailed analysis of the situation with a view to finding a formula that was legally more defensible. The proposal sought to abandon the principle of compulsory dispute settlement under section 2 of part XV and to replace it by compulsory conciliation procedures. His delegation associated itself with the comments of the Netherlands representative in that regard. Actually, the revised negotiating text already provided for the possibility of conciliation, since article 264 began with the words "Unless otherwise agreed or settled by the parties concerned", and the vast majority of cases would be settled by means of conciliation. His delegation believed, however, that a binding judgement was more appropriate for the purposes of legal stability. His delegation could not support the initiative aimed at detracting from legal stability in favour of a rule which was perhaps dictated by political opportunism but which might prove in the distant future contrary to the interests of marine scientific research.

50. Therefore, while accepting the Chairman's proposals as a whole, his delegation could not at the current stage accept the proposed new paragraph 2 of article 264, since it would be difficult for his Government to depart from a fundamental rule which it had always followed. Furthermore, it would be necessary to calculate the price of that new concession. Attempts were being made to water down the scope of other articles of the revised negotiating text, including article 254, which concerned the rights of neighbouring land-locked and geographically disadvantaged States, and to which his delegation was strongly attached.

51. Mr. LADJIMI (Tunisia) said that the lack of time and other constraints of the Conference did not justify any change in the methods of work. The results of the negotiations should, in the usual way, have been placed before the Committee for discussion. Since, however, there had been no time to evaluate those results, it was difficult for delegations to state their views on the Chairman's report.

52. His delegation had no difficulties with the amendments to articles 242 and 247, nor with the proposed wording of article 255, provided the Peruvian proposal was adopted.

53. Other articles, however, gave rise to difficulties. With regard to article 246 *bis*, subparagraph (*a*), the question of diplomatic relations should be clarified through a change in the wording. In the case of subparagraph (*b*), his delegation agreed with that of Yugoslavia that the International Sea-Bed Authority should be associated in some way with the operations carried out beyond the 200-mile limit.

54. As to article 249, he felt that the procedure provided for in the proposed paragraph 1 (*d*) would not constitute the best means of assisting developing countries to develop their own capacity to assess data and samples. With regard to paragraph 2, he welcomed the Peruvian suggestion that the wording should read "and exploitation".

55. Referring to article 253, he agreed with the proposed change in the title. However, the discussions had indicated the need for a short, unambiguous article covering the rights of the coastal State, which would be the best judge in good faith of whether to suspend or require cessation of research.

56. With regard to article 255, his delegation supported the Peruvian addition of the words "conducted in accordance with the present Convention".

57. Lastly, he felt that it was premature to say that the Committee's work had ended. The work of the Conference constituted a package, and it was difficult for delegations to take final positions without knowing the outcome of negotiations in other committees and groups and before the Chairman's proposals had been fully discussed. It would be wise to re-examine at the next session all the new proposals now before the Committee.

58. Mr. APPLETON (Trinidad and Tobago), commenting on the proposed new sentence of article 242, said that, while his delegation agreed with its objectives, it was not sure whether that provision was not already set forth in article 240, subparagraph (*d*).

59. With regard to article 246 *bis*, although his country did not have a significant continental shelf beyond the 200-mile limit, it had always defended the integrity of the continental shelf concept. It therefore had reservations with regard to deferral of the exercise of the coastal State's discretion, as provided for in the proposed article 246 *bis*, subparagraph (*b*).

60. Turning to article 249, he agreed with the Brazilian representative that merely providing the coastal State with an assessment of data would not only stultify the development of its research capability but also limit its ability to monitor and evaluate the researching State's conclusions concerning the data.

61. Commenting on article 264, he agreed with the representative of Peru that, since article 253 had been amended to include the power of suspension, the words "or to demand the cessation of marine scientific research activities" should be included in the new paragraph 2, after the words "to withhold consent".

62. While his delegation generally agreed with most of the proposed amendments, it wished to have further time to study them.

63. Miss MARIANI (France), expressing regret concerning the delay in distributing the French text of the Chairman's proposals, said that her delegation appreciated the considerable work done to improve the revised negotiating text, which was generally satisfactory but needed amendment on certain points. Her delegation was able to accept the proposals concerning articles 242, 249 and 253.

64. With regard to article 255, her delegation still had difficulties with the proposed formula but, in a spirit of compromise, would not object to it. It wished, however, to clarify that it interpreted the words "as appropriate" in the way indicated by the United Kingdom representative, namely, to mean that access to harbours was not automatic.

65. Her delegation had serious difficulties with the existing article 247, and had submitted an important amendment which had been misinterpreted by certain delegations; it also regretted that an error had crept into the English translation. The fact was that the amendment, far from strengthening the concept of implicit consent in the existing text, was aimed at limiting the effects of it by permitting the coastal State to refuse consent by stating its objections only within a specified time-limit. Her delegation considered that its proposal merited more detailed study and therefore requested that it should be reproduced in the Chairman's report in the most appropriate manner so that it could be discussed at the next session.

66. Commenting on article 246 *bis*, she wondered whether there was a consensus on the version proposed. However, she felt that a suitable formula could be found.

67. As to article 264, she thought that the existing formula, subject to possible minor amendments, should meet with general acceptance.

68. In conclusion, she noted that substantial progress had been made under the Chairman's guidance, although some questions would need to be studied in greater depth with a view to reaching a consensus.

69. Mr. SREENIVASA RAO (India) said that the Chairman's proposals could be divided into those which consisted of drafting changes, those which still required a serious negotiating effort and those which were entirely new. His delegation, like the overwhelming majority of delegations, believed that the package presented by the Chairman required further study before a position could be taken on it.

70. Mr. GRÖNWALL (Sweden) said that, since some of the Chairman's proposals were new to his delegation, it would examine them and if necessary revert to them on a future occasion. It would try to determine to what extent the principle of granting the widest possible freedom for marine scientific research, to which it attached great importance, had been met.

71. Commenting on part XII of the revised negotiating text, concerning protection and preservation of the marine environment, he said that a number of serious oil tanker accidents had dramatically demontrated the need to improve protection of the environment against oil spills. Public opinion in many countries was urging that measures should be taken to improve protection and reduce the risk of severe environmental damage. His delegation attached great importance to the articles of the convention which would prevent marine pollution by vessels or other sources.

72. He noted that, under the revised negotiating text, the coastal State might impose conditions on the entry of any vessel into its ports by requiring, for instance, that it should meet certain standards for protecting the marine environment.

73. With regard to innocent passage through the territorial sea, the coastal State had the power, albeit limited, of setting standards to protect the environment.

74. Within the exclusive economic zone, the coastal State had a certain degree of authority to introduce environmental protection measures. The rules in that regard should be understood as permitting the coastal State, even if it chose not to declare an economic zone, to exercise jurisdiction with regard to environmental standards in areas that could form part of such a zone. That jurisdiction would be exercised within the limits set for the economic zone by the rules of the convention.

75. His Government intended to invoke those provisions to the maximum in order to protect its shores and waters. It might be questioned, however, whether the rules were sufficient and whether the full scope of environmental problems had been accounted for in the revised negotiating text. While his delegation did not wish to disturb the delicate balance of the existing text, developments in that area occurred rapidly and the possibility could not be excluded that a review of the rules might be necessary in the not too distant future.

76. The CHAIRMAN reminded the Committee that the item on its agenda was the report on marine scientific research and requested speakers to confine their comments to that item.

77. Mr. LEGER (Canada) welcomed the Chairman's proposals, which his delegation was ready to examine in depth with a view to seeking a final consensus on Third Committee questions. He also welcomed the comments by the Swedish representative concerning the need for adequate international standards to meet the growing threat to the marine environment. His delegation had repeatedly pointed out that oil spills would continue to occur with increasing frequency and seriousness unless more vigorous measures were taken by the international community. It had also expressed at a previous meeting its disappointment that more detailed provisions had not been incorporated in the revised negotiating text, especially with regard to the coastal State's rights in the territorial sea. His delegation would have preferred to have environmental problems discussed and settled within the framework of the Conference and the Third Committee. It had full confidence in the Chairman's ability to guide the Committee to a consensus on such urgent questions.

78. Canada accepted the Chairman's conclusions to the effect that his proposals had received a substantial degree of support. It maintained its support for the important provisions elaborated by the Committee, which would serve as a basis for establishing fundamental obligations in respect of protection of the marine environment, thereby filling a gap in international law.

79. Mr. PARK (Republic of Korea) said that, while his delegation had had insufficient time to study the Chairman's proposals, its initial response was positive, since they generally constituted improvements in the revised negotiating text and reflected a balance between coastal and researching States. His delegation had not been deeply involved in the negotiations leading to the Chairman's proposals but, in view of the importance which it attached to those issues, it wished to offer its preliminary comments.

80. Since the basic premise of the new sentence proposed for article 242 was to protect the health and safety of persons and the environment, his delegation strongly supported it. The replacement of the expression "coastal State" by the word "State" was an improvement in that it broadened the concept.

81. With regard to article 246 *bis*, subparagraph (*a*), his delegation supported it primarily because it felt that the absence of diplomatic relations should not affect scientific research conducted for peaceful purposes. As to subparagraph (*b*), the fundamental question was whether two different régimes could be accepted with respect to the continental shelf, over which the coastal State exercised sovereign rights. In his delegation's view, the implications of that provision should be considered in connexion with the continental shelf régime, as provided for in articles 76 and 77. Subparagraph (*b*) could be regarded as incompatible with the basic principle that the coastal State exercised sovereign rights over the continental shelf regardless of whether it extended up to the 200-mile limit or beyond that limit up to the outer edge of the natural prolongation of the land territory, and that, as stated in article 77, paragraph 3, those rights did not depend on occupation, effective or notional, or on any expressed proclamation. His delegation would therefore need to study that provision in greater depth in the context of other relevant articles.

82. His delegation had no difficulty with the proposed addition to article 247. However, with regard to article 249, paragraph 1 (*d*), it agreed with the view that the coastal State should be provided not only with an assessment of data and samples, but also with the data and samples as such. He therefore proposed that that paragraph should be redrafted to read "If requested, provide the coastal State with such data and an assessment thereof, samples and research results or assist in their interpretation". As to paragraph 2 of that article, he supported the Peruvian amendment regarding the word "or".

83. He could accept the new wording of the title of article 253 and of paragraph 1 thereof, which represented a reasonable compromise between the coastal and the researching States. However, he had some difficulty with the new paragraph 2, because of certain ambiguities and because of the words "reasonable period of time". That expression might

circumscribe the coastal State's right to invoke the provision even in a *prima facie* case where it must require cessation of the activities as quickly as possible.

84. As to article 255, his delegation supported the amendment put forward by the Peruvian representative, for the reasons he had given.

85. In the case of the new paragraph 2 of article 264, his delegation was concerned with the type of dispute to be submitted to compulsory conciliation as well as with supporting the coastal State's discretion, which should not be called in question by the Conciliation Commission. However, for lack of time, his delegation was not in a position to make specific comments at the current stage.

The meeting rose at 10.10 p.m.

43rd meeting

Thursday, 23 August 1979, at 11.05 a.m.

Chairman: Mr. A. YANKOV (Bulgaria)

Report by the Chairman (*concluded*)

1. Mr. SUZUKI (Japan) said that his delegation found the compromise formulae contained in the report (A/CONF.62/C.3/L.33) generally acceptable and was in a position to support most of the views expressed therein. In particular, it had no difficulty in supporting the proposed amendments to articles 242, 246 *bis*, 247, 249 and 253. It could also support the proposed amendment to article 255, with the changes proposed by the Peruvian delegation (41st meeting). With regard to article 264, although his delegation in principle favoured a compulsory dispute settlement procedure, it was ready as a compromise to give serious consideration to the proposal in the report.

2. Mr. BRAUNE (German Democratic Republic) said that he welcomed the compromise formulae contained in the report under consideration. Regarding the question of marine scientific research on the continental shelf beyond the 200-nautical-mile limit, the German Democratic Republic, a geographically disadvantaged country, had no way of claiming such an extended continental shelf. Like the other socialist countries, it had actively supported the demand by the developing coastal States that marine scientific research within the exclusive economic zone of 200 nautical miles should be subject to the consent of the coastal State involved. In any case, his delegation had spoken, in the Second Committee, in favour of an outer limit of the continental shelf which would coincide with that of the economic zone. The effect of the current provisions of the revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1) would be to prevent free marine scientific research in a vast area beyond the 200-nautical-mile limit. For that reason, the German Democratic Republic favoured a more liberal régime of marine scientific research in that part of the continental shelf located beyond the 200-nautical-mile limit than in the exclusive economic zone. Although the proposed amendment to article 246 *bis* did not correspond to its wishes, his delegation was none the less prepared to accept it in a spirit of compromise.

3. Concerning article 255, his delegation, which had outlined at the Committee's last but one informal meeting the reasons why it was unable to support the current wording of the text of the revised negotiating text, considered acceptable the proposed compromise wording, as amended at the 41st meeting by Spain and Peru.

4. The German Democratic Republic thus supported the formulae contained in the report, which should, however, be considered within the over-all framework of the negotiations aimed at elaborating the convention envisaged.

5. Mr. CHANOCH (Israel) said that his delegation's final position on article 246 would depend on the provisions of part XV of the revised negotiating text and, more particularly, of article 296 regarding the settlement of disputes arising from marine scientific research.

6. With regard to the new article 246 *bis*, his delegation wished to reserve its position on subparagraph (*a*). It was not satisfied that such a provision was needed nor, to the extent that it stated a presumption, that the presumption was correctly formulated.

7. With regard to article 252, his delegation also wished to reserve its position on the four-month period specified therein. The possibility of allowing for a slightly longer period should be considered.

8. Regarding article 260, his delegation, while accepting the principle involved, believed that the Drafting Committee should carefully scrutinize its formulation. The current wording contained ambiguities which might open the door to abuses by States deploying or using scientific research installations, whether mobile or stationary.

9. In the light of resolution 16 (Cg-VIII), adopted by the World Meteorological Organization at its eighth congress, his delegation believed that the scientific research referred to in part XIII should also embrace meteorological research over the sea. That aspect should therefore be considered at the following session, preferably with the assistance of the World Meteorological Organization.

10. As for the new paragraph 2 of article 264, it seemed partly to overlap—and to contradict—the current wording of that article. Furthermore, it would be necessary to bring the new paragraph 2 into line with article 296 and probably also article 297. Paragraph 2 of article 296, which negotiating group 5 had properly left untouched the preceding year, also dealt with scientific research and was clearly intended to be an exception to the general principle of compulsory settlement of disputes set forth in article 286. Those were two major issues which would have to be clarified before the final adoption of the text of the convention.

11. Another fundamental question was whether it was really necessary to include in part XIII a specific provision on the settlement of disputes. In whatever form, article 264 seemed to limit the general dispute settlement obligation arising from the application of article 286. It would thus seem logical to include it in articles 296 to 298, where the limits of applicability of the provisions on the subject were outlined. It remained for the Conference to consider, if necessary, the general question of the settlement of disputes once the committees had indicated their basic positions on it. Thus, the Third Committee would pronounce itself on the reservations to the general applicability of the procedures for settling disputes on questions within its competence, in that instance the questions covered by part XIII. His delegation accordingly wished to suggest that the Chairman of the Third Committee bring the matter to the attention of the Confer-

ence, which should give it special attention at the following session.

12. Apart from the points just mentioned, his delegation was pleased with the results of the current session.

13. The CHAIRMAN said it was obvious that any amendment of article 264 would necessarily affect article 296. He had already suggested at an informal meeting at Geneva that all the provisions concerning the settlement of disputes should be transferred from part XIII to part XV. No consensus on that had emerged, but the question remained open, and the possibility of regrouping all the provisions on the settlement of disputes in a single part covering the convention as a whole should be considered in the final stages of preparing the convention.

14. Mr. BLUMBERG (United States of America), referring to the views expressed by the Swedish delegation, recognized that pollution of the oceans was increasing as a result of man's activities. Although it did not support the reopening of negotiations on the subject, his delegation did not think that the conclusion of the negotiations on part XII was an adequate solution to the problem. Further negotiations in other international forums would be needed to broaden existing measures to deal with marine pollution and to establish new measures in areas where international standards were inadequate. For example, article 208 called for the establishment of international standards to prevent, reduce and control pollution from activities on the continental shelf, and he did not believe that such international efforts needed to await conclusion of a law of the sea convention. Widespread ratification of existing global and regional treaties would represent an additional step towards preventing pollution of the sea.

15. With reference to a point raised by the Swedish delegation, he said he believed that international law clearly allowed States to require vessels entering their ports to meet certain environmental standards. That view was confirmed by part XIII of the revised negotiating text.

16. Mr. BELDESCU (Romania) said he thought that the Chairman's report contained positive elements which improved the revised negotiating text, and his delegation had no difficulty in accepting the proposed formulations for articles 242, 247 and 255.

17. It had some reservations, however, concerning other proposed provisions. With regard to article 246 *bis*, subparagraph (*a*), for instance, it was difficult to imagine that a coastal State could allow another State with which it did not maintain diplomatic relations to carry out research in areas under its jurisdiction. As for article 253, the Romanian delegation would like a more specific indication of the duration of the "reasonable period of time". In addition, the proposed formulations for articles 246 *bis*, subparagraphs (*b*) and (*c*), 249, paragraph 2, and 264 had repercussions on other articles and even on other parts of the convention. His delegation would study those articles very closely and reserved the right to make a later statement on them.

18. As it had already stated at Geneva, it believed that part XIII of the revised negotiating text contained provisions which ensured a reasonable balance between the recognized rights of coastal States within their exclusive economic zone and on their continental shelf on the one hand, and the interests of the continued development of marine scientific research on the other. His delegation welcomed the prospect, however, of new consultations and negotiations on those questions, with a view to making the provisions of that part more acceptable.

19. Mr. TREVES (Italy) said he regretted that the Committee did not have enough time to discuss the important proposals contained in the Chairman's report or to prepare a second revision of the negotiating text. His delegation had had serious reservations about the revised text, particularly with regard to the inadequate provisions for the settlement of disputes, but, in its opinion, the proposals in the report could on the whole be considered improvements.

20. The question of marine scientific research raised two key issues. First, with regard to the continental shelf—in which connexion Italy had only recently accepted the provisions of article 76—his delegation believed that the wording of article 246 *bis*, which took into account recent negotiations on the subject, seemed very promising, as a compromise. Secondly, with regard to the settlement of disputes, his delegation attached considerable importance to the mandatory conciliation procedure and would, therefore, have preferred stronger wording. However, in its view, the proposal submitted in the report reflected progress, and he expressed the hope that the Committee would continue to work in that direction.

21. Miss GERBER (Switzerland) said that, in general, her delegation thought that the proposals contained in the Chairman's report considerably improved the existing text of part XIII of the revised negotiating text. That was true, in particular, of the proposals concerning articles 246 *bis* and 249. Her delegation also favoured the system as the basis of the revised article 253, whereby the cessation of research activities must, in principle, be preceded by their having been merely suspended.

22. With regard to the new paragraph 2 of article 264, her delegation still believed that disputes concerning marine scientific research, like most other disputes relating to the interpretation or application of the convention, should be covered by the system of mandatory jurisdictional settlement described in part XV. Although, admittedly, mandatory conciliation was well-suited to the settlement of disputes based on the concept of distributive justice—as in the case, for example, of disputes concerning fishing in the exclusive economic zone—disputes concerning marine scientific research involved the interpretation or application of provisions of a decidedly normative nature and, as such, were difficult to settle by conciliation procedures. Accordingly, her delegation, like that of the Netherlands, found it very difficult to accept the new paragraph 2 of article 264. As for the placing of article 264, her delegation still thought that section 6 of part XIII should be included in part XV, which concerned the settlement of disputes.

23. Mr. LI GYE RYONG (Democratic People's Republic of Korea) said that after a preliminary examination of the Chairman's report his delegation endorsed the proposals concerning articles 242 and 247. However, with regard to marine scientific research, it preferred the original wording of the revised negotiating text. Moreover, the proposed articles 246 *bis* and 253 would restrict the rights of coastal States in matters of marine scientific research and would change the substance of the respective articles of the revised negotiating text, on which a consensus had already been achieved. For that reason, his delegation could not accept those articles. It reserved the right to comment on articles 249, 255 and 264 at a later date.

24. Mr. JACOBSEN (Denmark) reminded the Committee that his delegation had stated on many occasions that, in its opinion, the revised negotiating text was a balanced text which could, however, be improved. To a large extent, the efforts of the Chairman served that purpose, although his delegation could not approve unreservedly all his proposals. However, it welcomed the introduction in article 246 *bis*, subparagraphs (*b*) and (*c*), of an idea in which it had already shown interest. The new wording of article 253 also reflected important progress. Both those articles, as amended, helped to reconcile the interests of coastal States with those of researching States.

25. Mr. MACKAY (New Zealand) considered that the endorsement received by the Chairman's proposals was encouraging. His delegation supported any proposals that would clarify and improve part XIII of the revised negotiating text, which it already considered acceptable, and a number of the Chairman's proposals fell into that category.

26. However, with regard to the continental shelf beyond the 200-mile limit, some of the proposals entailed substantive changes and, in so far as the existing rights of coastal States would be affected, those proposals could be accepted only in the context of a final package, if at all.

27. Mr. GODANA (Kenya) said that, all in all, the Chairman's report reflected the work of the Committee quite accurately. However, it left something to be desired: for example, he could not recall there having been any semblance of a consensus on article 246 *bis*. In view of the Chairman's explanations, his delegation could accept subparagraph (*a*); however, it had reservations with regard to subparagraph (*b*), and he suggested that additional limitations should be imposed on the freedom of the researching State. For example, without prejudice to the other provisions of the convention, that State should notify the coastal State of the intended research in advance, supply information about its research project, and transmit the results of its work to the coastal State.

28. Mr. ASTAPKOV (Byelorussian Soviet Socialist Republic) said that, despite the complexity of the issues discussed, the main ideas set forth in the Chairman's report had largely been accepted, especially those concerning measures to facilitate marine scientific research and to assist vessels conducting activities in that field, as well as the procedure for the cessation of such activities if certain conditions were not respected. Appreciable progress had been made towards solving the problem of marine scientific research on the continental shelf beyond the 200-mile economic zone. Several delegations had expressed their interest in the double régime for scientific research on the continental shelf. The Chairman's proposal offered a compromise that was acceptable to coastal States, land-locked States and geographically disadvantaged States alike.

29. His delegation believed that the proposals contained in the report could provide a basis for consensus and it was prepared to support them.

30. Mr. RUDKOWSKI (Poland) said that the Chairman's report reflected the Committee's work completely, accurately and objectively and was encouraging in that it showed that a consensus could be reached rapidly. His delegation had no difficulty in accepting the ideas contained in the report, although the wording of certain articles could be improved. It could, moreover, give its preliminary endorsement to certain proposals, in particular those concerning articles 242, 246 *bis*, subparagraph (*a*), 247, 249 and all the amendments to article 253. The proposed texts constituted an actual improvement over the existing articles. It would state its position on the other proposals at a later date.

31. Mr. VALLARTA (Mexico) said that, having presided over the informal consultations on the protection and preservation of the marine environment, he was in a good position to suggest that the debate on part XII of the negotiating text should be closed. The provisions contained in part XII were very complete and could even be applied to the industrial or navigational accidents that had occurred in recent years. In that respect, he was pleased to note that no proposal had been made to amend part XII; any amendments would be disastrous for the balance that had been established.

32. Because the convention was so general, it would be without force unless, in practice, technical rules were established to control pollution. Therefore, the Inter-Governmental Maritime Consultative Organization, the United Nations Environment Programme and other specialized agencies must now round out the work begun by the Conference.

33. Mr. FIGUEIREDO BUSTANI (Brazil) challenged the brief statement the Chairman had made the previous day, in which he had presented a partial assessment of the Committee's discussions. He expressed the hope that the statements made during the current meeting would enable the Chairman to avoid taking arbitrary steps on that subject.

34. In his report, the Chairman requested support for the amendments proposed to the revised negotiating text. His delegation did not think that those proposals merited broad support. Very serious questions were involved, and many national interests were at stake; the Committee must therefore proceed with the utmost caution in order to avoid destroying what had been achieved thus far. In any case, it could not be said that the proposed amendments enjoyed substantial support; although one or two of them deserved support in principle, others required radical changes, and a third category had aroused strong objections from a large number of delegations. That fact must be taken into account. Some 30 delegations had stated that they preferred the revised negotiating text as it stood and had serious reservations about the proposals.

35. He suggested, therefore, that the text of the Chairman's report should be redrafted before being submitted to the Conference, since additional negotiations were necessary on a number of points. He would prefer it if the Chairman would submit those proposals in a personal capacity, and he did not think that they should be included in the Committee's report. In any case, they should all be carefully redrafted. Furthermore, in his report, the Chairman did not mention the substantial support expressed for the revised negotiating text.

36. More specifically, in paragraph 4 of his report (A/CONF.62/C.3/L.33), the Chairman referred to "the conduct of marine scientific research on the continental shelf beyond 200 miles from the baselines from which the breadth of the territorial sea is measured", as though that limit had already been accepted. Nothing of the sort had occurred, and therefore only a general reference should be made to the conduct of scientific research, without entering into details.

37. In paragraph 8 of his report, the Chairman stated that some compromise formulae had emerged. In his own opinion, that was not true; that sentence should therefore be changed, as should the wording of paragraph 9. He hoped that, on the basis of the discussion held during the current meeting, it would be possible to submit to the Conference a revised text that better reflected the positions in the Committee.

38. The Brazilian delegation had considerable difficulty in accepting the wording of articles 246 *bis* and 253 which, in its opinion, had not been adequately examined by the Committee. It had also been pointed out that articles 264 and 296 were related. There was, in fact, a logical relationship between those two articles but it might be useful to recall that the "package deal" reached on the revised negotiating text related to the articles concerning the settlement of disputes. The consensus would no longer be valid if the contents were changed. His delegation insisted that the question of the settlement of disputes regarding marine scientific research should be dealt with separately. It expressed reservations on the wording of article 264 which would be examined at the next session.

39. The CHAIRMAN assured the representative of Brazil that he had never acted arbitrarily in the exercise of his functions, that he had no intention of doing so and that the allegations made by the Brazilian delegation were totally unfounded. Ever since he had been chairing the Third Commit-

tee, he had gained a reputation for impartiality and objectivity and, in his opinion, his report was only a faithful reflection of the facts. It was up to the Conference itself to decide on the follow-up action to be taken in connexion with the report. Furthermore, there was no change in attitude towards the revised negotiating text and he drew the attention of the members of the Committee to paragraphs 14 and 15 of his previous report (A/CONF.62/L.34)[1] in which he had stated that the Committee had not yet attained all the required elements to enable it to amend the revised negotiating text and that the discussions could not be considered conclusive. The work of the Committee at the current session had been carried out, as had been stated at Geneva, with the aim of broadening the area of agreement on questions which were left pending.

40. He once again assured the representative of Brazil that he had duly taken note of his observations and that he would continue to act, as in the past, as positively and impartially as possible.

41. Mr. VÁLDEZ (Peru) began by pointing out that, in the new paragraph 2 of article 249, reference was made to the "exploration or exploitation" of natural resources. His delegation proposed that reference should be made to exploration and exploitation; he asked whether that proposal has been taken into account.

42. The Commission had been successful in settling some of the outstanding questions by improving the wording of certain articles on which a general consensus could thus more easily be reached and he quoted articles 242 and 247 as examples. On the other hand, other articles which were presented as having been accepted as a basis for consensus had not been sufficiently studied by the Committee and no consensus seemed to have been reached at the previous meeting. That being the case, and if no action were taken regarding the amendments proposed by several delegations, including his own, he proposed that those articles not be incorporated as a basis for consensus in the report. If they were, his delegation would not support the version submitted by the Chairman and would express its opposition at the plenary meeting.

43. The CHAIRMAN said that account had been taken of the amendment proposed by the Peruvian delegation to article 249, paragraph 2, and that the informal proposals made on most of the questions had appeared in documents MSR/2/Rev.1 and MSR/3 to 5. He referred the representative of Peru to paragraph 5 of his report and assured him that, even if the Committee did not have time to examine all the proposals, they would all receive the same treatment, without any form of discrimination. With regard to basic questions, it was up to the delegations themselves to decide on the procedure to be followed and to state their respective points of view in order to help find a compromise solution.

44. Mr. YTURRIAGA BARBERÁN (Spain) wished to stress categorically that no delegation had, at any time, questioned the undoubted objectivity, impartiality and fairness shown by the Chairman in his direction of the Committee's work. For its part, the Spanish delegation was firmly convinced of that. Opinions might, indeed, differ on certain points of detail but he did not doubt that the Chairman had described the situation as he saw it at the time when he was preparing his report. Nevertheless, after the debates that had taken place during the three preceding days, he thought that the conclusions of the report should be amended slightly. In fact, after those debates, it appeared difficult to uphold the view that the negotiations had produced some compromise formulae which seemed to enjoy sufficiently wide support to offer a reasonable prospect of consensus. It seemed to be essential to tone down that statement to a certain extent since there was a risk that, at the plenary meeting, the same debates would be repeated and the same objections would be raised as had already been heard by the Committee.

45. He shared the view expressed by the representative of Brazil that it would be premature to regard the proposals contained in the Chairman's report as being the formulae offering the greatest prospect of consensus. For his part, he would have preferred other formulae. In a spirit of compromise, he therefore proposed certain amendments which would allow a better presentation of the situation as it appeared during the debates.

46. For example, in paragraph 8, he proposed that "a certain support" should be substituted for "a substantial degree of support"; the wording would thus be less categorical. The phrase "as to provide a reasonable prospect for consensus" should then be replaced by "which could serve as a basis for subsequent agreement for amending the informal composite negotiating text".

47. In paragraph 9, he proposed that the phrase "which could offer a substantially improved prospect for a consensus" should be replaced by the phrase "which could be finalized at the next session". Such a wording would be more realistic since, while taking note of the progress made, delegations realized that the work was not finished and hoped that it might be concluded at the next session.

48. Finally, he must disagree with the Mexican representative's argument that the slightest amendment to the current text of part XII would have catastrophic consequences. While it was true that, in general terms, part XII possessed definite qualities, certain articles, in particular article 133 and article 42, were obviously not perfectly worded and he hoped that by the end of the Conference an agreement would be reached on a completely satisfactory wording.

49. The CHAIRMAN pointed out that he had prepared his report before the debates of the preceding days and that he would take those debates into account when submitting a true and exact report at the plenary meeting. It was generally acknowledged that the basic negotiations on parts XII and XIV were concluded and even if one or more delegations did not agree with that assessment, a reopening of the debate in the Third Committee was not justified.

50. The negotiations had produced positive results which improved the prospects for consensus. Indeed, in striving to broaden the basis for a reasonable compromise in the field of marine scientific research, it was important not to lose sight of the fundamental principles of the law of the sea. The Third Committee had been able to avoid upsetting the delicate balance needed for the conduct of marine scientific research. The compromise formulae produced by the negotiations were the result of concessions made by delegations which held opposing views. It was only under those conditions that a compromise was valid. That in no way signified that the negotiating efforts were completed and that there was no room for further improvement in the text and, consequently, a better prospect for a consensus. The important proposals contained in the report needed further consideration and certain drafting improvements could facilitate agreement. However, there was insufficient time to examine them further. It might, however, be considered that certain proposals, especially those relating to articles 242, 247 and 255 (with the drafting amendment proposed by Peru), were generally acceptable. Others, relating to articles 246 *bis*, 249, 253 and 264, had been accepted in substance by a number of delegations with certain drafting amendments. Some delegations were opposed in principle to all or part of some of those proposals but no delegation had been opposed to their further consideration which, in itself, was encouraging.

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XI (United Nations publication, Sales No. E.80.V.6).

51. On the whole, the work accomplished during the session could therefore be regarded with satisfaction and optimism.

52. After having thanked the delegations and members of the secretariat, the Chairman declared that the Committee had completed its work for the session.

The meeting rose at 12.40 p.m.

DOCUMENTS ISSUED DURING THE RESUMED EIGHTH SESSION

DOCUMENTS OF THE CONFERENCE

DOCUMENT A/CONF.62/79

Resolution 108 (V) adopted by the Trade and Development Board of the United Nations Conference on Trade and Development at its 170th meeting on 1 June 1979*

[Original: Spanish]
[26 July 1979]

108 (V) EXPLOITATION OF THE RESOURCES OF THE SEA-BED[1]

The United Nations Conference on Trade and Development,

Recalling General Assembly resolution 2574 D (XXIV) of 15 December 1969 declaring that, pending the establishment of an international régime, States and persons, physical or juridical, are bound to refrain from all activities of exploitation of resources of the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and that no claim to any part of that area or its resources shall be recognized,

Recalling General Assembly resolution 2749 (XXV) of 17 December 1970 declaring that the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of that area, are the common heritage of mankind,

Bearing in mind Conference resolution 51 (III) of 19 May 1972, in which it was decided that the question of the economic consequences and implications for the economies of the developing countries resulting from the exploitation of mineral resources should be kept constantly under review by the Conference,

Considering that the Trade and Development Board, by resolution 176 (XVIII) of 17 September 1978, called upon all States to refrain from adopting legislation or any other measures designed to carry on the exploitation of the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, until an international régime is adopted by the Third United Nations Conference on the Law of the Sea,

Considering that any unilateral action designed to carry on the exploitation of the area in question prior to the adoption of a convention on the law of the sea would violate the above-mentioned resolutions, would endanger the ongoing negotiations and would affect the interests of the international community,

1. *Reiterates* that any unilateral action in contravention of the pertinent resolutions would not be recognized by the international community and would be invalid according to international law;

2. *Requests* all States to refrain from adopting legislation or any other measure designed to carry on the exploitation of the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, until an international régime is adopted by the United Nations Conference on the Law of the Sea;

3. *Warns* that States which might take such unilateral actions would have to assume the responsibility for their consequences both with respect to their impact on the United Nations Conference on the Law of the Sea and with regard to the negotiations on commodities related to the exploitation of mineral resources of the sea-bed;

4. *Requests* the Secretary-General of the United Nations Conference on Trade and Development to transmit this resolution to the Secretary-General of the United Nations and to the Third United Nations Conference on the Law of the Sea, in order that its contents be made known to member States.

*Circulated at the request of the secretariat of the United Nations Conference on Trade and Development.

[1]The Conference adopted this resolution by a roll-call vote of 107 to 9, with 13 abstentions. The voting was as follows:

In favour: Afghanistan, Algeria, Argentina, Bahrain, Bangladesh, Barbados, Bhutan, Botswana, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Central African Empire, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic Kampuchea, Democratic People's Republic of Korea, Democratic Yemen, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Gabon, Gambia, German Democratic Republic, Ghana, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Hungary, India, Indonesia, Iran, Iraq, Ivory Coast, Jamaica, Kenya, Kuwait, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Qatar, Republic of Korea, Romania, Rwanda, São Tomé and Príncipe, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Sri Lanka, Sudan, Suriname, Swaziland, Switzerland, Syrian Arab Republic, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia.

Against: Belgium, France, Germany, Federal Republic of, Italy, Japan, Luxembourg, Netherlands, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstentions: Australia, Austria, Canada, Denmark, Finland, Greece, Ireland, Israel, New Zealand, Norway, Portugal, Spain, Sweden.

DOCUMENT A/CONF.62/80

Resolution 16 (Cg-VIII) adopted by the World Meteorological Organization at its eighth congress at Geneva in April/May 1979*

[*Original: English/French Russian/Spanish*]
[*9August 1979*]

The Congress,

Noting

(1) Resolution 2750 C (XXV), of the United Nations General Assembly, of 17 December 1970, by which the United Nations decided to convene the Third United Nations Conference on the Law of the Sea,

(2) The informal composite negotiating text prepared by the Conference, in particular part XIII, entitled "Marine scientific research",

(3) Action taken by the Executive Committee and the Secretary-General to ensure that the meteorological interests are adequately safeguarded during the consideration of relevant articles of the negotiating text,

Realizing that activities of the members of the World Meteorological Organization in the oceans fall under the following two major categories:

(1) Operational activities such as the collection of meteorological information from voluntary observing ships, buoys, other ocean platforms, aircraft and meteorological satellites,

(2) Research activities, both meteorological and oceanographic, such as those carried out during the Global Weather Experiment,

Considering

(1) That an adequate marine meteorological data coverage from ocean areas, in particular from those areas in the so-called "exclusive economic zone", is indispensable for the issue of timely and accurate storm warnings for the safety of life at sea and the protection of life and property in coastal and off-shore areas,

(2) That the International Convention for the Safety of Life at Sea, of 1960 specifies that the contracting Governments undertake, *inter alia*, to issue warnings of gales, storms and tropical storms and to arrange for selected ships to take meteorological observations,

(3) That members of the World Meteorological Organization have undertaken the responsibility of issuing warnings for the high seas and coastal waters according to internationally agreed procedures,

Expresses the hope that the legal provisions specified in the informal composite negotiating text which govern marine scientific research will not result in restrictions to operational meteorological and related oceanographic observational activities carried out in accordance with international programmes such as World Weather and the integrated Global Ocean Station System;

Appeals to members to ensure that their delegations to the United Nations Conference on the Law of the Sea are made aware of the vital need for observational data from sea areas for the timely issue of weather forecasts and storm warnings,

Requests the Secretary-General to follow closely the developments in the Conference, in particular by ensuring representation at sessions of the Conference, as appropriate.

*Circulated at the request of the Secretary General of the World Meteorological Organization.

DOCUMENT A/CONF.62/81

Letter dated 15 August 1979 from the representative of Costa Rica to the President of the Conference

[*Original: Spanish*]
[*15 August 1979*]

On instructions from my Government, I have the honour to transmit to you herewith—with the request that you have it circulated to the delegations participating in the Third United Nations Conference on the Law of the Sea—the communiqué issued yesterday by the Government of Costa Rica in response to the decision by the United States Government to disregard the sovereignty of States over their territorial sea when the latter exceeds the 3-mile limit:

"Late last week, according to international dispatches, the United States Government ordered its Air Force and Navy to enter national territorial waters which exceed the 3-mile limit.

"The Government of Costa Rica objects to the unilateral decision by the United States Government, which implies disrespect for the legal position taken by a majority of countries, which set the limit of territorial waters at 12 miles and claim an exclusive economic zone extending 200 miles; this decision also represents a retreat in the matter of the law of the sea and revives ideas which have been made obsolete by international practice, doctrine and justice.

"There is no general norm of international treaty or customary law which sets a maximum limit to the breadth of the territorial sea just as there are no international norms which clearly and specifically limit the traditional authority of States to determine the breadth of the territorial sea freely and on a universal basis. However, this absence of international agreement should not prompt any country to take unilateral action that has no legal basis and is not sanctioned by international practice for the purpose of defending its own interests to the detriment of the majority.

"Legal doctrine is unanimous in recognizing the traditional authority of countries freely to determine these limits, and the great majority of States favour a 12-mile limit for their territorial waters in addition to an adjacent zone of special jurisdiction extending 200 miles.

"By virtue of this authority, article 6 of the Costa Rican Constitution provides that the Costa Rican State exercises full and exclusive sovereignty in its territorial waters to a distance of 12 miles and special jurisdiction over the seas adjacent to its territory in an area extending 200 miles known as the patrimonial sea or exclusive economic zone.

"The Government of Costa Rica is guided by the provisions of its Consitution and cannot in any manner tolerate interference by any other nation or nations in its internal decisions to the detriment of its sovereignty and its economic interests.

"The Government has sent instructions to its delegation to the United Nations Conference on the Law of the Sea to acquaint delegations to the Conference with the position taken by Costa Rica in the face of this unilateral action by the United States Government.

"The Government of Costa Rica believes that, instead of taking unilateral action which discourages the search for a consensus on the matter, every possible international effort should be made to find a suitable solution based on international practice, doctrine and justice."

(*Signed*) L. A. VARELA
Chargé d'affaires, delegation of Costa Rica to the Third United Nations Conference on the Law of the Sea

DOCUMENT A/CONF.62/82

Manpower requirements of the Authority and related training needs: preliminary report of the Secretary-General

[*Original: English*]
[*17 August 1979*]

Introduction

1. At the 110th plenary meeting, the Chairman of the First Committee suggested that the Secretary-General might prepare an analysis of the manpower requirements of the Authority in the first five years of its existence in order to ascertain what the training needs of developing country personnel will be, particulalry in the relevant scientific and technical fields. The Chairman of the First Committee also suggested that the Secretary-General might compile a list of the institutions that could offer education and training in the appropriate fields. These studies were suggested as preliminary steps toward the establishment of a special United Nations training programme.

2. At the 115th plenary meeting, the delegation of the United Kingdom suggested that, immediately following signature of the convention, a provisional training fund should be established, financed by voluntary contributions, to provide training awards for qualified students in the disciplines identified as being relevant to the needs of the Authority and the Enterprise.

3. The brief discussion that was held at the 115th and 116th meetings on the question of training showed that a sustained effort and organization would be required and the first objective was to define requirements so that they could be met in a consistent and orderly manner, employing all available resources and means as efficiently as possible.

4. It may be noted that the request of the Chairman of the First Committee focused on a particular aspect of training, namely manpower needs of the Authority at the early stage, and before the full impact of the provisions of the convention dealing with training and related issues would be felt. This would be the short-term or immediate aspect to the long-term development of manpower resources associated with "the expanding of opportunities for participation" in the activities of the Area and the rational management of its resources. The question of training relates not only to the manpower requirements of the Authority but also to its functions, and the responsibilities of the Authority will not be limited to on-the-job training in marine mining operations. According to the provisions of part XIV of the revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1), the Authority will also be required to furnish technical assistance to developing countries, to promote and conduct marine scientific research, and to facilitate information exchange on marine science and technology. All such activities may be viewed as essential components of the transfer of technology process, but this relationship would not change or in any way lessen the responsibilities of the Authority in these areas. Training programmes of the future, whether initiated or conducted or partially supported by the Authority, would therefore be expected to encompass a wide range of activities and educational processes and institutions. There might be seminars and specialized conferences, expert meetings, fellowship schemes, information programmes, programmes to develop special curricula, formal training courses, as well as on-the-job training for managerial, research and technical staff. Future programmes would also co-ordinate relevant programmes conducted at national, bilateral, regional and international levels. While the requirements of the Authority and Enterprise call for special focus on education and training in deep-sea mineral development, the Authority would also become involved with more general training programmes in marine science and technology and marine affaires.

5. The general question of training has, in a sense, been before the Conference for a number of years. In addition to the two previous reports of the Secretary-General which concern, in part, the manning requirements of the future Authority—the first on alternative means of financing the Enterprise (A/CONF.62/C.1/L.17),[2] and the second on costs of the Authority and contractual means of financing its activities (A/CONF.62/C.1/L.19)[3]—there are comments and recommendations concerning training in earlier reports of the Secretary-General. A report on a study on international machinery submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction[4] listed training as one of five main functions for the future body, noting that ocean-based industries would require a variety of specialists in a wide range of basic scientific disciplines as well as in many engineering fields and that there was a world-wide weakness in most of these professions, particularly in developing countries. This early report suggested that a sustained training effort would be necessary if these countries were to be associated with activities in the area. The following tasks that were suggested for the Authority are still pertinent:

"(*a*) Organizing and implementing training programmes. These could be organized in various ways as, for example, in co-operation with Governments concerned, with regional organizations or groups, with authorized operators, as well as with those bodies within the United Nations system implementing projects in this field;

"(*b*) Ensuring that operators authorized under the international régime fulfil their obligations with respect to the training of personnel;

"(*c*) Allocating part of any funds which may become available to the international machinery from the proceeds of economic sea-bed activities to finance such training programmes when deemed feasible;

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

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

[4] See *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 21*, annex III.

"(*d*) Ensuring proper placement of fellows under bilateral or multilateral fellowship programmes;

"(*e*) Organizing the widest possible dissemination of relevant information on marine science and technology."

6. Organizations of the United Nations system continue to stress that scarcity of manpower resources is the chief limiting factor to the development of national efforts and international co-operation as regards the study of the oceans and the rational use of their resources, and to urge that marine education and training programmes be strengthened, whether by increasing allocations for study grants, fellowships and training courses, or by increasing the assistance States provide for the development of national and regional programmes and facilities. Emphasis is increasingly placed on the importance of national commitment to purposeful marine science and technology training and on efforts which create or promote public awareness of the oceans and their resources.

Forecasting manpower requirements

7. The manpower needs of the Authority will, in the first place, depend on agreement on the nature and scope of its functions. Since the regulatory and operational functions of the Authority have no precedent elsewhere, the organization and staffing of existing international bodies can offer very little guidance. A reasonable forecast of manpower requirements would also call for knowledge of the requirements of the future industry and an understanding as to the approaches the Enterprise might be expected to adopt in its early formative years. Full knowledge of the methods and technologies to be used by the industry and of the rate of technological development would greatly facilitate forecasting, but this is not available as yet. This situation was noted in documents A/CONF.62/C.1/L.17 and 19, and bears repeating.

8. A precise organizational structure with estimates of the numbers and levels of expertise of the people required in each category cannot be constructed on the basis of the informal composite negotiating text alone. The text cannot be expected to indicate precisely the scope of work required in the future since the rules, regulations and procedures to be established would substantially affect not only the scale of monitoring activities of the Authority but also the extent of the analyses required for decision-making. To take but one example: the degree of flexibility permitted in the size of mine sites will directly affect the administrative responsibilities of the Authority in that the greater the degree of flexibility permitted, the greater the costs to the Authority in terms of both the need for more highly skilled personnel and the need to acquire an independent data base to undertake the necessary evaluations. Nor can the text be expected to give any guidelines as to whether certain functions are best performed by the membership of the various expert bodies, by the substantive staff, by external advisory and consultancy services, by co-operative and co-ordinative arrangements, formal and informal, with organizations of the United Nations system, with other intergovernmental organizations and the international scientific community, or whether a combination of forces would be required to enable the Authority to meet its responsibilities for certain functions. The future international machinery may be said to consist of member States, a substantive secretariat, specialized agencies and other United Nations bodies, and independent scientific and technological expertise, so that co-operative efforts in many subject areas may prove to be the rule. As far as training is concerned, it would seem logical to take into account the needs of all elements of the future international machinery, and not only of its secretariat.

9. The process of evaluating manpower requirements unavoidably raises a number of important questions which have a bearing on other matters also, for example: the scope and degree of detail of preparatory work conducted prior to the establishment of the Authority; the place of the Authority in the United Nations system and the kinds of arrangements which would best ensure the co-operation and co-ordination needed in a variety of subject areas; the proper scope of interpretation, in terms of functions of the Authority, that should be given to such articles as the one dealing with "accomodation of activities" in the area, or the proper scope of activity that should be associated with such functions as the one concerning "the progressive development of international law and its codification"; and the extent to which certain key functions should be considered the province of the staff of the Enterprise rather than of the rest of the Authority. This latter question raises particular difficulties in attempting to assess manpower requirements since some types of expertise needed by the Enterprise for its planning and operational activities may not be significantly different from those required for carrying out the regulatory functions of the Authority. The request of the Chairman of the First Committee gave special attention to the first five years of the Authority since that would be when it would be most affected by any scarcity of qualified and experienced personnel. In terms of over-all manpower requirements, however, there might not be any substantial difference in the total size of the staff of the Authority in the first five years compared to later. The actual numbers of contracts or mine sites under production would not determine the total workload of the Authority so much as the scope of preparatory work conducted prior to its establishment. The numbers of personnel performing at-sea monitoring or inspection functions would, of course, increase in proportion to the number of mine sites undergoing exploitation, but again this increase might not substantially affect the total number of personnel required. Substantial changes in the composition of the staff of the Authority may occur after a few years, however, since some functions may become more or less important with time. For example, the amount of activity with respect to the development and modification of various rules, regulations and procedures would tend to decline with time and practice. The same might be true of some functions associated with the transfer of technology as the rate of innovation slows down. Such changes would tend to affect the priority given to different types of expertise in the manning table of the Authority, and in training programmes. Depending on the initial working relationship established between the staff of the Enterprise and the staff of offices of the Authority, it is also conceivable that significant changes would occur with time. For example, should it be decided that some sharing of expertise were necessary in the early years, any such arrangements would be dispensed with as the Enterprise developed its own body of experts. A substantial difference in over-all manpower requirement could occur by the fifth year or later, depending on the kinds of arrangements employed by the Enterprise. For any single mining project, it is very likely that before commercial production starts the various prior development or preparatory stages would need less personnel in most categories.

10. It should be recalled that there has been no discussion touching on the estimates contained in documents A/CONF.62/C.1/L.17 and 19. In the absence of substantial new evidence, therefore, there is very little justification for increasing, or decreasing, the total number of professional staff estimated for the purposes of determining the administrative costs of the Authority. Detailed discussion of the manpower requirements of the Authority, particularly in the light of any preparatory work that might be undertaken on the formulation of rules, regulations and procedures, could therefore be expected to lead to some adjustments in the comparative numbers of lawyers, economists, and technical and financial experts indicated in that document. In the mean

time, it might be noted that a significant number of scientists and scientific administrators would be needed, thus giving a stronger emphasis to the science and technology category of staff than presently indicated. Similarly, very little additional evidence can be given that would warrant any major change in the assessment given in A/CONF.62/C.1/L.17, namely, that the Enterprise would require 75 Professionals by its third year of operations. Again a detailed consideration would serve to clarify whether such a number would automatically be required under any type of arrangement, or with any size or number of operations, and whether that number of staff, or any other, should be broken down into categories of permanent employees, associated staff (integrated into the Enterprise for the purpose of a particular project, or of a planning or operational phase only), and personnel taken on in a trainee capacity.

The particular requirements of the Enterprise

11. An examination of the informal composite negotiating text suggests that the functions of the Authority might usefully be separated into general functions (not related to contracts), regulatory functions, and the operational functions of the Enterprise. Manpower requirements and associated training needs are probably best treated by examining the particular needs of the Enterprise separately from the rest of the Authority. Such separate consideration is suggested for the following reasons:

(*a*) The particular interests and problems the Enterprise will have with respect to the transfer of technology, as opposed to the broad range of responsibilities to be assumed by the Authority in this field;

(*b*) The close relationship that would be established between manpower requirements and the types of different arrangements the Enterprise may decide to enter into, as well as the size of the operations involved;

(*c*) The strong emphasis that would be placed on business management, physical sciences, engineering, and systems design and management for Enterprise staff and the scarcity of such personnel realtive to those in legal, economic, administrative and financial fields, particularly in developing countries;

(*d*) The tendency to separate staff required throughout system development and operation from other staff required according to the type of operation or stage of operation, and for which a schedule of personnel requirements would probably be established;

(*e*) The particular emphasis that will be placed on subcontracting certain advisory functions and one-time planning or operational needs.[5]

12. The above considerations do not affect, or do not affect to the same extent, the manpower requirements of the rest of the Authority. The Enterprise, certainly, will have a particular need for highly specialized personnel capable of modifying or creating equipment, as well as personnel who understand its operation. Its administrative staff also would need direct experience in marine operations. A more detailed consideration of the staffing needs of the Enterprise might be assisted by an examination of the staff of State-run enterprises.

13. According to the informal composite negotiating text, activities of the Enterprise, whether conducted alone or in association with other entities, may include some or all of the following: prospecting, exploration, exploitation, transportation, processing and marketing. Its plans and operations would be subject to the general policies of the Authority, to the rules, regulations and procedures adopted, and to the directives and control of the Council. At the same time, the Enterprise will be essentially responsible for setting up and conducting its own operations, in whatever form, for choosing the mining and processing systems and associated technologies it will employ and for negotiating actual terms of transfer, for establishing its schedule of personnel and training requirements, for loan applications, marketing, etc. In other words, it will be responsible for most of the activities normally associated with an independent venture. It would be feasible, therefore, for the Enterprise to have its own finance and personnel management staff, project planning and operational management staff, and a small legal staff for preparation of various contracts and forms of association, agreements with States, international organizations and other entities, and actions.[6]

14. Some of the personnel required will need prior and direct experience of the sea-bed mining industry (including knowledge of its research and development phase), particularly those that will provide systems engineering, technical direction and management of operations at sea and those handling procurement of goods and services. Other essential personnel may not need such direct experience and may be drawn from a number of fields, not all necessarily marine-related. In either case, functions will be performed to various degrees depending on the phase of a project and may be subcontracted because oaf the variability of manpower requirements over the lifetime of a project. The proportion of engineering services and technology development that would be contracted out would depend on decisions as to the extent of its commitment to independent research and development activities. The Enterprise would still need to have a strong engineering capability (at the top level of management) not only for the planning of projects, but also for the supervision of contracts. Contract procurement procedures would need to be the best possible, in any event.

15. Enterprise operations may take various forms and there may be more than one operation under way at the same time involving the Enterprise to different degrees, with consequent effects on the scheduling or development of manpower resources. One reason to assume that the Enterprise may choose to become involved in more than one joint arrangement in the early years rather than opt for a fully integrated project at the start — apart from possible constraints of limited (and affordable) manpower resources[7] on an ac-

[5]Companies either ineligible or not interested in becoming members of major mining consortia may none the less develop some exploration and mining technology. Such companies could provide instrumentation or other services, or develop complete programmes, setting themselves up as consulting organizations to advise on the selection and assembly of an efficient mining system. Some may concentrate on providing "turnkey" processing operations, for example.

[6]The functions suggested by the informal composite negotiating text which could be categorized as permanent or ongoing are: preparation of annual reports, including audited statements of Enterprise accounts; preparation of summary statements of Enterprise position and profit-and-loss statements showing results of operations; determination of financial reserves and surpluses required; application for loans in capital markets and international financial institutions and determination of collateral or other security for borrowing; arrangements in connexion with the refundable paid-in-capital advanced by States; transferrance of income to the Authority; receipt of voluntary contributions from States; management of income from joint and other contractual arrangements and management of reserve and other funds; conduct or supervision of feasibility studies; planning of detailed project descriptions and analyses of estimated costs and benefits; preparation of draft plans of work and periodic provision of information and data on projects; procurement of goods and services under contracts, particularly consultancy services, and the acquisition and disposal of property; marketing studies and plans; evaluation of training needs and conduct of training. Functions in the area of transfer of technology, other than those that concern training, cannot necessarily be categorized as permanent.

[7]At the present time, at least, there are perhaps no more than a few hundred people with direct experience in the development of equipment and system design, and fewer still with operational experience (pilot-scale only). Most of these people have been drawn from the off-shore oil industry and the shipping and mining industries.

ceptable geographic basis—is the possibly uncertain situation as regards "appropriate technology, i.e., technology that would present the best option or route for the Enterprise to take. It may be questioned whether the Enterprise would want to be the recipient of mining technology in the initial years and invest the funds that may be called for. It may adopt a wait-and-see attitude in order to ensure that it is investing in mainstream or predominant technology and thus avoiding becoming a party to a competitive situation in technology development. While the competitive situation which has existed for some years between the developers of the continuous line bucket system and the developers of the hydraulic lift system may not persist up until the time the Enterprise faces its technological decisions, a dominant over-all system design may not have emerged. Unless the Enterprise were to develop its own technology at some point, it would also take into account the natural increase in competition among suppliers of technology and the emergence of a possibly more accessible market situation for mining technology.

16. The kinds of arrangements the Enterprise would consider may in fact be determined primarily by the need to build up its manpower capabilities. By entering into more than one arrangement with strong training components and allowing for increasing managerial responsibility in those arangements,[8] the Enterprise would be ready after several years to undertake an integrated project with its own staff and using fully proven technology. An additional "training" component would lie in the arrangements made between the Authority and a contractor operating in the non-reserved area, although such arrangements might not always match sufficiently the priorities of the Enterprise of the time.

17. The necessity of adopting such a graduated approach to the development of manpower resources would be somewhat alleviated if personnel destined to become key staff of the Enterprise could become involved at the earliest possible stage in research and development work,[9] and thus bring to the Enterprise not only understanding of the available technologies but also the capability of refining and developing technology further. Unless such involvement were possible now or in the immediate future, it is unlikely that this approach would hold any more promise of achieving a fully integrated project at the earliest stage.

18. Another reason to expect that the Enterprise might undertake more than one project in the early stage concerns processing. It may be more attractive than mining to the Enterprise in terms of more readily available technology and manpower and because a processing plant could easily service more than one mining project. Processing technology would appear to call for less secrecy, thus fewer legal limitations on its transfer. The land-based processing plant, although original in concept, would probably consist of standard technologies (so that its capital and operating costs could probably be estimated with some confidence). It is even possible to say that operations will be standard to the mining industry as a whole, and that technical innovation would play a lesser role than in mining operations. There are at present a number of theoretical options for processing nodules (some dependent solely on what metal will be primarily extracted), which may prove to be equivalent in terms of reliability. Considerations of labour, capitalization, and environmental protection may therefore determine the method finally adopted, and once that choice is made, an enterprise is committed to that metallurgical route.

19. Also worth noting is that the Enterprise would not be exclusively dependent for its processing technology on the same interests as would be involved in deep-sea mining. On the contrary, some of the most complex metallurgical operations in the world and some of the better equipped metallurgical research activities are located in developing countries. Training facilities for metallurgists also exist in the developing world, although the numbers trained do not meet the present requirements of the mining industries of developing countries. Training programmes related to the processing sector might be expected to have a somewhat different orientation and organization to the main training programmes relevant to deep-sea mining manpower requirements, many of which would be related to or actively linked with other marine education and training programmes. In the case of processing, the training link is clearly with existing mining industries. Moreover, if processing activities were located in developing countries there would be an understandable preference to process part of the raw product further in order to establish forward and backward linkages for employment and promote national industrial development. Training programmes in this context might be quite broad and would tend to concentrate on the nationals of the country concerned or on nationals of the region.

20. While experts disagree as to the seriousness of the constraints that may be imposed on the effective transfer of technology to the Enterprise, whether by provisions in existing contracts prohibiting companies from working for another sea-bed mining entity for the duration of their contract, by the difficulties of setting and justifying a fair price for technology, or by the limitations imposed by patent rights, non-disclosure and secrecy agreements, few experts disagree that the most serious constraint on the transfer of technology will be the availability of the managerial skills necessary to select technologies and put together and operate systems. At the same time, it should be noted that there are several levels of transfer, and therefore several levels of technological capability that the Enterprise may decide to aim for at different times or in different phases of operation, with consequent effects on training needs. These levels, or objectives, may be given, in descending order, as: developing the ability to evaluate and make decisions as to the over-all feasibility and economic advantage of a project, and plan its development; developing the ability to design and modify equipment, and work with the supplier[10] to develop and further update the technology; developing the ability to design plant layout, order equipment, prepare production schedules and devise operating procedures; simply learning how to operate the equipment.

Manpower requirements with respect to the transfer of technology

21. The above comments are perhaps more relevant to the transfer-of-technology process as it relates to the Enterprise; certain other considerations would need to be taken into account where it is not the Enterprise which is the recipient, but developing countries. They may prefer to con-

[8] The training components would specify the results to be obtained, for example, by setting up a schedule requiring that a certain percentage of "counterpart staff" or "trainees" hold positions in each job category. A comparable method is the phase-out arrangement where management gradually changes hands, leaving some incentives for the partner in the venture to retain an interest, whether through profits earned or through a portion of the produc which could be used for downstream procession operations.

[9] The Red Sea Commission, which is developing hydrothermal deposits, may be cited as such an example of industry co-operation for on-the-job training in research and development. Scientists and technicians from developing countries are trained on board research vessels in all aspects of the work.

[10] A common theme in the literature on transfer of technology is the importance of interplay between the supplier and the recipient of technology. Once technologies and systems are actually put to use, the equipment and procedures naturally become subject to modification over time, particularly in the early stages. The reason why many prefer the expression "technology development" to "transfer of technology" is presumably to emphasize this co-operative element to improve a system and at the same time improve the manpower capabilities.

centrate on technology transfer where skills can be acquired which can be used in other fields. The emphasis in many recent transfer-of-technology agreements has in fact been on skills that are transferable. It is worth noting in this context that, in many respects, little distinction can be drawn between sea-bed mining and continental shelf and off-shore operations.

22. A useful distinction may be drawn between transfer of technology in the context of the Enterprise — specific arrangements derived from the terms of contracts with operators in non-reserved areas and from the terms of joint ventures in the reserved areas—and transfer of technology of concern to the Authority and its member States—a much broader programme encompassing all the recognized elements of the transfer process. These are: training and fellowship programmes; information dissemination programmes, research programmes; and direct transfer programmes (where a developing country has entered into an arrangement on technology with an operator in the non-reserved area under the auspices of the Authority). Therefore, when dealing with the manpower requirements of the Authority proper with respect to the transfer of technology,[11] emphasis should also be placed on its work in information dissemination and research support, as well as in training.

23. The transfer-of-technology process calls for a broad range of knowledge and skills. Without attempting to allocate staff to the Enterprise or to offices of the Authority (or to indicate the extent to which members of the Legal and Technical Commission should be conversant with technology transfer questions or should advise on technology selection and terms), the required knowledge and experience would encompass the following legal, economic and technical fields:

(*a*) International and national laws, regulations and practices, including registration, review and approval of agreements in the public or private sector;

(*b*) Role of the patent system;

(*c*) Role and activities of transnational corporations;

(*d*) Financial costs of transfer, both nominal costs (payment for the right to use patents, know-how, etc.) and real costs (return on investment, technical assistance, management, etc.);

(*e*) Evaluation and negotiation of contracts: all phases, from planning aspects, product specifications, plant design and construction, start-up phase, and engineering control, to product modification and development;

(*f*) Informational aspects (documentation, instruction, organization of conferences and seminars, visits and exchanges of technical personnel, etc.);

(*g*) Knowledge of the activities of United Nations organizations in the transfer of technology,[12] in the training of qualified scientists, technologists and middle-level technicians and in the creation of the necessary international and regional information systems and data banks.

Requirements in legal fields

24. Again, without attempting to allocate legal staff to the Enterprise or to an office of the Authority (or to the membership of the Legal and Technical Commission), the knowledge and experience required in legal fields would cover the following:

(*a*) Legal aspects of the transfer of technology (see para. 23 above);

(*b*) Law of the sea;

(*c*) Contractual law (joint arrangements, joint ventures, production sharing, etc., in mining and processing sectors) and international contracts (applicable law);

(*d*) Corporate law (relevant national rules and regulations) and legal problems associated with transnational corporations;

(*e*) Tax law and investment law;

(*f*) Environmental law (international conventions and relevant national rules and regulations);

(*g*) Consultancy contracts for feasibility studies, design and engineering and managerial services;

(*h*) Commodity agreements and producers' associations;

(*i*) National and international regulations affecting trade of commodities produced from the sea-bed (tariff and non-tariff barriers, restrictive business practices, preference systems);

(*j*) Arbitration (international judicial proceedings and national enforcement of international decisions).

Requirements for environmental protection

25. Although knowledge of the potential environmental impacts associated with mining, transportation and processing of nodules is developing,[13] it will be difficult to forecast with any precision what the environmental effects will be. There is also some concern that failure to understand, anticipate, control or mitigate the potential adverse effects might delay and add to the total costs of the development of a sea-bed mining industry. Experts stress that studies of ambient environmental conditions and relevant physical and biological factors must be performed before large-scale mining commences in order to measure changes in the environment during mining operations. The point has also been made that a sound scientific basis for establishing and modifying future environmental regulations will help avoid legal difficulties arising from unsubstantiated "expert" opinions.

26. In 1975, a panel of experts[14] of the National Academy of Sciences (United States) set out a series of steps intended to provide the environmental protection necessary. In doing so, it also called attention to the need for industry to disclose

[11] Transfer of technology, of course, is not a specific issue of the United Nations Conference on the Law of the Sea, but a general problem given high priority in the context of the new international economic order and in the programmes of various United Nations bodies and organizations, particularly the United Nations Conference on Trade and Development (UNCTAD), the United Nations Industrial Development Organization (UNIDO), the World Intellectual Property Organization (WIPO), and increasingly of other components of the United Nations system, such as the United Nations Conference on Science and Technology for Development and the United Nations Commission on International Trade Law (UNCITRAL). The responsibilities of the Authority in ensuring the effective transfer of knowledge, skills and technology relating to the development of deep-sea mineral resources might be expected to take account of objectives elaborated elsewhere and of existing programmes and experience gained in the establishment, expansion and modernization of the scientific and technical institutions and the capabilities of the developing countries.

[12] In view of the activities of UNCTAD, WIPO, UNIDO and UNCITRAL, there is also the possibility of their providing expert assistance in technology assessment and appropriate contractual terms.

[13] Most of the investigation to date has been conducted through the DOMES project (Deep Ocean Mining Environmental Studies) undertaken under the auspices of the United States National Oceanic and Atmospheric Administration (NOAA). This project is designed to assess the potential environmental effects of at-sea nodule mining operations in the central Pacific nodule belt and to develop information for appropriate environmental safeguards. A complementary project, also conducted under the auspices of NOAA, will assess the environmental and socio-economic impacts of other activities associated with the development of the industry, specifically, ore (nodule) transportation, processing of nodules and disposal of process wastes.

[14] "Mining in the Outer Continental Shelf and in the Deep Ocean", report of the Panel on Operational Safety in Marine Mining (Washington, DC, National Academy of Sciences, 1975). These recommended procedures are also outlined in "Environmental Aspects of Manganese Nodule Mining", Anthony F. Amos and Oswald A. Roels, *Marine Policy* (April, 1977).

data on the technology of mining pertaining to those elements that interact directly with the environment, and for the research and other groups involved to receive and maintain any proprietary information under the terms of protective confidential disclosure arrangements that prevent public access to the data. The panel proposed:

(*a*) The establishment of environmental conditions in the potential mining areas. The necessary studies could be completed if necessary during subsequent phases of the procedure outlined;

(*b*) The environmental monitoring of pilot and/or full-scale mining operations;

(*c*) The documentation of changes induced in benthic and pelagic eco-systems by deep-sea mining and evaluation of their implications in relation to current and potential marine resources;

(*d*) If necessary, the recommendation of changes in mining methods and equipment use, based on the facts established in subparagraphs (*b*) and (*c*);

(*e*) Preparation of an environmental impact statement for mining;

(*f*) The formulation of environmental criteria and regulations for future mining operations to minimize harmful environmental effects;

(*g*) Evaluation of environmental impact reports submitted by mining companies in support of their applications;

(*h*) Preparation of the specific environmental impact statement for each project or plan of work;

(*i*) The monitoring and enforcement of regulations.

27. The main point to be made is that a series of basic and indispensable steps must be taken prior to the establishment of rules, regulations and procedures, that an extensive research and monitoring effort is required at the earliest possible stage, and that consideration should be given to the question of providing training in this context. The Authority's needs, in terms of both its staff and the Legal and Technical Commission members, may be quite considerable in the area of environmental protection. A preparatory commission would be the first to feel this need for information, data and expertise.

28. A thorough examination and discussion of the function, organization, staffing and personnel requirements of the Authority, with respect to its environmental protection responsibilities, may serve also to demonstrate in a concrete way the nature of the analysis that will have to be undertaken for each of the Authority's offices to create a data base upon which the question of training can be addressed.

29. Assuming that the environmental responsibilities and power of the Authority will be those set out in document A/CONF.62/WP.10/Rev.1, and that the initial set of environmental rules, regulations and procedures to be applied by the Authority will have been drafted by a preparatory body, an office of environmental policy and assessment might be structured and staffed as follows:

Office of environmental policy and assessment

Director—Ph.D. in marine science with extensive administrative experience

Asst. Director—Responsible for co-ordination with UN system

Reports reference and analysis division	*Inspection and compliance division* [15]	*Research division*
Director: B.S. level in marine science with concentration and experience in statistics and automatic data processing	Director: B.S. level in marine science, with administrative and related drafting experience	Director: Ph.D. marine science
2 Analysts: B.S. level in natural science, with concentration in statistics and automatic data processing	2 Inspectors: B.S. level in marine science	2 Researchers: B.S. in marine science, with research and/or research contracting experience

30. The above separation of functions into analysis, inspection and research would reflect a regulatory scheme whereby:

(*a*) A significant proportion of the detailed, on-site data and information would be supplied by the contractor, usually in the form of tapes recorded by automatic devices measuring volume, concentration and type of discharges and supplemented by measurements of physical, chemical and oceanographic parameters and samples of local biota. Authority staff would then analyse the reports and data received;

(*b*) Inspectors would make unannounced visits to mining vessels to ensure that environmental regulations were being complied with;

(*c*) Research work, particularly into baseline conditions and assessments of environmental results of sea-bed mining will be an essential addition to the work of the analysis section and to the work of the Legal and Technical Commission in keeping the applicable rules, regulations and procedures under review. Research work could be conducted by the Authority or conducted on its behalf by recognized institutions or through co-operative research programmes of the United Nations system.

General functions of the Authority's staff

31. One of the very first conceptions of the international machinery was of an organization which would exchange information and prepare studies (a common variety of secretariat function). The report of the Secretary-General to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction, already mentioned, noted that while important functions in the subject area are performed by a number of United Nations organizations, particularly UNESCO/IOC (Intergovernmental Oceanographic Commission), the Intergovernmental Maritime Consultative Organization (IMCO) and the United Nations itself, the future Authority would act as a focal point for the assembly and dissemination of information[16] and the preparation of "reports, reviews, summaries and other working papers on national and international activities relating to the sea-bed, as well as on the relevant activities of the United Nations, the specialized agencies and other international bodies."

[15] It should be noted that, in accordance with article 162, paragraph 2 (*y*) and article 165, paragraphs 2 (*c*) and (*d*), the Council will direct and supervise a staff of inspectors through the members of the Legal and Technical Commission.

[16] Most United Nations organizations are engaged in collection, processing, analysis and dissemination of information relevant to their respective fields (as well as in training), and for some it is their principal task. The information is disseminated mainly through journals and reports or at professional meetings. A typical general information system is demonstrated by the ILO Integrated Scientific Information Service, which records all new acquisitions in the ILO library and distributes printed indexes to research institutes, libraries, government agencies, etc. Extensive abstracts in the technical training field are also published, containing summaries of published information on programmes, experience and experiments in the training of operative personnel, supervisors and technical staff.

32. The Authority might be expected to have an active publications programme covering subjects of legal, economic, scientific and technical interest. Publications may represent the results of special meetings, conferences, expert groups, etc., the results of programmes in which the Authority is a participant or co-sponsor, and the results of "in-house" research and study.

33. Publications might also be expected to deal with aspects of education and training; for example, directories or registers of educational and training institutions and work on curriculum development.

34. The Authority will also have specific responsibilities with respect to the publishing of "boundary" data (article 134) and data concerning areas under prospecting and under exploration and exploitation.

Research support

35. The Authority will have extensive responsibilities with respect to the promotion of scientific research, including research in applied fields touching on technological development. It may have to formulate, participate in, organize or conduct, as appropriate, various research programmes, seminars, conferences, etc.; to disseminate the results of research sponsored or co-sponsored by the Authority; and prepare special studies and reports. This work clearly calls for active co-operation and co-ordination with United Nations specialized agencies and organizations and with the international scientific community.

36. Certain scientific questions will require intensive investigation; for example, the precise nature of the supply function for deep-sea mineral resources, and environmental aspects. Knowledge of the process of nodule formation, together with information on nodule grade, concentration and sea floor topography will be needed to estimate the existing reserves that are available for exploitation and to give an indication as to future supply. Investigation of environmental problems associated with mining and how to cope with them will be essential.

37. Almost all aspects of the Authority's work will require research input. It will need to measure impact on the markets for the several metals, to reduce uncertainty by determining the specific nature of cost and supply conditions in both the short and the long run, and to monitor profit margins in the industry. It may be noted that States also can be expected constantly to evaluate their stake in the economics of the deep-sea mining industry by investigating its impact on their development prospects. With respect to its resource policy, the Authority will need constantly to evaluate a variety of information and data on minerals production, reserves, markets, etc.

38. The Authority will also be expected to keep under review the general state of knowledge with respect to the deep sea, its resources and relevant technological developments.

Information services

39. Many of the general functions, as well as some highly technical functions, indicate the need for an extensive information service, including library and archives, and since much of the information the Authority will use or disseminate would be stored on computer, the Authority faces an extensive requirement for specialized information personnel.[17]

40. Technological information stored and disseminated by the Authority would cover available technology[18]—licensing conditions, raw materials processes, know-how, machinery and equipment, operation procedures, maintenance and industrial engineering. It would also cover the commercial, economic and legal aspects — plant and operating costs, transfer of technology agreements and their terms, data on relevant transactions between developed and developing countries, including operations of transnational corporations — and information on environmental aspects. The Authority's information services should preferably also encompass consultants and experts, research and development institutions (programmes and results), engineering services, etc. and training programmes.[19]

41. The Authority would also be expected to collect all nodule analyses carried out by industrial, academic or governmental laboratories and to maintain an extensive collection of geological and oceanographic charts. Sea-bed maps will be essential both to the scientific research responsibilities of the Authority and to the assessment of data presented by potential contractors. While the Authority is unlikely to operate its own specialized printing plant or to contract such services, its responsibilities for maintaining an extensive library and map distribution service point to the need for substantial manpower requirements in this area.

Existing training

42. Educational institutions, materials and curricula with an orientation or specialization in marine mining are at the same early stage of development as the industry itself. The engineers and technicians currently engaged in the development of the future industry have been trained in other areas and have simply extended their earlier training and experience to meet marine mining demands. They have, in effect, undergone on-the-job training. While this movement can be expected to continue to account for many personnel involved in the industry, eventually the demands may require that the full educational spectrum be considered, and that training be offered at operational levels for specialists in the professional category, technicians, equipment operators and supervisory managers and that a marine orientation be adopted from the earliest educational stages.

43. In the present early stage of development, marine mining must draw upon existing educational processes and institutions in the fields of ocean science and engineering, mining, off-shore petroleum production, mineral exploitation, environmental and resources sciences, economics, marine affairs, and admiralty and international law. The disciplines of importance are covered to some extent in many institutions and, more comprehensively, in those institutions which offer interdisciplinary courses and research opportunities. The majority, however, do not have marine-oriented courses. The net result is that scientists engaged in marine minerals exploration and engineers working in marine mining development require on-the-job education in ocean-related problems. Their "training" needs to cover ex-

[17]United Nations organizations have recognized the need in connexion with the extension of data banks and technological information exchange systems and are consequently strengthening training programmes for specialized information personnel. There will also be a substantial requirement for personnel with experience in statistics and automatic data processing.

[18]Information of a proprietary nature would, of course, be subject to special arrangements.

[19]No comprehensive transfer mechanism for information on marine technology has been established within an international organization (although the programmes of United Nations/OETO (Ocean Economics and Technology Office) have been expanded in recent years). The largest effort undertaken jointly by United Nations, FAO/IOC is the Aquatic Sciences and Fisheries Information System (ASFIS). ASFIS has been designated as an international information system for the science and technology of marine and fresh water environments, and is being transformed into a computer-oriented system. The components of particular interest in this context are its Register of Experts and Institutions and Register of Meetings. The second Register of Courses and Training Programmes in Marine Affairs, to be prepared also by United Nations/OETO, will be incorporated into ASFIS.

ploration, mining systems, ore processing and mineral economics in order to develop the necessary professional background; mathematics, physics and chemistry are also required. The most direct and applicable education in academic institutions is therefore obtained by those who serve as laboratory and shipboard assistants in ongoing research projects having a bearing on marine mining. Such opportunities are few for the present.

44. The technician training required to operate underwater cameras and television equipment, mining machinery, instruments for nodule analysis, environmental monitoring equipment, deck machinery, pumps, winches and pipeline, as well as to carry out the normal duties of seamanship, also needs to be made more effective by further input from industrial and academic sectors.

45. A 1975 panel report of the National Academy of Sciences recommended that government-sponsored academic research and training in selected aspects of sea-bed minerals exploration, marine mining research and development, and environmental considerations be strengthened in co-operation with the academic and industrial sectors. It considered that expanded research support would provide the technological and scientific results and the specialized manpower needed to meet early industrial and regulatory needs.[20] The panel of experts also suggested that some curriculum development programmes might usefully be introduced with the support of appropriate governmental agencies, and that such programmes should recognize that marine education refers not only to the motivation, training and education of marine specialists, but to an informed public sufficiently aware of the importance of the oceans and marine environment to take part in or influence national marine policy.

46. Any useful assessment of existing training opportunities provided through multilateral or bilateral channels requires extensive investigation, and the co-operation of all elements of the United Nations system, Governments and public and private institutions.

Some preliminary guidelines for the establishment of a training programme

47. In order to facilitate the assessment of existing training opportunities and the subsequent development of special courses and curricula, the following guidelines are suggested:

(*a*) The programme should recognize three kinds of formalized international training programme: academic courses; short, comprehensive, group-oriented courses; and training concentrated on an individual and his speciality. It should also recognize on-the-job experience, academic training leading to a degree in a traditional discipline and regional and topical conferences and seminars, in order to provide the necessary diversity in structure, scope, approach, duration and focus. The programme should take account also of national needs and desires, although it would be intended basically to promote participation in activities at the regional and international levels;

(*b*) The programme should offer both theoretical and practical training and might be conducted at university institutions, in scientific laboratories and in public and private institutions specializing in research, exploration and exploitation activities, as well as through operations in the international area. Practical and project-oriented courses should, preferably, begin after the completion of more theoretical courses;

(*c*) The programme should, at least for some time, give priority to the training of scientists and engineers, particularly as a means of gaining more managerial experience and bringing job requirements into perspective, recognizing, however, that managers cannot be produced by a short (or long) training course and a few years' experience, but by many years of on-the-job experience. Participants should therefore be expected to have a basic and broad background in ocean sciences (with emphasis on applied as opposed to continued interest in basic research), or engineering, and preferably some experience in related fields (whether in offshore mining or land mining operations);

(*d*) The programme should promote and possibly also provide active support to basic education in the marine sciences, primarily through UNESCO/IOC, and its training, education and mutual assistance programme in marine sciences;

(*e*) No attempt should normally be made to train an individual in all fields of sea-bed mineral exploration and exploitation; rather, emphasis should be placed on training in selected fields, and building on the capabilities of the individual;

(*f*) Some resources should also be devoted to the training of technicians and skilled or semi-skilled workers to provide adequate support to the professionals who would be the main focus of the programme. Included in this category would be data gatherers and processors, equipment operators, including drillers and mechanics;

(*g*) The programme should train technicians only in those areas where continuous employment could be reasonably assured (particular attention would be paid to this aspect in the early years because of a more rapid rate of innovation in exploration and exploitation technology);

(*h*) Candidates should be selected on a regional basis (rather than on a basis of equitable geographic distribution),[21] also taking into account the status or possibility of development or of participation in sea-bed mining or processing operations, and the interests of the land-locked and geographically disadvantaged States;

(*i*) The programme should be based on a "clear understanding" that personnel selected for training by or through the programme would be accomodated either in the educational system, the relevant part of the private sector, in Government or in the Authority/Enterprise;

(*j*) On-the-job training components would ensure to the extent possible that personnel were given some responsibility for operations;

(*k*) The programme should concentrate on involving to the extent possible the scientific, educational and multinational business communities. (The weakness of present United Nations system activities relating to the expansion of marine transfer of technology is insufficient involvement by non-States. More research will be needed to map the complex network of non-governmental activity that already exists in the marine field);

(*l*) The programme should be implemented at national, bilateral, regional and global levels, taking account of the prevailing trend that international organizations decentralize their activities as much as possible and delegate responsibilities to the regional and subregional levels, and of the objectives for the development of regional centres outlined in part XIV of the informal composite negotiating text. In

[20] See foot-note 14. That panel also recommended that a study be undertaken on existing and projected personnel requirements of the marine mining industry, including those associated needs of regulatory agencies and academic institutions, in order to provide long-range educational guidance. Unfortunately, such a study did not eventuate.

[21] In any training programme it would need to be recognized that expertise could not be built on a national basis since the numbers required to build the infrastructure would be beyond the scope of any training programme.

particular, the programme should complement regional efforts to build capabilities in information exchange, transfer and development of technology, and to pool financial resources, skilled manpower and training resources.[22] The programme might single out a few promising institutions and help develop them into "centres of excellence" (which could be regional centres) and should also promote joint projects or "sister institutions" agreements between developed and developing country institutions, since such links provide the important elements of continuity, communication, joint research, quality control, etc.;

(*m*) Since the programme would consist of many elements, a considerable proportion of available resources should be devoted to over-all co-ordination. Co-ordination could be achieved through the development of a common register of programmes and institutions (also serving to help identify sponsors and appropriate means of finance); common training manuals and exchange of text materials; visiting lecturers; co-ordination of information, review and supervisory activities, etc.

Methods for establishing programmes

48. It may be useful also to consider ways in which training programmes have been formulated and developed in the past.

49. One common method has been to establish an expert or study group, or workshop, for the purposes of identifying needs, establishing methods, and co-ordinating existing programmes. A particularly relevant example is found in the method used for the preparation of a 1968 report, "Marine science and technology: survey and proposals",[23] presented also to the Sea-Bed Committee. That report surveyed actual activities in marine science and technology at national and international levels and sought to determine the world-wide status of trained personnel before making its recommendations. To do this, a group of experts was set up to assist the Secretary-General. That group was headed by a special consultant appointed by the Secretary-General and consisted of 4 specialists from the United Nations, 16 experts nominated by specialized agencies and United Nations organizations, and 11 national experts participating in their private capacity. The group met twice. The first meeting outlined the scope of the survey and ways and means of obtaining the required information. This was followed by a note verbale with questionnaire to all States and organizations members of the United Nations system.

50. Another example can be found in the United Nations University programme on the use and management of natural resources and its efforts to provide internationally co-ordinated advanced practical training to strengthen scientific resources in developing countries. A workshop was held in Iceland by the United Nations University and the Government of Iceland in order to establish training needs in the field of geothermal energy.[24] In fact, the practice of using study groups or special conferences to establish education and training needs, or to plan, develop or evaluate programmes, is quite common in the United Nations system. Some organizations use a permanent device, for example, the World Health Organization Expert Committee on Professional and Technical Education of Medical and Auxiliary Personnel.

51. Another method for the co-ordination of existing training programmes and recommendation of new and modified programmes is to create international studies boards which provide the necessary forum for information exchange on existing programmes, assess both the need for training and the suitability of candidates selected for training[25] and later provide the necessary feedback on the effectiveness of intensive or specialized training. Such boards also help to ensure that candidates from recipient countries are informed about all the courses and can apply for those most suitable; that training courses for technicians and skilled workers are made available, or the need for such courses is made known to the appropriate agencies, Governments and interested institutions; that suitable training manuals are prepared; and that there are exchanges of text materials, lecturers and students.

52. Whatever method might be adopted, the experts involved could also be expected to contribute to evaluation and planning activities with respect to the Enterprise's manpower requirements and to the development of more formal training programmes conducted finally under the auspices of the Authority. That programme may in time incorporate an international training institute as part of the Authority.

Training institute of the Authority

53. This suggestion is largely prompted by the probable need to distinguish between the three categories of training which emerge from an examination of the informal composite negotiating text, namely, training through the Enterprise, training through the contractor and training through the Authority proper. Training in the first two instances would presumably emphasize engineering skills, some areas of marine science, and management experience. Training through the Authority would be expected to encompass a wide variety of disciplines including environmental science and regulations, mining economics and various types of legal knowledge and expertise. The negotiating text also raises questions as to co-ordination among these three avenues for training. It is not clear what role, for example, the Enterprise will play in determining the obligations of the contractor with respect to training; nor is it clear what distinction will be made between training as a component of Enterprise operations and training provided to interested developing country personnel not associated with Enterprise operations. The process of establishing rules, regulations and procedures with respect to training, in accordance with article 16 of annex II (which refers to article 144) may shed some light on this matter.

54. One way to fuse or, at least, co-ordinate training opportunities would be to create a training institute in the Authority with the capacity to provide both general orientation and specialized training, whether for staff[26] of the Authority and Enterprise, trainees associated with Enterprise opera-

[22] National training need not, or cannot, assume the permanent demand for the services of personnel in the capacity for which they were trained. With a regional centre for education, training and research, a pool of trained manpower is created from which a country can draw. Regional centres can also identify areas of training in the context of the job market and make the necessary recommendations for adjustments to problems and trends.

[23] E/4487 and Corr.1-6 and E/4487/Add.1.

[24] The Government of Iceland proposed to conduct, with United Nations University support, an advanced practical training in geothermal energy for persons from developing countries. The objective of the workshop was to determine the need for such a training course and then to ensure that the course proposed would not duplicate any other course. The workshop was made up of experts in the field who were knowledgeable about current training facilities and development activities, individuals from selected developing countries that have geothermal energy resources and representatives of United Nations agencies that sponsor training courses in the subject area.

[25] Prospective trainees are sometimes interviewed in their home countries and a report is then made available to interested universities and institutions.

[26] It should be noted that the informal composite negotiating text, in most cases, uses the wording "staff of the Authority and Enterprise" when referring to training, so that the impression may be given that only personnel (permanent or under temporary contract) would be eligible for training associated with exploration and exploitation. There would seem to be no room in such a formulation for persons selected by the Authority for training under fellowship schemes, for example.

tions, or personnel from member States, particularly from developing countries.

55. The training responsibilities of the contractor could be largely or exclusively fulfilled through an institute, giving the Enterprise the opportunity of indicating its needs and the institute the responsibility of co-ordinating the training programmes offered by the contractor with those of the Enterprise.

56. The institute could also become involved in certain research activities and in information exchange to the extent that training relates to such activities. Its information responsibilities might also encompass such activities as the development of marine-oriented curricula and registers of appropriate institutions, in co-operation with similar programmes presently undertaken in the United Nations system.

57. There are a number of training institutes of various kinds in the United Nations system ranging from the United Nations University and the United Nations Institute for Training and Research to the International Labour Organisation training centre at Turin and to training institutes sponsored or co-sponsored by members of the United Nations system. The structure and mandate of such institutes may be usefully examined as well as the steps taken for their establishment. Particular attention would also need to be given in this exercise to the regional centres that may be established in conformity with the provisions of the informal composite negotiating text and their working relationship with such a training institute.

Implications of an assessment of training needs, existing opportunities and programme development needs

58. Mentioned frequently in this paper are the functions of the Authority with respect to training, whereas the request of the Chairman of the First Committee and the subsequent suggestion of the delegation of the United Kingdom to establish a voluntary fund for training relate to the period prior to the entry into force of the convention, thus presupposing a training programme initiated and supported by the United Nations itself. Reference must be made, consequently, to the mandate given in General Assembly resolution 3067 (XXVIII) which established a secretariat to service the Conference on the Law of the Sea. The secretariat has drawn extensively on the expertise available in other offices of the United Nations. However, in the case of the present request, wide co-operation will be required from many components of the United Nations system, from other intergovernmental organizations, from Governments and from national and regional institutions, in order to collect and evaluate the information required and to formulate and implement a programme. Such an undertaking would carry financial implications from the initial stage.

DOCUMENT A/CONF.62/83

Note dated 20 August 1979 from the International Labour Organisation*

[*Original: English*]
[*20 August 1979*]

1. The first revised version of the informal composite negotiating text of the Third United Nations Conference on the Law of the Sea (A/CONF.62/WP.10/Rev.1) envisages the establishment of the International Sea-Bed Authority and its Enterprise which will be responsible for exploration, exploitation, transport, processing and marketing of the mineral resources of the sea-bed. The activities of this Authority shall be carried out by its Enterprise and/or by member States or nationals or other legal entities within member States.

2. When the activities are carried out by member States (or their nationals or legal entities), the labour law applying to the personnel employed by them will presumably be that of the State of the flag flown by the ships, vehicles and installations in which they are working. However, as regards ships, vehicles and installations belonging to the Authority or its Enterprise (or in any case not under a national flag), the labour and social conditions, as well as the safety standards, applicable to the personnel employed are not governed by any provisions of the negotiating text. Without excluding the possibility that the personnel working in ships, vehicles and installations operating under a national flag be covered by general uniform provisions, it seems that, as far as the personnel working under the flag of the Authority are concerned, there is a lacuna in the text which should be filled.

3. This point has already been raised by the Portuguese delegation and others, and it is suggested that some provisions could be included in the text drawing attention to the need for regulations (if the Authority will have the power to create a system of laws and regulations), or standard employment contracts (if it is envisaged that there will be such contracts creating a legal framework), which would take into account the relevant conventions and recommendations of the International Labour Organisation (ILO).

4. It is recalled that ILO conventions and recommendations are adopted, with a two-thirds majority, by the International Labour Conference, at which each country is represented by two government representatives, one employer representative and one worker representative. The adoption of the convention is preceded by a long consultation procedure and a double discussion at two different sessions of the Conference. Therefore, while conventions are legally binding only upon ratifying States and recommendations are always advisory, the manner of their framing gives them an international moral authority appropriate to inspire the determination of the labour and social conditions of the personnel employed by the Authority or the Enterprise.

5. The International Labour Office is studying the existing international labour conventions, with a view to determining which ones could be considered both relevant and applicable to "off-shore" installations. From the studies so far made, it would appear that problems of safety and health, conditions of work (hours of work, minimum age, night work, holidays with pay), migrant workers, freedom of association, the right to organize and the right to collective bargaining, discrimination in employment and occupation, minimum standards in merchant shipping, social security and training could be covered by provisions inspired by ILO conventions. ILO is available to help in drafting such provisions.

* Circulated at the request of the International Labour Organisation.

DOCUMENT A/CONF.62/84

Report of the Credentials Committee

[*Original: English*]
[*22 August 1979*]

1. The Credentials Committee held its 11th meeting on 21 August 1979. Representatives of all the members of the Committee, except Chad, Ivory Coast and Japan, were present.

2. The Committee had before it a memorandum by the Executive Secretary of the Conference, dated 20 August 1979, indicating that as of that date communications had been received concerning 138 States participating in the session.

3. For the purposes of the resumed eighth session, credentials in the form provided for by rule 3 of the rules of procedure had been submitted to the Executive Secretary by the following 102 States: Algeria, Angola, Australia, Austria, Bahrain, Bangladesh, Barbados, Belgium, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Cape Verde, Chile, China, Czechoslovakia, Democratic Kampuchea, Democratic People's Republic of Korea, Democratic Yemen, Denmark, El Salvador, Fiji, Finland, France, Gabon, Gambia, Germany, Federal Republic of, Ghana, Greece, Guatemala, Holy See, Honduras, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Lao People's Democratic Republic, Lesotho, Liberia, Liechtenstein, Luxembourg, Madagascar, Malaysia, Malta, Mexico, Monaco, Mongolia, Mozambique, Nauru, Nepal, Netherlands, New Zealand, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Peru, Portugal, Republic of Korea, San Marino, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Singapore, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon, United Republic of Tanzania, United States of America, Viet Nam, Yemen, Yugoslavia and Zaire.

4. The following eight States had submitted credentials which remained valid for the eighth session at Geneva, and the resumed eighth session in New York: Bahamas, Ethiopia, German Democratic Republic, Guyana, Hungary, Morocco, Poland and Uruguay.

5. The appointment of the representatives of the following 28 countries had been communicated to the Executive Secretary by letters, cables or notes verbales: Afghanistan, Albania, Argentina, Benin, Burundi, Central African Empire, Colombia, Costa Rica, Cuba, Cyprus, Dominican Republic, Ecuador, Egypt, Grenada, Iraq, Jordan, Lebanon, Libyan Arab Jamahiriya, Norway, Paraguay, Philippines, Qatar, Romania, Saudi Arabia, Somalia, Tunisia, Upper Volta and Venezuela.

6. The Executive Seretary informed the Committee that, subsequent to the preparation of his memorandum, credentials in due form had been received from Guinea-Bissau and a cable had been received from Mauritius.

7. The Chairman proposed that, in the light of past practice, the Committee should accept the credentials referred to in paragraphs 3 and 4 above and that, as an exceptional measure and subject to later validation, it accept the communications referred to in paragraph 5 above in lieu of formal credentials.

8. The representative of Hungary recorded his delegation's objection to the acceptance of the credentials of the delegation of Democratic Kampuchea, stating that, in the view of the Hungarian delegation, these credentials were null and void.

9. The representative of China objected to the statement by the representative of Hungary, stating that, in the view of the Chinese delegation, the credentials of Democratic Kampuchea were valid.

10. The Chairman noted that the views and reservations expressed would be reflected in the report of the Committee. Subject to these views and reservations, summarized in paragraphs 8 and 9 above, the Committee decided to approve the following draft resolution.

"*The Credentials Committee*,

"*Taking into account* the views expressed during the debate;

"*Accepts* the formal credentials of the representatives that have been received;

"*Accepts*, as an exceptional measure and subject to later validation, the communications referred to in paragraph 6 of the Executive Secretary's memorandum of 20 August 1979 in lieu of formal credentials."

DOCUMENT A/CONF.62/85

Letter dated 20 August 1979 from the heads of the delegations of Chile, Colombia, Ecuador and Peru to the President of the Conference

[*Original: Spanish*]
[*22 August 1979*]

We have the honour to bring to your attention the text of the following official declaration by the Ministers for Foreign Affairs of Colombia, Ecuador, Chile and Peru issued on 18 August 1979:

"The Ministers for Foreign Affairs of Colombia, Ecuador, Chile and Peru, in the light of recent reports concerning instructions given to United States vessels and aircraft to defy the maritime jurisdiction of other States exercising sovereignty and jurisdiction beyond the three-mile limit, and in the light of official statements by the United States Government confirming such reports,

"Considering that, in the present state of development of the new law of the sea, it is unusual to attempt to deny the validity of the new provisions, whose initial and clearest expression is found in the Santiago Declaration on the Maritime Zone of 200 miles, which contains principles that represented a major and genuinely Latin American contribution to the discussions of the Third United Nations Conference on the Law of the Sea, now in its eighth session,

"Have resolved to declare that they do not agree with those manifestations of a policy seemingly based on ag-

gressive intentions, that they fully reserve their rights and that anyone seeking to trespass on the maritime zones where they exercise their sovereignty and jurisdiction rightfully, peacefully and without prejudice to the freedom of communication would be answerable for any violation of those rights.

"This protest by the countries of the South Pacific group is voiced as yet another expression of the solidarity existing among its members in the defence of the rights and interests of their peoples and as a proclamation of their decision to reject any type of pressure or threats impeding or obstructing the negotiations taking place in the Conference on the Law of the Sea, through which the developing countries hope to establish a more just, equitable and effective legal régime of the sea.

"Accordingly, the countries of the South Pacific group appeal to the peoples who support concordant maritime policies to associate themselves with this just protest, with a view to joining their forces to ensure that this Conference achieves its noble goals for the development of peoples and the safeguarding of peace.

"This declaration is issued in identical terms at Bogota, Quito, Santiago and Lima on 18 August 1979, the twenty-seventh anniversary of the Santiago Declaration."

We should be grateful if you would have the text of this declaration circulated as an official document of the Third United Nations Conference on the Law of the Sea.

(*Signed*) H. CHARRY-SAMPER
Head of the delegation of Colombia
to the Third United Nations Conference
on the Law of the Sea

(*Signed*) L. VALENCIA-RODRIGUEZ
Head of the delegation of Ecuador
to the Third United Nations Conference
on the Law of the Sea

(*Signed*) F. ORREGO VICUÑA
Head of the delegation of Chile
to the Third United Nations Conference
on the Law of the Sea

(*Signed*) A. ARIAS SCHREIBER
Head of the delegation of Peru
to the Third United Nations Conference
on the Law of the Sea

DOCUMENT A/CONF.62/86

Letter dated 22 August 1979 from the Chairman of the group of Islamic States to the President of the Conference

[*Original: English*]
[*22 August 1979*]

In accordance with the decision taken at the meeting of the group of Islamic States I have the honour to submit herewith the following documents: the recommendations of the experts on the law of the sea of the member States of the Islamic Conference adopted at the meeting held at Istanbul from 6 to 9 March 1979 (IS/LEG/11); and resolution 17/10-P on the law of the sea, adopted at the Tenth Islamic Conference of Foreign Ministers held at Fez from 8 to 12 May 1979.

I would like to request that these documents be circulated as official Conference documents.

(*Signed*) N. YOLGA
Chairman of the group
of Islamic States

A

RECOMMENDATIONS OF THE EXPERTS ON THE LAW OF THE SEA OF THE MEMBER STATES OF THE ISLAMIC CONFERENCE TO THE TENTH CONFERENCE OF FOREIGN MINISTERS

INTRODUCTION

The experts on the law of the sea from the member States of the Islamic Conference met at Istanbul from 6 to 9 March 1979 pursuant to resolution No. 17/8-P of the Eighth Conference of Foreign Ministers of the Islamic Conference and resolution No. 1/9-P of the Ninth Conference and have decided to recommend a draft declaration for adoption by the Tenth Conference of Foreign Ministers.

I. FIRST COMMITTEE MATTERS

1. The Islamic States reaffirm their belief in the Declaration of Principles embodied in resolution 2749 (XXV) and in the principles contained in resolutions 2750 (XXV) and 3029 (XXVII) of the United Nations General Assembly.

2. They reiterate in particular their attachment to the principle stipulating that the resources of the sea-bed beyond national jurisdiction are the common heritage of mankind.

3. The Islamic States believe that the activities in the international area shall be carried out for the benefit of mankind as a whole, taking into account the needs and interests of the developing countries, and in particular, those of the peoples that have not attained full independence.

4. They further declare that the international Authority shall conduct the activities in the area on behalf of mankind as a whole, taking into consideration the objective of contributing to the strengthening of all efforts towards the realization of a new world economic order.

5. The Islamic States reiterate their deep concern regarding any unilateral action that may be taken in the field of sea-bed mining activities before the conclusion of the convention on the law of the sea. Such unilateral action shall be unacceptable and in violation of the moratorium contained in General Assembly resolution 2574 (XXIV).

6. The Islamic States are of the opinion that substantial progress has been made towards achieving a consensus and finding generally acceptable solutions to most of the issues related to the area, including the question of resource policy. They affirm their determination to continue the negotiations to solve the remaining issues, particularly:

(*a*) Financial arrangements of contracts for exploration and exploitation of resources;

(*b*) Contractual arrangements between the contractors and the Authority;

(*c*) Composition, powers and functions of the Council and the Assembly;

(*d*) Fair and just representation and equal voting rights in the Council;

(*e*) A viable enterprise which can begin to carry out activities in the area at the same time with other entities.

II. Second Committee matters

1. *The status of islands*

Islands which, by their geographical situation, constitute a source of disagreement in the delimitation of maritime boundaries between adjacent and opposite countries will only share sea space according to equitable principles and taking into account all relevant circumstances.

2. *Semi-enclosed seas*

1. Semi-enclosed seas are those seas with particular characteristics which consist entirely of exclusive economic zones of two or more States.

2. States bordering enclosed or semi-enclosed seas shall co-operate with each other on the following:

(*a*) Management, conservation, exploration and exploitation of the living resources of the sea;

(*b*) Preservation of the marine environment;

(*c*) Undertaking of scientific research policies and appropriate joint programmes of scientific research in the area.

3. The delimitation of the territorial seas, exclusive economic zones and continental shelves between adjacent and/or opposite States bordering semi-enclosed seas shall be effected in accordance with the respective provisions of this convention and taking into account all the relevant circumstances in such areas.

4. The presence of islands, artificial islands, structures or installations in semi-enclosed seas shall not affect the régime of unimpeded navigation contained in the relevant provisions of this convention.

3. *Delimitation of maritime boundaries*

In the delimitation process between adjacent and opposite States, the States shall engage in good faith in negotiations to reach a mutually acceptable agreement applying equitable principles based on objective criteria emanating from all circumstances related to the zones to be delimited, resorting either to a combination of delimitation lines or to one line drawn according to any method of delimitation, including the median line or that of equidistance whenever it leads to an equitable solution.

Provisional measures

Pending a final solution, the States concerned shall exert all efforts to reach provisional arrangements avoiding any measures of a nature which may prejudice the final solution.

During this transitional period, the States concerned shall seek in particular to establish among themselves fruitful co-operation for the exploitation of resources in the disputed areas.

Settlement of disputes

The States concerned shall resort to the procedures of settlement of disputes provided for in part XV of the Convention or such other procedures agreed upon in accordance with Article 33 of the Charter of the United Nations.

4. *Outer limit of the continental shelf*

The Islamic States support the Arab formula that the outer limit of the natural prolongation of the continental shelf should not exceed 200 miles.[27]

5. *Land-locked and geographically disadvantaged States*

The Islamic States invite the Third United Nations Conference on the Law of the Sea to take into consideration the interests and needs of the land-locked and geographically disadvantaged States to have access to a fair share of the living resources of the economic zone of the neighbouring States.[28]

6. *Straight baselines*

The Islamic States adopted the following formulation for the delineation of straight baselines.

Where most part of a coastline of a State is constituted by a continuous process of sedimentation of fluvial deposit rendering the low-water line highly unstable, the method of straight baselines joining appropriate joints may be employed along the farthest seaward extent of submerged sedimentary delta in drawing the baseline from which the breadth of the territorial sea is measured.[29]

III. Preamble and final clauses

The group of experts of the Islamic Conference has studied the preamble and the final clauses. They shall exert further efforts to study these questions during the coming eighth session of the Third Conference on the Law of the Sea to be held at Geneva.

B

RESOLUTION ON THE LAW OF THE SEA ADOPTED BY THE TENTH ISLAMIC CONFERENCE OF FOREIGN MINISTERS

(Palestine and Al Quds Al Sharif session)

The Tenth Islamic Conference of Foreign Ministers, held at Fez, Kingdom of Morocco, from 8 to 12 May 1979 (10-14 Jamad Al Thani 1399H),

Recalling resolution No. 17/8-P of the Eighth Conference of Foreign Ministers of the Islamic Conference and resolution No. 1/9-P of the Ninth Conference regarding the Third United Nations Conference on the Law of the Sea,

Reaffirming the importance it attaches to the Third United Nations Conference on the Law of the Sea,

Believing that the traditional spirit of understanding and co-operation existing among Islamic nations is a fundamental element for the maintenance of Islamic solidarity within the framework of the Third United Nations Conference on the Law of the Sea,

Convinced that the members of the Islamic Conference can make a significant contribution to the development of the law of the sea and the establishment of a more equitable, legal and economic order,

Welcoming the first meeting of the experts on the law of the sea from the member States of the Islamic Conference, which was held at Istanbul from 6 to 9 March 1979,

1. *Expresses* its conviction that the meeting held at Istanbul has demonstrated that consultation and co-operation among the Islamic countries regarding questions of common interest on the law of the sea prove to be very useful;

2. *Takes note of* the report and declaration by the experts on the law of the sea;

3. *Decides* to circulate the report and declaration to the member States in order to help them formulate their policies in the forthcoming sessions of the Third United Nations Conference on the Law of the Sea;

4. *Calls upon* member States to continue their consultation and co-operation before and during the forthcoming sessions of the Third United Nations Conference on the Law of the Sea;

[27] One representative stated that this subject needed further study.

[28] Three representatives reserved the position of their Governments.

[29] Two representatives stated that they would like to study the question further.

5. *Affirms* that the convention on the law of the sea to be finalized by the Third United Nations Conference on the Law of the Sea can be acceptable only if it can accommodate the interests of all the parties concerned and contain provisions which will ensure the exercise of rights and the fulfilment of obligations in good faith.

DOCUMENT A/CONF.62/87

Letter dated 22 August 1979 from the Chairman of the group of Islamic States to the President of the Conference

[*Original: English*]
[*23 August 1979*]

I have the honour to inform you that the group of Islamic States has decided to reiterate its support for the candidature of Malta for the seat of the International Sea-Bed Authority.

I would like to request that this letter be issued as an official document of the Conference.

(*Signed*) N. YOLGA
Chairman of the group
of Islamic States

DOCUMENT A/CONF.62/89

Letter dated 23 August 1979 from the Chairman of the Group of 77 to the President of the Conference

[*Original: English/Spanish*]
[*24 August 1979*]

I have the honour to write to ask you to arrange to have circulated as an official document of the Conference the attached statement which was prepared by the group of legal experts on unilateral legislation concerning mining of the sea-bed, the common heritage of mankind, of the Group of 77 and to which I referred in my capacity as Chairman of the group at the 120th plenary meeting of the Conference, on 24 August 1979.

(*Signed*) M. CARÍAS
Head of the delegation of Honduras
to the Third United Nations Conference
on the Law of the Sea
and Chairman of the Group of 77

STATEMENT BY THE CHAIRMAN OF THE GROUP OF 77

The Group of 77 wishes to reiterate its firm position in assuring respect for the basic principles that govern the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, as well as the exploration and exploitation of its resources for the benefit of mankind as a whole, which shall take particular due regard of the needs and interests of the developing countries.

The Group wishes to emphasize the consistency of its position and the coherence and unity of more than 119 States, expressed in several attitudes and actions undertaken since the adoption of the Declaration of Principles contained in resolution 2749 (XXV) by the General Assembly in 1970, and more recently in the letter prepared by the Group of 77's group of legal experts on unilateral legislation, which was sent to the President of the Conference on 25 April 1979,[30] as well as in the declarations of the States members of the Organization of African Unity (OAU) at the meeting of its Council of Ministers held at Monrovia, Liberia, in July 1979.

Our participation in the Third United Nations Conference on the Law of the Sea, convened in 1970, is a proof of our conviction for the need to develop the above-mentioned principles by the world community as a whole.

Those principles have been the basis for negotiations at the Conference since 1973, and considerable progress has been made in working out the details of the international régime and machinery.

While the Group of 77 has been broadly satisfied with these developments, it has also been perturbed over repeated reports that some industrialized States threaten to enact unilateral mining legislation, to make arrangements for its enforcement either singly or in small groups, and to conclude some form of mini-convention or other similar arrangements which provide for mutual recognition of such claims and their collective enforcement against the upholders of the common heritage of mankind and the universal principles of international law.

Such unilateral legislation and related arrangements are allegedly justified as being of a provisional nature, pending the conclusion and entry into force of the new convention on the Law of the Sea. They may also be supposedly defended on the ground of necessity for ensuring development of research and technology. Above all, it is stated that they are lawful and derive from the freedom of the high seas.

The Group of 77 has examined all these claims. Motivated by the interests of the world community as a whole, respect for international law and its peaceful and progressive development, and an early and successful conclusion of the current negotiations at the Third United Nations Conference on the Law of the Sea, the Group of 77 has rejected these claims.

The views expressed unequivocally in these matters may be summarized as follows:

(1) Neither the Geneva Convention on the High Seas, 1958,[31] nor customary international law deals with or regu-

[30] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XI (United Nations publication, Sales No. E.80.V.6).

[31] United Nations, *Treaty Series*, vol. 450, No. 6465, p. 82.

lates this exploration and exploitation of the resources of the international sea-bed area. These are not covered by the freedoms of the high seas.

(2) The international sea-bed area beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind.

No State shall claim or exercise sovereignty or sovereign rights over any part of the international sea-bed area or its resources, nor shall any State or person, natural or juridical, appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights, nor such appropriation, shall be recognized. All rights in the resources of the area are vested in mankind as a whole. The exploitation of minerals from these resources shall be organized, regulated and controlled by an international machinery, such as the proposed International Sea-Bed Authority.

The above principles are imperative rules of international law, the derogation of which is allowed neither by unilateral legislation nor by restricted treaties. Any unilateral legislation adopted while these negotiations are going on will not only violate the rule of good faith in negotiations but, as I said on 19 March 1979, may also have wider impact on economic co-operation between developing and developed States.

(3) Unilateral mining legislation not only will not be recognized by the international community, but also will entail international responsibility to other States.

In view of the grave consequences which such unilateral mining legislation may entail for the enacting States and their contractors, for the future of the Conference, and for peace, co-operation and orderly economic development of the world community as a whole, the Group of 77 reiterates its request and urges all States to make every effort to bring this Conference to an early and successful conclusion and to the adoption of a Convention which is fair and acceptable to all sections of the world community.

DOCUMENT A/CONF.62/90

Letter dated 22 August 1979 from the Vice-Chairman of the group of coastal States to the President of the Conference

[Original: English/Spanish]
[24 August 1979]

In my capacity as Vice-Chairman of the group of coastal States, I have the honour to transmit to you herewith a declaration by the group and to request that it be circulated as soon as possible as an official Conference document.

(*Signed*) A. CABRERA (Mexico)
Vice-Chairman of the group of coastal States

DECLARATION BY THE GROUP OF COASTAL STATES

The group of coastal States noted with surprise and concern recent media reports that the Government of the United States of America had "ordered its Navy and Air Force to undertake a policy of deliberately sending ships and planes into or over the disputed waters of nations that claim a territorial limit of more than three miles".

In the view of the group of coastal States, such a policy, which in its essentials has been confirmed by officials of the United States Government, is highly regrettable and unacceptable, being contrary to customary international law, whereby a great majority of States exercise full sovereignty in their territorial seas up to a limit of 12 nautical miles, subject to the right of innocent passage. That policy is also inconsistent with the prevailing understanding at the United Nations Conference on the Law of the Sea which has recognized the validity of such a practice.

The group has taken note of the clarification which was later made by officials of the United States Government to the effect that there has been no order to challenge in an aggressive way the claims of other nations. However, the group considers the statement that the régime of high seas commences beyond three miles is clearly an anachronism.

The group has also taken note of the reassurances given by the same official source that the position of the United States of America in the Third United Nations Conference on the Law of the Sea has not changed as well as of the elements which, according to that source, should be combined within the context of an over-all package deal.

The group reaffirms its determination to continue working towards the early adoption of a generally acceptable, comprehensive convention on the law of the sea and, in the meantime, expresses its hope that every State will refrain from undertaking any actions that may adversely affect its relations with other States or the success of the Conference.

DOCUMENT A/CONF.62/91*

Reports to the plenary Conference

[Original: English]
[19 September 1979]

Memorandum by the President

This document contains the reports to the Conference of the Committees, the two groups of legal experts on the settlement of disputes relating to part XI of the revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1) and on final clauses, respectively, and of the Drafting Committee and the informal plenary meeting on the settlement of disputes (part XV of the negotiating text), as well as of negotiating groups 6 and 7, on their work during the resumed eighth session held in New York from 19 July to 24 August 1979.

The Conference had originally decided to effect the second revision of the informal composite negotiating text before the adjournment of the eighth session or immediately thereafter, as on the occasion of the first revision. Time and circumstances did not, however, permit the attainment of this objective and the Conference was unable to proceed beyond receiving the reports contained herein. It must be emphasized that the Conference did not have the time to discuss these results in such a manner as to permit assessment in

* Incorporating document A/CONF.62/91/Corr.1 of 15 October 1979.

conformity with document A/CONF.62/62.[32] As a consequence, the question of their incorporation in a second revision of the negotiating text did not arise, and the Conference therefore decided at its 120th plenary meeting, held on 24 August 1979, merely to record the results of the work accomplished during the resumed eighth session. They are included in this memorandum in order to preserve them in convenient form and thereby facilitate the preparation of the second revision.

The second revision was, by decision of the Conference at its 118th plenary meeting, held on 23 August 1979, deferred to the end of the fourth week of the ninth session following a formal discussion in plenary which will enable delegations to place their positions on record, both in regard to proposed revisions and the entire package, before the preparation and the adoption of the revised negotiating text as a draft convention. Document A/CONF.62/88 sets out the procedure that the Conference will follow in the matter.

CONTENTS

DOCUMENT A/CONF.62/88

Report of the General Committee approved by the Conference at the 118th meeting*

[*Original: English*]
[*24 August 1979*]

1. This memorandum was prepared by the President after consultation with the Chairmen of the three committees and negotiating groups, the Chairmen of the two groups of legal experts, and the Chairman of the Drafting Committee and the Rapporteur-General.

2. It was agreed that all negotiating groups should conclude their work by 17 August, and that the three committees would consider the reports of all the groups dealing with the issues falling within their respective mandates on 20 and 21 August, so as to be ready to make a final report to the Conference in plenary meeting by 22 August, immediately following the meeting of the General Committee. In the meantime, the Conference would also have held an informal plenary meeting to dispose of certain outstanding issues on the settlement of disputes and also to make as much progress as possible in the discussion of the final clauses.

3. It has been repeatedly stressed that the eighth session should be the final negotiating session and that every effort should be made to effect a second revision either by the end of the session, if that is feasible, or as soon after its adjournment as possible, as was done at the end of the first part of the eighth session. This second revision would again be not a negotiated text but a negotiating text.

4. The General Committee is called upon to consider, and to make a recommendation to the plenary meeting on, the most suitable procedure to be followed in regard to this second revision. The first revision was effected in accordance with the decision of the Conference contained in paragraphs 10 and 11 of document A/CONF.62/62. Under that procedure:

> "Any modifications or revisions to be made in the informal composite negotiating text should emerge from the negotiations themselves and should not be introduced on the initiative of any single person, whether it be the President or a Chairman of a Committee, unless presented to the plenary and found, from the widespread and substantial support prevailing in plenary, to offer a substantially improved prospect of a consensus.
>
> "The revision of the informal composite negotiating text should be the collective responsibility of the President and the Chairmen of the committees, acting together as a team headed by the President. The Chairman of the Drafting Committee and the Rapporteur-General should be associated with the team as the former should be fully aware of the considerations that determined any revision and the latter should, *ex officio*, be kept informed of the manner in which the Conference has proceeded at all stages."

5. It will be noted that the opinion of the plenary Conference could not be determined otherwise than by the presidential team. It is for the Conference to decide whether the same procedure adopted on the occasion of the first revision would be appropriate so far as the next revision is concerned. In making its recommendations to the Conference, the General Committee is requested to take into consideration the proposals that will follow in this note in regard to the procedure to be applied to the consideration of the second revision.

[32] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4).

* This report consists of the text of a memorandum prepared by the President and submitted to the General Committee, together with modifications agreed upon in the General Committee. The President read out this amended text in a plenary meeting of the Conference as the report of the General Committee.

6. It would seem to the President that the situation on the occasion of the second informal revision is scarcely different from that which prevailed on the occasion of the first revision. If the Conference were to attempt to determine the contents of the second revision, a protracted debate would be unavoidable, and almost the same degree of agreement would have to be evidenced as would be necessary for the final draft itself.

7. The proposals that follow provide for an examination of the second revision and for negotiated changes to be effected in it at the second stage. It is apparent that the second revision cannot be effected before the closure of this session. The next alternative is that it be effected immediately following the adjournment of the session, as on the previous occasion, so as to be available to all delegations for study in the interval between the adjournment of the eighth session and the opening of the ninth session.

8. The President's consultations with those responsible for the conduct of negotiations lead him to the conclusion that a second revision, of the sort that is contemplated and desired, would be impossible to effect either before the adjournment or immediately after the adjournment of this session. The President suggests that a second revision not be attempted unless there is sufficient material to be incorporated in such a revision. In those circumstances and in order to preserve such results as have been achieved so far, the General Committee might wish to recommend to the Conference that, in place of a second revision at this stage, the only course open to the Conference is to agree to the incorporation in a memorandum of the revised formulations that satisfy the criteria specified in paragraph 10 of document A/CONF.62/62.

Organization of work for the ninth session

9. If the Conference is to conclude a convention during its ninth session, in 1980, it would be essential for it to have a definite time-table divided into separate stages. In the absence of such a programme which the Conference would accept as binding on it, there is a very serious risk of final decisions being deferred in the belief that more time is available. It is in this belief that the Conference must impose this discipline on itself and agree at the expiry of each stage indicated below to proceed to the next stage without modifications that would disrupt the schedule and defeat the declared objective of the Conference.

10. The following time-table is proposed:

First stage

During the first three weeks of the ninth session the work on the final clauses should be completed by the Conference in informal plenary meetings with the assistance of the group of legal experts on final clauses. This is imperative if the final draft of the convention is to be ready at the appropriate time.

During the same period of three weeks, the Chairmen of the three committees, assisted by the Chairmen of the established negotiating groups and the group of legal experts on the settlement of disputes relating to part XI, should conduct the necessary consultations within their respective spheres of competence in order, to the extent possible, to reach compromise solutions on outstanding issues. If these consultations are to be genuinely productive they must involve all delegations.

The Drafting Committee should, during the same period, meet informally to complete its work on informal recommendations that would have to be taken into account in the preparation of the final version of the informal composite negotiating text.

Should an informal intersessional meeting of the Drafting Committee between the eighth and the ninth sessions be considered necessary to expedite the preparation of the final version of the informal composite negotiating text, arrangements and facilities for this purpose would have to be considered.

Second stage

At the beginning of the fourth week, there should be a formal discussion by the Conference in plenary. Such a formal discussion would be necessary to meet the wishes of a very large number of delegations that consider an opportunity should be given to them, before the preparation and the adoption of the revised informal composite negotiating text as a final draft convention, to place on record their position, both in regard to proposed revisions and on the entire package. It is implicit in paragraphs 10 and 11 of document A/CONF.62/62 that the plenary Conference should have an opportunity of discussing the proposed changes in the informal composite negotiating text before revision is effected, to enable the collegium as required in document A/CONF.62/62 to prepare the revision. This is of special importance on the occasion of the second revision as it is to serve, with such changes as are negotiated, as a final draft convention through a decision of the Conference. Every delegation must be entitled to participate in the formal debate but, if the debate is to be concluded within a reasonable period of time and thus allow for the conclusion of the work of the Conference by the end of the ninth session, the Conference would be well advised to set a time-limit, of perhaps 15 minutes, for every speaker, on the understanding that delegations will, if they so wish, be permitted to present written statements whose contents will appear as part of the official records of the Conference, without forfeiting the right to make oral statements as well and which will form part of the summary records.

It is estimated that should 130 delegations participate in this debate, and given the acceptance of the proposed time-limit for each speaker, about 12 plenary meetings of three hours each, with night meetings, would be necessary and the debate could be concluded in one week.

At the end of this period, the President and the Chairmen of the committees, with whom the Chairman of the Drafting Committee and the Rapporteur-General will be associated, will revise the negotiating text in accordance with the procedure prescribed in paragraphs 10 and 11 of document A/CONF.62/62.

Third stage

In the middle of the fifth week, the plenary Conference should meet to decide on altering the status of the revised informal composite negotiating text to that of a final Conference document that would serve as a draft convention. It is recommended that in taking this decision the Conference also decide that all formal proposals which have previously been presented be treated as having lapsed, without prejudice to the right of any State participant to move a fresh amendment similar to or different in substance from the one that has lapsed, when the draft text has been given the status of a formal draft convention. Such a procedure would be perfectly logical, as the entire procedure of preparation of the informal composite negotiating text and of the second revision effected was designed to consider and dispose of the substance of such earlier proposals.

After the decision is taken to give the revised negotiating text the status of a formal Conference document, the Conference will have to decide the question of referring it for examination to the three committees and the plenary, operating as a committee, in the following manner: part XI and annexes II and III to the First Committee; parts I to X and annex I, as well as any additional annex that is found necessary, to the Second Committee; parts XII to XIV to the

Third Committee; parts XV and XVI and annexes IV to VII to the plenary Conference, operating as a committee.

Any delegation that wishes to submit formal amendments should endeavour to do so before the suspension of the session.

At this point, the session should be suspended to enable Governments to study the final draft convention and any amendments submitted.

Final stage

During the first 10 calendar days of the resumed session the committees should examine the draft convention. Any amendments not previously submitted would have to be submitted formally on the first day of this period. During that period of 10 calendar days the Chairmen, with the assistance, as appropriate, of the officers of their Committees, would have to pursue their efforts to facilitate the attainment of general agreement, having regard to the progress made on all matters of substance which are closely related to one another.

By the end of this period a decision on all pending amendments will be taken by the Committees.

The subsequent steps which would be taken during the resumed session could be determined by the Conference on the recommendations of the General Committee on the first day of the resumed session, so that the convention can be adopted before the end of the fifth week of the resumed session, having due regard to the rules of procedure and to the Gentlemen's Agreement appearing as an appendix to the rules of procedure.

DOCUMENT A/CONF.62/L.43

Report of the Chairman of the First Committee on the negotiations in the First Committee

[*Original: English*]
[*29 August 1979*]

1. Negotiations on matters falling within the mandate of the First Committee and consequently in part XI of the revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1), were, during this resumed session, continued in the working group of 21 established at Geneva last spring. In that group very intensive negotiations were followed by what the co-ordinators, including myself as Chairman, consider to be productive consultations on some of the critical questions relating to the hard-core issues.

2. I do not wish to duplicate by a further explanatory note the comprehensive report of the First Committee (A/CONF.62/C.1/L.26), which is annexed to this report. The 46th formal meeting of the First Committee was held on 22 August 1979 to consider it and some delegations placed on record their preliminary comments, both on the report and on the contents of the suggestions contained in document WG 21/2 (see appendix A).

3. I must also report that most delegations refrained from commenting on details because they needed time to study the suggestions. Perhaps more important, most of the delegations considered that it was undesirable to comment prematurely on what clearly represented only some elements of the package that must emanate from the hard-core issues before the First Committee.

4. It would appear, none the less, that it was generally agreed that much valuable work has been done at this resumed session and that consequently the results should be preserved at least for the purpose of providing a satisfactory starting point at the next session of the Conference—which will also be the final phase of our work.

5. All of these are to be found in the summary records of the proceedings before the First Committee.

6. The planning of the final phase, therefore, is the main preoccupation of my comments today. One overriding feature of our negotiations is the truth that a consensus on the outstanding issues before the First Committee must, of imperative necessity, address an important reservoir of mini-packages. The major package itself is not always easy to identify; some delegations often regard it as changing its character with each step made in our negotiations. For convenience, therefore, the major package must be regarded as part XI of the negotiating text as a whole.

7. The mini-packages of which I speak are comparatively easier to identify; but even here, there is hardly total agreement among the opposing sides as to their scope and content. The difficulty would appear to lie, in the first instance, in the variety of perspectives entertained by the two major interest groups, notably the developing and the developed countries. A more complex situation is posed by the perspectives of delegations with interests that cut across this traditional dichotomy. Among the developed countries are the major as well as the minor industrialized countries, both with varying degrees of interests.

8. In the world of developing countries, there are those who, as land-based producers or potential producers of the minerals that are the focus of impending exploitation in the deep sea-bed, must share a community of interests with some developed countries, also producers of the same minerals. Among the industrialized countries, the rate of development in economic and technological terms has been so uneven that our negotiating efforts must address seriously the apprehension of the majority with regard to monopoly threatened by the accelerated technological developments of a significant minority among them. There is also a curious community of interests among a number of countries opposed to discrimination in the award of contracts, even though the immediate motivations may be diverse.

9. The discussion of packages is thus complex and, indeed, delicate, especially because there is a tendency to equate them with the extreme priorities of individual delegations. There is a tendency to talk of "important national interest" in loose terms, without the more desirable approach of attempting to reconcile one's so-called national interests with the many diverse national interests of others within the international community and this Conference.

10. In the final analysis, I believe that the only packages that must preoccupy us in the search for compromise and consensus over part XI of the negotiating text are:

(1) Those which must reconcile the declared realistic interests of the few industrialized countries on the one hand, and, on the other hand, those of the vast majority of mankind represented by predominantly developing countries; and

(2) Those which must reconcile the declared realistic interests of two other opposing categorizations of countries. On the one hand, the family of current producers of the minerals in their national territories we seek to exploit in the area, whose economies depend significantly upon their export to the industrialized countries; on the other hand, the highly industrialized countries whose industrial growths consume these minerals, provide healthy markets for the producer countries and who, with contemplated activities in the area, seek assured access to the new source of these minerals through active participation as producers therein.

11. It can only be hoped that, in this monumental reconciliation effort, all concerned will preserve the collective needs of the young and fragile international community in which we can only survive together or perish like unthinking mortals, who punch each other senselessly into smelting lava from an erupting mountain.

12. One point that must be noted at this stage is that it is impossible to meet all the individual national interests of

each delegation. The scope of the diversity makes this clear. An important feature in successful negotiations is that each side must be seen to gain something, even if losses may be encountered in the process. Each negotiation must relate to a collectivity of interests, making it possible to protect some and to give up others on the basis of reciprocity.

13. At this Conference, we cannot, at this stage, insist on viewing the individual interests of each nation represented here, in isolation from the collectivity. We have all come with a set of interests which are "national"— each with a package, as it were. The negotiations must necessarily be among packages.

14. This question is an important one, because I honestly do not believe that in the programme the Conference has adopted for the next phase of our work it would be desirable for amendments and decisions to be made on the basis of individual articles in isolation from the mini or major package to which it belongs. The Conference must not contemplate, for instance, an amendment to an article in an annex which was worked out and agreed to *ad referendum* subject to agreements elsewhere. It is a package, not an isolated idea that should as a whole be the subject of proposals for amendment. If we do not reach a clear decision on this now, it may raise insurmountable problems when we invoke the final procedures for the adoption of a convention.

15. I shall now attempt to underline what I see as the elements of the outstanding mini-packages which we must together strive to resolve in the next session.

A. The system for activities

16. One broad underlying consideration, which is a type of *jus cogens* for us, is that we are endeavouring to work out an international régime for a limited pioneering period; that the system under current study is the parallel system and that we have all agreed that it falls apart if we do not ensure that both sides of the system work and work efficiently. It became the basis for negotiations only on this understanding. Therefore all sides must endeavour to agree on incorporating fundamental elements which will adequately ensure the effective functioning of the parallel system from the very beginning and throughout the contemplated period of time before the review conference.

17. Broadly speaking, a limited number of areas must be addressed under this heading:

(1) The direct operators now identified are the Authority through the Enterprise in the reserved area and, on the other hand, States parties and other entities in the contract area. Joint arrangements between the Enterprise and other entities in both reserved and non-reserved areas are a possibility which must be examined more closely.

It is essential here that each category of operator be qualified in accordance with the rules and regulations. The real issue is that the Enterprise must be given, through the convention, full capacity to become an effective operator in the area. Technology must be seen to be available to it, and it must be financially strong not only during the critical first five years but beyond.

In annex II, articles 8, 8 *bis* and 10 have attempted to take care of a range of issues: adequacy of prospecting and exploration data, and especially data for acceptance for reservation of mine sites; operations in the reserved area by the Enterprise at the commencement to be guaranteed for at least one fully-integrated project with financial burden carried largely by developed countries and with interest-free loans (considered as equity contribution) and interest-bearing loans in a ratio of 1:1; joint venture provisions for both reserved and contract areas; and some provisions for a system of technology transfer.

I believe that an important issue which must be tackled with seriousness after some reflection is that of adequate assurances of transfer of technology to and the financing of the Enterprise. As I have said, the parallel system will not work unless this is ensured.

(2) The second area within the system relates to an agreed resource policy, especially regarding the critical element of production limitation in article 151. With regard to the latter, the issue is between two needs for assurances: that sea-bed mining industry can commence and develop in an orderly and reasonable manner; and that this new industry does not introduce further chaos into the economics of the mineral industry, particularly with regard to the economies of the land-based producer countries. It is, however, important to observe that there is widespread feeling that the new industry must develop in a way that benefits mankind as a whole. I do not wish to do any more than make this a passing reference to a subject which remains the object of intensive but inconclusive informal negotiations co-ordinated by the Chairman of negotiating group 1, Mr. Njenga, Kenya, actively assisted in continuing consultations by Mr. Nandan of Fiji. It is my hope that armed with further and more appropriate instructions from their Governments, delegations will be better prepared for flexibility and a spirit of mutual accommodation.

(3) The third element in the package remains the agreement on the financial terms of mining contracts. The Chairman of negotiating group 2, Mr. Koh of Singapore, has constantly encouraged different negotiating parties to have a better understanding of the interests and concerns of the other parties; to understand also that each negotiating party has certain irreducible minimum interests that must be accommodated. I wish to endorse and encourage that approach.

18. The issue to be borne in mind remains that with which I commenced. The parallel system of exploration and exploitation was accepted on certain conditions understood by both sides. One of these conditions was the undertaking by developed countries to assure the Enterprise of the funds required to carry out one fully-integrated mining project. It must, on the other hand, be noted that the proposals made by the Chairman of negotiating group 2 on the financing of the Enterprise, as well as those on the financial terms of mining contracts, are linked.

19. Two years ago, when we embarked on the job of seeking to regulate a new industry, the problem seemed intractable. Our assumptions and estimates about capital requirements, operating costs and revenues are, at best, uncertain. Comparisons with land-based mining have offered us only limited help. We had to seek for a solution which has necessarily to be flexible to take into account the uncertainties of actual financial outcomes and, at the same time, generate an adequate and stable income for the Authority for the purpose of carrying out its functions and obligations. The proposed financial terms of contracts are intended to achieve these objectives of stability and flexibility.

20. The problems outstanding, as I have said, must remain a mini-package in itself. That package must be viewed as an integrated whole. Negotiating parties must resist the temptation to accept only those parts of the package which favour them and demand further negotiations on other parts of the package. All negotiating parties must endeavour to weigh the pluses and minuses of the package, and answer whether, taken as a whole, they can live with it. It is undesirable to cause Mr. Koh to enter into an unending pursuit of new figures and new provisions in a manner that gives the erroneous impression that the negotiations are being held between him and the opposing sides.

B. Institutional problems

21. The composition of the Council, its voting procedure and the relationship between the Council and the Assembly in terms of their respective powers and functions, constitute yet another mini-package. Each element may not appear linked with the other to a non-participant in the negotiating effort, but it must be recognized that from a political standpoint they are very closely linked. I shall attempt a brief survey of the broad aspects:

(1) The issue of the composition of the Council involves two aspects. The first is the categorization of special interests as contained in article 161, paragraph 1. This aspect has in principle been resolved with regard to general characteristics. Suggestions so far made relate to the enlargement of the scope of each. In the fourth category, reserved for developing countries, for instance, the plea for adding the interests of potential, land-based producers, island States etc. is a matter of detail which the Group of 77 should be able to resolve. Other suggestions, including the addition of the interests of countries with migrant workers, can be considered within the existing framework. The second relates to the numbers for each categorization. The provisions contained in the revised negotiating text were the product of intense negotiations and enjoy some consensus. However, it must be recalled that the suggestions of a group of less industrialized among the developed countries for some increase in the chances of their representation may, if accepted generally, lead to inevitable change in the size of the Council and consequently in a renegotiation of the numbers of the two major categorizations, i.e. the interest groups in article 161, paragraphs 1 (*a*)-(*d*) and that represented by paragraph 1 (*e*). A spirit of understanding on all sides should resolve this question at the next session.

(2) For convenience, we may wish to consider the relationship between the Assembly and the Council. This element has a number of considerations which are also linked. The first consideration relates to the powers and functions of the Authority itself. The developing countries insisted that these shall be specified but that implied powers and functions are recognized under international law. The industrialized countries have argued that these should be the sum total of those of all given to the organs and no more. The new text proposes a new approach which grants incidental powers consistent with the provisions of the convention, implicit in and necessary for the performance of these powers and functions. This appears to invite consensus, although, it must be remembered, it remains part of a package. Regarding the powers and functions of the principal organs, the central focus was the implications of the phenomenal "supreme" organ. The developing countries feel that the Assembly, looked at as the organ in which all States parties are members, must have a superior policy role over other principal organs; other organs, including the Council, must account to it; residual powers must be conferred upon it in addition to discussions on any question on part XI of the negotiating text. The developed countries prefer the Assembly as a deliberative or plenary organ, which must not be "supreme"; it may make general policies on the recommendations of the Council; that there should be strict separation of powers and non-interference. The new suggested amendments of article 162 may well provide a satisfactory compromise.

(3) The last element relates to the problem of a specific relationship between the discussions of the Council and its subsidiary organ. The report of the working group of 21 explains in sufficient detail the solution which appears to have emerged from consultations.

The results of negotiations on these considerations have, I believe, enhanced the chances of the package to which they belong.

C. The decision-making procedure in the Council

22. The report of the working group of 21 is adequately explanatory on this question. I continue to believe that this issue is a critical one. The developing countries have done their best to try to accommodate the industrialized countries in this field. As a result, negotiations are continuing in a far healthier atmosphere than ever before.

23. I can only state that this is perhaps the last thorny issue not yet resolved. The elements of resolution may well be with us and no one dares to show too much enthusiasm before a break-through is found to the actual decision-making system. As the report of the working group of 21 indicates, some matters of principle still underlie the questions of figures. I do not believe that the negotiations will let this issue hold back an over-all attainment of consensus on the entire package.

24. That is the guidance I wish to provide for the next phase of our work in the First Committee, as far as the core issues are concerned. I must state that there remains a wild field of less difficult but all-important negotiations regarding part XI of the negotiating text. We must continue with our present speed and determination if we are to conclude our work. Some of these issues will indeed be taken last of all, and may be resolved by the normal procedures of the Conference. Environmental questions have been raised after consultations and they would, as usual, appear to present no difficulties. As you know, they remain an informal paper in the working group of 21.

D. Settlement of disputes

25. I must refer briefly to the treatment of questions relating to the settlement of disputes touching upon part XI of the negotiating text as well as other parts of the document. My consultations convinced me that the First Committee must first conclude substantial work on those aspects under review by the group of legal experts under Mr. Wuensche, of the German Democratic Republic, before any co-ordination may be done with the plenary exercise. As you must know, most of the participants in these questions in that group are also involved with the efforts in plenary. They will best advise our co-ordinating efforts on financing, perhaps sometime early during the next session.

E. Report on manpower requirements of the Authority and related training needs

26. The special representative of the United Nations Secretary-General presented a preliminary report to the First Committee on 22 August 1979. It has been released as document A/CONF.62/82. We did not have time to receive comments on it but there was a general feeling of gratitude for its preparation. I expressed, and once again express, great satisfaction for the continuing work of the Secretary-General. I wish to add that in view of the details which he must provide in his final report, I believe that the Conference will wish to have the matter brought formally before the General Assembly of the United Nations because of some of the financial implications involved. In fact, it is my impression that the delegations agree to this being done.

27. Finally, I wish to register on behalf of the officers of the First Committee my sincere thanks to all who have made our work such a continuing success. Special thanks, in the first place, for the distinguished men who helped co-ordinate the working group of 21; Mr. Njenga, Mr. Koh, and Mr. Wuensche. They, in turn, have presented a list of others who have helped them in their work, including Mr. Nandan and Mr. Brennan of Australia. The team of experts from the United Nations Secretariat, as well as the various delegations, were incredibly helpful. I wish to thank the special representative of the Secretary-General for the characteristically excellent co-operation of his team.

28. We all look forward to the last phase of this Conference and to a viable convention that will instil the conditions of peace into international relations among nations.

ANNEX

DOCUMENT A/CONF.62/C.1/L.26

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

[*Original: English*]
[*21 August 1979*]

At this resumed session, the working group of 21 continued its work in the form of meetings and consultations. It was chaired over-all by the Chairman of the First Committee, who also co-ordinated the negotiations on the Assembly and the Council. Mr. Njenga co-ordinated the negotiations on the system of exploration and exploitation. Mr. Koh co-ordinated the negotiations on financial arrangements, Mr. Wuensche acted as co-ordinator but held separate meetings of the group of legal experts, the results of which were reported to the working group of 21. The suggestions resulting from consultations held by the Chairman and the co-ordinators of the working group of 21 are given in document WG21/2 (appendix A). The report of Mr. Wuensche is incorporated in this report as appendix B.

The working group of 21 considered the hard-core issues in the following order: first, the Assembly and the Council: composition of the Council, decision-making system and interrelationship between the Council and the Assembly; secondly, financial arrangements; and thirdly, the system of exploration and exploitation.

I. The Assembly and the Council

The working group of 21 addressed the issues under this heading, bearing in mind the need to assemble a mini-package consisting of the interrelationship of the principal organs of the Authority, mainly regarding the scope of the powers and functions of the Assembly and the Council, and the decision-making system in the Council.

Document WG21/2 contains suggestions which were made during consultations held by the Chairman and co-ordinators following negotiations. Those relating to the Assembly and Council were chosen because it is the impression of the Chairman, in co-ordinating the negotiations, that they had been the basis for intense negotiations. Some of the suggestions were accepted on an *ad referendum* basis. Others, notably the ideas on the decision-making system, did not enjoy complete consensus, especially as the number of members required for a blocking majority remains unsettled and reservations have been expressed by some representatives regarding the list of subjects requiring a special voting régime.

The suggestions, all part of a "package", do not assume more than the role of providing indication as to the trends of negotiations. It is only the reaction of the membership of the First Committee that will dictate the capacity of any ideas to enter into the second revision of the negotiating text.

1. *Interrelationship*

The suggestions attempt to resolve the existing issues relating to the concept of the supremacy of the Assembly, which appeared to present difficulty to the industrialized countries. They also seek to clarify the scope of exercise of the powers and functions of each organ.

First, the suggested revision of article 160 states that the Assembly shall be considered the supreme organ of the Authority. The sources of its supremacy lie in its membership consisting of all the members of the Authority, in its accountability for the other principal organs of the Authority, in its "incidental powers" as defined in article 157 and its residual powers as referred to in new paragraph 2 (*o*) of article 160.

Secondly, the relationship of powers and functions of the principal organs of the Authority is defined in article 158, paragraph 4, which makes it explicit that each organ, in exercising its powers and functions, shall avoid taking any action which may derogate from or impede the exercise of specific powers and functions conferred upon another organ. Paragraph 2 (*o*) of article 160 gives the Assembly power to discuss and decide upon any question within the competence of the Authority, and to decide which organ shall deal with any question not specifically entrusted to a particular organ. The revised paragraph 2(*r*) of article 162 gives the Council power to make recommendations to the Assembly concerning policies on any question within the competence of the Authority.

A related issue is that of the interrelationship of the Council and its subsidiary organ, the Legal and Technical Commission. Paragraph 2 (*j*) of article 162 of the revised negotiating text provides that the Council shall act expeditiously in its approval of formal, written plans of work following the review of the Commission. It then provides that such plan of work shall be deemed to have been approved unless a decision to disapprove it is taken within 60 days upon its submission by the Commission. It is this latter provision that has proved to be a highly contested issue, the opponents considering that it erodes the supremacy of the Council over its subsidiary organ.

The suggested article 162, paragraph 2 (*j*) seeks to accomodate this serious preoccupation. It restricts the operation of such automatic approval system only to a plan of work which is not contested by a competing application. It also prescribes that a plan may be deemed to have been approved unless a proposal for its approval or disapproval has been voted upon within 60 days.

On an *ad referendum* basis, it would appear that these suggestions attract consensus.

2. *The decision-making system in the Council*

This has been perhaps the most difficult issue to tackle in the absence of a resolution of other issues in the mini-package. The clause of the revised negotiating text, stipulating that all decisions on questions of substance are to be taken by a three-fourths majority of members present and voting, clearly does not enjoy a consensus. It appears to be generally accepted now that no traditional veto system as known in the United Nations system is acceptable. There has also been widespread rejection of the concept of "chamber" voting, in which identified interest categorization could block a decision.

Consequently, some attempt has been made to identify special or sensitive issues over which the industrialized countries need special protection. The list of these was, however, not forthcoming. It was thought expedient to review issues over which no special régime or procedure of voting was acceptable.

The suggestions relating to article 161 reflect this new approach. It contains three new points. First, the decisions on questions of procedure shall be taken by a majority of the members present and voting. Secondly, certain questions of substance which are enumerated in subparagraph (*b*) shall be taken by a two-thirds majority of the members present and voting provided that such majority includes a majority of the members of the Council. Thirdly, decisions on all other questions of substance shall be taken by a two-thirds majority of members present and voting, provided a specific number of members, still to be settled, has not cast negative votes. When the issue arises as to whether the question is covered by this subparagraph or not, the questions shall be treated as so covered unless otherwise decided by the Council by the majority required for questions under the paragraph.

The acceptance of this system itself will depend on a satisfactory resolution of two main questions. The crucial one is that of the blocking figure under subparagraph (*c*). As the suggestions indicate, that figure is somewhere between 5 and 10, both of which are clearly unacceptable as basis for consensus. The other, perhaps to a lesser extent, relates to the list of issues contained in subparagraph (*b*).

It is generally felt that the system, as stated, is not to be considered as a basis of a viable consensus until these issues are satisfactorily resolved. Consequently, it would appear inadvisable to consider the inclusion of these latter suggestions in any further revision of the negotiating text before that event. However, it is also clear that the system must be kept in view as an idea which may lead to a consensus, if the revised negotiating text continues to present difficulties.

II. Financial arrangements

Annex III: Financing the Enterprise

The Chairman of negotiating group 2 began his report by explaining the revisions which he proposed to annex III, the statute of the Enterprise.

The first revision proposed is to article 3. Mauritius pointed out that there is a need to make a cross-reference between article 3 and article 10 in order to make explicit the fact that article 3 is subject to article 10. The Chairman accepted this point and proposed the addition of the words "subject to article 10, paragraph 3, below". Since

this revision is only by way of clarification, it should not be controversial.

The second revision proposed is to article 10. Following a suggestion by India, he reformulated article 10, paragraph 2 (*c*) as a new paragraph 3. The Chairman deleted the words "to the extent that such funds are not covered by the other funds referred to in paragraph 1".

The new paragraph 3 contains the following salient points:

First, the Enterprise is assured of the funds necessary to carry out one fully-integrated mining project. An integrated mining project would enable the Enterprise to process up to four metals, namely, cobalt, copper, manganese, and nickel. The Enterprise has the discretion to decide whether to utilize these funds by investing them in one project of its own, or to invest them in joint ventures. During the consultations, the Chairman raised the question whether the amount of the funds should be specified. He asked this question because many Governments would like to know the extent of their obligations. Members of the Group of 77 were, however, against specifying an amount. They pointed out that estimates of the capital required to carry out one fully-integrated project varied greatly. The original estimates by the Massachussets Institute of Technology, based upon a three-metal case, and upon 1976 prices, were $560 million. The new estimates, based upon 1979 prices, suggest an amount of $750 million. Other estimates, however, based upon a four-metal case, are much higher and suggest a total amount exceeding $1 billion. The Chairman suggested specifying the amount of $1 billion, together with an escalating factor to take care of inflation. Members of the Group of 77 could not accept his proposal because they feared cost overruns would not be taken care of by the escalating factor. For these reasons, therefore, he left the amount unspecified. The amount would be determined by the Assembly, upon the recommendation of the Council, on the advice of the Governing Board of the Enterprise.

The next salient point is the ratio between the interest-free loans from States parties and the guaranteed interest-bearing loans. In dealing with this question, an analogy was often made with the debt-equity ratio of a company. The interest-free loans are compared with the equity capital of a company. The interest-bearing loans are compared with the debt capital of a company. Some delegates objected to this analogy on the ground that the shareholders of a company expect to earn dividends on their equity, whereas the lenders of the interest-free loans to the Enterprise would not receive any dividends. One answer to this criticism is that lenders of the interest-free loans to the Enterprise also expect to earn dividends by way of sharing the profits made by the Enterprise which will be distributed to States parties by the Authority. In his consideration of this question, the Chairman found the analogy with the debt-equity ratio a helpful one.

The members of the Group of 77 contend that the ratio of the interest-free loans to the guaranteed interest-bearing loans should be 1:1. Industrialized market-economy countries contend that the ratio should be 1:2. The Chairman has asked the United Nations Centre on Transnational Corporations to undertake a survey of the debt-equity ratios of mining companies in the industrialized market-economy countries. The results of the survey are contained in a document which is attached to this report as annex A. The table shows support for both a debt-equity ratio of 1:1 and a debt-equity ratio of 2:1. In view of this and in view of the fact that the Enterprise will be a new institution with no assets and no track record, he thought a ratio of interest-free loans to guaranteed interest-bearing loans of 1:1 would be justifiable.

The third salient point is the scale which will determine the contributions by States parties of interest-free loans as well as their guarantees of the debts of the Enterprise in raising the remaining half of the capital required. The Chairman of negotiating group 2 considered various possibilities, but came to the conclusion that the best scale to use is the scale referred to in article 160, paragraph 2 (*e*), which is based upon the United Nations scale. Several representatives of the Group of 77 pointed out, during consultations, that since the Enterprise belongs to all, no State Party should be exempted from making a contribution to the Enterprise. They also said that the contributions by States parties should reflect their varying capacities to help and that the most widely acceptable scale for doing this is the United Nations scale.

The fourth salient point concerns the repayment of the interest-free loans to States parties. The Chairman proposed that the repayment of interest-bearing loans shall have the priority over the repayment of interest-free loans. He also proposed that, upon the recommendation of the Council, on the advice of the Governing Board of the Enterprise, the Assembly shall adopt a schedule for the repayment of the interest-free loans to the States parties.

Annex II: Financial terms of contracts

Turning to article 12 of annex II of the revised negotiating text, the Chairman proposed a number of changes to this article, and attempted to explain the more important of these proposals. In paragraph 1, the Group of 77 has proposed the addition of a subparagraph (*f*) which would state the general principle that the financial terms of sea-bed mining should be comparable to the financial terms of land-based mining. The evil which the Group of 77 wishes to avoid is that investment would be artificially diverted from land-based mining to sea-bed mining if the financial terms of sea-bed mining were unduly favourable compared to those of land-based mining. As a result of consultations the Chairman proposed a new subparagraph (*f*) which he hoped would be generally acceptable.

The mixed system

The Chairman then turned to the mixed system of financial payments contained in article 12, paragraph 6. The Group of 77 did not like the proposal but could accept it. The industrialized countries said, however, that they could not accept the proposal. They had several complaints. The first complaint was that the production charge should be based upon the attributable gross proceeds and not on the gross proceeds. Secondly, the said that the production charge rates of 2 per cent in the first period and 5 per cent in the second period were too high. The best offer they were willing to make was 1 per cent in the first period and 2 per cent in the second period. Their third complaint was against the proposal that the attributable net proceeds should be equal to 35 per cent of the contractor's net proceeds. They said that the figure of 35 per cent was arbitrary and that it should be replaced by the ratio of the development costs of the mining sector to the contractor's total development costs. Fourthly, they complained that the trigger mechanism of recovery of twice the development costs was an inadequate method of reflecting the opportunity cost of capital invested in the project. Fifthly, they complained that the tax rates of 45 per cent in the first period and 65 per cent in the second period were too high. The best offer they were willing to make was for 25 per cent in the first period and 50 per cent in the second period. Finally, they complained that the tax system was inflexible in that it did not vary with the contractor's return on investment. It was regressive in that the Authority's relative share was larger when the contractor's return on investment was low and smaller when his return was high.

Proposal by Norway

In order to bridge the considerable gap existing between the Group of 77 and the industrialized market-economy countries, the representative of Norway, Mr. Evensen, made a very interesting proposal. A copy of his proposal is attached as annex B. Briefly, the production charge rates would be 2 per cent in the first period and 4 per cent in the second period; the attributable net proceeds would be 20 per cent in the first period and 40 per cent in the second period; the trigger mechanism would be the same as in paragraph 6 (*e*); and the tax rates would be 40 per cent in the first period and 75 per cent in the second period. In the Chairman's view, Mr. Evensen's proposal was a considerable improvement on his own proposal as contained in the revised negotiating text. Unfortunately, Mr. Evensen's proposal was not acceptable either to the group of 77 or to the industrialized market-economy countries.

New proposal on the mixed system

As a result of the intensive consultations and negotiations which took place at this resumed session of the Conference, the Chairman proposed a new package on the mixed system of financial payments which he hoped would be acceptable to both the Group of 77 and the industrialized market-economy countries.

Production charge

The Chairman had retained the idea that the production charge should be based upon the market value of the processed metals, or the Contractor's gross proceeds, rather than on the attributable gross proceeds. For the first period, he did not propose to change the rate, which remains at 2 per cent. For the second period, he proposed a reduction from 5 per cent to 4 per cent. During the consultations, some members of the Group of 77 indicated their willingness

to accept a production charge rate of 4 per cent for the second period.

The Chairman knows that the production charge rate of 4 per cent, based upon the market value of the processed metals, can be a heavy burden for the Contractor, even in the second period, if in a particular year the Contractor's project is doing badly. This is a legitimate concern and in order to take care of the concern he proposed a new safeguard. The safeguard is that if, in any financial year, the contractor's return on investment is less than 15 per cent, he shall pay a production charge of 2 per cent instead of 4 per cent. Return on investment is arrived at by dividing the attributable net proceeds by the development costs of the mining sector. The Chairman hopes that with this additional safeguard, the production charges of 2 per cent and 4 per cent, based upon the market value of the processed metals, will be acceptable to both the Group of 77 and the industrialized market-economy countries.

The attributable net proceeds

Perhaps the most difficult issue in the negotiations is the question how to determine the Authority's tax base if the Contractor's project is partially or fully integrated. In the revised negotiating text, the Chairman proposed a predetermined constant ratio of 35 per cent. This was not acceptable to the industrialized market-economy countries who complained that any predetermined constant ratio was arbitrary. They insisted that the most objective and logical method of determining the attributable net proceeds was to use the ratio of the development costs in the mining sector to the Contractor's total development costs.

In order to assist delegates in negotiating this difficult issue, negotiating group 2 prepared a paper. This paper is attached as annex C. The paper identifies four methods of determining the attributable net proceeds. First, the predetermined constant ratio method; second, the cost-ratio method; third, the net-back method; and fourth, the cost-plus method. Each of the four methods has its advantages and disadvantages.

The major disadvantage of the predetermined constant ratio method is that the ratio is derived from certain assumptions and the actual financial outcome may not conform to these assumptions. The actual ratio may turn out to be higher or lower than the predetermined constant ratio. If higher, the Authority's tax base, calculated by this method, is lower. If the actual ratio is lower, the tax base of the national taxing Authority is lower and the contractor's tax burden may be higher.

The cost-ratio method assigns the value of the nodules, if any, to the mining and the processing sectors proportionately to the development costs of the two sectors. A major disadvantage of the cost-ratio method is that it may vary from project to project, and thus the Authority has a less stable tax base compared with the predetermined constant ratio method.

The Chairman of negotiating group 2 was unable to convince the industrialized market-economy countries to use the net-back method or the cost-plus method. The intensive negotiations on this issue have resulted in the combination of the cost-ratio method and the predetermined constant ratio method. The latter will act as a floor above which the attributable net proceeds will be determined by the cost ratio. The Chairman suggested a floor of 25 per cent for a fully integrated three-metal project. In all other cases, including four metal projects producing nickel, copper, cobalt and manganese, he proposed that the Authority may, by regulations, prescribe appropriate floors which will bear the same relationship to each case as does the 25 per cent floor to the three-metal case.

The tax system

In order to assist representatives in the negotiations on the tax system and tax rates, negotiating group 2 prepared a paper entitled: "An alternative scheme of taxation: variable incidence". This paper is attached as annex D and deals with the trigger mechanism as contained in paragraph 6 (*e*) and with the relative merits of single rate and variable rate tax systems.

The paper suggests that, from the points of view of both the Authority and the contractor, a trigger mechanism whereby development costs are recovered with an interest rate on the unrecovered part of the development costs would be preferable to the proposal of twice the recovery of development costs. The reason is that it is possible for a project to achieve a more than adequate over-all return on investment before 200 per cent of development costs are recovered. In such an event, the contractor would continue to pay production charge and tax rates of the first period. This would consequently reduce the income to the Authority. For this reason, the Chairman reformulated the trigger mechanism. Under his new proposal, the first period would come to an end when the contractor recovered his development costs with interest at 10 per cent on that portion of his development costs not recovered by his cash surplus. Cash surplus means the contractor's gross proceeds, less his operating costs, less his payments to the Authority. This is the same as the contractor's net proceeds plus his annual recovery of development costs, as stated in paragraph 6 (*j*) of his new text, less his payments to the Authority.

The paper also demonstrates that from the points of view of both the Authority and the contractor, a flexible tax system based upon an incremental scale would be preferable to a single-rate system. Under a single tax rate the Authority would not be able to capture additional revenues during the years when the profits were high. For various reasons, the Chairman therefore proposed a change in the tax system to a flexible one using the contractor's return on investment. He proposed three incremental steps. The first would be when the contractor's return on investment was greater than 0 per cent but less than 10 per cent. That part of the attributable net proceeds falling within that increment would be taxed at 35 per cent in the first period and 40 per cent in the second period. The second step would be when the contractor's return on investment was 10 per cent or greater, but less than 20 per cent. That part of the attributable net proceeds falling within that increment would be taxed at 42.5 per cent in the first period and 50 per cent in the second period. The third step would be when the contractor's return on investment was 20 per cent or greater, when the applicable tax rates would be 50 per cent in the first period and 70 per cent in the second period.

The single system

One of the fundamental principles of our negotiations is that the single system and the mixed system must be equalized. The Chairman used the contractor's internal rates of return to equalize the two systems. Because of the changes he proposed to the mixed system, it would be necessary to propose some changes to the single system. He suggested reducing the production charge in the first period from 8 per cent to 5 per cent, and from 13.5 per cent to 12 per cent in the second period.

Monetizing the proposals

The single system and the mixed system contained in his new proposal would produce different amounts of income for the Authority and different internal rates of return for the contractor depending upon the technical and economic outcomes of sea-bed mining projects. It is nevertheless useful to examine payments to the Authority and the contractor's internal rates of return under several sets of possible circumstances.

The calculations which follow (annex E) are based upon a version of the Massachusetts Institute of Technology model of a vertically integrated sea-bed mining operation. These figures permit the comparison of the Authority's income and the contractor's internal rates of return, but they assume a mining operation financed with 100 per cent equity which pays United States taxes after sharing with the Authority, and which has a 25-year period of commercial production and not 20 years. For these reasons, the figures are not directly comparable with those reported in document NG2/12/Rev.1.[33] The internal rates of return would be higher by about one to three percentage points in the different cases if national taxes were not levied. The internal rates of return would also differ if debt-equity ratio was 1:1.

Case C is the original Massachusetts Institute of Technology baseline set of assumptions. Case A represents a low-profit situation with higher costs and lower ore grade (development costs and operating costs are increased by 25 per cent, research and development costs are increased to $150 million, and ore grade is reduced to 2.4 per cent). Case B is the same as case A but with metal prices increasing 1 per cent per year. Case D increases metal prices to near-current levels and the original Massachusetts Institute of Technology baseline costs. Case E is the same as case D except that the original Massachusetts Institute of Technology baseline development and operating costs are increased by 25 per cent and prices are allowed to increase by 2.5 per cent per year. Case F is the same as case E but with the original MIT baseline cost estimates.

[33] *Ibid.*, vol. XI (United Nations publication, Sales No. E.80.V.6), document A/CONF.62/C.1/L.22, annex III.

Table 1 in annex E shows payments to the Authority under the mixed system which are from about $260 million to about $2 billion as the contractor's internal rates of return range from about 6 per cent to 24 per cent. In the baseline case, payments to the Authority are $574 million. Under the single system, payments range from about $527 million to about $1.3 billion with payments in the baseline case equal to $599 million. The contractor's internal rates of return range from about 5 per cent to 25 per cent.

Case E represents the situation in which the original baseline price and cost estimates are revised to reflect more current values, and metal prices are allowed to increase 2.5 per cent per year. Some observers believe this case to be more realistic. Payments to the Authority in case E would be $1,792 million under the mixed system and $1,312 million under the single system.

Table 2 in annex E compares three proposals, namely my new proposal, the proposal contained in the revised negotiating text and the proposal by the United States.

ANNEX A

DEBT-EQUITY RATIOS OF MINING COMPANIES

	1958	1963	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977
Australia												
BHP	—	—	20/80	22/78	20/80	19/81	23/77	20/80	17/83	22/78	25/75	17/83
Western M	—	—	—	—	31/69	19/81	13/87	16/84	23/77	41/59	41/59	36/64
Canada												
Alcan	58/42	58/42	45/55	45/55	47/53	46/54	47/53	44/56	45/55	47/53	40/60	34/66
Falconbridge	4/96	1/99	1/99	1/99	1/99	50/50	56/44	50/50	47/53	45/55	41/59	43/57
Inco	—	—	16/84	16/84	21/79	30/70	28/72	25/75	28/72	29/71	35/65	35/65
Noranda	18/82	5/95	40/60	32/68	35/65	42/58	42/58	37/63	36/64	43/57	46/54	44/56
Sherrit G	—	—	26/74	26/74	21/79	14/86	32/68	32/68	25/75	22/78	19/81	34/66
France												
Imetal	—	—	—	—	—	—	—	—	—	18/82	17/83	16/84
Pechiney	—	—	32/68	25/75	35/65	—	46/54	46/54	45/55	50/50	54/46	54/46
Germany, Federal Republic of												
Metallgesell.	—	—	52/48	57/43	57/43	62/38	59/41	58/42	53/47	56/44	55/45	52/48
Preussag	—	—	—	—	—	—	—	63/37	56/44	56/44	53/47	59/41
Japan												
Mitsubishi	—	—	44/56	41/59	48/52	55/45	61/39	60/38	62/36	71/29	77/23	78/22
Mitsui	—	—	50/50	57/43	59/41	58/42	62/38	62/38	63/37	62/38	67/33	70/30
Nippon H	—	—	63/37	61/39	67/33	64/36	70/30	72/28	72/28	76/24	76/24	76/24
Sumitomo	—	—	44/56	49/51	47/53	55/45	65/35	61/39	61/39	67/33	73/27	73/27
South Africa												
Anglo	—	5/95	4/96	11/89	11/89	11/89	15/85	12/88	11/89	12/88	11/89	16/84
Sweden												
Boliden	—	—	33/67	28/72	46/54	51/49	52/48	53/47	53/47	62/38	67/33	70/30
Switzerland												
Alusuisse	—	—	29/71	38/62	38/62	44/56	50/50	45/55	50/50	56/44	53/47	52/48
United Kingdom												
Goldfields	7/93	28/72	33/67	42/58	38/62	34/66	30/70	30/70	29/71	22/78	24/76	27/73
RTZ	16/84	28/72	40/60	39/61	46/54	56/44	52/48	46/54	44/56	46/54	48/52	48/52
Selection T	—	—	—	—	—	—	7/93	19/81	33/67	39/61	41/59	31/69
United States												
Amax	6/94	20/80	28/72	25/75	28/72	36/64	39/61	34/66	29/71	28/72	29/71	29/71
Asarco	—	11/89	5/95	4/96	3/97	5/95	7/93	11/89	12/88	28/72	32/68	33/67
Anaconda	10/90	9/91	20/80	21/79	24/76	32/68	22/78	19/81	18/82	22/78	27/73	27/73
Alcoa	40/60	32/68	38/62	39/61	41/59	43/57	40/60	39/61	38/62	44/56	41/59	39/61
Bethlehem	9/91	7/93	16/84	18/72	23/77	22/78	23/77	23/77	21/79	25/75	28/72	35/65
Hanna M.	—	—	17/83	14/86	11/89	11/89	11/89	12/88	16/84	9/91	7/93	10/90
Kaiser	60/40	48/52	50/50	45/55	44/56	48/52	48/52	48/52	49/51	47/53	46/54	43/57
Kennecott	1/99	1/99	19/81	15/85	13/87	21/79	18/82	14/86	14/86	22/78	28/72	27/73
Newmont	—	—	—	11/89	19/81	30/70	31/69	28/72	25/75	28/72	31/69	34/66
Phelps D.	—	—	5/95	14/86	12/88	19/81	20/80	26/74	27/73	37/63	39/61	37/63
Reynolds	53/47	44/56	56/44	55/45	53/47	56/44	58/42	57/43	55/45	51/49	50/50	46/54
St. Joe	24/76	16/84	9/91	8/92	7/93	6/94	16/84	18/82	11/89	9/91	9/91	13/87
Texasgulf	—	—	30/70	26/74	26/74	33/67	34/66	28/72	21/79	28/72	26/74	33/67
Union C.	35/65	28/72	35/65	34/66	34/66	33/67	32/68	31/69	26/74	32/68	34/66	32/68
US Steel	14/86	19/81	32/68	29/71	29/71	29/71	30/70	27/73	23/77	24/76	28/72	31/69

ANNEX B

PROPOSAL BY NORWAY ON ANNEX II, ARTICLE 12, PARAGRAPH 6

6. If a contractor chooses to make his financial contribution to the Authority by paying a combination of a production charge and a share of net proceeds, such payments shall be determined as follows:

(*a*) The production charge shall be fixed at a percentage of the market value of the processed metals produced from the nodules extracted from the contract area in accordance with the following schedule:

(i) First period of commerical production: 2 per cent

(ii) Second period of commercial production: 4 per cent

(*b*) The said market value shall be the product of the quantity of the processed metals and the average price for those metals during the relevant accounting year. The average price shall be determined in accordance with paragraphs 7 and 8.

(*c*) The Authority's share of net proceeds shall be taken out of an amount equal to 20 per cent of the contractor's net proceeds for the first period of commercial production and 40 per cent for the second period of commercial production to represent the net proceeds attributable to mining of the resources of the contract area. This amount shall be referred to hereinafter as the attributable net proceeds.

(*d*) The Authority's share of attributable net proceeds shall be determined in accordance with the following schedule:

(i) First period of commercial production: 40 per cent

(ii) Second period of commercial production: 75 per cent

This latter percentage shall not be applicable if the net profit of the mining of the resources in an area is less than 10 per cent.[34]

(*e*) The first period of commercial production referred to in subparagraphs (*a*) and (*d*) shall commence in the first year of commercial production and terminate in the year in which the contractor's total net proceeds plus his recovery of development costs less his payments to the Authority in the form of share of attributable net proceeds in the preceding accounting years are equal to twice the development costs incurred prior to the commencement of commercial production. The second period of commercial production referred to in subparagraphs (*a*) and (*d*) shall commence in the following accounting year and continue until the end of the contract.

ANNEX C

DETERMINATION OF THE TAX BASE FOR THE AUTHORITY

1. In the absence of a competitive market for nodules, the net proceeds of an integrated operation would need to be divided between the mining sector and the processing sector. This note deals with:

(i) The methods of determining the net proceeds of the mining sector, i.e., the Authority's tax base;

(ii) The implications of these methods.

2. Annual gross proceeds from the sale of metals processed from the nodules mined from the area are, in the accounting sense,

= Operating costs in the processing sector
+ Annual recovery of development costs in the processing sector
+ Return on development costs in the processing sector
+ Operating costs in the mining sector
+ Annual recovery of development costs in the mining sector
+ Return on development costs in the mining sector
+ "x" (a positive or negative amount reflecting other market factors).

As is evident from this schematic presentation, net proceeds of the integrate operation will be the sum of return on development costs in the processing sector and in the mining sector, and "x". The tax base of the Authority is return on development costs in the mining sector + "x", or the portion thereof assigned to the mining sector.

Of the accounting items above, gross proceeds, operating costs in the processing sector, recovery of development costs in the processing sector, operating costs in the mining sector, and recovery of development costs in the mining sector are directly ascertainable. Return on development costs in the processing sector and in the mining sector and "x" are not directly ascertainable and depend for their values on judgement. Hence, the problem of assignment of net proceeds to each of the two sectors arises.

3. There are several methods to deal with the problem, four of which are described below:

(*a*) Predetermined constant ratio;

(*b*) Ratio of development costs in the mining sector to total development costs;

(*c*) Net-back;

(*d*) Cost-plus.

4. Predetermined constant ratio

Tax base

= Predetermined constant ratio multiplied by total net proceeds.

Total net proceeds

= Gross proceeds
− Operating costs in the processing sector
− Annual recovery of development costs in the processing sector
− Operating costs in the mining sector
− Annual recovery of development costs in the mining sector
= Return on development costs in the processing sector
+ Return on development costs in the mining sector
+ "x"

The predetermined constant ratio is a negotiated figure aimed at assigning as great a portion of "x" as feasible to the mining sector, consistent with a reasonable return on development costs in order to ensure a fair value to the nodules. The value "x" is calculated on the basis of specific financial outcome.

(i) This method places a value on the nodules.

(ii) The Authority is assured of a stable tax base. This is one of the three factors accounting for the stability of the Authority's income. The other two factors are the actual financial outcome and the tax rate.

(iii) Risk-sharing by the mining sector is predetermined, as it is based on the estimated financial outcome. Actual financial outcome may not conform to the assumptions. The actual ratio may turn out to be higher or lower than the predetermined constant ratio. If higher, the Authority's tax base, as calculated above, is lower. If lower, the tax base of the national taxing authority is lower, and the contractor's tax burden may be higher.

5. The ratio of development costs in the mining sector to total development costs

$$\text{Tax base} = \text{Ratio of } \frac{\text{Development costs in the mining sector}}{\text{Development costs in the processing sector and in the mining sector}} \times \text{Total net proceeds}$$

The ratio is applied to total net proceeds to obtain the net proceeds in the mining sector. "x" is assigned to both sectors according to this ratio.

(i) Under this method the value of the nodules is assigned to both sectors proportionately.

(ii) Development costs in each sector earn the same rate of return, and hence this method does not favour investments in either the mining sector or the processing sector.

(iii) Risk is shared proportionately by both the sectors. Risk borne is based on actual outcomes, not estimates.

(iv) The ratio may vary from project to project and, thus, the Authority has a less stable tax base compared with the first method.

(v) According to the Massachusetts Institute of Technology baseline case and the European base case, the ratio will be lower than in annex II, article 12 of the revised negotiating text.

6. Net-back

Tax base

= Gross proceeds
− Operating costs in the processing sector
− Agreed return on development costs in the processing sector
− Annual recovery of development costs in the processing sector
− Operating costs in the mining sector

[34] The 40 per cent tax (on 40 per cent of attributable net proceeds) would apply. An alternative would be a formulation whereby in the second period a 40 per cent tax should always apply to the first 10 per cent of the profit and 75 per cent to additional profits. My proposal referred to the first solution, not the alternative.

– Annual recovery of development costs in the mining sector

= Return on development costs in the mining sector

+ "x"

Under this method, "x" is assigned to the mining sector.

(i) As the payments in the processing sector are assured, changes in gross proceeds affect the mining sector only. The risk resulting from changes in gross proceeds is borne by the mining sector. Consequently, net proceeds in the mining sector are subject to fluctuations in gross proceeds. The tax base of the Authority is the least stable.

(ii) Depending on the agreed rate of return on development costs in the processing sector, the tax base may be the highest in good years and the lowest in bad years, compared with other methods.

(iii) The impact on the investment decisions in the processing sector is minimal.

7. Cost-plus

Tax base

= Agreed return on development costs in the mining sector

Gross proceeds

– Operating costs in the processing sector

– Recovery of development costs in the processing sector

– Operating costs in the mining sector

– Recovery of development costs in the mining sector

– Agreed return on development costs in the mining sector

= Return on development costs in the processing sector

+ "x"

"x" is assigned to the processing sector. This is the converse of the net-back method.

(i) As the payments in the mining sector are assured, changes in gross proceeds affect the processing sector only. The risk resulting from changes in gross proceeds is borne by the processing sector. The mining sector bears no risk and net proceeds in the mining sector do not vary with gross proceeds.

(ii) The Authority has a stability of tax base compared with other approaches.

(iii) The impact on the investment decisions in the mining sector is minimal.

ANNEX D

An alternative scheme of taxation: variable incidence

1. In order to ensure that the Authority's share of the net proceeds will be maximized throughout the life of the project, the system of taxation should respond to the financial outcome of sea-bed mining; that is, a system in which the incidence of taxation (or tax burden) will rise or fall with corresponding changes in annual net proceeds. The system should provide that the contractor's share of the net proceeds is not less than the "opportunity" cost of the capital he would tie up in sea-bed mining in order that he does not select another investment as preferable. At the same time, the system should limit the contractor's net proceeds to no more than would otherwise be needed to attract his investment, so that the Authority's share is maximized.

2. The uncertainty of the financial outcome of sea-bed mining and the likely difficulty in implementing changes in the financial terms of the contract, which might be desirable in light of any re-evaluation of the project, complicate any effort to arrive at a single correct tax rate. This tax rate, if it could be devised, would achieve the dual objectives of maximizing the Authority's share of the net proceeds and of encouraging investments in sea-bed mining at a level of return to the contractor no higher than necessary to undertake the investment. Yet there is a great risk that a single tax rate would be either too low, in which case the Authority's share of net proceeds would fall below what it could obtain and still attract investment, or too high, and thus discourage investment in sea-bed mining. It is likely that in view of the uncertain financial outcome of sea-bed mining, a rate of taxation appropriate to a low financial outcome would be chosen to safeguard the viability of investment in case such an outcome results. In the event that the outcome was more favourable, under the single low rate chosen, the Authority's share of income would be adversely affected.

3. Under a single tax rate, the Authority also runs the risk of failing to capture additional revenue from more profitable operations. For example, with a single tax rate system, if there were two mining operators, one whose net proceeds were low and the other whose net proceeds were high, both would pay at the same rate to the Authority. Yet the Authority could impose a high tax rate on the contractor whose net proceeds were higher without discouraging him from investing in the area.

4. The "trigger" clause under the mixed system of financial arrangements (A/CONF.62/WP.10/Rev.1, annex II, art. 12, para. 6 (*e*)) addresses this issue from the perspective of protecting the contractor from a higher tax incidence if his returns are low. But its impact on the Authority's share is uncertain because the timing of the increase from the low to the high rate could materially alter the financial outcome of the project. As such, the Authority's share might be less than it needs to be. Moreover, it is possible for a project to achieve a more-than-adequate over-all return before 200 per cent of development costs are recovered—a situation in which the Authority's share would continue needlessly to be taken at a low rate. If recovery of 200 per cent of development costs occurs late in a project's life, however, the over-all return to the contractor may be unacceptably low even to withstand higher sharing rates. From the perspective of either party, therefore, this mechanism can be improved. Of course, any such "trigger" clause fails to respond to annual changes in profitability.

5. An effective way of dealing with the uncertain financial outcome of sea-bed mining, while at the same time achieving the objectives of maximizing the Authority's share of net proceeds and of ensuring investment in the area, is to devise a system of taxation which will respond to annual changes in net proceeds of any one operation as well as to different annual levels of net proceeds among individual contractors. Such a system would ensure that when annual net proceeds were high, the tax burden would be higher than when annual net proceeds were low. It would also ensure that, in any one year, contractors whose net proceeds were higher than other contractors would contribute relatively more to the Authority's share of net proceeds.

6. The rate of tax which determines the Authority's share of net proceeds will be subject to the constraint of maintaining incentives to invest in the area by ensuring that the return to the contractor is not less than the "opportunity" cost of his money. This objective will be achieved if the tax payments to the Authority are structured so that, when the contractor's over-all profitability is low, these payments result in a small reduction in the profitability of the project, whereas when the over-all profitability of the project is high, these payments substantially reduce its profitability. The effective level of taxation will thus vary with the over-all level of profitability.

7. Since the over-all profitability of the project can be evaluated only in the context of the whole financial history of the project, some care needs to be taken in determining rates of incidence and their timing. This can be achieved by the use of two complementary mechanisms: first, by having two schedules for sharing net proceeds, one to apply before over-all project profitability approaches a threshold level, and the other, higher schedule to apply subsequently; secondly, by having both rate schedules vary with annual profitability. The first mechanism would help to ensure that higher sharing rates would apply to a project when it had achieved an acceptable threshold internal rate of return. The second mechanism of variable rates would ensure that annual payments would apply progressively with annual returns.

8. The over-all economic status of a project is best measured by the extent to which its capital is recovered, taking into account its "opportunity cost", or the rate of return forgone by capital tied up in the project. This will be achieved by signalling the second higher sharing schedule to come into effect once the project's cash flow is sufficient to recover the development costs with a minimum required rate of interest.

9. In both cases, payments to the Authority will be maximized. In the first case, before the recovery of the cost of development, the Authority's share will increase as net proceeds increase. Where different contractors' net proceeds vary, they will be taxed in accordance with their ability to pay. Contractors whose net proceeds are higher than those of other countries will pay more in both proportional and absolute terms.

10. After the costs of tied-up capital are recovered, higher rates will apply. The reason for higher rates is that having recovered his tied-up capital with interest, the contractor's risk project is minimized. As such, the contractor's share of net proceeds could be less than it was before recovery of development costs. Thus, this

part of the financial arrangements would not have a negative impact on his investment planning. Moreover, after capital recovery, the contractor would have received the internal rate of return, equal to the interest rate used. Subsequent additions to that internal rate of return, though a significant and necessary element in the over-all profitability of the project, are less critical once the risk of a return less than the interest rate has been reduced.

11. The incidence of tax would apply to the contractor's net proceeds arising from the exploitation of resources in the area. The appropriate rate of incidence would depend on the success of his undertaking and would be calculated annually. A measure which is likely to reflect the success of the investment is a ratio of the contractor's "cash surplus" to his development costs. While net proceeds alone are a more frequently used and a more direct measure of profitability, their use in evaluating the outcome of sea-bed mining is limited, at least in the initial stages, because of the uncertainties of development costs, and other capital requirements. Hence, there is a need to use a measure related to development costs.

ANNEX E

TABLE 1. MONETIZATION OF THE PROPOSED TAX SYSTEMS

	Mixed system			*Single system*	
Case	*Payments ($ millions)*	*Internal rates of return (percentage)*	*First year of second period (year)*	*Payments ($ millions)*	*Internal rates of return (percentage)*
A	258	6.1	—	527	5.1
B	429	8.5	20	638	7.9
C	574	13.8	8	599	13.9
D	1 015	19.5	5	807	20.1
E	1 792	20.2	6	1 312	20.9
F	1 964	23.9	5	1 312	25.0

TABLE 2. COMPARATIVE TABLE FOR THE AUTHORITY'S INCOME AND CONTRACTOR'S INTERNAL RATES OF RETURN UNDER THE MIXED SYSTEM

	Document WG21/2		*Informal composite negotiating text*		*United States proposal August 1979*	
Case	*Authority's income ($ millions)*	*Contractor's internal rates of return (percentage)*	*Authority's income ($ millions)*	*Contractor's internal rates of return (percentage)*	*Authority's income ($ millions)*	*Contractor's internal rates of return (percentage)*
A	258	6.1	455	5.7	141	6.5
B	429	8.5	745	7.9	203	8.9
C	574	13.8	882	13.2	372	14.5
D	1 015	19.5	1 464	18.6	641	20.4
E	1 792	20.2	2 484	19.4	1 103	21.0
F	1 964	23.9	2 696	23.0	1 185	25.0

III. SYSTEM OF EXPLORATION AND EXPLOITATION

The Chairman of negotiating group 1 on the system of exploration and exploitation still considers that definitive answers to the questions of who will exploit the area and how the area will be exploited are to be found not very far from the solutions he previously proposed in formulae now incorporated in the revised negotiating text. Indeed, although in the new proposal now submitted, some amendments have been introduced and some new provisions added, the essential characteristics of the system have been kept unchanged. These amendments and additions refer to very specific points and either improve the draft without altering the substance or develop some ideas that were summarily mentioned in the text.

All the amended provisions but one belong to annex II. The exception is article 140 of the convention on the principle of the benefit of mankind into which it was decided to insert a reference to General Assembly resolution 1514 (XV) and other General Assembly resolutions relevant to the question of peoples who have not attained full independence or other self-governing status. This inclusion was proposed by the delegation of Qatar on behalf of the Arab group towards the end of the first part of this session. The proposal has been endorsed by the Group of 77. It is believed that this addition to article 140 reflects the wishes of the overwhelming majority of the group of 21. It must be added that, in the opinion of some representatives, the question of implementation of this provision is a problematic one and will require careful scrutiny at the next stage of the negotiations.

Concerning the provisions of annex II, at the beginning of the deliberations at this resumed session it was proposed to this group, and accepted, that the discussions be confined to the following issues:

(1) (*a*) Training of personnel (art. 2, para. 1 (*b*));

(*b*) Right of the Authority to close a particular sector of the area (art. 2, para. 1 (*d*));

(2) Scope of the undertaking by the applicant concerning transfer of technology which he is not entitled to transfer and which is not available on the open market (art. 5, para. 2);

(3) Procedure in case of failure of negotiations concerning terms and conditions of transfer of technology (art. 5, para. 2);

(4) Transfer of processing technology (art. 5, para. 3);

(5) Anti-monopoly clause (arts. 6 and 7);

(6) Priority given to the Enterprise when competing with other applicants for contracts (art. 7, para. 4);

(7) Undertaking by the applicant concerning transfer of data necessary to assess value of the sites (art. 8);

(8) Joint arrangements (art. 10);

(9) Applicability of annex II to the activities conducted by the Enterprise (art. 11);

(10) Scope of undertaking by contractor to transfer data to the Authority (art. 13);

As a result of the discussions and of the informal consultations changes were introduced in articles 1 to 4, 6, 8 and 10 and 13 of annex II.

The new draft of article 1 on title to minerals is a drafting change and seems to be more general without affecting its substance. It also makes it clear that title would also pass to the Enterprise as well as to the prospector with respect to the samples collected, in accordance with the relevant provisions. In article 2, paragraph 1 (*b*), it was decided to replace the reference of the training of personnel nominated by the Authority by a reference to articles 143 and 144 which deal respectively with marine scientific research and transfer

of technology. Article 2 of annex II, dealing with prospecting, is not the right place to set forth the obligations related to training of personnel. What is necessary is to indicate the scope of the obligations of the prospector with respect to training, which is dealt with in articles 143 and 144. It was not necessary to establish a separate or new obligation in this provision but it would be sufficient to provide for the co-operation of the prospector in the training programmes so that the personnel of the Authority and the developing countries would be able to acquire prospecting skills.

Since the nature of prospecting activities is such that it is unlikely to have such major effects as to cause irreparable harm to the marine environment or interfere seriously with other uses of the area, the Chairman of negotiating group 1 decided to delete the provision in paragraph 1 (*d*) of the same article. The protection of the marine environment as well as the accommodation of different activities in the area are matters which have been taken care of in other provisions of the convention dealing particularly with operations of exploration and exploitation which are likely to have a greater impact on the environment.

In article 3, two new paragraphs were added, namely paragraphs 1 and 2. These new paragraphs deal with the presentation of plans of work by the Enterprise or other entities. The addition of these provisions was necessary as a general introduction to the other provisions of the same article since they refer to the first steps in a sequence developed in the other paragraphs of article 3 and in the following articles. Paragraph 2 states clearly and categorically that the Enterprise may apply for a plan of work in respect of any part of the area, either reserved or non-reserved. In light of this change, the saving clause in article 8, paragraph 4, of the annex is no longer necessary. The amendment in paragraph 4 (*c*) of the same article was made to delimit the scope of the exclusive right conferred on the operator.

Also for the sake of clarification, the word "qualification" was added before "standards" in article 4, paragraph 1. The amendment in paragraph 4 of the same article is a consequence of the addition made in paragraph 1. Paragraphs 2 and 3 are new and deal with the question of sponsorship of applicants by States parties, a question that until now was mentioned briefly in the text without providing any detail. In these two paragraphs general rules are set forth on sponsorship of national and multinational entities and on responsibility of the sponsors. It is hoped that these new additions will command general acceptance since they fill a lacuna in the existing text. However, it should be pointed out that some delegations have serious reservations about the need to have such provisions at all.

Article 6, paragraph 3, on the procedures to be followed by the Authority after receiving the proposed plan of work, has been amended to clarify its meaning. No other changes have been made to this article.

In article 8, relating to the reservation of sites, some amendments were introduced in order to ensure that the Authority would obtain all the data necessary to make the right decision on the selection of the reserved site. There is a new sentence, according to which the Authority may request an independent expert to assess whether the applicant submitted all data required. It has been considered convenient to separate into two different articles the provisions of article 8 in the revised negotiating text. The existing and new provisions dealing with the conditions under which activities in reserved sites will be carried out are grouped in a new article (art. 8 *bis*). Paragraphs 1 and 4 of this new article are to clarify the process according to which the Enterprise shall decide whether it will carry out activities in the reserved site and the extent to which developing countries may have access to the reserved sites if the Enterprise decides not to exploit the sites itself or in joint ventures with such countries. The new paragraph 2 deals with the conclusion of contracts by the Enterprise for the execution of parts of its activities, as well as entry into joint ventures with other entities on a voluntary basis. The matters dealt with in the new paragraphs 2, 3 and 4 are quite complex and in many respects delicate, and consequently further discussions on these matters may be required.

In article 10, the introduction of the words "when the parties so agree" in paragraph 1 has been made in order to stress the voluntary character of joint arrangements between the contractor and the Authority. Paragraph 3 is a new one and establishes the obligation of the partners of the Enterprise in joint ventures in reserved sites to pay the financial contributions required by article 12 to the extent of their share, subject to financial incentives as provided for in article 12.

The new wording of article 13, paragraph 3, appears in document WG21/2. The amendments introduced in this provision are meant to make more precise the responsibilities of the Authority and the Enterprise concerning the disclosure of proprietary data.

Unfortunately, the group could not deal extensively with other important matters still pending, the consideration of which would have required more time and additional negotiations. One of these matters is the problem of transfer of technology. Although during the last two sessions of the Conference tremendous progress was made in this field, some delegations consider that the present text, in particular article 5 of annex II, does not provide a totally satisfactory solution to the problem and that we have to work out such provisions in order to make the undertaking of the contractors more specific and mandatory. However, no one gave any concrete proposals on these matters and, therefore, detailed discussions on the issues could not be conducted.

It is hoped that the next session of the Conference will provide the opportunity to make a last attempt to find a solution on this matter acceptable to all sectors concerned.

With regard to the anti-monopoly clause, the delegation of France submitted to the group a proposal suggesting a new wording for article 6, paragraphs 3 and 4, and article 7, paragraphs 2 and 3. This proposal and an explanatory note are contained in document WG21/Informal Paper 3, of 10 August 1979. Since the proposal deals in part with a technical subject which is extremely complex, there was not sufficient time to examine it and discuss it thoroughly. Another opportunity will be provided to take up this matter in the future.

The question of the moratorium in case of failure of the review conference to reach an agreement within five years was not considered by the group during the resumed session. Since this is a very important problem and also because of the polarization of the positions of the delegations on this issue, it was proposed to the group to leave this matter to be treated either in a forum broader than the group of 21 or in any case at a later stage after other, less intractable issues have been dealt with.

APPENDIX A

Suggestions resulting from consultations held by the Chairman and co-ordinators of the working group of 21*

A. System of exploration and exploitation

Article 140. Benefit of mankind

1. Activities in the Area shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of the developing countries and peoples who have not attained full independence or other self-governing status recognized by the United Nations in accordance with General Assembly resolution 1514 (XV) and other relevant General Assembly resolution as specifically provided for in this Part of the present Convention.

Annex II

Article 1. Title to minerals

1. Title to minerals shall pass upon recovery in accordance with the present Convention.

Article 2. Prospecting

1. (*a*) The Authority shall encourage the conduct of prospecting in the Area.

(*b*) Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector shall comply with the present Convention and the relevant rules and regulations of the Authority concerning protection of the marine environment, co-operation in training programmes according to articles 143 and 144 and accepts verification by the Authority of compliance. The proposed prospector shall, together with the undertaking, notify the Authority of the broad area or areas in which prospecting is to take place.

(*c*) Prospecting may be carried out by more than one prospector in the same area or areas simultaneously.

(*d*) [*Deleted*]

2. Prospecting shall not confer any preferential, proprietary, exclusive or any other rights on the prospector with respect to the

* Document WG21/2.

resources. A prospector shall, however, be entitled to recover a reasonable amount of resources of the Area to be used for sampling.

Article 3. Exploration and exploitation

1. The Enterprise, States Parties, and the other entities referred to in article 153, paragraph 2 (*b*), may apply to the Authority for approval of plans of work covering exploration and exploitation of resources of the Area.

2. The Enterprise may apply with respect to any part of the Area, but applications by others with respect to reserved areas are subject to the additional requirements of article 8.

(Formerly para. 1) 3. Exploration and exploitation shall be carried out only in areas specified in plans of work referred to in article 153, paragraph 3, and approved by the Authority in accordance with the provisions of this annex and the relevant rules, regulations and procedures of the Authority.

(Formerly para. 2) 4. Every plan of work approved by the Authority shall:

(*a*) Be in strict conformity with the present Convention and the rules and regulations of the Authority;

(*b*) Ensure control by the Authority of activities in the Area in accordance with article 153, paragraph 4;

(*c*) Confer on the operator exclusive rights for the exploration and exploitation of the specified categories of resources in the area covered by the plan of work in accordance with the rules and regulations of the Authority. If the applicant presents a plan of work for one of the two stages only, the plan of work may confer exclusive rights with respect to such a stage.

(Formerly para. 3) 5. Except for plans of work proposed by the Enterprise, each plan of work shall take the form of a contract to be signed by the Authority and the operator or operators upon approval of the plan of work by the Authority.

Article 4. Qualifications of applicants

1. Applicants, other than the Enterprise, shall be qualified if they have the nationality or control and sponsorship required by article 153, paragraph 2 (*b*), and if they follow the procedures and meet the qualification standards established by the Authority by means of rules, regulations and procedures.

2. Sponsorship by the State Party of which the applicant is a national shall be sufficient unless the applicant has more than one nationality, as in the case of a partnership or consortium of entities from several States, in which event all States Parties involved shall sponsor the application, or unless the applicant is effectively controlled by another State Party or its nationals, in which event both States Parties shall sponsor the application.

3. The sponsoring State or States shall, pursuant to article 139, have the responsibility to ensure, within their legal systems, that a contractor so sponsored shall carry out activities in the Area in conformity with its obligations under the present Convention and the terms of its contract. A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has enacted legislation and provided for administrative procedures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction.

(Formerly para. 2) 4. Except as provided in paragraph 6, such qualification standards shall relate to the financial and technical capabilities of the applicant and his performance under previous contracts with the Authority.

(Formerly para. 3) 5. The procedures for assessing the qualifications of States Parties which are applicants shall take into account their character as States.

(Formerly para. 4) 6. The qualification standards shall require that every applicant, without exception, shall, as part of his application, undertake:

(*a*) To accept as enforceable and comply with the applicable obligations created by the provisions of Part XI, rules and regulations of the Authority, decisions of the organs of the Authority, and terms of his contracts with the Authority;

(*b*) To accept control by the Authority of activities in the Area, as authorized by the present Convention;

(*c*) To provide the Authority with a written assurance that his obligations under the contract will be fulfilled in good faith;

(*d*) To comply with the provisions on the transfer of technology set forth in article 5 of the present annex.

Article 6. Approval of plans of work submitted by applicants

1. Six months after the entry into force of the present Convention, and thereafter each fourth month, the Authority shall take up for consideration proposed plans of work.

2. When considering an application for a contract with respect to exploration and exploitation, the Authority shall first ascertain whether:

(*a*) The applicant has complied with the procedures established for applications in accordance with article 4 of the present annex and has given the Authority the commitments and assurances required by that article. In cases of non-compliance with these procedures or of absence of any of the commitments and assurances referred to, the applicant shall be given 45 days to remedy such defects;

(*b*) The applicant possesses the requisite qualifications pursuant to article 4.

3. All proposed plans of work shall be dealt with in the order in which they were received, and the Authority shall conduct, as necessary and as expeditiously as possible, an inquiry into their compliance with the terms of the present Convention and the rules, regulations, and procedures of the Authority, including the operational requirements, the financial contributions and the undertakings concerning the transfer of technology. As soon as the issues under investigation have been settled, the Authority shall approve such plans of work, provided that they conform to the uniform and non-discriminatory requirements established by the rules, regulations, and procedures of the Authority, unless:

(*a*) Part or all of the proposed area is included in a previously approved plan of work or a previously submitted proposed plan of work which has not yet been finally acted on by the Authority;

(*b*) Part or all of the proposed area is disapproved by the Authority pursuant to article 162, paragraph 2 (*w*);

(*c*) Selection among applications received during that period of time is necessary because approval of all plans of work proposed during that period would be contrary to the production limitation set forth in article 151, paragraph 2, or to the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided for in article 151, paragraph 1;

(*d*) The proposed plan of work has been submitted or sponsored by a State Party which has already had approved:

(*i*) Three plans of work for exploration and exploitation of sites not reserved pursuant to article 8 of the present annex within a circular area of 400,000 square kilometres which is centred upon a point selected by the applicant within the requested additional site;

(*ii*) Plans of work for exploration and exploitation of sites not reserved pursuant to article 8 which in aggregate size constitute 3 per cent of the total sea-bed Area which is not reserved pursuant to that article or otherwise withdrawn by the Authority from eligibility for exploitation pursuant to article 162, paragraph 2 (*w*).

4. For the purpose of the standard act set forth in paragraph 3 (*d*) above, a plan of work proposed by a consortium shall be counted on a *pro rata* basis among the States Parties whose nationals compose the consortium. The Authority may approve plans of work covered by paragraph 3 (*d*) if it determines that such approval would not permit a State Party or persons sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the Area.

Article 8. Reservation of sites

Each application, other than those proposed by the Enterprise or by any others for reserved sites, shall cover a total area, which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations. The proposed operator shall indicate the co-ordinates dividing the area into two parts of equal estimated commercial value and submit all the data obtained by him with respect to both parts of the area. Within 45 days of receiving such data the Authority shall designate the part which is to be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing countries. This designation may be deferred for a further period of 45 days if the Authority requests an independent expert to assess whether all data required by this article has been submitted to the Authority. The area designated shall become a reserved area as soon

as the plan of work for the non-reserved area is approved and the contract is signed.

Article 8 bis. *Activities in reserved sites*

1. The Enterprise shall be given an opportunity to decide whether it intends to carry out activities in each reserved site. This decision may be taken at any time, unless a notification pursuant to paragraph 4 is received by the Authority, in which event the Enterprise shall take its decision within a reasonable time. The Enterprise may decide to exploit such sites in joint ventures with the interested State or entity.

2. The Enterprise may conclude contracts for the execution of part of its activities in accordance with article 11 of annex III. It may also enter into joint ventures for the conduct of such activities with any willing entities which are eligible to carry out activities in the Area pursuant to article 153, paragraph 2 (*b*). When considering such joint ventures, the Enterprise shall offer to States Parties which are developing countries and their nationals the opportunity of effective participation.

3. The Authority may prescribe, in the rules, regulations, and procedures of the Authority, procedural and substantive requirements with respect to such contracts and joint ventures.

4. Any State Party which is a developing country or any national entity sponsored by it which is a qualified applicant or any group of the foregoing, may notify the Authority that it wishes to apply for a plan of work pursuant to article 6 of the present annex with respect to a reserved site. The plan of work shall be considered if the Enterprise decides, pursuant to paragraph 1 above, that it does not intend to carry out activities in that site.

Article 10. Joint arrangements

1. Contracts for the exploration and exploitation of the resources of the Area may provide for joint arrangements, when the parties so agree, between the Contractor and the Authority through the Enterprise, in the form of joint ventures, production sharing or service contracts, as well as any other form of joint arrangement for the exploration or exploitation of the resources of the Area.

2. Contractors entering into such joint arrangements with the Enterprise may receive financial incentives as provided for in the financial arrangements established in article 12 of the present annex.

3. Joint venture partners of the Enterprise in the reserved sites shall be liable for the payments required by article 12 of the present annex to the extent of their joint venture share, subject to financial incentives as provided for in article 12.

Article 13. Transfer of data

1. The operator shall transfer in accordance with the rules and regulations and the terms and conditions of the plan of work to the Authority, at time intervals determined by the Authority, all data which are both necessary and relevant to the effective implementation of the powers and functions of the principal organs of the Authority in respect of the area covered by the plan of work.

2. Transferred data in respect of the area covered by the plan of work, deemed to be proprietary, may only be used for the purposes set forth in this article. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment and safety shall not be deemed to be proprietary.

3. Data transferred to the Authority by prospectors, applicants for contracts for exploration and exploitation, and contractors deemed to be proprietary shall not be disclosed by the Authority to the Enterprise or outside of the Authority. Such data transferred by such persons to the Enterprise shall not be disclosed by the Enterprise to the Authority or outside of the Authority. The responsibilities set forth in article 168, paragraph 2, are equally applicable to the staff of the Enterprise.

B. Financial arrangements

1. Financial terms of contract

Annex II

Article 12

1. In adopting rules, regulations and procedures concerning the financial terms of a contract between the Authority and the entities referred to in article 153, paragraph 2 (*b*), in accordance with the provisions of Part XI of the present Convention, and in negotiating the financial terms of a contract in accordance with the provisions of Part XI and those rules, regulations and procedures, the Authority shall be guided by the following objectives:

(*a*) To ensure optimum revenues for the Authority from the proceeds of commercial exploitation;

(*b*) To attract investments and technology to the exploration and exploitation of the Area;

(*c*) To ensure equality of financial treatment and comparable financial obligations on the part of all States and other entities which obtain contracts;

(*d*) To provide incentives on a uniform and non-discriminatory basis for contractors to undertake joint arrangements with the Enterprise and developing countries or their nationals, to stimulate the transfer of technology thereto, and to train the personnel of the Authority and of developing countries;

(*e*) To enable the Enterprise to engage in sea-bed mining effectively at the same time as the entities referred to in article 153, paragraph 2 (*b*);

(*f*) To ensure that the financial incentives provided to contractors under paragraph 14 of this article, or under the terms of contracts reviewed in accordance with article 18, or under the provisions of article 10 with respect to joint ventures, shall not result in subsidizing contractors with a view to placing them at an artificial competitive advantage relative to land-based miners.

2. A fee shall be levied for the administrative cost of processing an application for a contract of exploration and exploitation and shall be fixed at an amount of $500,000 per application. If the cost incurred by the Authority in processing an application is less than $500,000, the Authority shall refund the difference to the applicant. The amount of the fee shall be reviewed from time to time by the Council in order to ensure that it covers the administrative cost of processing such an application.

3. A Contractor shall pay an annual fixed fee of $1 million from the date of entry into force of the contract. From the commencement of commercial production, the Contractor shall pay either the production charge or the annual fixed fee, whichever is greater.

4. Within a month from the date of commencement of the commercial production, in conformity with paragraph 3, a Contractor shall choose to make his financial contribution to the Authority by either:

(*a*) Paying a production charge only, hereinafter referred to as the single system; or

(*b*) Paying a combination of a production charge and a share of net proceeds, hereinafter referred to as the mixed system.

5. (*a*) If a Contractor chooses to make his financial contribution to the Authority by paying a production charge only, it shall be fixed at a percentage of the market value of the processed metals produced from the nodules extracted from the contract area in accordance with the following shedule:

(i) Years 1-10 of commercial production:	5 per cent
(ii) Years 11-20 of commercial production:	12 per cent

(*b*) The said market value shall be the product of the quantity of the processed metals produced from the nodules extracted from the contract area and the average price for those metals during the relevant accounting year, as defined in paragraph 7 below.

6. If a Contractor chooses to make his financial contribution to the Authority by paying a combination of a production charge and a share of net proceeds, such payments shall be determined as follows:

(*a*) The production charge shall be fixed at a percentage of the market value of the processed metals produced from the nodules extracted from the contract area in accordance with the following schedule:

(i) First period of commercial production:	2 per cent
(ii) Second period of commercial production:	4 per cent

If, in the second period of commercial production, as defined in subparagraph (*d*), the return on investment in any accounting year, as defined in subparagraph (*n*) below, shall fall below 15 per cent, the production charge shall be 2 per cent instead of 4 per cent in that accounting year.

(*b*) The said market value shall be the product of the quantity of the processed metals produced from the nodules extracted from the contract area and the average price for those metals during the relevant accounting year as defined in paragraph 7 below.

(*c*) (i) The Authority's share of net proceeds shall be taken out of that portion of the Contractor's net proceeds which is attributable to the mining of the resources of the contract area, referred to hereinafter as attributable net proceeds.

(ii) The Authority's share of attributable net proceeds shall be determined in accordance with the following incremental schedule:

Return on investment	*First period of commercial production*	*Second period of commercial production*
Greater than 0 per cent, but less than 10 per cent	35 per cent	40 per cent
Equal to or greater than 10 per cent, but less than 20 per cent	42.5 per cent	50 per cent
Equal to or greater than 20 per cent	50 per cent	70 per cent

(*d*) The first period of commercial production referred to in subparagraphs (*a*) and (*c*) above shall commence in the first accounting year of commercial production and terminate in the accounting year in which the Contractor's cash surplus, that is, his total gross proceeds less his operating costs, less his payments to the Authority in the form of shares of attributable net proceeds, in the preceding accounting years shall exceed for the first time the Contractor's development costs with interests at 10 per cent on that portion of his development costs not recovered by his cash surplus. The second period of commercial production referred to in subparagraphs (*a*) and (*c*) above shall commence at the conclusion of the first period and continue until the end of the contract.

(*e*) The amount of attributable net proceeds shall be the product of the Contractor's net proceeds and the ratio of the development costs in the mining sector to the Contractor's development costs. In the event that the Contractor engages in mining, transportation of nodules and production primarily of three processed metals, namely, cobalt, copper and nickel, the amount of attributable net proceeds shall not be less than 25 per cent of the Contractor's net proceeds. In all other cases, including those where the Contractor engages in mining, transportation of nodules, and production primarily of four processed metals, namely, cobalt, copper, manganese and nickel, the Authority may, by regulations, prescribe appropriate floors which shall bear the same relationship to each case as the 25 per cent floor does to the three-metal case.

(*f*) The term "Contractor's net proceeds" shall mean the Contractor's gross proceeds less his operating costs and the recovery of his development costs as set out in subparagraph (*j*) below.

(*g*) (i) In the event that the Contractor engages in mining, transportation of nodules and production primarily of three processed metals, namely, cobalt, copper and nickel, the term "Contractor's gross proceeds" shall mean the gross revenues from the sale of the processed metals, and any other monies deemed to be reasonably attributable to the operation of the contract in accordance with the financial rules, regulations and procedures of the Authority.

(ii) In the event that the Contractor engages in mining only, the term "Contractor's gross proceeds" shall mean the gross revenues from the sale of the nodules, and any other monies deemed to be reasonably attributable to the operation of the contract in accordance with the financial rules, regulations and procedures of the Authority.

(iii) In all cases other than those specified in subparagraphs (i) and (ii) above, the term "Contractor's gross proceeds" shall mean the gross revenues from the sale of the semi-processed metals from the nodules extracted from the contract area, and any other monies deemed reasonably attributable to the operation of the contract in accordance with the financial rules, regulations and procedures of the Authority.

(*h*) The term "Contractor's development costs" shall mean:

(i) All expenditures incurred prior to the commencement of commercial production which are directly related to the development of the productive capacity of the contract area and the activities related thereto for operations under the contract, in conformity with generally recognized accounting principles, including, *inter alia*, costs of machinery, equipment, ships, construction, buildings, land, roads, prospecting and exploration of the contract area, research and development, interest, required leases, licences, fees; and

(ii) Similar expenditures, incurred subsequent to the commencement of commercial production, for the replacement, improvement, or addition of machinery and equipment.

(*i*) The proceeds from the disposal of capital assets and the market value of those capital assets which are no longer required for operations under the contract and which are not sold shall be deducted from the Contractor's development costs during the relevant accounting year. When these deductions exceed the Contractor's development costs the excess shall be added to the Contractor's gross proceeds.

(*j*) The Contractor's development costs referred to in subparagraph (*h*) (i) shall be recovered in 10 equal annual instalments from the date of commencement of commercial production. The Contractor's development costs referred to in subparagraph (*h*) (ii) shall be recovered in 10 or fewer equal annual instalments so as to ensure their complete recovery by the end of the contract.

(*k*) The term "Contractor's operating costs" shall mean all expenditures incurred after the commencement of commercial production in the operation of the productive capacity of the contract area and the activities related thereto, for operations under the contract, in conformity with generally recognized accounting principles, including, *inter alia*, the fixed annual fee or the production charge, whichever is greater, expenditures for wages, salaries, employee benefits, supplies, materials, services, transportation, marketing costs, interest, utilities, preservation of the marine environment, overhead and administrative costs specifically related to the operation of the contract, and any net operating losses carried forward from prior accounting years.

(*l*) (i) In the event that the Contractor engages in mining, transportation of nodules and production primarily of three processed metals, namely, cobalt, copper and nickel, the term "development costs of the mining sector" shall mean the portion of the Contractor's development costs which is directly related to the mining of the resources of the contract area, in conformity with generally recognized accounting principles, and the financial rules, regulations and procedures of the Authority, including, *inter alia*, application fee, annual fixed fee, and, where applicable, costs of prospecting and exploration of the contract area, and a portion of research and development costs.

(ii) In the event that the Contractor engages in mining only, the term "development costs of the mining sector" shall mean the Contractor's development costs.

(iii) In all cases other than those specified in subparagraphs (i) (ii) above, the term "development costs of the mining sector" shall be defined as in subparagraph (i) above.

(*m*) The term "operating costs of the mining sector" shall mean the portion of the Contractor's operating costs which is directly related to the mining of the resources of the contract area, in conformity with generally recognized accounting principles, and the financial rules, regulations and procedures of the Authority.

(*n*) The term "return on investment" in any accounting year, shall mean the ratio of attributable net proceeds in that year to the development costs of the mining sector. The development costs of the mining sector for the purpose of this subparagraph shall include additions to the development costs of the mining sector incurred prior to the commencement of the commercial production, in order to carry out the specified plan of work. It shall also include expenditures on new or replacement equipment in the mining sector less the original cost of the equipment replaced.

(*o*) The costs referred to in subparagraphs (*h*), (*k*), (*l*) and (*m*) above, in respect of interest paid by the Contractor may only be allowed if, in all the circumstances, the Authority approves, pursuant to article 4, paragraph 1, the debt-equity ratio and the rates of

interest as reasonable, having regard to existing commercial practice.

(*p*) The costs referred to in this paragraph shall not be interpreted as including payments in respect of corporate income taxes or similar charges levied by States in respect of the operations of the Contractor.

7. (*a*) The term "processed metals" referred to in paragraphs 5 and 6 above, shall mean the metals in the most basic form in which they are customarily traded on international terminal markets. For the metals which are not traded on such markets, the term "processed metals" shall mean the metals in the most basic form in which they are customarily traded in representative arm's-length transactions. For this purpose, the Authority shall specify, in the financial rules, regulations and procedures, the relevant international terminal market.

(*b*) In the event that the Authority cannot otherwise determine the quantity of the processed metals produced from the nodules extracted from the contract area referred to in subparagraphs 5 (*b*) and 6 (*b*) above, the quantity shall be determined on the basis of the metal content of the nodules extracted from the contract area, processing recovery efficiency and other relevant factors in accordance with the rules, regulations and procedures of the Authority, and in conformity with generally recognized accounting principles.

8. If an international terminal market provides a representative pricing mechanism for processed metals, nodules and semi-processed metals from the nodules, the average price on such a market shall be used. In all other cases, the Authority shall, after consulting the Contractor, determine a fair price for the said products in accordance with paragraph 9 below.

9. (*a*) All costs, expenditures, proceeds and revenues and all determinations of price and value referred to in this article shall be the result of free market or arm's-length transactions. In the absence thereof, they shall be determined by the Authority, after consulting the Contractor, as though they were the result of free market or arm's-length transactions, taking into account relevant transactions in other markets.

(*b*) In order to ensure enforcement of, and compliance with, the provisions of the present paragraph, the Authority shall be guided by the principles adopted for, and the interpretation given to, arm's-length transactions by the Commission on Transnational Corporations established by the Economic and Social Council, the Expert Group on Tax Treaties between Developed and Developing Countries and other international organizations, and shall adopt rules and regulations specifying uniform and internationally acceptable accounting rules and procedures, and the means of selection by the Contractor of independent certified accountants acceptable to the Authority for the purpose of auditing in compliance with the said rules and regulations.

10. The Contractor shall make available to the accountants, in accordance with the financial rules, regulations and procedures of the Authority, such financial data as are required to determine compliance with the article.

11. All costs, expenditures, proceeds and revenues, and all prices and values referred to in this article, shall be determined in accordance with generally recognized accounting principles and the financial rules, regulations and procedures of the Authority.

12. The payments to the Authority under paragraphs 5 and 6 may be made either in a freely convertible currency or in a currency agreed upon between the Authority and the Contractor, or, at the Contractor's option, in the equivalents of processed metals at market value. The market value shall be determined in accordance with paragraph 5 (*b*).

13. All financial obligations of the Contractor to the Authority, as well as all his fees, costs, expenditures, proceeds and revenues referred to in this article, shall be adjusted by expressing them in constant terms relative to a base year.

14. The Authority may, taking into account any recommendations of the Economic Planning Commission and the Legal and Technical Commission, adopt rules and regulations that provide for incentives, on a uniform and non-discriminatory basis, to Contractors to further the objectives set out in paragraph 1.

15. In the event of a dispute between the Authority and a Contractor over the interpretation or application of the financial terms of a contract, either party may submit the dispute to compulsory and binding commercial arbitration.

2. FINANCING OF THE ENTERPRISE

Annex III

Article 3

Subject to article 10, paragraph 3 below, no member of the Authority shall be liable by reason only of its membership for the acts or obligations of the Enterprise.

Article 10

Delete paragraph 2 (*c*) and insert a new paragraph 3:

3. (*a*) The Enterprise shall be assured of the funds necessary to explore and exploit one mine site and to transport, process and market the metals recovered therefrom, namely, nickel, copper, cobalt and manganese, and to meet its initial administrative expenses, or the equivalent amount thereof. The said amount shall be determined by the Assembly upon the recommendation of the Council, on the advice of the Governing Board of the Enterprise.

(*b*) States Parties shall make available to the Enterprise an amount equivalent to one half of the funds referred to in paragraph 3 (*a*) above by way of long-term, interest-free loans in accordance with the scale referred to in article 160, paragraph 2 (*e*). Debts incurred by the Enterprise in raising the balance of the funds shall be guaranteed by all States Parties in accordance with the said scale. Upon request by the Enterprise, a State Party may provide a guarantee covering debts additional to the amount it has guaranteed in accordance with the said scale. In lieu of debt guarantee, a State Party may make a voluntary contribution to the Enterprise of an amount equivalent to that portion of the debts which it would otherwise be liable to guarantee.

(*c*) The repayment of the interest-bearing loans shall have priority over the repayment of the interest-free loans. The repayment of interest-free loans shall be in accordance with a schedule adopted by the Assembly, upon the recommendation of the Governing Board of the Enterprise.

C. THE ASSEMBLY AND THE COUNCIL

Article 157

Add a new paragraph 1 *bis*:

The powers and functions of the Authority shall be those expressly conferred upon it by the provisions of this Part and by annexes II and III. The Authority shall have such incidental powers, consistent with the provisions of this Convention, as are implicit in and necessary for the performance of these powers and functions with respect to activities in the Area.

Article 158

Revise paragraph 4 to read:

4. The principal organs shall each be responsible for exercising those powers and functions which have been conferred upon them. In exercising such powers and functions each organ shall avoid taking any action which may derogate from or impede the exercise of specific powers and functions conferred upon another organ.

Article 160

Revise paragraph 1 to read:

1. The Assembly, as the sole organ of the Authority consisting of all the members, shall be considered the supreme organ of the Authority to which the other principal organs shall be accountable as specifically provided for in this Part. The Assembly shall have the power to establish general policies in conformity with the provisions of this Part on any question or matter within the competence of the Authority.

Add a new paragraph 2 (*o*):

(*o*) Dicussion of any question or matter within the competence of the Authority and decisions as to which organ shall deal with any such question or matter not specifically entrusted by the provisions of this Convention to a particular organ of the Authority, consistent with the distribution of powers and functions among the organs of the Authority.

Article 161

Paragraph 7

Revise subparagraphs (*a*) and (*b*) to read:

(*a*) Decisions on questions of procedure shall be taken by a majority of the members present and voting;

(*b*) Decisions on questions of substance arising under article 162, paragraph 2 (*b*) to (*i*) and (*o*), (*r*) and (*t*) in cases of non-compliance by a contractor or a sponsor, (*u*) and (*v*) provided that orders issued under this subparagraph may be binding for no more than 10 days unless confirmed by a decision taken in accordance with subparagraph (*c*) below, (*x*) and (*y*) shall be taken by a two-thirds majority of the members present and voting, provided that such majority includes a majority of the members of the Council;

Present trend for subparagraph (*c*) appears as follows:

(*c*) In order to promote the resolution of particularly sensitive issues by means of consensus, decisions on all other questions of substance shall be taken by a two-thirds majority of members present and voting, provided that . . . [35] members have not cast negative votes. When the issue arises as to whether the question is within this subparagraph or not, the question shall be treated as within this subparagraph unless otherwise decided by the Council by the majority required for questions under this subparagraph.

Article 162

Paragraph 2

Subparagraph (*f*):

After "of the Authority" add "and within its competence"

Revise subparagraph (*i*) to read:

(*i*) Issue directives to the Enterprise in accordance with article 170;

Subparagraph (*j*):

Delete second and third sentences and replace by the following:

The Council shall act within 60 days of the submission of a plan of work by the Legal and Technical Commission at a session of the Council. Except where selection must be made among applicants, a plan of work shall be deemed to have been approved unless a proposal for its approval or disapproval has been voted upon within the aforementioned period of 60 days;

Revise subparagraph (*r*) to read:

(*r*) Make recommendations to the Assembly concerning policies on any question or matter within the competence of the Authority;

D. Settlement of disputes relating to Part XI and connected issues

Article 168. International character and responsibilities of the secretariat

1. In the performance of their duties, the Secretary-General and the staff shall not seek or receive instructions from any Government or from any other source external to the Authority. They shall refrain from any action which might reflect on their position as international officials of the Authority responsible only to the Authority. Each State Party undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities. Any violation of responsibilities by a staff member shall be submitted to the appropriate administrative tribunal as provided in the staff rules of the Authority.

2. The Secretary-General and the staff shall have no financial interest whatsoever in any activity relating to exploration and exploitation in the Area. Subject to their responsibilities to the Authority, they shall not disclose, even after the termination of their functions, any industrial secret or data which is proprietary in accordance with article 13 of annex II to the present Convention, or other confidential information of commercial value coming to their knowledge by reason of their official duties with or on behalf of the Authority.

3. Violations of the obligations of a staff member of the Authority set forth in paragraph 2 shall, on the request of a State Party affected by such violation, or a natural or juridical person sponsored by a State Party as provided for in article 153, paragraph 2 (*b*), and affected by such violation, be submitted by the Authority against the staff member concerned to an appropriate tribunal. The Party affected shall have the right to take part in the proceedings. If the tribunal so recommends, the Secretary-General shall dismiss the staff member concerned.

4. The elaboration of the relevant provisions of this article shall be included in the staff regulations of the Authority.

Section 6. Settlement of disputes and advisory opinions

Article 187. Jurisdiction of the Sea-Bed Disputes Chamber

The Chamber shall have jurisdiction under this Part and the annexes relating thereto in the following categories of disputes with respect to activities in the Area:

1. Disputes between States Parties concerning the interpretation or application of this Part and the annexes relating thereto.

2. Disputes between a State Party and the Authority concerning acts or omissions of the Authority or of a State Party which are alleged to be in violation of this Part or the annexes relating thereto, or of rules, regulations or procedures promulgated in accordance therewith, or acts of the Authority alleged to be in excess of jurisdiction or a misuse of power.

3. Disputes between parties to a contract, being States Parties, the Authority or the Enterprise, State entities and natural or juridical persons as referred to in article 153, paragraph 2 (*b*), concerning:

(*a*) The interpretation or application of a relevant contract or a plan of work;

(*b*) Acts or omissions of a party to the contract relating to activities in the Area and directed to the other party or directly affecting its legitimate interests.

4. Disputes between the Authority and a prospective contractor who has been sponsored by a State as provided for in article 153, paragraph 2 (*b*), and has duly fulfilled the conditions referred to in article 4, paragraph 4 and article 12, paragraph 2, of annex II, concerning the refusal of a contract, or a legal issue arising in the negotiation of the contract.

5. Disputes between the Authority and a State Party, a State entity or a natural or juridical person sponsored by a State Party as provided for in article 153, paragraph 2 (*b*), where it is alleged that the Authority has incurred liability as provided for in article 21 of annex II.

6. Any dispute for which jurisdiction of the Chamber is specifically provided for in this Part and the annexes relating thereto.

Article 188. Submission of disputes to a special chamber of the Law of the Sea Tribunal or an ad hoc *chamber of the Sea-Bed Disputes Chamber or to binding arbitration*

1. Disputes between States Parties referred to in article 187, paragraph 1, may be submitted:

(*a*) To a special chamber of the Law of the Sea Tribunal to be established in accordance with articles 15 and 17 of annex V, upon the request of the parties to the dispute; or

(*b*) To an *ad hoc* chamber of the Sea-Bed Disputes Chamber to be established in accordance with article 36 *bis* of annex V, upon the request of any party to the dispute.

2. Disputes referred to in article 187, paragraph 3, shall be submitted to binding commercial or other arbitration, in so far as this is provided for in any contract between the parties to the dispute, at the request of any party thereto. Failing agreement of the parties, the procedure in accordance with commercial arbitration rules to be specified shall apply.

Article 191. Participation and appearance of sponsoring States Parties

1. In any dispute referred to in article 187 when a natural or juridical person is a party, the sponsoring State shall be given notice thereof, and shall have the right to participate in the proceedings by submitting written or oral statements.

2. In any dispute referred to in article 187, paragraph 3, if an action is brought against a State Party by a natural or juridical person, of another nationality, the State Party sponsoring that person may be requested by the respondent State Party to appear in the proceedings on behalf of that person. Failing such appearance, the respondent State may arrange for the appearance on its behalf of a juridical person of its nationality.

[35] The figure is still being negotiated; current proposals range from 5 to 10.

Annex II

Article 21. Liability

Any responsibility or liability for wrongful damage arising out of the conduct of operations by the Contractor shall lie with the Contractor, account being taken of contributory factors by the Authority. Similarly, any responsibility or liability for wrongful damage arising out of the exercise of the powers and functions of the Authority, including liability for violations under article 168, paragraph 2, shall lie with the Authority, account being taken of contributory factors by the Contractor. Liability in every case shall be for the actual amount of damages.

Annex V

Article 4. Procedure for nomination and election

1. Each State Party may nominate not more than two persons having the qualifications prescribed in article 2. The members of the Tribunal shall be elected from a list of persons thus nominated.

2. At least three months before the date of the election, the Secretary-General of the United Nations in the case of the first election and the Registrar of the Tribunal in the case of subsequent elections shall address a written invitation to the States Parties to submit their nominations for members of the Tribunal within two months. He shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties before the seventh day of the last month before the date of each election.

3. The first election shall be held within six months of the date of entry into force of the present Convention.

4. Elections of the members of the Tribunal shall be by secret ballot. They shall be held at a meeting of the States Parties convened by the Secretary-General of the United Nations in the case of the first election and by procedure agreed to by the States Parties in the case of subsequent elections. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Tribunal shall be those nominees who obtain the largest number of votes and a two-thirds majority of votes of the States Parties present and voting, provided that such majority shall include at least a majority of the States Parties.

Article 36. Composition of the Chamber

1. The Sea-Bed Disputes Chamber established in accordance with article 14 shall be composed of 11 members, selected by a majority of the members of the Tribunal from among its members.

2. In the selection of the members of the Chamber, the representation of the principle legal systems of the world and equitable geographical distribution shall be assured. The Assembly of the Authority may adopt recommendations of a general nature relating to such representation and distribution.

3. The members of the Chamber shall be selected every three years and may be selected for a second term.

4. The Chamber shall elect its President from among its members, who shall serve for the period for which the Chamber has been selected.

5. If any proceedings are still pending at the end of any three-year period for which the Chamber has been selected, the Chamber shall complete the proceedings in its original composition.

6. Upon the occurrence of a vacancy in the Chamber, the Tribunal shall select a successor from among its members who shall hold office for the remainder of the term of his predecessor.

7. A quorum of seven members shall be required to constitute the Chamber.

Article 36 bis. Ad hoc *chambers of the Sea-Bed Disputes Chamber*

1. The Sea-Bed Disputes Chamber shall form an *ad hoc* chamber, composed of three of its members, for dealing with a particular dispute submitted to it in accordance with article 188, paragraph 1 (*b*). The composition of such a chamber shall be determined by the Sea-Bed Disputes Chamber with the approval of the parties.

2. If the parties do not agree on the composition of an *ad hoc* chamber referred to in paragraph 1, each party to the dispute shall appoint one member, and the remaining member shall be appointed by them in agreement. If they disagree, or if any party fails to make an appointment, the President of the Sea-Bed Disputes Chamber shall promptly make such appointments from among the members of the Sea-Bed Disputes Chamber, after consultation with the parties.

3. Members of the *ad hoc* chamber must not be in the service of, or nationals of, any of the parties to the dispute.

APPENDIX B

Report by the Chairman of the group of legal experts on the settlement of disputes relating to part XI

Though the questions of the settlement of disputes were not discussed in the group of 21, the Chairman of the group of legal experts on the settlement of disputes relating to part XI presented his report to the group of 21, before presenting it in the First Committee.

The group of legal experts held three meetings during the resumed eighth session in New York. After each of the meetings, the Chairman had intensive consultations with interested delegations, on the basis of which he attempted to reach compromise solutions. This process followed the procedure which had been agreed to by the Group.

At the opening of the first meeting, the Chairman stated that he had, on 25 April 1979, reported to the Chairman of the First Committee on the results of the work of the group, setting out fully the status of the work at the conclusion of the first part of the eighth session at Geneva (A/CONF.62/C.1/L.25 and Add.1[36]). That report identified the outstanding issues which were not discussed at all and those that were discussed, though not fully.

The Chairman suggested that the outstanding issues be dealt with in the following sequence:

(1) The manner of selection of members of the Sea-Bed Disputes Chamber of the Law of the Sea Tribunal and the necessary changes to annex V;

(2) The suggestion regarding *ad hoc* chambers of the Sea-Bed Disputes Chamber;

(3) Liability of the Authority, in cases of staff members violating their duty not to disclose confidential information, and in other cases;

(4) Aspects of contractual disputes for which commercial arbitration would be appropriate.

The Chairman also pointed out the need to consider articles 187, 189, 190 and 191 which the group had formulated at the first part of the session, as incorporated in part XI, section 6, because there could be some matters that needed clarification. However, he suggested that this be taken up last, after the negotiations on the outstanding issues had been subject to the same process of negotiation as those issues in respect of which texts had been included in the revised negotiating text.

This course of procedure was accepted by the Group.

I. Selection of members of the Sea-Bed Disputes Chamber

On the first issue, which was the manner of selection of members of the Chamber, the Chairman stated that, after the original discussion at Geneva, he had the impression that it would be possible to provide that members of the Chamber be selected by the Law of the Sea Tribunal itself. The Tribunal was to be elected by the Conference of States Parties, who would be the same as the members of the Assembly, and there appeared to be no need for a second vote of confidence. Should there be agreement that the Chamber be selected by the Tribunal, consideration could then be given to whether the Assembly should be empowered to make recommendations that the principles of equitable geographical distribution and the representation of the principal legal systems be followed.

A clear desire to compromise was shown. A willingness to accept that the members of the Tribunal itself should select the members of the Chamber was expressed by those who had originally opposed it. Those who opposed the role of the Assembly in that regard, also in a spirit of compromise, agreed that the Assembly could be empowered to make recommendations of a general nature regarding equitable geographical distribution and the representation of the principle legal systems which was to be assured in the Chamber. It was also

[36] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XI.

agreed that the selection of the members of the Chamber would be made by the decision of a majority of the members of the Tribunal. A consensus was reached in the group on this compromise solution. The text drafted on this basis is to be found in annex V, article 36, in appendix A above.

2. Special and *ad hoc* chambers of the Sea-Bed Disputes Chamber

Regarding the second item, namely, the formation of *ad hoc* chambers of the Sea-Bed Disputes Chamber (art. 188, para. 1, of the revised negotiating text), there was an exhaustive expression of views. Some felt that for disputes between States the choice of procedures available in article 287 should be available, as that would ensure consistency of application of dispute settlement procedures in all cases of interpretation or application of the convention. That view was strongly opposed by those who advocated unity of jurisdiction of the Chamber for all matters in part XI and the related annexes.

All sides were of the opinion that the concept of *ad hoc* chambers represented a compromise on their part. Those who advocated unity of jurisdiction emphasized that the *ad hoc* chambers could only be envisioned as an exception to the general rule. For this reason, they felt strongly that resort to the *ad hoc* chambers could only be had upon agreement of the parties. Those who opposed the exclusive jurisdiction of the Chamber envisioned the *ad hoc* chambers as a parallel system for the settlement of sea-bed disputes. They insisted that resort to the *ad hoc* chambers should be allowed upon the request of any party to the dispute.

It was suggested that if there could be agreement in the group on the composition of the *ad hoc* chamber, that might facilitate the reaching of a compromise of the divergent views. In that connexion, the size of the *ad hoc* chamber; the question of whether to allow the selection of judges who were of the same nationality as a State party; and the question of whether the judges should be selected from among the members of the Chamber or of the Tribunal appeared to be the critical factors. Several alternative compromises were presented but, rather than a single trend, two alternative suggestions emerged as commanding support. The alternatives presented in article 188, paragraphs 1 (*a*) and (*b*), contained in appendix A above seemed to offer the best prospects for widespread support.

This article provides that on the agreement of the parties, a special chamber could be established on the lines set out in annex V, articles 15 and 17, which provide for the inclusion of national members and the selection from among the 21 members of the Tribunal. The alternative presented in this paragraph permits one party to request an *ad hoc* chamber which consists only of three members to be selected from among the members of the Chamber, excluding nationals of the parties.

3. Liability of the Authority for staff violations and other matters

The third item, the question of liability of the Authority for the unauthorized disclosure of secret data by its staff, had been raised in the first part of the session, but it had not been dealt with by the group. It was noted that this liability would be in addition to the liability of the staff member concerned, which article 168, paragraph 2, already provided for. The Chairman pointed out that the responsibility of the Authority for wrongful damage was referred to in annex II, article 21. Liability under article 168, paragraph 2, could also be set out in that article. The group agreed upon such an approach and, accordingly, provision was included in annex II, article 21 (see appendix A above) for liability of the Authority in the case of staff members' violations.

The Chairman suggested that it might be desirable to provide jurisdiction of the Chamber for all such questions of liability of the Authority. The group agreed to that suggestion. Accordingly, such provision was included in article 187, which deals with the jurisdiction of the Chamber, in a new paragraph 5 (*ibid*).

4. Commercial arbitration

In considering the fourth question, commercial arbitration in cases of contractual disputes, the Chairman drew the attention of the group to some aspects of the issues that arose regarding the present article. He pointed out that article 188, paragraph 2, referred to article 187, subparagraph (*c*). That paragraph was again subdivided into: the interpretation or application of contracts or plans of work and acts or omissions relating to activities in the area. While commercial arbitration was suited to the first such category of disputes, its appropriateness to the second category was raised.

The Chairman suggested that the intention of providing commercial arbitration appeared to be because of the expeditious nature of the procedure and its suitability in disputes of a technical or commercial nature.

He explained that it might be found unnecessary at the time of contracting to include a detailed arbitration procedure and for that reason the existing second sentence of article 188, paragraph 2, suggested that a standard form procedure be specified where the contract itself did not provide it.

A lengthy discussion ensued. Some felt that commercial arbitration might be appropriate for disputes of a purely commercial and technical nature, provided that the parties had agreed thereto, and that in no case should the commercial arbitration tribunal be empowered to determine questions of the interpretation or application of the convention.

In that connexion a compromise suggested was that the scope of the article should be limited to article 187, subparagraph (*c*) (i). Those who were of the view that in all cases agreement of the parties was needed felt that agreement could be evidenced either by a provision regarding commercial arbitration in the contract or by subsequent agreement on the subject. The opposing view, also strongly expressed, was that the request to resort to arbitration could be made by either party, whether or not the contract so provided.

The interpretation of the existing text of article 188, paragraph 2, appeared to present difficulties to both sides and attempts to reconcile doubts on the text only led to a further polarization of positions.

It became clear that in order to move towards reconciling the divergence, it was necessary to set out clearly the principle that the arbitral tribunal would not be competent to determine questions of the interpretation or application of the convention, and that its competence should be limited strictly to the interpretation or application of relevant contracts or plans of work. If that were done, it might be possible to allow for resort to commercial arbitration at the request of any party, whether or not it was provided for in the contract. Time, however, did not permit a full consideration of the question and it would most certainly need to be examined thoroughly at the very beginning of the next session.

The rules of the United Nations Commission on International Trade Law (UNCITRAL) appeared to command wide acceptance and, in the absence of specific arbitration rules in the contract, there appeared to be agreement that standard-form arbitration rules, such as the UNCITRAL rules, could apply. As an alternative, or in addition, the Authority could specify other rules in its rules, regulations and procedures.

No conclusions were reached regarding article 188, paragraph 2, and no suggestions were sufficiently widely accepted to warrant any change in the present text.

5. Jurisdiction of the Sea-Bed Disputes Chamber and limitations thereof; participation of sponsoring States and advisory opinions

In the consideration of articles 187, 189, 190 and 191, the Chairman pointed out that these articles were very closely linked and that the substance of those provisions form a composite unit; he therefore suggested that the articles be considered in conjunction. The Chairman also noted that it was the decision of the Conference that no changes could be made to any texts unless there was widespread and substantial support. He therefore urged members of the group to refrain from making suggestions which were not likely to receive such support and that a constructive attempt be made to arrive at compromise solutions. That procedure was adopted by the Group.

Regarding article 187, the suggestion was made that paragraph (*a*) should be deleted and that disputes covered under that provision should be subject to the general dispute settlement procedures under part XV. That was strongly opposed on the grounds that a uniform legal order must be maintained for all sea-bed questions.

Regarding paragraph (*b*) of article 187, it was generally agreed that the wording contained in the revised negotiating text was acceptable.

Regarding paragraph (*c*), it was noted that this referred to a "plan of work". The point was made that this wording implied that the Sea-Bed Disputes Chamber would have jurisdiction over disputes between the Authority and the Enterprise. Strong and widespread opposition was recorded to this possibility on the basis that, since the Enterprise was an arm of the Authority, any possible conflict between them should be resolved by the Council of the Authority. It was urged that some formulation be arrived at whereby the possibility of the Chamber exercising jurisdiction over such disputes should be avoided at all costs.

The question was raised as to whether article 187, subparagraph (*c*) (i), dealt with disputes only between the Authority, as one party, and the other possible contractors. If that was the case, it was suggested that the reference to "plan of work" be deleted. On the other hand, the point was made that there should be provision covering disputes between contractors who had independent contracts with the Authority although they did not have a contract between themselves. If this interpretation was not possible under article 187, paragraph (*c*); it was a question that needed resolution and would have to be considered at the beginning of the next session.

Regarding article 187, paragraph (*d*), some wanted it deleted while others wanted to strengthen it by eliminating the necessity to comply with any conditions. It was the Chairman's impression, in the light of the discussions, that the existing text represented the best basis for a possible compromise. Concern was expressed as to the possibility of unsuccessful applicants impeding the work of those to whom contracts had been awarded by bringing disputes and obtaining restraining orders from the Chamber.

A proposal was made to provide for jurisdiction of the Chamber in disputes between prospectors and the Authority, but there was a lack of support for such provision, it being pointed out that prospectors had no contractual rights to be safeguarded.

No points were raised regarding articles 189 and 190 dealing, respectively, with advisory opinions and limitations on the jurisdiction of the Chamber. The Chairman noted that the group found these acceptable and there was no desire expressed to make any changes in the text.

There was much discussion on the question of the appearance and participation in proceedings of sponsoring States, and a clear division of views regarding article 191, paragraph 2. On the one hand, it was argued that such a provision was necessary to protect the juridical personality of a State. In this respect, it was noted that, according to the general principles of international law, a State always enjoyed immunity from legal process compared to a natural or juridical person, and that therefore a safeguard clause, whereby the State sponsoring the applicant person must join the proceedings, was needed. Counter to this argument was the view that a State could not be compelled to participate in the proceedings merely because its sponsored natural or juridical persons wished to bring a claim against another State. It was felt that this should be a matter of discretion with the State. Supporters of this view advocated the deletion of paragraph 2.

In the spirit of compromise, it was suggested that perhaps paragraph 2 could be reformulated whereby the Chamber would have no jurisdiction in cases where the sponsoring State of a natural or juridical person did not agree to participate in the proceedings. An alternative compromise was suggested whereby the respondent State party could nominate a natural or juridical person of its own nationality to participate in the proceedings in its place. A combination of these two suggestions led to further consultations which provided the basis for the revised draft of article 191 in appendix A above. This draft could seem to command widespread support.

6. Other issues

All drafting suggestions made in the course of the negotiations or submitted to the Chair have been closely examined and wherever practicable have been incorporated in the Chairman's suggested text. Due regard was given to avoiding the inclusion of any drafting suggestions that might have had implications on substantive issues. It was suggested, however, by many participants that the texts should be examined as a whole for consistency and accuracy of drafting and translation. Reference was also made to the need to examine the titles of all articles and some changes that were agreed upon have been incorporated in the new draft.

The sequence of the articles may need to be changed. In this regard it was suggested that article 189 concerning advisory opinions appear last or as a separate section.

DOCUMENT A/CONF.62/L.42

Report of the Chairman of the Second Committee

[*Original: Spanish*]
[*24 August 1979*]

1. The Conference decided to establish seven negotiating groups to concern themselves with the most difficult questions. Three of those groups, negotiating groups 4, 6 and 7, were to concern themselves with matters which were completely or partially within the competence of the Second Committee.

2. At the present resumed eighth session, only negotiating groups 6 and 7 held meetings. Negotiating group 4 did not hold any meetings.

3. The Second Committee also devoted a number of meetings to the consideration of other questions, apart from those which were within the competence of the negotiating groups. I shall refer to those meetings later in this report.

Negotiating groups

4. Negotiating group 7, presided over by Mr. E. J. Manner of Finland, concerns itself with the definition of the maritime frontiers between adjacent States and between States whose coasts lie opposite each other—subjects within the competence of the Second Committee—and with the settlement of disputes related thereto, a matter dealt with by the plenary Conference.

5. Negotiating group 6, of which I am Chairman, is concerned with the definition of the outer limit of the continental shelf and the question of payments and contributions in connexion with the exploitation of the continental shelf beyond 200 miles, or the question of revenue sharing.

6. At its 126th informal meeting on 22 August 1979, the Second Committee received the reports of the Chairmen of negotiating groups 6 and 7 on the work done during the current second stage of the eighth session.

7. Owing to lack of time and in order to avoid duplication of work, it was agreed that no substantive comments would be made concerning the report of Mr. Manner on the work of negotiating group 7, since any delegations interested in commenting could do so in the plenary Conference. The report will be published as informal document NG7/45. I wish to express once more my gratitude to Mr. Manner for his untiring efforts to find solutions to the problems dealt with by his group.

8. My report to the Second Committee on the activities of negotiating group 6 is contained in informal document paper NG6/19, which is now in the hands of delegations. I do not propose to repeat it in this forum and shall merely refer in a general way to the group's work. Negotiating group 6 held five meetings, and at its meeting of 13 August 1979, at the request of several delegations, it established the so-called group of 38, an open-ended group formed on the basis of registration of delegations interested in dealing with the same subjects in a smaller framework. The group of 38 also held five meetings and considered the following items: the outer limit of the continental shelf; payments and contributions for the exploitation of the continental shelf beyond 200 miles; submarine oceanic ridges; the commission on limits; and the problem of Sri Lanka.

9. Concerning these items, delegations presented various informal suggestions which helped to determine more precisely the various positions and the possible solutions. I hope that the deliberations and extensive consultations held during this stage have prepared the ground for finding satisfactory solutions on these items at the next session.

Other matters

10. There were two informal meetings of the Second Committee devoted to other matters than those assigned to

negotiating groups 4, 6 and 7. The items considered were dealt with in accordance with the numbering of the articles of the revised informal composite negotiating text. The items were the following:

Article 25, paragraph 3

The informal suggestion by Belgium to add the words "or for the safety of ships" at the end of the first sentence of article 25, paragraph 3, was incorporated into the text in accordance with the recommendation I made in my report presented at the 116th plenary meeting on 27 April 1979. The proposing delegation stated that, as a result of new consultations, the words quoted should be replaced by the words "including weapons exercises", with the explanation that the amendment related to artillery exercises carried out by the coastal State.

Article 36

Informal suggestion by Yugoslavia (C.2/Informal Meeting/2/Rev.1), to add the following: "; in such routes the freedoms of navigation and overflight shall not be impeded".

Article 56

Informal suggestion by Afghanistan, Austria, Bolivia, Lesotho, Nepal, Singapore, Uganda, Upper Volta and Zambia (C.2/Informal Meeting/45), proposing payments or contributions in kind by the coastal State into a common heritage fund from the proceeds accruing to it from the exploitation of the non-living resources of the exclusive economic zone. The Authority would determine the rate of the payments and contributions, taking into account the relative capacity of the States to make such payments and contributions. The Authority would also make disbursements to the States parties to the convention on the basis of equitable sharing criteria, taking into account the interests and needs of developing countries, particularly the least developed and the land-locked countries among them. The Authority might also make disbursements to protect the marine environment, to foster the transfer of marine technology, to assist the work of the United Nations in those fields and to help finance the Enterprise.

Article 62

Informal suggestion by Romania and Yugoslavia (C.2/Informal Meeting/1/Rev.1) to insert, in paragraph 2, after the words "other States", the words "developing States in particular"; to delete, in the same paragraph, after the words "articles 69 and 70", the rest of the sentence; and to insert, in paragraph 3, after the words "of developing countries", the words "in particular, those".

Article 63, paragraph 2

Informal suggestion by Argentina (C.2/Informal Meeting/48) to delete the word "seek" and replace it by "be obliged"; and to add, at the end of the paragraph, an additional text specifying the measures to be included in the respective agreements and stating that, if no agreement is reached within a reasonable period of time, the State fishing for the stocks mentioned in paragraph 2 of the article should abide by the regulations issued by the coastal State for the conservation of such stocks.

Article 65

Informal suggestion by the United States of America (C.2/Informal Meeting/49) for a text reading: "Nothing in this Part restricts the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in this Part. In this connexion, States shall co-operate with a view to the conservation of marine mammals and, in the case of cetaceans, shall in particular work through the appropriate international organizations for their conservation, management and study". This suggestion was not discussed by the Committee because the delegation making the proposal introduced it for the sole purpose of subsequently receiving the comments of other delegations.

Article 70

In connexion with this article, a document entitled "The stand of the Socialist Republic of Romania with regard to the right of access to the fishing resources in the economic zones" (C.2/Informal Meeting/42) was submitted. In this informal document it is proposed that the article should be supplemented, after paragraph 4, by an additional text stating that the geographically disadvantaged States bordering enclosed or semi-enclosed seas poor in biological resources, particularly the developing countries located in a subregion or region which is also poor in biological resources, should have the right to participate, on an equitable basis, in the exploitation of biological resources of the exclusive economic zones of the coastal States located in other regions or subregions, under the conditions provided for by the article.

Article 77

Informal suggestion by Cape Verde, Greece, Italy, Malta, Portugal, Tunisia and Yugoslavia (C.2/Informal Meeting/43/Rev.1) to add a new paragraph 5 giving the coastal State sovereign rights over any object of an archaeological and historical nature on or under its continental shelf for the purposes of research, salvaging, protection and proper presentation. The State or country of origin, or the State of historical and archaeological origin, would have preferential rights over such objects in the case of sale or any other disposal resulting in the removal of such objects out of the coastal State.

Article 98

Informal suggestion by Bulgaria, the Byelorussian Soviet Socialist Republic, Czechoslovakia, the German Democratic Republic, Hungary, Poland, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics (C.2/Informal Meeting/44) to add a paragraph 3 providing that, without prejudice to the provisions of the convention and other universally recognized rules of international law, sunken ships and aircraft, as well as equipment and cargoes located on board them, may be salvaged only by the flag State or with its consent.

Article 121

Informal suggestion by Ireland (C.2/Informal Meeting/46) to replace, in paragraph 2, the words "except as provided for in paragraph 3", but "without prejudice to the provisions of articles 15, 74 and 83 and except as provided for in paragraph 3".

Article 121 bis

Informal suggestion by Ecuador ((C.2/Informal Meeting/47) to add a new article to the effect that the territorial sea, the exclusive economic zone and the continental shelf of a group of islands forming part of the territory of a State which constitute an archipelago as defined in article 46 (*b*) should be determined through the system of baselines drawn in accordance with article 47. This suggestion was not discussed by the Committee at the request of the delegation making the proposal, to enable it to be studied and thus facilitate its consideration at the next session.

11. Thus, most of these informal suggestions were considered by the Committee and the proposing States have a clear idea of the extent to which they are accepted.

12. I should like to express my sincere thanks to the delegations participating in the work of the Second Committee for their valuable co-operation in the conduct of our programme of work, to the members of the secretariat of the Conference for their dedication and competence in the performance of their functions, to the interpreters, the translators and all the staff co-operating in this resumed eighth session.

DOCUMENT A/CONF.62/L.41

Report of the Chairman of the Third Committee

[*Original: English*]
[*23 August 1979*]

1. I have the honour, in accordance with the decision of the Conference, to submit for your consideration, the report on the work of the Third Committee during this resumed session. The report was considered at the 41st, 42nd, and 43rd meetings of the Committee.

2. As I have pointed out in my previous report (A/CONF.62/L.34),[37] in view of the progress of the negotiations made during the first part of the eighth session at Geneva and the very important positive results that were achieved, the substantive negotiations on part XII (Protection and preservation of the marine environment) and part XIV (Development and transfer of marine technology) could be considered as completed. As far as part XIII (Marine scientific research) is concerned, I pointed out in that report that, though there was substantial support for the informal composite negotiating text, and for the maintenance of the delicate balance achieved so far in the over-all package with regard to that part, several delegations maintained that they should have the opportunity to continue the negotiations on the outstanding issues relating to marine scientific research. It was agreed that we should try at this session to make an effort to broaden the basis for agreement on the pending issues.

3. Accordingly, at this resumed session, our efforts were directed to the consideration of the pending substantive issues relating to the régime for the conduct of marine scientific research on the continental shelf beyond 200 miles from the baselines from which the breadth of the territorial sea is measured as well as the problem of the settlement of disputes relating to the interpretation or implementation of the provisions of this convention with regard to marine scientific research.

4. There were also some other substantive issues still pending, such as the facilities with regard to access of research vessels to the harbours of the coastal State and assistance to be rendered to such vessels conducting marine scientific research activities; the requirement for making the research results internationally available through appropriate national or international channels; the conditions for cessation or suspension of marine scientific research activities; the assistance or co-operation for providing the research vessels with information necessary to prevent and control damage to the health and safety of persons, or to the marine environment; the modalities under which marine scientific research projects could be undertaken under the auspices of an international organization etc. Informal proposals on most of these issues are contained in documents MSR/2/Rev.1, MSR/3, MSR/4 and MSR/5. At the last moment, a new proposal contained in document MSR/5 was submitted which sought to amend some of the provisions contained in article 254 relating to the rights of the neighbouring land-locked and geographically disadvantaged States.

5. These proposals were considered at six informal meetings of the Third Committee. Intensive negotiations were also conducted through informal consultations with delegations directly concerned.

6. During these informal meetings and consultations some compromise formulae have emerged which in my personal assessment have such a considerable degree of support as to provide a reasonable prospect for consensus. These compromise formulae refer to articles 242, 246 *bis*, 247, 249, 253, 255 and 264. They are contained in an annex to this report. In my view these provisions could serve as a basis for a subsequent agreement leading to the revision of the negotiating text.

7. I wish to reiterate that, in our attempts to broaden the basis for a reasonable compromise in the field of marine scientific research, we should not lose sight of the fundamental principles of the newly emerging law of the sea and the need to keep a viable and equitable balance between the interests of all States. This has been our main concern throughout the work of the Third Committee. Evaluating the results of this session, I believe that we have succeeded in our endeavours to search for compromise formulae that do not upset the delicate balance which constitutes the very foundation of the régime for the conduct of marine scientific research. It is my submission that the compromise formulae, which emerged from the intensive negotiations during this session, are altogether the result of certain concessions made from the delegations which held opposing views. This is, indeed, the only way to achieve a compromise which provides the basis for mutual agreement. Of course, this does not mean that there is no room for improvement of the formulations contained in my report. Unfortunately, owing to lack of time during this session, we could not complete the consideration of these proposals.

8. Turning to the specific formulations and considering them in the light of the debate that took place in the Third Committee, I should like to state the following: first, the formulations on articles 242, 247 and 255 (with some drafting amendments) have acquired widespread support and therefore they can be considered as generally acceptable; secondly, on the other formulations, concerning articles 246 *bis*, 249 253 and 264, most of the representatives expressed support in substance for the underlying basic concepts and there have been suggestions for drafting amendments. However, certain delegations opposed in principle some of these proposals or parts of them. But even they did not oppose a further consideration of those proposals. In my view, the main trends in the debate and the prevailing desire to reach a compromise represent in themselves an encouraging feature. This is, indeed, a promising avenue for our future work.

9. In conclusion, I wish to extend to all the members of the Third Committee my gratitude for their co-operation and goodwill, which enabled us to make substantial progress in our negotiating efforts. I wish also to pay special tribute to the members of the secretariat for their dedication, competence and most valuable assistance rendered to the Committee in the discharge of its mandate.

ANNEX

Compromise formulae emerging from the intensive negotiations during the resumed eighth session

Article 242

Add the following sentence at the end of the paragraph:

"In this context, without prejudice to the rights and duties of States under this Convention, a State in the application of this Part shall provide, when appropriate, other States with a reasonable opportunity to obtain from it, or with its co-operation, information necessary to prevent and control damage to the health and safety of persons and the environment."

Article 246 bis

For the purposes of article 246:

(*a*) The absence of diplomatic relations between the coastal

[37] *Ibid.*

State and the researching State does not necessarily mean that normal circumstances do not exist between them for purposes of applying article 246, paragraph 3;

(*b*) The exercise by the coastal State of its discretion under article 246, paragraph 4 (*a*), shall be deferred and its consent shall be implied with respect to marine scientific research projects undertaken outside specific areas of the continental shelf beyond 200 miles, from the baselines of which the breadth of the territorial sea is measured, which the coastal State has publicly designated as areas in which exploitation or exploratory operations, such as exploratory drilling, are occurring or are about to occur;

(*c*) The coastal State shall give reasonable notice of such areas.

Article 247

In line 1, after "global" add "intergovernmental".

Article 249

Redraft paragraph 1 (*d*) to read:

"(*d*) If requested, provide the coastal State with an assessment of such data, samples, and research results or assist in their interpretation;".

In paragraph 1 (*e*), delete "subject to paragraph 2 of this article".

Redraft paragraph 2 to read:

"2. The present article is without prejudice to the conditions established by the laws and regulations of the coastal State for the exercise of its discretion to grant or withhold consent pursuant to article 246, paragraph 4, including requiring prior agreement for making internationally available the research results of a project of direct significance for the exploration and exploitation of natural resources."

Article 253

Redraft the title to read:

"Suspension or cessation of research activities".

In paragraph 1, line 1, before "cessation" insert "suspension or".

Redraft paragraph 1 (*a*) to read:

"(*a*) The research activities are not being conducted in accordance with the information communicated as provided for under article 248 upon which the consent of the coastal State was based and compliance is not secured within a reasonable period of time;".

Add a new paragraph 2:

"2. The coastal State may require cessation of research activities if the conditions provided for in paragraph 1 are not complied with within a reasonable period of time after suspension has been invoked, subject to any proceedings which may have been instituted pursuant to section 2 of Part XV."

Article 255

States shall endeavour to adopt reasonable rules, regulations and procedures to promote and facilitate marine scientific research activities beyond their territorial sea and, as appropriate, to facilitate, subject to the provisions of their internal law, access to their harbours and promote assistance for marine scientific research vessels, which comply with the relevant provisions of this Part.

Article 264

Add a new paragraph 2:

"2. Disputes arising from an allegation by the researching State that with respect to a specific project the coastal State is not exercising its rights under articles 246 and 253 in a manner compatible with the provisions of this Convention shall be submitted, at the request of either party and notwithstanding article 284, paragraph 3, to the conciliation procedure described in annex IV, provided that the Conciliation Commission shall not call in question the exercise of the discretion to withhold consent in accordance with article 246, paragraph 4."

DOCUMENT A/CONF.62/L.40

Report of the Chairman of the Drafting Committee

[*Original: English*]
[*22 August 1979*]

At the 93rd plenary meeting of the Conference, the Drafting Committee was requested to commence work by addressing itself to the provisions of the informal composite negotiating text that appeared to be settled and to recommend changes that were considered necessary from a technical and drafting point of view, particularly the adoption of uniform terminology.

At the request of the Drafting Committee, the secretariat prepared a list of recurring words and expressions in the informal composite negotiating text which might be harmonized (informal paper 2). The examples which were selected were not exhaustive on any particular issue but they clearly indicated the difficult task which the Committee faced in carrying out the mandate of ensuring uniformity of terminology.

It was recognized that it is desirable, to the extent possible, to avoid the use of different words, where the intended meaning appears to be the same.

The following pattern has been adopted for this paper. Firstly, there is a representative list of examples which has been chosen from each section of informal paper 2, then some issues involved. This is followed by the recommendations of the Drafting Committee. The substance of these recommendations, which were themselves based on the work of the language groups, was discussed by the coordinators of the language groups under the direction of the Chairman of the Drafting Committee.

I

"*All States*"

Examples

Article 17:

"ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea".

Article 52, paragraph 1:

"ships of all States enjoy the right of innocent passage through archipelagic waters".

Article 90:

"every State, whether coastal or land-locked, has the right to sail ships under its flag on the high seas".

Article 116:

"all States have the right for their nationals to engage in fishing on the high seas".

Article 140:

"activities in the Area shall be carried out for the benefit of mankind as a whole irrespective of the geographical location of States, whether coastal or land-locked".

Article 150, subparagraph (*f*):

"for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area".

Article 238:

"States, irrespective of their geographical location . . . have the right to conduct marine scientific research".

Article 256:

"States, irrespective of their geographical location . . . shall have the right . . . to conduct marine scientific research in the Area".

Article 257:

"States, irrespective of their geographical location . . . shall have the right. . . to conduct marine scientific research in the water column beyond the limits of the exclusive economic zone".

Some issues involved

(*a*) Should the term "all States", wherever it appears, be qualified by an expression such as "whether coastal or land-locked"?

(*b*) What is the distinction between the following expressions: "all States", "every State" and "States"?

The recommendations of the Drafting Committee

The Drafting Committee recommended the addition of the word "all" before "States" in articles 238, 256 and 257 of the revised negotiating text.

II

(i) "*Developing country*";
(ii) "*Developing State*".

Examples

Article 61, paragraph 3:
"special requirements of developing countries".

Article 62, paragraph 4 (*a*):
"of developing coastal States".

Article 82, paragraph 3:
"a developing country which is a net importer of a mineral resource".

Article 82, paragraph 4:
"the interests and needs of developing countries".

Article 119, paragraph 1 (*a*):
"requirements of developing countries".

Article 140:
"and taking into particular consideration the interests and needs of the developing countries and peoples who have not attained full independence or other self-governing status".

Article 143, paragraph 3 (*b*):
"for the benefit of developing countries".

Article 144, paragraph 2 (*b*):
"the domestic technology of developing countries . . . and from developing countries".

Article 150, subparagraph (*g*):
"the protection of developing countries".

Article 202, subparagraph (*a*):
"and other assistance to developing States".

Article 202, subparagraph (*a*) (iv):
"enhancing the capacity of developing States".

Article 202, subparagraph (*c*):
"in particular to developing States".

Article 203:
"developing States".

Article 266, paragraph 2:
"particularly developing States".

Annex II, article 5, paragraph 1 (*e*):
"for the benefit of a developing country".

Annex II, article 8, paragraph 1:
"or in association with developing countries".

Some issues involved

The text, as these examples show, is not consistent in its use of the words "developing country" or "developing State". The following factors may help to elucidate this issue:

(*a*) As used within the United Nations system, a "developing country" is a State.

(*b*) This issue should be divorced from the question of participation in the convention, for example, whether dependent territories may become parties to the convention.

(*c*) This issue is not related either to the separate question of whether States which are not parties to the convention can benefit from or be bound by the provisions of the convention.

(*d*) On the other hand, the expression "developing country" is hallowed by usage.

The recommendations of the Drafting Committee

The Drafting Committee recommended that the phrase "developing States" should replace "developing countries" except where the reference is to an entity other than a State (for example, in article 140, paragraph 1).

III

(i) "*States with special geographical characteristics*";
(ii) "*Land-locked and geographically disadvantaged States*";
(iii) "*Land-locked and other geographically disadvantaged States*";
(iv) "*Land-locked or otherwise geographically disadvantaged State* ".

Examples

Article 70:
"States with special geographical characteristics shall have the right to participate . . .".

Article 148:
"The effective participation of developing countries . . . having due regard to their special needs and interests, and in particular the special needs of the land-locked and geographically disadvantaged States among them".

Article 160, paragraph 2 (*k*):
"for States in connexion with activities in the Area as are due to their geographical location, including land-locked and geographically disadvantaged countries.

Article 254, title:
"neighbouring land-locked and geographically disadvantaged States".

Article 254, paragraph 1:
"rights of neighbouring land-locked and other geographically disadvantaged States".

Article 266, paragraph 2:
"particularly developing States, including land-locked and geographically disadvantaged States".

Annex III, article 11, paragraph 3 (*b*) (ii):
"in the developing countries, including the land-locked or otherwise geographically disadvantaged among them".

Some issues involved

The issue here seems to be to all intents and purposes one of nomenclature. The choice of expression will depend on general acceptance of a name for such States. It should be pointed out that in article 70, paragraph 2, there is a definition of the term "States with special geographical characteristics".

The recommendations of the Drafting Committee

Articles 69 and 70 use the phrase "States with special geographical characteristics" whereas articles 148, 160, 161, 254, 266, and 272 use the phrase "geographically disadvantaged States". The Drafting Committee recommended that the Chairman of the Drafting Committee consult with the relevant chairmen on the question of the harmonization of the use of these terms.

IV

"*State enterprises*".

Examples

Article 137, paragraph 1:
"whether undertaken by States Parties, or State enterprises or persons natural or juridical".

Article 153, paragraph 2 (*b*):
"by States Parties or State entities or persons natural or juridical".

Article 165, paragraph 2 (*c*):
"in consultation and collaboration with any entity carrying out such activities or State or States concerned".

Some issues involved

There are perhaps two issues here. In the first place, is there a difference between "State enterprises" and "State entities"? Secondly, does not the expression "persons natural or juridical" include "State enterprises"?

The recommendations of the Drafting Committee

The co-ordinators of the language groups are continuing to consult on this section.

V

"*Persons*".

Examples

Article 137, paragraph 1:
"or person, natural or juridical".

Article 153, paragraph 2 (*b*):
"or persons natural or juridical".

Article 235, paragraph 2:
"natural or juridical persons".

Article 263, paragraph 2:
"their natural or juridical persons".

Some issues involved

This section poses a relatively simple problem concerning the position of the adjectives "natural or juridical". Should they be placed before the noun "person" or after it? The question whether "juridical" should be replaced by "legal" is also raised.

The recommendations of the Drafting Committee

The Drafting Committee recommended use of the phrase "natural or juridical persons".

VI

(i) "*Ship*";
(ii) "*Vessel*".

Examples

The word "ship", with few exceptions, is used in Parts II, III, IV, V, and VII of the English version and the word "vessel" is used in Parts XII, XIII and XV, save in one case (article 233).

Some issues involved

This problem affects only the English and Russian versions since only one word is used in the other languages, e.g. *buque* in Spanish and *navire* in French. The words "ship" and "vessel" are not interpreted as meaning different things in the text.

The recommendations of the Drafting Committee

In the Arabic, Chinese, French and Spanish texts, one word is used consistently throughout the text. The Drafting Committee suggested that the chairmen of the English and Russian language groups might consult with each other in an attempt to resolve the issue within their groups.

VII

"*Joint ventures*".

Examples

Article 62, paragraph 4 (*i*):
"relating to joint ventures or other co-operative arrangements".

Article 72, paragraph 1:
"by establishing joint collaboration ventures".

Article 153, paragraph 3:
"such contracts may provide for joint arrangements in accordance with".

Article 269, subparagraph (*e*):
"promote joint ventures and other forms of bilateral and multilateral co-operation".

Annex II, article 7, paragraph 4:
"or through joint ventures with States".

Annex II, article 8, paragraph 3:
"into joint arrangements".

Annex III, article 12, paragraph 2 (*a*):
"forms of association, or other arrangements".

Some issues involved

It seems reasonable to seek more uniformity in references such as "joint ventures or other co-operative arrangements" and "joint collaboration ventures".

The recommendations of the Drafting Committee

The Drafting Committee recommended that the word "collaboration" be deleted from article 72, paragraph 1, following the model of article 62, paragraph 4 (*i*).

VIII

"*Internal law*".

Examples

Article 94, paragraph 2 (*b*):
"assume jurisdiction under its internal law over each ship flying its flag".

Article 217, paragraph 6:
"such proceedings to be taken in accordance with their laws".

Article 220, paragraph 2:
"to be taken in accordance with its laws".

Article 223:
"as may be provided under national legislation".

Article 235, paragraph 2:
"in accordance with their legal systems".

Annex III, article 12, paragraph 6:
"of making effective in terms of its own law".

Some issues involved

In this list of references there are several different expressions used to convey the notion of "municipal" or "domestic" law, for example, "internal law", "their laws", "its own law". Consequently, there should be some harmonization to the extent possible.

The recommendations of the Drafting Committee

The Drafting Committee noted that the Arabic, Chinese, French, Russian and Spanish co-ordinators were in agreement that it was preferable to use either "internal law" or "national law" rather than expressions such as "its laws", "their laws", "legislation" or "national legislation".

It also noted that the co-ordinator of the English language group expressed a preference for "its laws" or "their laws". Wherever added precision is required to distinguish from

international or other types of law, the term "national" should be used.

IX

"*Subject to the consent of the coastal State*".

Examples

Article 40:
"without the prior authorization of the States bordering straits".

Article 77, paragraph 2:
"without the express consent of the coastal State".

Article 79, paragraph 3:
"subject to the consent of the coastal State".

Article 210, paragraph 3:
"without the permission of the competent authorities of States".

Article 210, paragraph 5:
"without the express prior approval of the coastal State".

Article 245:
"only with the express consent of and under conditions set forth by the coastal State".

Article 246, paragraph 2:
"with the consent of the coastal State".

Article 265:
"without the express approval of the coastal State concerned".

Some issues involved

The problem here is whether there is a need for this variety of expressions—"express consent", "consent", "prior authorization", "express approval", "express prior approval", etc.

The recommendations of the Drafting Committee

The Drafting Committee recommended that it should aim for standardization in translation of expressions such as "consent" or "authorization", but that standardization of expressions within each language may not be possible.

X

"*Artificial islands, installations and structures and international navigation*"

Examples

Article 60, paragraph 7:
"Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation".

Article 147, paragraph 2 (*c*):
"The configuration and location of such safety zones shall not be such as to form a belt impeding the lawful access of shipping to particular maritime zones or navigation along international sea lanes.".

Article 261:
"The deployment and use of any type of scientific research installations or equipment shall not constitute an obstacle to established international shipping routes".

Some issues involved

The problem here relates to what language should be used to express the notion that the establishment of artificial islands, installations and structures should not impede international navigation.[38]

[38] See article 5 paragraph 6, of the Convention on the Continental Shelf (United Nations, *Treaty Series*, vol. 499, No. 7302, p.312).

The recommendations of the Drafting Committee

The co-ordinators of the language groups are continuing to consult on this section. In this connexion, a model article based on article 60 will be examined.

XI

"*Status of artificial islands, installations and structures*"

Examples

Article 60, paragraph 8:
"Artificial islands, installations and structures have no territorial sea of their own".

Article 147, paragraph 2 (*e*):
"Such installations shall not possess the status of islands. They shall have no territorial sea".

Article 259:
"The installations or equipment referred to in this section shall not have the status of islands, or possess their own territorial sea".

Some issues involved

With respect to the language used in this section, see article 5, paragraph 4, of the Convention on the Continental Shelf.

The recommendations of the Drafting Committee

The Drafting Committee recommended that the relevant parts of articles 60, paragraph 8, 147, paragraph 2 (*e*) and 259 read as follows: ". . . . do not possess the status of islands. They have no territorial sea of their own . . . ".

XII

(i) "*Sea lanes and traffic separation schemes*";

(ii) "*Any channels customarily used for international navigation*";

(iii) "*All normal passage routes used as routes for international navigation*";

(iv) "*To the use of recognized sea lanes essential to international navigation*".

Examples

Article 22, paragraph 1:
"through its territorial sea to use such sea lanes and traffic separation schemes".

Article 22, paragraph 3 (*b*):
"any channels customarily used for international navigation".

Article 41, paragraph 1:
"States bordering straits may designate sea lanes or traffic separation schemes".

Article 53, paragraph 4:
"all normal passage routes used as routes for international navigation".

Article 53, paragraph 4:
"all normal navigational channels".

Article 53, paragraph 12:
"through the routes normally used for international navigation".

Article 60, paragraph 7:
"to the use of recognized sea lanes essential to international navigation".

Article 147, paragraph 2 (*b*):
"through sea lanes of vital importance for international shipping".

Article 147, paragraph 2 (*c*):
"or navigation along international sea lanes".

Article 261:
"to established international shipping routes".

Some issues involved

The language used is not consistent, for example, article 147, paragraph 2 (*c*), refers to "international sea lanes" whereas article 261 speaks of "international shipping routes". Both could be referring to the same maritime area. Moreover, the term "sea lanes" is used in a specific sense in some articles, for example, articles 22, paragraph 1, and 41, paragraph 1, and in a general sense in, for example, articles 60, paragraph 7, and 147. The specific usage of the term is frequently associated with traffic separation schemes.

The recommendations of the Drafting Committee

The Drafting Committee noted that the terminology used in these articles requires article-by-article consideration. However, it recommended that the following suggestions be made to the Conference:

1. The word "such" should be added to the beginning of article 53, paragraph 5, so that it reads "such sea lanes".

2. The term "sea lanes" should be retained in part III.

3. A term other than "sea lanes" should be used elsewhere than in Parts II, III and IV of the Convention, for example, in articles 60, paragraph 7, and 147.

XIII

"Delimitation of the territorial sea, the exclusive economic zone or the continental shelf"

Examples

Article 60, paragraph 8:
"and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf".

Article 134, paragraph 4:
"shall affect the validity of any agreement between States with respect to the establishment of limits between opposite or adjacent States".

Article 147, paragraph 2 (*e*):
". . . nor shall their presence affect the determination of territorial or jurisdictional limits of any kind".

Article 259:
"and their presence shall not affect the delimitation of the territorial sea, exclusive economic zone and the continental shelf of the coastal State".

Some issues involved

With respect to the language used in these references see article 5, paragraph 4, of the Convention on the Continental Shelf.

The recommendations of the Drafting Committee

The Drafting Committee recommended that the relevant parts of articles 60, paragraph 8, 147, paragraph 2 (*e*), and 259 should read as follows: ". . . and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf".

XIV

(i) *"Between States with opposite or adjacent coasts"*;

(ii) *"Between adjacent or opposite States"*.

Examples

Article 15, title:
"Delimitation of the territorial sea between States with opposite or adjacent coasts".

Article 74, paragraph 1:
"The delimitation of the exclusive economic zone between adjacent or opposite States".

Article 83, paragraph 1:
"The delimitation of the continental shelf between adjacent or opposite States".

Article 298, paragraph 1 (*a*):
"disputes concerning sea boundary delimitations between adjacent or opposite States".

Some issues involved

The choice lies between the expressions "States with opposite or adjacent coasts" and "between adjacent or opposite States".

The recommendations of the Drafting Committee

The Drafting Committee recommended that the words "opposite" or "adjacent" should modify "coasts" not "States". The model would therefore be the title of article 15 which, in the English text, reads in part: "Delimitation . . . between States with opposite or adjacent coasts".

The choice of whether "opposite" precedes "adjacent", or vice versa, was left to the Chairman of the Drafting Committee to decide on the basis of which phrase would require the least change to the text, bearing in mind that the "equidistance line" is appropriate to States with adjacent coasts and the "median line" to States with opposite coasts.

XV

"Due publicity of charts", etc.

Examples

Article 16, paragraphs 1 and 2:
"1. The baselines for measuring the breadth of the territorial sea determined in accordance with articles 7, 9 and 10, or the limits derived therefrom, and the lines of delimitation drawn in accordance with articles 12 and 15, shall be shown on charts of a scale or scales adequate for determining them. Alternatively, a list of geographical co-ordinates of points, specifying the geodetic datum, may be substituted.

"2. The coastal State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations."

Article 47, paragraph 6:
"The archipelagic State shall clearly indicate such baselines on charts of a scale or scales adequate for determining them. The archipelagic State shall give due publicity to such charts and shall deposit a copy of each such chart with the Secretary-General of the United Nations."

Article 75, paragraphs 1 and 2:
"1. Subject to this Part, the outer limit lines of the exclusive economic zone and the lines of delimitation drawn in accordance with article 74 shall be shown on charts of a scale or scales adequate for determining them. Where appropriate, lists of geographical co-ordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.

"2. The coastal State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations."

Article 76, paragraphs 7 and 8:
"7. Information on the limits of the continental shelf beyond the 200 nautical mile exclusive economic zone shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under annex on the basis of equitable geographic representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf

established by a coastal State taking into account these recommendations shall be final and binding.

"8. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto."

Article 84, paragraphs 1 and 2:

"1. Subject to this Part, the outer limit lines of the continental shelf and the lines of delimitation drawn in accordance with article 83 shall be shown on charts of a scale or scales adequate for determining them. Where appropriate, lists of geographical co-ordinates of points, specifying the geodetic datum, may be substituted for such outer limits or lines of delimitation.

"2. The coastal State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations."

Article 134, paragraphs 2 and 3:

"2. States Parties shall notify the Authority established pursuant to article 156 of the limits referred to in article 1, paragraph 1 (1), determined by co-ordinates of latitude and longitude and shall indicate the same on appropriate large-scale charts officially recognized by that State.

"3. The Authority shall register and publish such notification in accordance with rules adopted by it for the purpose".

Some issues involved

The major issues here concern the repetition of certain provisions, for example, "the coastal State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations", and the problem of co-ordination between articles 75, 76, 84 and 134.

The recommendations of the Drafting Committee

The secretariat has prepared a draft article on publicity of charts. That article might be submitted after review by the Drafting Committee to the chairmen of the relevant committees for discussion.

The co-ordinators of the language groups are continuing to consult on the harmonization of articles 134, 76 and 84 with a view to consultation with the chairmen of the relevant committees.

XVI

"*Notification*".

Examples

Article 27, paragraph 3:

"In the cases provided for in paragraphs 1 and 2, the coastal State shall, if the captain so requests, advise the diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken."

Article 73, paragraph 4:

"In cases of arrest or detention of foreign vessels the coastal State shall promptly notify, through appropriate channels, the flag State of the action taken and of any penalties subsequently imposed".

Article 231:

"States shall promptly notify the flag State and any other State concerned of any measures taken pursuant to section 6 against foreign vessels, and shall submit to the flag State all official reports concerning such measures. However, with respect to violations committed in the territorial sea, the foregoing obligations of the coastal State shall apply only to such measures as are taken in proceedings. The consular officers or diplomatic agents, and where possible the maritime authority of the flag State, shall be immediately informed of any such measures".

Some issues involved

There are certain issues of harmonization raised by these examples. First, whereas articles 73 and 231 use the word "notify", article 27 uses the word "advise". In the second place there is a lack of uniformity as to who should be notified or advised. Article 27, paragraph 3, makes mention of the "diplomatic agent or consular officer of the flag State". Article 73, paragraph 4, refers to "the flag State" and article 231 refers to "the flag State or any other State concerned" and in the case of violations committed in the territorial sea "the consular officers or diplomatic agents, and where possible the maritime authority of the flag State". The question of the consistency in substance of articles 27, paragraph 3, and 231 is also raised.

The recommendations of the Drafting Committee

The Drafting Committee recommended that the word "notify" be used rather than "advise". In French the words *aviser* or *avertir* should be changed to *notifier*.

XVII

"*Exploration and exploitation of the resources of the Area*".

Examples

Article 1, paragraph 3:

"'Activities in the Area' means all activities of exploration for, and exploitation of, the resources of the Area".

Article 133, subparagraph (*a*):

"'Activities in the Area' means all activities of exploration for, and exploitation of, the resources of the Area."

Article 150, subparagraph (*f*):

"of the exploration and exploitation of the resources of the Area".

Article 155, paragraph 6:

"of exploration and exploitation of the resources of the Area".

Article 215:

"activities concerning exploration and exploitation of the Area".

Article 269, subparagraph (*a*):

"in the exploration and exploitation of the marine resources".

Article 273:

"to the exploration of the Area, the exploitation of its resources and other related activities".

Article 274:

"to the exploration of the Area and the exploitation of its resources".

Some issues involved

A variety of expressions is used to signify the idea of exploring and exploiting the resources of the area. The main point, however, is that article 1, paragraph 3, does declare that "activities in the Area" means "all activities of exploration for, and exploitation of, the resources of the Area". Thus, it ought to be possible to replace expressions such as those in articles 215 and 273 by the phrase "activities in the Area".

The recommendations of the Drafting Committee

The Drafting Committee recommended:

1. That the expression "exploration and exploitation of the resources of the Area" and similar expressions such as those in articles 215 and 273, should be changed to "activities in the Area", which is defined in article 1, paragraph 3;

2. That the definition of "activities in the Area" should occur only in article 1, paragraph 3.

XVIII

(i) "*For peaceful purposes*";

(ii) "*Exclusively for peaceful purposes*".

Examples

Article 88:
"The high seas shall be reserved for peaceful purposes."

Article 141:
"The Area shall be open to use exclusively for peaceful purposes."

Article 147, paragraph 2 (*d*):
"such installations shall be used exclusively for peaceful purposes;".

Article 155, paragraph 3:
"the use of the Area exclusively for peaceful purposes".

Article 240, subparagraph (*a*):
"Marine scientific research activities shall be conducted exclusively for peaceful purposes".

Article 242:
"promote international co-operation in marine scientific research for peaceful purposes".

Article 246, paragraph 3:
"to be carried out in accordance with this Convention exclusively for peaceful purposes".

Some issues involved

The issue here is whether it is necessary to change any of these expressions for the purposes of harmonization.

The recommendations of the Drafting Committee

The Drafting Committee recommended that the French and Russian texts be adjusted to conform with the English in articles 88 and 141 and that no further harmonization was necessary.

XIX

"*Transfer of technology*".

Examples

Article 144, paragraph 2:
"promoting the transfer of technology".

Article 150, subparagraph (*c*):
"transfer of technology to the Enterprise".

Article 266, paragraph 1:
"transfer of marine science and marine technology".

Article 268, subparagraph (*c*):
"the transfer of marine technology".

Article 269, subparagraph (*a*):
"transfer of all kinds of marine technology".

Article 270:
"transfer of marine technology".

Article 272:
"in the field of transfer of marine technology".

Article 273:
"transfer . . . of skills and technology".

Annex II, article 5, paragraph 1:
"transfer of technology".

Some issues involved

There are certain issues which are raised by these references. Should the term be "transfer of technology" or "transfer of marine technology"? Does the inclusion of expressions such as "all kinds of" in article 269 and "of skills" in article 273 create negative implications regarding the meaning of other provisions?

The recommendations of the Drafting Committee

The Drafting Committee recommended that the word "marine" should be added to articles 276 and 277 and that the suggested deletion of "all kinds of" in article 269, subparagraph (*a*), and "skills and" in article 273 should be subject to further consultation.

XX

"*International rules and standards*".

Examples

Article 21, paragraph 2:
"unless they are giving effect to generally accepted international rules or standards".

Article 21, paragraph 4:
"generally accepted international regulations relating to the prevention of collisions at sea".

Article 39, paragraph 2 (*a*):
"comply with generally accepted international regulations, procedures and practices for safety at sea".

Article 42, paragraph 1 (*b*):
"the prevention, reduction and control of pollution by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait".

Article 60, paragraph 5:
"taking into account applicable international standards . . . except as authorized by generally accepted international standards".

Article 60, paragraph 6:
"All ships must respect these saftey zones and shall comply with generally accepted international standards regarding navigation".

Article 61, paragraph 3:
"and any generally recommended subregional or global minimum standards".

Article 94, paragraph 3 (*b*):
"The manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments".

Article 213:
"to implement applicable international rules and standards established through".

Article 217, paragraph 4:
"rules and standards established through the competent international organization or general diplomatic conference".

Article 222:
"in conformity with all relevant international rules and standards concerning the safety of air navigation".

Some issues involved

This is clearly one of the most difficult sections to harmonize. The plethora of examples cited indicate quite eloquently that on the face of it, at least, there is need for intensive study.

The recommendations of the Drafting Committee

The Drafting Committee recommended that there should be further discussion on this issue and that, with this in mind,

representatives from all language groups should participate in the small group established by the English language group.

XXI

(i) "*Protection and preservation of the marine environment*";

(ii) "*The preservation of the marine environment*".

Examples

Article 21, paragraph 1 (*f*):
"the preservation of the environment of the coastal State".

Article 56, paragraph 1 (*b*) (iii):
"the preservation of the marine environment".

Article 145:
"effective protection for the marine environment".

Article 202, subparagraph (*a*):
"for the protection and preservation of the marine environment".

Article 234:
"the protection of the marine environment".

Article 235, paragraph 1:
"concerning the protection and preservation of the marine environment".

Article 266, paragraph 2:
"the preservation of the marine environment".

Article 277, subparagraph (*c*):
"related to the protection and preservation of the marine environment".

Annex II, article 2, paragraph 1 (*b*):
"concerning protection of the marine environment".

Annex II, article 16, paragraph 1 (*b*) (xii):
"the protection of the marine environment".

Some issues involved

The main issue here is whether the expression should be "preservation of the marine environment", "protection of the marine environment", or "protection and preservation of the marine environment". Some guidance in this matter is given by article 192 which can be considered the source of this obligation. Article 192 states that: "States have the obligation to protect and preserve the marine environment".

The recommendations of the Drafting Committee

The Drafting Committee recommended the use of the phrase "protection and preservation of the marine environment" throughout, except in Part XI. In addition, the Committee suggested that a draft of article 145, using the language of Part XII and of article 1, paragraph 4, be prepared for discussion in the co-ordinator's group and used as a model for Part XI and annexes II and III.

XXII

"*References to subregional, regional and global organizations*".

Examples

Article 61, paragraph 2:
"As appropriate, the coastal State and relevant subregional, regional and global organizations shall co-operate to this end".

Article 63, paragraph 1:
"these States shall seek either directly or through appropriate subregional or regional organizations".

Article 66, paragraph 5:
"The State of origin of anadromous stocks and other States fishing these stocks shall make arrangements for the implementation of the provisions of this article, where appropriate, through regional organizations."

Article 118:
"They shall, as appropriate, co-operate to establish subregional or regional fisheries organizations to this end."

Article 123:
"directly or through an appropriate regional organization".

Article 197:
"States shall co-operate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, global or regional."

Article 200:
"States shall co-operate directly or through competent international organizations, global or regional".

Article 202:
"States shall directly or through competent international or regional organizations, global or regional".

Article 204, paragraph 1:
"individually or collectively through the competent international organizations, global or regional".

Article 205:
"or provide at appropriate intervals such reports to the competent international or regional organizations".

Article 207, paragraph 3:
"States shall endeavour to harmonize their national policies at the appropriate regional level."

Article 247:
"A coastal State which is a member of a regional or global organization".

Article 268, subparagraph (*e*):
"international co-operation at all levels, particularly at the regional, subregional and bilateral levels".

Some issues involved

An issue raised here is whether expressions such as "subregional, regional, and global organizations" or "international organizations, global or regional" could be replaced by the simple phrase "international organizations".

The recommendations of the Drafting Committee

The Drafting Committee recommended that:

1. In article 61, paragraph 5, the word "relevant" should be inserted to conform to article 61, paragraph 2.

2. In principle, except with respect to article 61, the term "competent international organizations" is sufficient to refer to global organizations or to both global and other organizations. The use of the word "competent" is subject to later reconsideration in connexion with the other adjectives referred to in section 15 of informal paper 2/Add.1.

3. Most co-ordinators of the language groups felt that there was no substantive issue in the order in which "global", "regional" and "subregional" appeared. However, there may be reason for distinguishing between provisions on living resources in which "subregional" and "regional" precede "global", and provisions on pollution in which "global" precedes "regional".

4. It should be noted that the Spanish text uses the word "competent" in article 61, paragraph 2, where the English text uses "relevant".

XXIII

"*Bilateral, subregional or regional agreements*".

Examples

Article 69, paragraph 2:
"through bilateral, subregional or regional agreements".

Article 70, paragraph 3:
"through bilateral, subregional or regional agreements".
Article 125, paragraph 2:
"through bilateral, subregional or regional agreements".
Article 243:
"through the conclusion of bilateral, regional and multilateral agreements".
Article 255:
"for the purpose of giving effect to bilateral or regional and other multilateral agreements".
Article 282:
"through a general, regional or special agreement".

Some issues involved

There are two types of agreements mentioned in these references: agreements of a limited kind, for example, "bilateral, subregional or regional agreements" and those which are of a wider nature, for example, "bilateral, regional and multilateral agreements". It seems that harmonization can be carried out in the latter type of expressions (articles 243, 255 and 282).

The recommendations of the Drafting Committee

The Drafting Committee recommended that the expression "bilateral, regional and multilateral agreements" be simplified to read "bilateral and multilateral agreements" except where a specific type of international agreement is contemplated. A change would not therefore be made in articles 69, 70, 125 and 282. Where the negotiating text uses the word "or" rather than "and", that word would be retained pending an article-by-article review. The expression "through a general, regional or special agreement" in article 282 is still under consideration.

XXIV

(i) "*Obligation*";
(ii) "*Duty*".

Examples

Article 192, title:
"General obligation".
Article 192:
"States have the obligation to protect and preserve the marine environment".
Article 193:
"States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment".
Article 237, title:
"Obligations under other conventions on the protection and preservation of the marine environment".
Article 237, paragraph 1:
"The provisions of this Part shall be without prejudice to the specific obligations assumed by States under special conventions and agreements".
Article 282, title:
"Obligations under general, regional or special agreements".
The term "duty" or "duties" is used in the titles of articles 24, 39, 44, 54, 56, 58, 94, 98, 100, 117, 195, 225, 248 and 249.

Some issues involved

These examples raise the following questions: Do the words "obligation" and "duty" carry the same legal meaning? If the answer is in the affirmative, should there be only one word throughout the text to express the notion of duty? Of course, there may be other criteria, for example, usage which may determine in each instance the choice of word. It should be pointed out that this issue arises in a different manner in the other languages.

The recommendations of the Drafting Committee

The Drafting Committee recommended that this section receive further consideration by the language groups. It recommended that harmonization was preferable noting, for example, the problems of harmonization and linguistic concordance in articles 192 and 193.

The French language group expressed a preference for the term *obligation* in French, but could agree to any other harmonized solution.

XXV

(i) "*Juridical status*";
(ii) "*Legal status*".

Examples

Article 2, title:
"Juridical status of the territorial sea, of the airspace over the territorial sea and of its bed and subsoil".
Article 34, title:
"Juridical status of waters forming straits used for international navigation".
Article 49, title:
"Juridical status of archipelagic waters, of the airspace over archipelagic waters, and of their bed and subsoil".
Article 78:
"the legal status of the superjacent waters".
Article 135:
"shall affect the legal status of the waters superjacent to the Area".
Article 155, paragraph 3:
"the legal status of the superjacent waters".
Article 259, title:
"Legal status".

Some issues involved

For the sake of uniformity either "juridical status" or "legal status" should be chosen.

There is a broader question of the distinction in the English text between the words "status" and "régime", the question of the consistency in the use of the adjective "legal", and the problem of concordance among the different languages.

The recommendations of the Drafting Committee

The Drafting Committee recommended that "legal status" be used throughout the English text in preference to "juridical status". Equivalents in other languages: Arabic-النظام القانوني, Chinese-法律地位, French—*régime juridique*, Russian— правовой статус, Spanish—*régimen jurídico*.

The Drafting Committee recommended that the language groups review instances other than those listed in informal paper 2 where the English text uses words such as "régime", "legal régime", "status", "legal (juridical) status".

XXVI

"*Other rules of international law*".

Examples

Article 2, paragraph 3:
"and to the other rules of international law".

Article 34, paragraph 2:
"and to other rules of international law".

Article 58, paragraph 2:
"other pertinent rules of international law . . . in so far as they are not incompatible with this Part".

Article 58, paragraph 3:
"and other rules of international law in so far as they are not incompatible with this Part".

Article 87, paragraph 1:
"by other rules of international law".

Article 139, paragraph 1:
"to applicable principles of international law".

Article 223:
"or applicable international law".

Article 294:
"by international law".

Some issues involved

The main issues here relate to the use of various expressions such as "other rules of international law", "other pertinent rules of international law", "applicable principles of international law" and "other rules of international law in so far as they are not incompatible with this Part". Do the adjectives "pertinent" and "applicable" carry any meaning in this context? Does the term "rules of international law" adequately cover the meaning?

The recommendations of the Drafting Committee

The Drafting Committee recommended the deletion of the word "pertinent" wherever it appears in this context, and the use of the word "rules" rather than "principles" in article 139, paragraph 1.

The Drafting Committee also recommended that the adjective "applicable" be deleted when reference is made to rules or principles of international law.

XXVII

"*The Charter of the United Nations*".

Examples

Preamble, paragraph 2
"in accordance with the purposes and principles of the United Nations as set forth in the Charter".

Preamble, paragraph 3
"in accordance with the Charter of the United Nations".

Article 19, paragraph 2 (*a*)
"of the principles of international law embodied in the Charter of the United Nations".

Article 39, paragraph 1 (*b*)
"of the principles of international law embodied in the Charter of the United Nations".

Article 138
"other pertinent rules of international law, including the Charter of the United Nations".

Some issues involved

The examples all refer to the Charter of the United Nations. Therefore, the issue relates to the finding of a uniform formula where the principles of the Charter of the United Nations are referred to. See section XXVI above.

The recommendations of the Drafting Committee

The co-ordinators of the language groups recommended that article 138 be redrafted in part to read: "the provisions of this Part, the principles embodied in the Charter of the United Nations and other rules of international law . . .".

XXVIII and XXIX

(i) "the above provisions do not affect the right of the coastal State to take any steps"

(ii) "nothing in this Part shall affect the right of States to take measures";

(iii) "applies";

(iv) "shall apply".

Examples

Article 10, paragraph 6:
"The foregoing provisions do not apply to".

Article 27, paragraph 2:
"the above provisions do not affect the right of the coastal State to take any steps".

Article 28, paragraph 3:
"paragraph 2 is without prejudice to the right of the coastal State".

Article 35:
"nothing in this Part shall affect".

Article 49, paragraph 4:
"The régime of archipelagic sea lanes passage established in this Part shall not in other respects affect the status of the archipelagic waters".

Article 71:
"the provisions of articles 69 and 70 shall not apply".

Article 110, paragraph 4:
"these provisions shall apply".

Article 112, paragraph 2:
"Article 79, paragraph 5 applies".

Article 134, paragraph 1:
"this Part shall apply".

Article 135:
"Neither the provisions of this Part nor any rights granted or exercised pursuant thereto shall affect the legal status of the waters".

Article 142, paragraph 3:
"Neither the provisions of this Part nor any rights granted or exercised pursuant thereto shall affect the rights of coastal States to take such measures".

Article 233:
"Nothing in sections 5, 6 and 7 of this Part shall affect the legal régime of straits used for international navigation".

Article 236:
"the provisions of the present Convention . . . shall not apply".

Article 249, paragraph 2:
"This article is without prejudice to the conditions".

Article 293, paragraph 1:
"The court or tribunal having jurisdiction under this section shall apply the present Convention".

Some issues involved

The main issue involved here concerns the use of "shall". It is generally agreed that "shall" denotes an imperative and expresses an obligation. The text, as the examples show, in English, Russian and Spanish, tends to be indiscriminate in its use of "shall" vis-à-vis the present tense. There is certainly a case for consistency in the use of this auxiliary.

The recommendations of the Drafting Committee

The co-ordinators of the language groups are continuing to consult on this section. The secretariat has prepared a paper on the use of the word "shall" in the English text which will form the basis for further discussions in the language groups.

XXX

(i) "*Not contrary to*";

(ii) "*Consistent with*".

XXXI

"*Except where otherwise provided*".

XXXII

(i) "*In accordance with*";

(ii) "*In conformity with*";

(iii) "*Pursuant to*";

(iv) "*In strict conformity with*";

(v) "*In pursuance of*".

XXXIII

(i) "*Provided in*";

(ii) "*Provided for in*";

(iii) "*Established in*";

(iv) "*Referred to in*";

(v) "*Defined in*";

(vi) "*Set out in*";

(vii) "*Listed in*";

(viii) "*Mentioned in*";

(ix) "*Called for in*";

(x) "*Described in*";

(xi) "*Prescribed in*";

(xii) "*Laid down in*";

(xiii) "*Set forth in*";

(xiv) "*Created by*";

(xv) "*Designated under*";

(xvi) "*Determined under*";

(xvii) "*Covered by*";

(xviii) "*Required by*".

Examples

Section XXX

Article 1, paragraph 5 (*b*) (ii):
"is not contrary to the aims of the present Convention".

Article 56, paragraph 2:
"compatible with the provisions of the present Convention".

Article 58, paragraph 1:
"compatible with the other provisions of the present Convention".

Article 58, paragraph 2:
"so far as they are not incompatible with the present Part".

Article 62, paragraph 4:
"consistent with the present Convention".

Article 236:
"in a manner consistent, so far as is reasonable and practicable, with the present Convention".

Article 240, subparagraph (*c*):
"compatible with the present Convention".

Article 293, paragraph 1:
"not compatible with the present Convention".

Section XXXI

Article 5:
"except where otherwise provided in the present Convention".

Article 8, paragraph 1:
"except as provided in Part IV".

Article 24, paragraph 1:
"except in accordance with the present Convention".

Article 32:
"With such exceptions as are contained in subsection A".

Article 121, paragraph 2:
"except as provided for in paragraph 3".

Article 298, paragraph 1 (*b*):
"subject to the exceptions referred to in article 296".

Article 302:
"unless expressly provided otherwise".

Section XXXII

Article 3:
"in accordance with the present Convention".

Article 19, paragraph 1:
"in conformity with the present Convention".

Article 72, paragraph 2:
"pursuant to articles 69 and 70".

Article 73, paragraph 1:
"in conformity with the present Convention".

Article 208, paragraph 1:
"pursuant to articles 60 and 80".

Annex II, article 3, paragraph 2 (*a*):
"in strict conformity with the present Convention and the rules and regulations of the Authority".

Annex II, article 16, paragraph 1 (*d*):
"in pursuance of articles 151 and 164".

Section XXXIII

Article 8, paragraph 2:
"as provided in the present Convention".

Article 10, paragraph 6:
"provided for in article 7".

Article 34, paragraph 1:
"established in the present Part".

Article 38, paragraph 1:
"referred to in article 37".

Article 42, paragraph 2:
"as defined in the present section".

Article 56, paragraph 3:
"The rights set out in the present article".

Article 64, paragraph 1:
"species listed in annex I".

Article 67, paragraph 3:
"mentioned in paragraph 1".

Article 94, paragraph 5:
"called for in paragraphs 3 and 4".

Article 101, subparagraph (*c*):
"described in subparagraphs (*a*) and (*b*)".

Article 140, paragraph 1:
"as specifically provided for in the present Part".

Article 153, paragraph 2:
"as prescribed in paragraph 3".

Article 155, paragraph 1:
"policies set forth in article 150".

Article 155, paragraph 3:
"principles laid down in the present Part".

Article 199:
"referred to in article 198".

Article 206:
"in the manner provided in article 205".
Article 237, paragraph 1:
"principles set forth in the present Convention".
Article 238:
"as provided for in the present Convention".
Article 252, subparagraph (*d*):
"with regard to conditions established in article 249".
Article 253, paragraph 1 (*a*):
"as provided under article 248".
Annex V, article 23:
"covered by the present Convention".

Some issues involved

The list of expressions cited above are phrases which introduce a reference to an article, section, a part, or to the convention itself. The object is to discern what distinction, if any, there might be in the different forms used. Perhaps, if there is a distinction, the expressions will be retained; if not, some harmonization may be necessary.

It should be noted, however, that even from an initial examination there seems to be no need for an expression such as "in strict conformity with", which may raise an unintended negative implication regarding the meaning of other provisions which omit the word "strict".

The recommendations of the Drafting Committee

The French language group has established a special group to advise the co-ordinators of the language groups on these expressions.

DOCUMENT NG6/19

Report of the Chairman of negotiating group 6

[*Original: Spanish*]
[*22 August 1970*]

Negotiating group 6 deals with the definition of the outer limit of the continental shelf and the question of payments and contributions with respect to the exploitation of the continental shelf beyond 200 miles or the question of revenue-sharing. At this resumed eighth session, it held five meetings, at which 72 statements were made. At its meeting on 13 August 1979, negotiating group 6 established the so-called group of 38. This was in response to the request by several delegations for questions referred to negotiating group 6 to be considered by a smaller group with a view to facilitating the solution of those questions. In response to those suggestions, I invited delegations interested in participating in a smaller group to register with the secretariat. The delegations which did so are as follows, in order of registration: Uruguay, Ireland, Libyan Arab Jamahiriya, Singapore, Bulgaria, Sri Lanka, United States of America, Philippines, Argentina, Seychelles, United Kingdom of Great Britain and Northern Ireland, France, United Arab Emirates, Japan, Ecuador, Iceland, India, Indonesia, Colombia, Yuogoslavia, Union of Soviet Socialist Republics, Swaziland, Netherlands, Australia, New Zealand, Venezuela, Austria, Brazil, Romania, Morocco, Switzerland, Norway, Canada, Iraq, Jamaica, Sweden and Peru.

Although the number of delegations registered turned out to be somewhat large, I decided, in accordance with the wishes expressed by negotiating group 6, to begin the meetings of this working group immediately, on the understanding that it would be an open group in which delegations would refer to such items as they considered appropriate within the context of the mandate of negotiating group 6.

The items considered by the group of 38 were: the outer limit of the continental shelf; payments and contributions with respect to the exploitation of the continental shelf beyond 200 miles; submarine oceanic ridges; the Commission on the Limits of the Continental Shelf; and the problem of Sri Lanka.

The group of 38 held five meetings, at which there were 65 statements on the aforementioned items.

(a) *Outer limit of the continental shelf*

Some delegations expressed their preference for the 200-mile extension, although, in the light of the progress of negotiations, they declared their willingness to continue negotiations to achieve a general agreement.

The Chinese delegation submitted an informal proposal regarding article 76 of the revised negotiating text, in document NG6/18. In paragraph 1, it would be made clear that the natural prolongation of the territory of the coastal State would be to a "limit not exceeding" the outer edge of the continental margin. In paragraph 3, in the listing of the elements which constitute the continental margin, the word "generally" would be inserted to indicate that those elements do not occur in all regions.

The Austrian delegation submitted an informal suggestion (NG6/12) containing a draft resolution for adoption by the Conference, urging the coastal States to facilitate participation by land-locked and geographically disadvantaged States of the same region or subregion in the exploration and exploitation of the natural resources of the continental shelf, through their entities or persons natural or juridical of their nationality.

(b) *Payments and contributions established by article 82 of the informal composite negotiating text*

In addition to the suggestions concerning this item made during the first part of the current session, there was an informal suggestion by the United States (NG6/13) to redraft paragraph 3 of article 82.

The delegations of Afghanistan, Austria, Bolivia, Lesotho, Nepal, Singapore, Uganda, Upper Volta and Zambia submitted an informal suggestion (NG6/15), according to which the payments or contributions referred to in article 82 would be made to the common heritage fund to be established to receive from the coastal States a portion of the proceeds from the exploitation of the non-living resources of their exclusive economic zones.

(c) *Submarine ocean ridges*

In connexion with this item, which is mentioned in the foot-note to paragraph 3 of article 76, the Group examined the suggestions contained in informal papers NG6/9 and NG6/11, submitted, respectively, by the Union of Soviet Socialist Republics and by Argentina, Australia, Canada, India, Ireland, New Zealand, Norway, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Uruguay. The first suggestion was to add at the end of article 76, paragraph 5, the following text: "However, the limit of the shelf in areas containing submarine oceanic ridges shall not extend farther than the aforementioned 350-mile distance". The second suggestion would define submarine oceanic ridges as long, narrow submarine elevations formed of oceanic crust and establish that in the areas of such ridges the outer limit of the continental shelf would not exceed the same distance of 350 miles.

Bulgaria also submitted an informal proposal (NG6/14/Rev.1), according to which the extension of the continental shelf on the basis of depth and distance would be subject to the shelf not being extended to submarine oceanic ridges. Singapore submitted an informal proposal (NG6/17), which was basically to delete in article 76, paragraph 5, the reference to the possibility of the continental shelf being extended 100 nautical miles from the 2,500-metre isobath. Japan sug-

gested that ridges formed of oceanic crust should be excluded from the definition of the continental margin as well as the ocean floor and the subsoil thereof (NG6/16).

In connexion with this item, I held consultations with the delegations most directly concerned and I trust that it will be possible to reach a solution at the next session.

(d) *Commission on the Limits of the Continental Shelf*

Article 76, paragraph 7, provides for the establishment of this commission. Some delegations referred to consultations held for the purpose of preparing a text to serve as the basis for the annex that would describe the composition and functions of the commission.

Singapore suggested informally (NG6/17) an amendment to paragraph 7, so that the limits of the shelf established by a coastal State would be in accordance with the recommendations of the commission, although the coastal State could deviate from those recommendations in consultation with the commission and in accordance with any decision mutually arrived at.

(e) *The problem of Sri Lanka*

This question was referred to in the foot-note to paragraph 4 (*a*) of article 76. As indicated in the foot-note, the suggestion of the delegation of Sri Lanka for an additional method of delimitation applicable to its geological and geomorphological conditions had received widespread sympathy during the first part of the eighth session. The question was considered both in negotiating group 6 and in the group of 38. Sri Lanka submitted a new informal proposal (NG6/10) to add a new subparagraph (iii) to paragraph 4 (*a*) of article 76. According to that proposal, in the case of a State where the mathematical average of the thickness of sedimentary rocks along the outer edge of the continental margin established at the maximum distances set in paragraph 4 was not less than 3.5 kilometres, and where more than half of the margin lay beyond the outer edge as so delineated, the outer limit of the continental shelf would extend to a line delineated on the basis of the outermost fixed points where the thickness of the sedimentary rocks was not less than 0.8 kilometre. No detailed analysis was made of this informal proposal, at the request of the delegation of Sri Lanka itself, pending the outcome of consultations with other delegations.

This summary of the activities of negotiating group 6 shows that it examined all the questions submitted to it for its consideration on the basis of the various suggestions made by participating delegations. Although its work has not produced formulae reflecting a definitive general agreement, I believe that the discussion has made it possible to define precisely the areas where some differences exist and possible solutions.

DOCUMENT NG7/45

Report of the Chairman of negotiating group 7

[*Original: English*]
[*22 August 1979*]

The present report is confined to giving an account of the work of negotiating group 7 during the resumed eighth session. As far as the group's previous work and the results thereof are concerned, reference is made to earlier reports by the Chairman contained in documents NG7/21, NG7/24 and NG7/39. Since the establishment of the group, it has held a total of 51 meetings, with 45 working papers being distributed in the course of its deliberations.

During the resumed eighth session, negotiating group 7 discussed in 10 meetings the following three items,[39] widely explored but not resolved in its previous negotiations: criteria to be applied in the delimitation of the exclusive economic zone or the continental shelf between States with opposite or adjacent coasts; interim measures to be applied pending final delimitation; settlement of delimitation disputes.

Besides meetings of the group itself, the Chairman met separately with the sponsors of documents NG7/2 and NG7/10 and Add.1 to discuss delimitation criteria. In addition, discussions for the elaboration of compromise texts on interim measures and the settlement of delimitation disputes were conducted in small consultation groups as will be mentioned below. Furthermore, the Chairman also held numerous private consultations with interested delegations on the issues pending solution.

Article 74 and article 83, paragraph 1

As before, the discussions on delimitation criteria were characterized by the opposing positions of, on the one hand, delegations advocating the equidistance rule and, on the other hand, those specifically emphasizing delimitation in accordance with equitable principles. In the main, the arguments of the two sides remained as before, referring to the concepts and expressions to be used in the provisions concerned. At the Chairman's meetings with the supporters of the two differing opinions, it became apparent that a consensus may not be based upon a "non-hierarchical" formulation listing only the basic elements of delimitation, an alternative which earlier had seemed to have some support. Similarly, a concise formulation providing merely that the delimitation would be "effected by agreement in accordance with international law" did not receive any particular sympathy from either side.

At the same time, however, the discussions and consultations seemed to indicate a certain gain of common ground in the technical formulation of the respective provisions, while also certain new elements of delimitation, notably that of the equality of States, were introduced in private consultations, possibly to prove conducive to the final solution.

It is hardly necessary to explore in detail the reasons so far obstructing our attempts to find a compromise. The opposing positions on this controversial problem have time and again been voiced in clear terms by the supporters of each group. It would seem, however, that despite abundant opportunities to change views on the present issue in negotiating group 7, the efforts to reach a compromise may have suffered from a certain lack of communication between delegations belonging to the opposing interest groups. It is my sincere wish, as the Chairman of the group, that in this sense a fruitful dialogue may be established not merely to reflect the positions of the past but also, in essence, to follow any possible course of compromise. In any case, the differences of opinion, as reflected in the wording and formulation of the various proposals, would not seem to be insurmountable.

Compromise efforts might find substantive ground in at least some of the proposals presented during the work of our group. In this regard—and not excluding other alternatives—reference might be made to the text offered as the Chairman's assessment of a possible basis for a compromise in my report of 20 April (NG7/39). While this proposal would still remain available for further discussion, an alternative formulation, contained in document NG7/44, was also introduced by the Chairman, based upon my estimation of the present state of negotiations on delimitation criteria.

Article 74 and article 83, paragraph 3

During the first part of the eighth session several new proposals were introduced on interim measures. In view of the discussions and consultations held, the Chairman offered, in document NG7/39 a somewhat modified formulation for the

[39] It was also suggested that a special provision might be needed for delimitation of contiguous zones but no discussion on this matter took place.

facilitation of further negotiations on the issue. The observations made on this formula at the end of the first part of the eighth session indicated that the main difficulty with the proposed text lay in its second sentence, which was criticized by a number of delegations for introducing what they felt to be a moratorium arguably prohibiting, *inter alia*, any economic activities in the disputed area.

During the resumed eighth session, the discussions on interim measures were focused on this specific question as displaying the following basic alternatives: whether the second sentence could remain as it appeared in the above-mentioned document or, if not, whether it could be somehow modified or should be deleted altogether.

As a result of intensive negotiations both in the negotiating group itself and in two small consultation groups convened by the Chairman, a revised text was produced. After a comprehensive debate on the basis of the new text, the Chairman was able to draw the conclusion that, except for certain reservations by a few delegations, the revised formula was generally regarded as a positive outcome of the group's deliberations and that, accordingly, it could serve as one of the three basic elements of the final compromise package on the delimitation issue. Some delegations emphasized, however, that their acceptance of any provision on interim measures would be dependent on the final result of the negotiations on delimitation criteria.

Taking into account the above clarifications, the following text is offered as the sought-after compromise formula on interim measures and does not, at least for the time being, need further negotiation:

"Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation."

Article 298, paragraph 1 (a)

Extensive discussions were conducted on the formula of a revised rule on settlement of delimitation disputes, included in my report of 20 April 1979. While the proposal received fairly broad support, at least as a basis for further negotiations, it was also objected to by a number of delegations advocating a more comprehensive system of dispute settlement. For further elaboration of the text, it was suggested by many delegations that a small consultation group should be established composed of delegations having different points of view. However, owing to conflicting opinions on the mandate of such a group, the Chairman was not able to convene a working body fully representative of the membership of negotiating group 7. As a result of discussions with a number of delegations assisting the Chairman in the revision of his text, certain changes, based mainly upon proposals by the United States of America (NG7/40), were made to the Chairman's proposal which was then presented in its modified form to the negotiating group (NG7/41). In subsequent debate, however, the text was found to be inadequate by a number of delegations, while several others, many of whom considered the proposal as the maximum compromise they could approve, advocated its adoption as a basis for a consensus.

Upon this unsatisfactory outcome of the negotiations, further consultations were continued in a new group, the composition of which reflected in a more comprehensive manner the various positions on dispute settlement in negotiating group 7. However, this time, it did not prove possible to reach the final compromise either.

In the light of the negotiations and consultations held, and still being convinced of the necessity to continue our efforts to reach an acceptable solution, the following text is hereby offered as the Chairman's suggestion for a basis for further negotiations on article 298, paragraph 1 (*a*):

"(i) Disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that the State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, and notwithstanding article 284, paragraph 3, accept submission of the matter to conciliation provided for in annex IV; and provided further that there shall be excluded from such submission any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory;

"(ii) After the Conciliation Commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report; if these negotiations do not result in an agreement, the parties shall, by mutual consent, submit the question to one of the procedures provided for in section 2 of Part XV, unless the parties otherwise agree;

"(iii) The provisions of this subparagraph shall not apply to any sea boundary dispute finally settled by an arrangement between the parties, or to any such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon those parties."

The lengthy discussions on the settlement of delimitation disputes during the eighth session have strengthened my understanding that only a proposal based upon the procedure of compulsory conciliation is consistent with a realistic view of the possibilities, if any, to reach a compromise on this controversial issue. However, owing to the fact that no consensus prevails on the matter, it remains, as indicated above, subject to further negotiations. Accordingly, and taking into account the provisions of document A/CONF.62/62, I do not find myself in a position to suggest the incorporation of the above proposal in any new revised text, although suggestions were made by several delegations during the discussions of negotiating group 7 to include the formula appearing in document NG7/41.

In this connexion, it may also be recalled that reference was made to a proposal, already submitted during the first part of the eighth session, for the modification of the introduction to the present article 298. No conclusion, however, was drawn on this point.

In view of the above and bearing in mind, in particular, that according to a number of delegations the issues falling under the mandate of negotiating group 7 are to be settled together as parts of a final "package", it is to be stated that, though notable progress was recorded especially as regards the reaching of a positive solution on the question of interim measures, the texts considered did not, as a whole, receive such support that would justify a conclusion that negotiating group 7 had, at the end of this session, completed its task. On the other hand, it would not seem ungrounded to expect that the texts proposed by the Chairman in view of the discussions held might serve as a basis for the sought-after final compromise to be reached during the next stage of the Conference.

In conclusion, I have once again the pleasure to express my gratitude to the members of the secretariat for their valuable advice and efficient assistance in our efforts to find a consensus within the group.

DOCUMENT FC/16

Report of the Chairman of the group of legal experts on final clauses

[*Original: English*]
[*23 August 1979*]

1. The group of legal experts on final clauses was constituted as explained by the President in his statement of 27 July 1979 (FC/2). According to paragraph 2 of the statement, the mandate of the group of legal experts on final clauses was to examine the technical aspects of the final clauses and the establishment of a preparatory commission and, taking into consideration the discussions in the informal plenary meeting, to prepare draft texts without seeking to resolve the political issues involved.

2. The group has so far held 10 meetings, the first on 31 July 1979 and the last on 20 August 1979.

3. The group considered the first six items on the final clauses identified as non-controversial. On the basis of a draft text suggested by the Chairman in informal document GLE/FC/1, the group considered draft texts on those items as follows: signature (art. 298 *bis*), ratification (art. 299), accession (art. 300), status of annexes (art. 302), depositary (art. 303), authentic texts (art. 304) and a testimonium clause (art. 304). Based on the discussions in the group, the Chairman has prepared a draft text which is annexed to the report.

4. After the consideration of the texts of the non-controversial items, the group commenced its consideration of the first controversial item on final clauses, namely, amendment or revision. In the course of the discussion of this question, several draft proposals were submitted: documents GLE/FC/2 and GLE/FC/2/Amend.1 proposed by the delegations of Peru and Portugal; an informal proposal by the delegations of Austria and Singapore (GLE/FC/3); a working paper (GLE/FC/4) by a member of the group; another working paper (GLE/FC/5) proposed by a member; a draft text suggested by the Chairman (GLE/FC/6); an informal proposal by Ecuador (GLE/FC/7); an informal proposal by the delegations of Peru and Portugal (GLE/FC/8); and an informal working paper (GLE/FC/10).

5. The group has not completed its consideration of the item. It would require additional meetings to continue the study of the existing proposals mentioned above and additional suggestions that may be made for the purposes of preparing a text on the item. In this context, it should be noted that the final clauses are now being discussed in a substantive way for the first time at the Conference. Many of the issues have a bearing on the different subject-matters of the convention and hence on the package deal. It is, therefore, of the utmost importance to have an exhaustive discussion on various aspects of these clauses.

6. In order to complete its mandate, apart from the need to conclude the discussion on the item, the group must take up for discussion the following controversial issues which have already been discussed by the conference in informal plenary meetings, namely: reservations, relation to other conventions, entry into force, including the establishment of a preparatory committee, transitional provision, and denunciation.

7. In concluding, the Chairman would thank the members of the group for their co-operation and constructive contribution to the work during this first stage. He also wishes to express his gratitude and appreciation to the members of the secretariat for their dedication, competence and untiring efforts to assist the group in carrying out its task.

ANNEX

Draft text suggested by the Chairman of the group of legal experts on final clauses

Article 298 bis. *Signature*

The present Convention shall be open for signature by . . . until . . . (the last day of the twenty-fourth month after the opening date of signature) at the Ministry of Foreign Affairs of the Republic of Venezuela and also, from . . . (first day of the seventh month after the opening date of signature) until . . . (last day of the twenty-fourth month after the opening date of signature), at United Nations Headquarters in New York.

Article 299. Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 300. Accession

The present Convention shall remain open for accession by . . . The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 302. Status of annexes

The annexes form an integral part of the present Convention and, unless expressly provided for otherwise, a reference to the Convention includes a reference to its annexes.

Article 303. Depositary

The Secretary-General of the United Nations shall be the depositary of the present Convention.

Article 304. Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto . . . , have signed the present Convention.

DONE at Caracas, this . . . day of . . . , one thousand nine hundred and eighty . . . .

DOCUMENT A/CONF.62/L.44

Report of the President on the work of the informal plenary meeting of the Conference on final clauses

[*Original: English*]
[*27 August 1979*]

1. At the 117th plenary meeting, on 19 July 1979, it was decided that the discussion of the final clauses of the new convention would be undertaken in informal plenary meetings, to be assisted by a group of legal experts established to consider the technical aspects of the clauses.

2. The first informal plenary meeting on final clauses was held on 23 July 1979 and the 11th and last one on 23 August 1979.

3. At the first meeting, I presented a suggested programme of work in a statement distributed as informal document FC/1. In paragraph 5 of that document, I suggested that the final clauses be examined by placing the relevant subjects and issues in two categories, namely, the subjects and issues that, for various reasons, are likely to prove controversial; and the subjects and issues that may be considered non-controversial, as they follow a traditional pattern irrespective of the substance of the convention. The first category was constituted as follows: (i) amendment or revision, (ii) reservations, (iii) relations to other conventions, (iv) entry into force (including consideration of a preparatory commission), (v) transitional provision, (vi) denunciation and (vii) participation in the convention. In the second category, the following items were placed: (i) signature, (ii) ratification, (iii) status of annexes, (iv) authentic texts and (v) testimonium clause.

4. It was agreed that the informal plenary meetings should first take up consideration of the non-controversial items, on the understanding that such items, as noted in document FC/1, are not non-controversial *per se*, since they may have a bearing also on controversial issues or some issues regarded by some delegations as being of paramount importance.

5. After a preliminary discussion on the non-controversial items during the 2nd informal plenary meeting, it was agreed to refer the items to the group of legal experts with the mandate to examine the technical aspect of the final clauses and the establishment of a preparatory commission and, taking into consideration the discussions in the informal plenary meeting, to prepare draft texts without seeking to resolve the political issues involved. The group was constituted under the chairmanship of Mr. Evensen, as I explained in informal document FC/2.

6. Having finished consideration of the non-controversial items, which were then transmitted to the group of legal experts for its consideration, the informal plenary meetings of the Conference took up consideration of the controversial items for the purposes of preliminary discussions and then submission to the group of legal experts.

7. The controversial items were taken up in the informal plenary meetings in the order in which they appear in paragraph 5 of document FC/1 and as enumerated in paragraph 3 above. The discussion on these items and the major ideas that emerged have been summarized in informal documents FC/3, FC/4, FC/6, FC/7, FC/9, FC/11, FC/13 and FC/17. I need not repeat them here.

8. Two items, however, remained unfinished: the question of participation in the convention and the establishment of the preparatory commission, both of which will be taken up at the next session.

9. The group of legal experts also attempted to carry out its mandate and, as explained by the Chairman in his report (FC/16), more work is necessary to produce draft articles for consideration in informal plenary meetings of the Conference at the next session.

10. I would like to thank the Chairman of the group of legal experts for the work he and the group have done so far, which has been most useful.

DOCUMENT A/CONF.62/L.45

Report of the President on the work of the informal plenary meeting of the Conference on the settlement of disputes

[*Original: English*]
[*29 August 1979*]

1. At the resumed eighth session, the Conference held one informal plenary meeting, on 20 August 1979, for the purpose of considering the informal proposal of 11 May 1978 of the delegations of the Netherlands and Switzerland (SD/1). This proposal dealt with the conciliation procedure (art. 284 and annex IV); the listing of the alternative dispute settlement procedures, namely the Court and tribunals (art. 287, para. 1); and *ad hoc* chambers of the International Court of Justice.

2. At its informal plenary meeting, the Conference first considered the conciliation procedure and dealt with the ambiguity in paragraphs 1, 2 and 3 of article 284 caused by the use of the word "procedure" in different senses. Drafting clarifications were suggested by the President, and it was decided that changes should be made to article 284 as follows:

Article 284

"1. Any State Party which is a party to a dispute relating to the interpretation or application of the present Convention may invite the other party or parties to the dispute to submit the dispute to conciliation in accordance with the procedure in annex IV, or with some other conciliation procedure.

"2. If the other party accepts this invitation and if the parties agree upon the procedure in annex IV or such other conciliation procedure, any party to the dispute may submit it to the agreed procedure.

"3. If the other party does not accept the invitation or the parties do not agree upon the procedure in annex IV or such other conciliation procedure, the conciliation proceedings shall be deemed to be terminated.

"4. When a dispute has been submitted to conciliation, such conciliation proceedings may only be terminated in accordance with the provisions of annex IV or other agreed conciliation procedure, as the case may be."

3. The next item dealt with was the right of any party to the conciliation to terminate the proceedings where the conciliators appointed by the parties had failed to appoint the chairman of the commission (annex IV, art. 3, para. 4). It was agreed that if the conciliation proceedings had reached the stage where the parties had appointed their conciliators, it was preferable to avoid the procedure being terminated at the request of either party to the dispute. This would also derogate from the compulsory resort to conciliation provided for in article 296, paragraph 3 (*b*), of the revised negotiating text, as formulated by negotiating group 5. The informal proposal of the Netherlands and Switzerland on this question was accepted for changing the existing text of the revised negotiating text. The new text reads as follows:

"Within 30 days following the date of the last of their own appointments, the four conciliators shall appoint a fifth conciliator chosen from the list, who shall be chairman. If the appointment is not made within the prescribed period, either party may, within one week of the expiration of the prescribed period, request the Secretary-General to make the appointment in accordance with paragraph 5."

4. The next issue considered was the number of national conciliators that a party can appoint (annex IV, art. 3, para. 2). The present text permits each party to appoint two national conciliators. The informal proposal suggests that this should be limited to one national. One reason adduced for the proposed change was that a heavy burden would be imposed on the Chairman of the Commission who would have a greater responsibility, acting as the sole arbiter amongst four other members representing the interests of the parties. The counter argument was that the parties should have the flexibility to appoint two national conciliators if they felt that it was in their interests. The President suggested that consideration be given to incorporating aspects of both provisions by permitting each party to appoint one national unless the parties agreed otherwise. Consideration of this question could not be concluded. The President held consultations with the delegations most interested and it would appear that further consultations were needed.

5. The proposal to change the order in which the alternative dispute settlement forums are listed (art. 287, para. 1) would place the International Court of Justice first in that list. While the rationale for listing in first place the principal judicial organ of the United Nations was explained, this was met by the reasoning that the creation of a new judicial organ with comprehensive jurisdiction over all aspects of the law of the sea would necessitate its being listed as the first alternative. The delegations of the Netherlands and Switzerland indicated a willingness to consider withdrawing this proposal, which was, however, conditional upon the outcome of the outstanding proposal regarding national conciliators referred to above. Consequently, this item too is outstanding.

6. The President expressed appreciation for the spirit of compromise and for the co-operation shown by the delegations of the Netherlands and Switzerland which had indicated that they would not pursue the other suggestions in their informal proposal.

7. At the conclusion of the informal plenary meeting on the settlement of disputes, the President identified the other outstanding issues, which were as follows:

(i) The necessary changes to co-ordinate article 298, paragraph 1 (*b*), with article 296 as fomulated by negotiating group 5;

(ii) The report by the Chairman of the group of legal experts on the settlement of disputes relating to part XI;

(iii) The report of the Third Committee relating to the dispute settlement provision on marine scientific research;

(iv) The report relating to the dispute settlement provisions within the mandate of negotiating group 7.

8. Regarding the first item, as a consequence of the redrafting of article 296 by negotiating group 5, it has become necessary to bring article 298, paragraph 1 (*b*), in line with the new structure of article 296. Article 298, paragraph 1 (*b*), therefore needs to be reformulated to maintain its original intent.

9. Regarding the second item, the Chairman of the group of legal experts on the settlement of disputes relating to part XI has presented his report (A/CONF.62/C.1/L.26, appendix B) to the formal plenary Conference. The report has been presented to the working group of 21 of the First Committee, and to the Committee itself, where it has been considered. The changes suggested in that report relate to annex V, the statute of the Law of the Sea Tribunal, and in particular to the provisions concerning the Sea-Bed Disputes Chamber. This report could be accepted by the Conference without the need for a separate consideration of its content. The outstanding issues referred to by the Chairman would need to be dealt with at the first stage of the ninth session, and this has already been included in the decision of the Conference in the programme of work for that session. The Chairman is to be complimented on the excellent work done by the group which has been appreciated all around.

10. Regarding the third item, the Chairman of the Third Committee has presented his report to the plenary Conference and that included a new formulation of article 264 dealing with dispute settlement. There has been a discussion of that report and it is only necessary for the plenary Conference, therefore, to take note of the dispute settlement provision on the question of marine scientific research.

11. Regarding the fourth item, the Chairman of negotiating group 7 has also presented his report to the Conference. As all matters falling within the competence of that negotiating group are closely interrelated, including the dispute settlement provision, and as the Chairman had not presented any new formulations which would satisfy the conditions laid down by the Conference in document A/CONF.62/62, there is no need for the report to be discussed at the present stage.

DOCUMENT A/CONF.62/92

Statement by the representative of the United States of America in response to the statement by the Vice-Chairman of the group of coastal States contained in document A/CONF.62/90*

[*Original: English*]
[*1 October 1979*]

It is both surprising and distressing that distorted press reports should have caused such a stir at the Third United Nations Conference on the Law of the Sea, where the views of the United States with respect to navigation and overflight have long been well known to all participants. Press reports notwithstanding, those views have not changed. Activities in the oceans by the United States are fully in keeping with its long-standing policy and with international law, which recognizes that rights which are not consistently maintained will ultimately be lost. At the same time, it remains the firm position of the United States that a comprehensive convention on the law of the sea offers by far the best, and perhaps the last, opportunity to establish a universally agreed and conflict-free régime governing all uses of the world's oceans and their resources. We have indicated that, as part of such an agreement, we could accept a 12-mile territorial sea coupled with transit passage of straits used for international navigation, all within the context of the over-all package deal. In this regard, we note that the group of coastal States reaffirms its determination to continue working towards the early adoption of a generally accepted comprehensive convention on the law of the sea.

Let us not be diverted from our shared goal by debate over the very differences in national régimes that compelled our Governments to enter into negotiations in the first place.

*Circulated at the request of the representative of the United States of America.

DOCUMENT A/CONF.62/93

Statement by the representative of the United States of America in response to the statement by the Chairman of the Group of 77 contained in document A/CONF.62/89

[*Original: English*]
[*1 October 1979*]

It is regrettable that controversy has been introduced once again into the deliberations of this Conference, which can ill afford distraction from its goal of forging consensus on a comprehensive legal régime for the use and management of the oceans and their resources. In light of the full and repeated explanations of views and positions to which the Con-

ference has already been exposed, most recently on 28 August and 15 September 1978, and 19 March 1979, I shall respond as briefly as possible to the contention that the enactment of national legislation designed to regulate the conduct of deep sea-bed mining, and exploration and exploitation activities undertaken beyond the limits of national jurisdiction, would be illegal and potentially disruptive to this Conference.

My Government rejects outright the notion that United Nations General Assembly resolutions, including resolutions 2574 D (XXIV) and 2749 (XXV) and irrespective of the majorities by which such resolutions were adopted, are legally binding on any State in the absence of an international agreement that gives effect to such resolutions and that is in force for that State. Clear statements of our position are on public record, including those made in the course of debate accompanying the passing of the General Assembly resolutions just mentioned and those made in the course of the unfortunate exchanges on this subject that have taken place during the Conference on the Law of the Sea and in the United Nations Conference on Trade and Development.

There exists nothing in customary or conventional international law that precludes Governments from acting to regulate the activities of their citizens or that forbids Governments or private persons or entities access to the sea-bed beyond the limits of national jurisdiction for the purposes of exploring for and exploiting the resources there. Should the Conference succeed in producing a convention that establishes an international régime for the regulation of such exploration and exploitation, those States for which that convention is in force will forgo the exercise of these high seas freedoms. But for States not bound by such a convention, there are no legal impediments to these activities.

Legislation currently being contemplated in the United States would by its own terms be superseded by a convention in force for the United States. Moreover, legislation designed to establish a regulatory régime for deep sea-bed mining is compatible with the aims of the Conference as they have emerged in the course of negotiations. Finally, it is widely recognized that commercial recovery of deep sea-bed hard mineral resources cannot commence until the middle of the next decade, that is, far beyond the date that the Conference has set for itself for completion of the convention. Assuming continuation of the encouraging progress that has marked recent negotiations, legislation thus poses no threat to the orderly establishment of an international régime to regulate deep sea-bed mining activities. In the meantime, legislation is needed if the sizeable investment required for the continued development of technology is to be made.

With respect to the assertion that national legislation or prospective unilateral mining are disruptive to negotiations and will have an adverse impact on the Conference on the Law of the Sea and on other multilateral negotiations undertaken within the United Nations framework, I wish to say that such a result is not the intention of the United States. Indeed, if there is a burden being placed on the negotiations, it is the impression held by some that we will eventually agree to an unworkable international régime simply because we have no alternative means of access to resources we need. Let the prospect of legislation serve as a reminder that, to be acceptable, a convention must provide assured and non-discriminatory access to deep sea-bed resources for States and entities sponsored by States, on reasonable terms and conditions and with security of tenure for miners.

Let us end this sterile debate and get on with the important work of the Conference, for its success will make it unnecessary to put to the test conflicting views of nations and permit us all in concert to exploit the resources of the deep sea-bed for the common good of all mankind.

DOCUMENT A/CONF.62/94

Letter dated 10 October 1979 from the Chairman of the Group of 77 to the President of the Conference

[*Original: English/French/Spanish*]
[*19 October 1979*]

I have the honour to transmit to you herewith resolution I, adopted by the Ministers for Foreign Affairs of the member States of the Group of 77 on 29 September 1979 in New York, on the question of unilateral legislation on sea-bed mining, and to request you to have it circulated as an official document of the Conference.

(Signed) M. CARÍAS
Head of the delegation of Honduras
to the Third United Nations Conference
on the Law of the Sea
and Chairman of the Group of 77

Resolution I

QUESTION OF UNILATERAL LEGISLATION ON SEA-BED MINING

The Ministers for Foreign Affairs of the States members of the Group of 77,

Recalling General Assembly resolution 2749 (XXV) of 17 December 1970, whose principles held that the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction, as well as the resources thereof, are the common heritage of mankind, to be explored and exploited for the benefit of mankind as a whole and taking into particular consideration the interests of the developing countries,

Recalling various resolutions of the General Assembly, United Nations agencies, and regional and subregional groups, as well as resolutions 51 (III) of 19 May 1972 and 108 (V) of 1 June 1979 of the United Nations Conference on Trade and Development affirming the principle that all States should refrain from adopting legislation or any other measures designed to carry out the exploration and exploitation of these resources until an international régime and machinery is adopted by the Third United Nations Conference on the Law of the Sea,

Taking note of the fact that negotiations to create an international régime and machinery for the exploration and exploitation of these resources for the benefit of mankind as a whole are in progress under the auspices of the United Nations,

Convinced that such unilateral legislation would create a situation which would be prejudicial to the orderly exploration and exploitation of the resources of the sea-bed for the benefit of mankind as a whole,

Convinced also that unilateral legislation on sea-bed mining and other related matters will be contrary to well-established principles of negotiations and will have considerable negative impact upon the successful conclusion of the Conference and would endanger other economic negotiations and affect the interests of the international community.

1. *Declare* that:

(*a*) Any unilateral measures, legislation or agreement restricted to a limited number of States on sea-bed mining are unlawful and violate well-established and imperative rules of international law;

(*b*) Such unilateral acts will not be recognized by the international community, and, being unlawful, will entail international responsibility on the part of States who commit them, and an investor will not have legal security for his investments in activities in pursuance of such acts;

2. *Urge* all States to refrain from taking any unilateral action on sea-bed mining and appeals to them to bring the Third United Nations Conference on the Law of the Sea to a successful and early conclusion.

DOCUMENTS OF THE THIRD COMMITTEE

DOCUMENT A/CONF.62/C.3/L.33

Report by the Chairman of the Third Committee

[Original: English]
[21 August 1979]

Results of negotiations on Part XIII of the revised informal composite negotiating text during the resumed eighth session

1. Following the pattern of the negotiating process established during the previous sessions, I have the honour to submit for your consideration the report on the work of the Third Committee. It contains my personal assessment of the results of the negotiations during the resumed eighth session on those issues which were left pending after the conclusion of our work at Geneva. Faithful to the established practice, I tried to involve in the negotiations all interested delegations and to provide the membership of the Committee with the opportunity to express their views and to have them reflected in the final outcome.

2. We started our work in the resumed eighth session and this fact alone not only conveyed a sense of urgency in our work but also brought pressure upon all of us and called for greater mobilization of our efforts in order to pave the way for further advancement in our endeavours.

3. As I had the opportunity to recall, the first part of this session was marked with an outstanding achievement which was the successful completion of the consideration of Part XII (Protection and preservation of the marine environment) and Part XIV (Development and transfer of marine technology) of the informal composite negotiating text. These positive results have already been reflected in the revised text and have broadened the area of agreement, which could indeed offer a substantially improved prospect for consensus within the Conference as a whole. I am glad to reiterate this assessment made in this Committee and endorsed by the plenary Conference in April this year.

4. At this resumed session, our efforts were directed to the consideration of the pending substantive issues relating to the régime for the conduct of marine scientific research on the continental shelf beyond 200 miles from the baselines from which the breadth of the territorial sea is measured, as well as the problem of the settlement of disputes relating to the interpretation or implementation of the provisions of the convention with regard to marine scientific research.

5. There were some other substantive issues still pending, such as the facilities with regard to access of research vessels to the harbours of the coastal State and assistance to be rendered to such vessels conducting marine scientific research activities; the requirement for making the research results internationally available through appropriate national or international channels; conditions for cessation or suspension of marine scientific research activities; assistance or co-operation in providing the research vessels with information necessary to prevent and control damage to the health and safety of persons, or to the marine environment; the modalities under which marine scientific research projects could be undertaken under the auspices of an international organization etc. Informal proposals on most of these issues are contained in documents MSR/2/Rev.1, MSR/3, MSR/4 and MSR/5. At the last moment, a new proposal was submitted which sought to amend some of the provisions contained in article 254 relating to the right of neighbouring land-locked and geographically disadvantaged States.

6. During this resumed session, the Committee held six informal meetings. Owing to the nature of key issues still pending relating to the conduct of marine scientific research, I felt that more informal consultations were needed with the delegations directly concerned. At the informal meetings of the Committee and in the informal consultations, we heard over 270 statements and this fact alone is an indication of the intensive negotiations that took place.

7. As you might recall, during the first part of the eighth session at Geneva as well as at the previous sessions, we proceeded to the consideration of the specific amendments article by article. At this resumed session, we combined this method of work with an issue-oriented approach. New texts were presented and discussed at the informal meetings of the Committee and in the consultations.

8. During these intensive negotiations, some compromise formulae have emerged which, in my personal assessment, have a substantial degree of support as to provide a reasonable prospect for consensus. These compromise provisions are the following:

Article 242

Add the following sentence at the end of the paragraph:

"In this context, without prejudice to the rights and duties of States under the present Convention, a State in the application of the present Part shall provide, when appropriate, other States with a reasonable opportunity to obtain from it, or with its co-operation, information necessary to prevent and control damage to the health and safety of persons and the environment."

Article 246 bis

For the purposes of article 246:

(*a*) The absence of diplomatic relations between the coastal State and the researching State does not necessarily mean that normal circumstances do not exist between them for purposes of applying article 246, paragraph 3;

(*b*) The exercise by the coastal State of its discretion under article 246, paragraph 4 (*a*), shall be deferred and its consent shall be implied with respect to marine scientific research projects undertaken outside specific areas of the continental shelf beyond 200 miles, from the baselines from which the breadth of the territorial sea is measured, which the coastal State has publicly designated as areas in which exploitation or exploratory operations, such as exploratory drilling, are occurring or are about to occur;

(*c*) The coastal State shall give reasonable notice of such areas.

Article 247

In line 1, after "global" add "intergovernmental".

Article 249

Redraft paragraph 1 (*d*) to read:

"(*d*) If requested, provide the coastal State with an assessment of such data, samples, and research results or assist in their interpretation;".

In paragraph 1 (*e*), delete "subject to paragraph 2".

Redraft paragraph 2 to read:

"2. The present article is without prejudice to the conditions established by the laws and regulations of the coastal State for the exercise of its discretion to grant or withhold consent pursuant to article 246, paragraph 4, including requiring prior agreement for making internationally available the research results of a project of direct significance for the exploration or exploitation of natural resources.

Article 253

Redraft the title to read:

"Suspension or cessation of research activities."

In paragraph 1, before "cessation" insert "suspension or".

Redraft paragraph 1 (*a*) to read:

"(*a*) The research activities are not being conducted in accordance with the information communicated as provided for under article 248 upon which the consent of the coastal State was based and compliance is not secured within a reasonable period of time;".

Add a new paragraph 2:

"2. The coastal State may require cessation of research activities if the conditions provided for in paragraph 1 are not complied with within a reasonable period of time after suspension has been invoked, subject to any proceedings which may have been instituted pursuant to section 2 of Part XV."

Article 255

States shall endeavour to adopt reasonable rules, regulations and procedures to promote and facilitate marine scientific research activities beyond their territorial sea and, as appropriate, to facilitate, subject to the provisions of their internal law, access to their harbours and promote assistance for marine scientific research vessels, which comply with the relevant provisions of the present Part.

Article 264

Add a new paragraph 2:

"2. Disputes arising from an allegation by the researching State that, with respect to a specific project, the coastal State is not exercising its right under articles 246 and 253 in a manner compatible with the provisions of the present Convention shall be submitted, at the request of either party and notwithstanding article 284, paragraph 3, to the conciliation procedure described in annex IV, provided that the Conciliation Commission shall not call in question the exercise of the discretion to withhold consent in accordance with article 246, paragraph 4."

9. In conclusion, I wish to express my view that we have made significant progress and have broadened the basis for a reasonable compromise which could offer a substantially improved prospect for a consensus. I further believe that if the above-mentioned formulae receive broad support, this Committee then may consider that the substantive negotiations within its terms of reference are concluded and that the work of this Committee has been completed at this stage. I therefore earnestly hope that these results will constitute a very important contribution of the Third Committee to the positive final outcome of this Conference.

10. Finally, I should like to express my gratitude and appreciation to all members of the Committee for their untiring efforts and understanding which made the spirit of compromise prevail throughout our work over the many years. I wish also to express my most sincere thanks and appreciation to the members of the secretariat for their dedication, competence and most valuable assistance rendered to the Committee and to me personally in the discharge of the work of the Committee.

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