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REPORTS OF COMMITTEE CHAIRMEN ON THE WORK OF THE SESSION

(PART IV WILL BE REPRODUCED AS SOON AS IT BECOMES AVAILABLE)

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THIRD CONFERENCE
ON THE LAW OF THE SEA

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REPORT BY MR. PAUL BAMELA ENGO, CHAIRMAN OF THE FIRST COMMITTEE ON THE WORK OF THE COMMITTEE AT THE FIFTH SESSION OF THE CONFERENCE

I wish to apologize for the length, not the content, of this report. The motivation is to speak frankly and to express views that I believe could help the Conference in general and the First Committee in particular in future negotiations.

The two preceding sessions of the Conference, held in Geneva and New York respectively, called for the preparation of unique documents which were to form the basis for negotiations. The Single Negotiating Text 1/ that I submitted at the end of the Geneva session in 1975 contained ideas drawn from my personal impressions of what could provide a consensus, bearing in mind the nature and historic significance of the mandate of the Conference in general and the First Committee in particular. I was compelled in some instances to look outside and beyond the unproductive debates that had dominated that session, especially considering the climate of distrust and acrimony between opposing sides. As I explained in the introduction to that text, I worked in the light of the provisions contained in the Declaration of Principles Governing the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction, 2/ adopted without discussion by the United Nations General Assembly on 17 December 1970. Also of considerable importance for me was another international document commanding wide universal support: the "Declaration on the Establishment of a New International Economic Order" adopted by the General Assembly on 1 May 1974 at its sixth special session. I could do this because I had a free hand.

During the last session of the Conference held in New York, a new mandate was given by the Conference by which I was to revise the Single Negotiating Text in the

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1/ 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/Part I.

2/ General Assembly resolution 2749 (XXV).

light of the ideas and debates which occurred during the negotiations. I was thus bound by a new duty to produce another negotiating text reflective of the discourse in the Committee. The Revised Single Negotiating Text 3/ was the result.

From that account, it is clear that, in spite of the intensive consultations carried out before their production, the two negotiating texts were, in the final analysis, the product and responsibility of one man, the Chairman of the Committee. As a first reaction, they were branded as everything from unbalanced to the worst basis for negotiations. Yet, after serious debates between opposing sides, I am reassured to find that each text has served the crucial purpose intended. They indeed did expose issues in concrete terms.

If the exchange of views this session can appropriately be characterized, it can hardly be disputed that they were conditioned by the clear knowledge of the nature and content of the issues which stand between us and the adoption of a universally acceptable Convention. It is not the Revised Negotiating Text that is an issue. The argument whether or not it or its predecessor is a good basis for negotiation responds only to subjectivity. A provision not in tune with one's cherished position risks condemnation as a bad basis. What must concern us at this juncture are issues which still divide us. I shall turn to this aspect later. I wish merely to state at this stage that the various observations and appeals which I made in the First Committee, the General Committee and the Plenary remain valid.

Organization of work

With regard to the organization of our work, the details have appeared in various Committee documents. I shall therefore scan through it merely to place this report in a chronological sequence.

The First Committee held 13 formal meetings during this session. Most of the Committee's time was spent in informal meetings, either in the Workshop set up by the Committee, or in the ad hoc group created by the Workshop to conduct negotiations on the system of exploitation of the international sea-bed area. Both were under the co-chairmanship of Dr. Jagota of India and Mr. Sondaal of the Netherlands. The Workshop held 13 meetings, the ad hoc negotiating group 12. One informal meeting was also held in an effort to consult the Committee members on an advice sought of me by the President of the Conference relating to the procedures for dealing with the dispute settlement system at the level of the Plenary. Interestingly enough we struck our first consensus. Whenever there was time available, regional and interest groups made good use of the opportunity to pursue their work on First Committee matters.

The Workshop was created at the 2nd meeting of the session following consultations held by the three Vice-Chairmen of the Committee. It determined its own method of work and established the order in which it would consider two chosen

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3/ Official Records of the Third United Nations Conference on the Law of the Sea, vol. V (United Nations publication, Sales No. E.76.V.8). Document A/CONF.62/WP.8/Part I/Rev.1.

sets of issues. Unfortunately, some delegations were prepared for detailed negotiations on one of the two issues chosen and not on the other. Time had consequently to be allocated to the regional and interest groups to get themselves prepared for both. Work finally commenced in earnest with the system of exploitation on 18 August 1976.

Five meetings of the Workshop were spent on discussing the various aspects of the system of exploitation, particularly those arising from the three Workshop papers submitted. On 26 August, the Workshop decided to create a more informal ad hoc group for negotiations. That group was open to all delegations but had a central membership of 26, that composition being unique to the group.

A reporting mechanism was established between the Workshop and the Committee and the ad hoc group and the Workshop. The results of the Workshop were set forth in weekly reports by the Co-Chairmen (A/CONF.62/C.1/WR.1 to 5); the activities of the ad hoc group were reported orally to the Workshop by the Co-Chairmen after approximately each four meetings. The final Workshop report of the Co-Chairmen contains the main elements of discussions in the ad hoc group also. This was done in order to give a more comprehensive account of the work done on the system of exploitation, particularly article 22 of part 1 and related paragraphs 7 and 8 of annex 1.

The various terms of reference, including the central membership of the ad hoc group are to be found in the Workshop reports and in the report of the Rapporteur (A/CONF.62/C.1/L.18).

The last four meetings of the Committee which followed the presentation of the final report of the Co-Chairmen were devoted to an appraisal of the work of the session by delegations, including the procedures adopted. It also included consideration of the approach which should be taken at the next session.

The exchange of views was very useful and it is my hope that the respective comments will be studied by all concerned. It became clear also that the Bureau will have to play its traditional role of ensuring early and speedy negotiations by all delegations at the next session. Delegations will for their part spend all the time available negotiating and not dissipate energies on time-consuming procedural questions.

Negotiation of issues

The final report of the Co-Chairmen 4/ presented on their behalf by Mr. Sondaal of the Netherlands is comprehensive and contains a valuable assessment of the current situation. I consider the latter to be of extremely great importance.

It would clearly be less than candid to describe this as one of our more productive sessions. It is true, of course, that the Group of 77 reformulated its

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4/ See A/CONF.62/C.1/WR.5 and Corr.1 and Add.1.

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position on the system of exploitation, specifically article 22 and certain important provisions of annex I, in an attempt to meet some of the expressed concerns of the industrialized countries. Other drafts were produced by the Soviet Union and by the United States which were helpful in the negotiation process adopted by the Committee. But regrettably, it seems to me that the discussion at all levels of the Committee's activities tended, in spite of all efforts by most delegations, to cover old ground and failed to produce any new approaches that might help resolve the problems at the centre of our work.

I am not above owing that I am deeply gratified at the spirit of co-operation and understanding that continued to prevail in the Committee despite periods of disappointment, frustration, even of despair that frequently threatened our work. That the members of the First Committee were able to transcend these passing phases and maintain the quality of their work calls for warm tribute to their patience and dedication.

If it was regrettable that the First Committee failed at this session to make spectacular gains, it was nevertheless entirely understandable and, if I may say so, both foreseeable and foreseen. From my vantage point in the Committee, it has been relatively clear for a long time what our several methods of work were attempting to accomplish: viz. to place on one side the possible differences in philosophical approach, and address ourselves in a pragmatic way to how a system of exploitation might actually function to the satisfaction of all States concerned. By examining the practical details of a system of exploitation, it was thought we might be able to achieve substantial areas of agreement, and succeed in isolating and eventually narrowing areas of disagreement. This was what inspired the work of the Committee and its various levels at Caracas, and since then in Geneva and in New York.

I am convinced that we have progressed as far as we possibly can down that particular road. Marking the end of this phase of the work, and acting in accordance with the mandate given to me by the Committee and by the Conference as a whole, I put out at the end of the last session a revised version of the Single Negotiating Text which, on the basis of my extensive consultations, I believed - and continue to believe - might offer to all a satisfactory basis for discussion in their search for a compromise acceptable to all. As I have often emphasized, its objective was to suggest a possible direction toward a compromise, or at the very least to expose problems in concrete form to induce fruitful negotiation. I am gratified to note that such drafting as has been done at this session has taken into account, and, to a not-insignificant extent has incorporated ideas from that revised text.

Now despite these efforts at new drafts and the leadership shown under difficult and sometimes impossible circumstances, by the Co-Chairmen of the Workshop, we are faced with a problem of the first magnitude, a problem, in fact, that lies at the heart of our negotiation. It was a long, highly instructive and even necessary road we travelled these years since Caracas and indeed unknowingly continued to travel at this session. We all have to realize now that that journey is over and that we have arrived at the core of our problem. Like conscientious

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and methodical workmen we have slowly but surely cleared away subsidiary issues and questions, cleared away, I say, in the sense of having considered and discussed them to an advanced stage of maturity, and greatly improved our own awareness of their full implications. This long gestation period, as it were, has had a great equalizing effect in that many of the delegates from the smaller technologically less-advanced countries have now acquired a certain level of familiarity with our complex subject, the better to represent their views in dealing with those who might approach things differently.

Having completed this initial phase, dealing vigorously and courageously with a wide variety of legal, technical and economic problems we have now come to confront the central and most difficult problem of all and it is this: should the new system of exploitation provide for a guaranteed permanent role in sea-bed mineral exploitation for States Parties and private firms? Or should such a role for States Parties and private firms be considered only at the option of and subject to conditions negotiated by the Authority? Or again, should their role be conceived of as essentially temporary, to be phased out over a defined period agreed to beforehand?

This then, to my mind, is the single most important decision that faces us in the First Committee, and I dare say, in the Conference as a whole. We have deliberately travelled the road that has led to this point. We have now reached our valley of decision. We can proceed no further without a positive manifestation of political will that will enable us to adopt with confidence one or other of the three basic approaches that have been suggested during the Conference. With regard to these, there appears to be no indication that the proponents of any will accept the others. We thus find ourselves in an impasse. There is little hope, I fear, that human ingenuity can find a way around. It can only be resolved through a change in the positions and attitudes that go to create this situation. This is the plain truth, as I see it. As Chairman, I would be failing in my duty if I did not urge my friends and colleagues, who have worked so hard, to treat this moment with proper solemnity, to reflect upon it, and to act then with purpose. But if we cannot find a solution to this our central problem it may well be that no progress will be possible in the First Committee or even in the Conference as a whole.

During this session of the Conference some dramatic proposals were made public outside the forum of this Committee, for a substantial input into our endeavours, provided the system of exploitation eventually agreed upon was acceptable to the Government concerned. The United States Secretary of State, Dr. Henry Kissinger, declared that his Government would be prepared to agree to a means of financing the Enterprise in such a manner that it could begin its mining operations either concurrently with the mining of State or private enterprises or within an agreed time span that was practically concurrent, and further that the United States would be prepared to include in the treaty agreed provisions for the transfer of technology so that the existing advantage of certain industrial States would be equalized over a period of time. I do not think that anyone could fail to agree that these indications on the part of the United States, an active member of one of the major interest groups involved in the negotiation (the industrialized Powers) have been extremely helpful, although it could be more helpful still when greater

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details are known. It deserves the most serious consideration. It was noted however that the proposal comes with a clear condition that it would have relevance only in the event that the type of system which certain of the industrialized countries are prepared to accept, i.e. a system where it would be guaranteed that the Enterprise would operate side by side and in parallel with States and private firms on a permanent basis, were to gain general acceptance. Nevertheless it could be an important element in the choices that we shall have soon to make.

Nigeria's distinguished Attorney-General and Commissioner for Justice, Mr. Justice Dan Ibekwe, similarly proposed what he considered to be "the area of least resistance". He suggested in effect a joint venture system applying to all activities of exploration and exploitation in the Area; this, he argued, would avoid the problem of the types of relationships proposed between the Authority on the one hand and States and private parties on the other.

Mr. Kissinger also spoke of establishing a periodic review conference at intervals of, say, 25 years. This thought is also helpful in its attempt to find a way of allaying the fears of a permanent imposition on the international community of a system of exploitation that might prove to be unsuitable in the earlier years of its existence. This is a politico-technical question which politicians must decide on with guidance from technologists or miners. There could be consequences deriving from the lifetime and availability of the valuable mine sites. One implication of this idea is that, should there be no agreement on a new system of exploitation at the end of the review period, the same "parallel" system would continue. However, it is important that a major force among the industrialized countries is prepared, in certain circumstances, to think in terms of an initial period, after which another system of exploitation might, if agreed, be brought into operation. In my opinion, very interesting possibilities for resolving our difficulties could be in that direction provided that no serious consequences are involved. The developing countries, which have shown a willingness to examine new ideas will undoubtedly wish to ponder on this one, as well as its implications. At the same time, consideration should be given to measures which would also allow the Enterprise to play a significant role in the exploration and exploitation of the area in those earlier years.

Intimately connected with any system of exploitation we choose is the matter of making the Enterprise a reality, of making it operational and competitive; for many, it is also a question of shaping it in such a way that it will be able to assume the function of sole explorer and exploiter of sea-bed resources. Mr. Kissinger's indications on this matter contemplate the Enterprise in a particular setting - a setting in which it would operate in parallel with State and private enterprises on a permanent basis. It is possible of course that our deliberations could end differently and that the Enterprise would emerge in a different and potentially dominant role. I think we should direct our thinking to methods of structuring, funding and generally equipping the Enterprise to build technological capabilities and managerial skills, independent of the particular system contemplated. The Enterprise, mankind's business arm, must be viable. It cannot, and must not, depend purely on the benevolence of willing States alone. Financing should be on a proportionate and co-operative basis to the extent

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possible, and should aim at making it self-financing in the shortest possible time. The Secretariat has, at the request of the Committee at this session, provided us with a valuable paper on this subject which will facilitate the decisions we shall have to take.

It is not my intention to survey at this time the entire range of issues before the First Committee, but rather to place before you squarely those which are of current and critical importance. I wish to emphasize that the one central, critical issue which must be solved without delay is that of the system of exploitation. I will not repeat it, or seek to characterize or evaluate the systems we have discussed. And indeed there may be others that the delegations might wish to devise. But unless they decide, actually decide, upon the basic approach to exploitation, upon the role of States and private firms in relation to the Authority's functions, we cannot move forward.

In this connexion I propose that the time between now and the next session of our Conference be used to ascertain the precise limits to which Governments will go on this one single question. No other needs engage us. Just this one question must preoccupy all our attentions before we meet again. I propose that there be an informal agreement now that we take a decision on this matter one way or another by the end of the first week or two of the First Committee's work at the next session. We dealt with the first of our important political questions - the rules of procedure - in co-operation with the President of the Conference in a similar manner. I ask then for co-operation with me in the First Committee in resolving what may well be the most important question before our Conference - and for an agreement now that we shall spend no more than one week or so in doing so. I urge that there be the fullest consideration of this problem in the intervening period and that delegates return ready to meet a situation in which a decision on the matter can and will be taken.

My sense of duty and my strong personal convictions about the crucial importance of a successful and universally accepted Convention for the sea-bed area for the very survival of man on this planet impels me to venture sharing further with all delegations some of my thoughts on this subject. I have myself constantly discouraged the mere intellectual exposition of the issues and encouraged the examination of possible avenues to their solution. The impasse which haunts our deliberations makes imperative the need to review the respective policies of the different groups.

Several significant developments must be recognized and their role examined. I am of the opinion that at the present session, as stated earlier, the real issues were no longer treated with evasiveness or contempt. Different interest groups have now unveiled their underlying concerns and have crystallized their positions. In reassessing these positions a new solution might be found.

Only two years ago, the exploitation systems envisaged by the two major interest groups were diametrically opposed: the developing countries could accept only the Authority as sole operator in sea-bed mining, whereas the technologically advanced group insisted on operations by private commercial entrepreneurs. At

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this session, the latter has accepted the Enterprise on an equal legal footing with other entities. The former, while still insisting on the pre-eminent role of the Enterprise, has accepted that other entities (including private companies) may also participate in sea-bed mining in a form of association with the Authority. This interest group nevertheless maintains that the Authority should have a say in the creation, form and terms of the association. Clearly, both groups now accept roles by both the Enterprise and private companies. The disagreement would therefore seem to lie in their respective roles and it is here that the impasse focuses.

With a view to finding a solution, it is worth while to re-examine the basic objectives and underlying concerns of the major interest groups. The principal objective of the industrialized countries which insist on access to resources, appears to be to increase the availability of inexpensive raw materials and in turn reduce the current dependence on foreign sources. These countries apparently feel that only guaranteed access of their private or State companies to the sea-bed resources can provide the efficiency of development and security of supply necessary in order to achieve these goals. In addition, these countries also anticipate so-called spin-off benefits as a result of any operations by domestic industry. These countries hope that such benefits would include substantial financial profit and broader stimulation of the domestic economy and perhaps the maintenance of an acquired power through the continued sway of their economic and technological might in a delicate, ill-balanced bipolar international system. However, since the multinational corporations would presumably seek the most favourable taxation in host countries, some spin-off benefits, particularly financial, may elude the industrialized countries.

At the beginning of the Conference, sea-bed exploitation was seen primarily for the benefit of the developed nations. The developing countries, standing uncertainly at the cross-roads of a cruel history, had the almost complacent objective of gaining some financial benefit, while simultaneously protecting the few land-based producers from adverse effects on their export earnings. A strong international Authority appeared the only hope and guarantee. Due to this apparent attitude, the developed countries perceived that the Authority would be used by the others to obstruct sea-bed mining. In response to this perception, they formulated the policy to strip the sea-bed Authority of any real power. They recommended a mere licensing system, which gave the industrialized nations a free hand and cash "hand outs" to the developing countries.

Contrary to their initial reaction, developing countries increasingly recognized their interest in cheap and reliable supplies of metals, in order to facilitate their own national economic development. Consistent with these interests, developing countries have seen that other means can be devised to protect adequately the legitimate concerns of the land-based producers. The principal objective of increased availability of raw materials, originally held only by the developed countries, is now shared by the developing countries as well. Thus, today, there is common interest in encouraging rapid and efficient sea-bed mining.

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What divides the developing countries from the technologically advanced ones, it would appear, is not so much the scope of the revolutionary concept of common heritage, but the emphasis placed by the latter upon exploitation by State or private companies. The developing countries fear that so long as these companies have guaranteed access and alone possess the necessary finance and technology they would dominate sea-bed mining in a monopolistic manner. This would deprive the rest of the international community of any significant role in sea-bed mining. The developing countries envisage the Enterprise as a suitable means for offsetting such a monopolistic situation and for achieving this meaningful role. Yet, technological, managerial, institutional and financial problems confronting the Enterprise can clearly be seen from the recent note prepared by the Secretary-General on the alternative means of financing the Enterprise (A/CONF.62/C.1/L.17). The developing countries appear to be fully aware of these difficulties. As a result, they hesitate to accept the proposition that the Enterprise should be placed on a merely equal legal footing with private companies from the beginning, since this would in fact place the Enterprise in an inferior position. The majority of the developing countries believe that the Authority must have a role to play and that in turn the Enterprise must be a concrete and commercially viable entity from the outset.

If what in fact divides the industrialized from the developing countries is the means to achieve the common overriding objective of increasing the availability of less costly raw materials deriving from the sea-bed, then this may be the last opportunity to pose and answer the question of whether alternative means can be devised to accomplish this goal. If a mechanism can be found to ensure the accomplishment of this overriding objective, then it may be possible to break through the present impasse. A number of preliminary thoughts might be advanced to stimulate other ideas. For example, it might be helpful to stipulate in clear and unequivocal terms in the Convention that exploitation should be conducted for the explicit purpose of increasing the availability of raw materials. Although a similar provision exists in article 9 of the Revised Single Negotiating Text, this idea should be stated more prominently as the overriding goal and this principle needs to be complemented by other substantive provisions to ensure its implementation. Adequate measures would need to be devised and embodied in the Convention to guarantee that this basic objective would be met. Specifically, the Convention might stipulate provisions for calculating a time schedule of sea-bed production whereby a determined volume of sea-bed production would be achieved. It might also seem advisable to ensure that the metals produced from sea-bed mining would be made available on the world market.

Once this mechanism has been clearly and indisputably established, many outstanding fears - seemingly inherent in the strict policies of "guaranteed access" or "full and effective control by the Authority" - would be allayed. For example, resolution of the title to and control over the resources of a quota system, and of the relationship between the decision-making organs of the Authority might come within relatively easy reach. Needless to say, these problems comprise crucial issues, some not yet even treated in the Committee and all unresolvable in any case under the present circumstances.

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But once this is done it is my view that the respective roles of the Enterprise and private entrepreneurs become clear and the role of both may then be perceived as a means to further the common objective. Serious consideration should be given to how private companies, possessing the necessary technological and managerial skills, could be employed to strengthen the role of the Authority, and to facilitate its rapid and successful commencement of commercial production. In this manner, the proprietary interests and investments of these companies could reasonably be protected while simultaneously meeting the concerns of the developing countries mentioned above, all within the framework of accomplishing the fundamental objective of helping supply the international community with the raw materials it demands.

There is a widespread view in the Committee that the international community needs a strong international Authority for the very reason that it will be the instrument of all mankind. It is only with such an Authority that the revolutionary ideas we are discussing can best or at all be effected. A viable operational arm of the Authority, which is the Enterprise, is imperative if the strength of the Authority is not to depend only on the uncertain benevolence of a single State or a group of today's wealthier States. No one now seriously imagines that a consensus can emerge without this foundation.

I am convinced that we shall spend decades in fruitless dialogue if we continue to accept that the interests at this Conference may naïvely be classified into two: those of the developed versus those of the developing countries. Neither group is without a diversity of concrete interests, given the factor of uneven development within. It is worse to maintain the posture of a confrontation between the few industrialized countries on the one hand and the proposed Authority or "mankind" on the other. Present-day so-called realities, political and economic, may well be flattened or destroyed by the crushing wheels of history.

Both developed and developing countries have a common stake in peace through co-operation and equitable development. The ravages of belligerency and of war are far more expensive than the lasting benefits which the joint effort of all sectors of humanity can produce from the new challenges of the oceans' wealth and advancements in science and technology. The new Convention must ensure that neither the minority nor the majority can predominate and more to the point it must lay down a design for a new order of genuine co-operation among nations and peoples.

There is a common ground, as I have observed above, that the need exists for increasing production of minerals to meet world demands. The Convention must contain adequate provisions to ensure that whatever discretion rests with the Authority, mankind as a corporate body will always exercise it in favour of this. I feel that such provisions could allay any expressed fears of the industrialized countries.

The Kissinger proposal, taken in its broad aspects, may well represent a recognition of the need to strengthen the Authority's capacity through the Enterprise and thus fulfil a crucial need to nourish a growing international community. Instead of treating the access question as a pre-condition, I believe

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that it can best be regarded as an independent problem for those States which need to maintain an industrial growth in order to sustain the standard of living of their peoples.

I am not unaware that the resolution of this problem alone could produce a Convention with which all sides can live. The real and final solution will lie in a package. I have discussed the system of exploitation only because it preoccupied the Committee this session, and, more importantly, because it lies at the delicate centre of the major political decisions that we must of necessity take at our next meeting.

We know enough about the processes and complexities of negotiations to realize that one cannot expect a party involved in the process of bargaining to show his whole hand at once or perhaps even be prepared to develop his propositions in all detail. But I am bound to point out that, having as we now have after this session, a much better understanding of what are the points at issue, we would be derelict in our responsibility to the international community if on major points of importance we are obliged to abandon negotiation because of lack of detailed knowledge of each other's position.

There remains the question: where do we start from in this process of negotiation? We must have a basis for discussion. What is it to be? The only texts before us are part I of the Revised Single Negotiating Text and the various texts circulated at this session both on the question of access and on the Council. I do not see how, if we are to progress, we can abandon them as elements in our discussion.

No doubt, we all recognize that even as a basis of discussion these documents can be improved. I can see no reason why delegates should feel reluctant to offer additional texts before the next session, modifying, adding to or amalgamating those already in our possession. If such texts are the product of bilateral or multilateral discussion amongst regional or interest groups that would be excellent. It would even be better if they could be the product of discussions which embrace groups of divergent or even conflicting interests.

Amongst some delegates here the expression "intersessional meeting" has come almost to sound like a dirty word. I do not personally believe that a formal meeting of the Committee will be desirable or productive before the next session. I know also that for practical reasons not all delegates will be able, or will want, to be involved in a virtual continuous process. But, as we know, some dirty words describe some very necessary functions. And in our present situation the maintenance of a level of awareness and of the exchange of ideas which has already begun is essential. And because of this, I believe that it is best that we should not formalize these exchanges but should let them take the course which, in the spirit of my present address to you, the initiators think best. They will have in mind that as sovereign States we are all equal and have a right to know and to be consulted. At the same time, we will recognize amongst ourselves that there is a natural variation in the degree of our interest and commitment; and that the spirit of constructive realism which must control our activities henceforth cannot be properly served if we fail to take this variation into account.

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The time has come for the Committee to make a radical departure from its existing processes. At the heart of our problems lie a number of basic and highly political questions that have to be answered before any actual drafting of a compromise text can be undertaken in good faith, and these questions should be answered at the highest political level.

First, I would ask whether delegations to this Conference are ready to accept as a basic objective of the Authority the exploitation of sea-bed resources to meet world demand? I have already given some examples of the kind of technical measures that would be required to accomplish this objective. If you do not agree that this is a basic objective, what is?

Secondly, are they ready to accept that the system of exploitation can consist of different stages over a specific period of time, with a provision for a review Conference? For example, can they agree on an initial phase under special provisions clearly defining the extent and conditions of a right of access, followed by what might be the permanent system of exploitation. Again, I have already indicated some possibilities in this respect.

Thirdly, and of equal importance, would they assign to the Authority, as represented by the Enterprise, a true and meaningful role in the exploitation of the Area, and how can this be achieved? There appears to be some consensus that the Enterprise should be viable and must be able to carry out activities in the Area as of the date the Authority decides that such activities should begin. And, of course, this is where we must give special attention to the role of those entities possessing the necessary technological capabilities and managerial skills which can be employed to strengthen the role of the Authority and to facilitate the rapid and successful commencement of commercial production.

I need not emphasize that these are interrelated.

Assuming that the basic elements of an agreement on the system of exploitation emerge from this series of questions and answers, it will be possible to agree on the other main components of the Convention including the respective compositions, powers and functions of the Assembly and Council of the Authority, and the dispute settlement system.

I feel it is my duty to impress upon the Conference that only with such political decisions delivered under a time-limit can the Committee and the Conference ever hope to complete its work. I can only ask - are delegations at this Conference ready?

It is my wish and intention as Chairman of the First Committee to do all in my power to give momentum to our activities. I will consult widely and I shall seek stimulus and support in all quarters. I shall regard the conduct of the Committee and of any working groups which it may form as my personal responsibility and shall, in the discharge of that responsibility, seek to associate with those who by their imagination, experience, skill and standing, will commend themselves to you as instruments of our common design.

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We have all pledged our loyalty to a common cause - that of implementing the Declaration of Principles governing the use of the Sea-bed. We cannot fail ourselves and our commitment. We must rise above factions. We must avoid wrangles about procedure. I have proposed a scheme which rests upon some solid measure of agreement. In the nature of things I cannot consult you all directly; but I appeal to you now to join me in implementing this grand design for our next session.

In conclusion, I must emphasize that the ideas expressed here are intended to advance our real work, and not to provoke new procedural debate. As Chairman, I must state truths as I see them from the chair, in the hope each time that they will be productive. For the rest, as I have said, only the dedication and co-operation of delegations can respond to the supreme necessity for the achievement of success and a consensus text for part I of the Convention.

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FIRST COMMITTEE

Final report by the Co-Chairmen on the activities of the Workshop (9 August to 8 September 1976)

Organization of work

1. At its 26th meeting on 5 August 1976, the First Committee decided to establish a Workshop in order to conduct its work in an informal setting. The Workshop was co-chaired by Dr. Jagota (India) and Mr. Sondaal (Netherlands). It held 13 meetings from 9 August to 8 September. The Co-Chairmen prepared joint weekly reports on the Workshop for submission to the Committee (A/CONF.62/C.1/WR.1, WR.2 and Corr.1, WR.3 and Corr.1, and WR.4).

2. The Workshop commenced its discussion with the system of exploitation of the international sea-bed area, particularly article 22 and the related paragraphs in annex I on the basic conditions of prospecting, exploration and exploitation.

3. At its meetings on 18 and 19 August, three papers on the system of exploitation were presented and distributed as Workshop Papers Nos. 1, 2 and 3. Workshop Paper No. 1 contained texts on articles 22 and 23 and on paragraphs 2, 7 and 8 /8 (a) new and 8 bis/ of annex I. Workshop Paper No. 2 contained texts on article 22; Workshop Paper No. 3 contained texts on articles 22 and 23, and related paragraphs 2, 5, 6, 7, 8 and 9 of annex I. In the subsequent discussions, not all of the subject-matter covered in these papers was dealt with; the discussion concentrated on article 22, paragraph 7 of annex I, and some aspects of its paragraph 8.

4. On 26 August, the Workshop decided to undertake negotiations in a more informal ad hoc group, open to all delegations, but having a central membership of 26 delegations (see A/CONF.62/C.1/WR.3). The Philippines replaced Indonesia as a member in the week of 6 September. The purpose of the ad hoc negotiating group was to produce such results as could command a consensus on the system of exploitation.

5. The negotiating group held 12 meetings in all, the Co-Chairmen having reported orally to the Workshop on the general progress of work in the group.

6. At its meeting held on 8 September, the Workshop decided not to take up the question of the Assembly and Council in view of the shortage of time which would not permit a meaningful discussion on the subject. Several delegates noted that sufficient time should be allocated to this subject at the next session. It was understood that delegations might wish to circulate informally their suggestions on this question.

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Papers presented to the Workshop

Workshop Paper No. 1

7. In this connexion, it was stated that the texts contained in articles 22 and 23 and paragraphs 2, 7, 8 (new) and 8 bis of annex I were closely linked and must be considered together. This paper asserted the pre-eminence of the Authority and its full and effective control over activities in the international sea-bed area as a means of ensuring compliance with the provisions of the Convention. According to this paper it would be necessary to make the Enterprise a concrete and financially viable entity. The proponents of this paper did not support a parallel system of exploitation as set forth in the Revised Single Negotiating Text.

8. According to this paper, activities in the area should be conducted exclusively by the Authority (i) directly through the Enterprise in accordance with a formal written plan of work, or (ii) as determined by the Authority, through a form of association between the Enterprise and the specified entities pursuant to a contract. The plan of work or the contract would be drawn up or entered into in accordance with annex I and approved by the Council after review by the Technical Commission. For the purpose of securing compliance at all times with the relevant provisions and instruments, the Authority should exercise full and effective control over the activities in the area. States Parties should assist the Authority by taking all measures necessary to secure such compliance. The paper further provided that the Authority should avoid discrimination in the exercise of its powers and functions and that all rights granted should be fully safeguarded. Special consideration for developing countries, including the conduct of activities by the Authority in certain parts of the area solely in association with them, should not be deemed discriminatory.

9. Flexibility was maintained in the provision as to when title to minerals and processed substances could be passed from the Authority. The Authority would be required to adopt appropriate administrative procedures, rules and regulations for making an application and for the qualifications of an applicant. Such qualifications included financial standing, technological capability and satisfactory performance under previous contracts with the Authority, if any. In assessing the qualifications of a State Party its character as a State should be taken into account. Every applicant should be treated on an equal footing and would be required to fulfill four specific requirements: the undertaking to comply with and to accept as enforceable all the obligations; acceptance of control by the Authority; satisfactory assurance of fulfilment of obligations in good faith; the undertaking to promote the interests of developing countries by association or other means. In view of the two main methods of operation embodied in article 22 mentioned above, one new paragraph was added to provide that the procedures for the

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Enterprise should be governed by such provisions as the Authority might establish in its rules and regulations and by the Statute of the Enterprise. Furthermore, its activities should be conducted in accordance with the resource policy and the relevant decisions of the Authority in implementation thereof.

10. The Authority should determine as to when to conduct activities in the area in association with entities. With respect to selection of applicants, the Authority would be empowered, on its own initiative, or upon receiving an application, to initiate selection procedures for applicants and to publish and make known a time-limit for receiving other applications.

11. Subject to the foregoing, the Authority should enter into negotiations with the applicant on the terms of a contract, provided that the applicant possessed the requisite qualifications and complied with the procedures established for applications, that the application did not relate to those parts of the area retained solely for the conduct of activities by the Enterprise or by it in association with the developing countries; and that the contract complied with the resource policy and the relevant decisions of the Authority. The terms of a contract to be negotiated were clearly set out in the text. They included the respective contributions of the Authority and the Contractor in association, including the contribution of funds, materials, equipment, skills and know-how as necessary for the conduct of operations covered by the contract and the extent of the participation of developing countries therein, as well as the proper financial arrangements. Provisions were also made to cover cases where more than one application is received, whereby selection would be on a competitive basis, and any preference and priority would be accorded at a subsequent stage to an applicant who had previously entered into a contract for a separate stage or stages of operations. The Authority could re-initiate the procedure for selection of applicants, if after a specified period and after negotiations had been entered into, a contract had not been concluded.

12. The Authority was empowered to determine that, in certain parts of the contract area, activities should only be conducted by it either through the Enterprise or in association with developing countries, the Enterprise having the first right of refusal. When considering applications for such area the Authority was required to ensure that the developing country or countries would obtain substantial benefits. Reference to the issue of a quota or anti-monopoly provision was maintained in the text of Workshop Paper No. 1.

13. This paper was further supported by other delegations both from developed and developing countries, some of whom stressed that the activities within the international sea-bed area should naturally be conducted directly by the Authority since the Authority would be composed of all countries representing humanity as a whole. They therefore opposed the provisions of Workshop Papers Nos. 2 and 3 because they ignored the principle that the international sea-bed was the common heritage of mankind. Some other delegations were prepared to support the general approach taken in Workshop Paper No. 1 as the best basis for working out a more generally acceptable system of exploitation. A general agreement would need to recognize that the Convention must give some assurance of access to the area for States Parties and other entities, and that its provisions must enable the Enterprise to establish itself as a viable concern.

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Workshop Paper No. 2

14. According to this Paper, the activities in the Area should be conducted both by States Parties and directly by the Authority. The Authority would determine the part or parts of the Area in which it would conduct its activities. The Authority's area would not exceed that in which activities would be carried out by States Parties. The activities of States Parties would be conducted on the basis of contracts with the Authority and they would come under its effective financial and administrative supervision. States Parties might carry out activities through State enterprises or juridical persons registered in and sponsored by States. States Parties sponsoring such entities would be responsible for taking all necessary measures to ensure that such entities complied with the Convention, its rules, regulations and procedure adopted by the Authority. All States Parties would have equal rights to participate in activities in the Area irrespective of their geographical location, social system and level of industrial development, and particular consideration would be given to the needs of developing countries particularly those which are land-locked or geographically disadvantaged. It should be noted that while activities would be conducted in accordance with the basic conditions in Annex I, such conditions were not elaborated in this Workshop Paper. On this point, it was explained that the present provisions of Annex I of the Revised Single Negotiating Text could not be taken as being totally acceptable. It was stressed that the right of States to conduct exploration and exploitation activities in the Area followed naturally from the concept of "common heritage of mankind" since States are juridical representatives of mankind under international law, and that these rights should therefore be guaranteed in the Convention itself and not left to the discretion of the Authority. Furthermore, the system of exploitation would need to take account of the legitimate rights and interests of the socialist system, being one of the main systems in the world; no sea-bed régime and machinery would be viable without taking this into account. Although the Paper did not contain any quota clause, it was stressed that such a clause should none the less be an integral part of the system of exploitation as presented in this Paper.

15. This Workshop Paper was supported by a number of delegations since they considered that the system it proposed took into account the positions of all delegations and could therefore be regarded as a compromise.

Workshop Paper No. 3

16. According to this Paper, there would be a parallel or dual access system. In introducing this Paper, it was pointed out that a parallel system could be a method of accommodating the interests of all States and the international community in general, so as to best reflect the principle of the common heritage of mankind. States Parties or other entities and the Enterprise would carry out activities in the Area directly by entering into contracts with the Authority. All such activities would be in accordance with Annex I and the rules, regulations and procedures adopted by the Authority. The Authority would have effective fiscal and administrative supervision over all activities in the Area to secure effective compliance with Part I of the Convention, Annex I and the rules and

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regulations of the Authority. States Parties who sponsor other entities would assist the Authority by taking all appropriate measures to ensure such compliance. The Authority should promote and encourage activities in the Area and should avoid discrimination in granting access and in implementing its powers and functions. The Authority would be forbidden to impair any rights granted under Part I of the Convention and must fully safeguard such rights. Pursuant to specific articles in Part I of the Convention dealing with scientific reasearch, technology transfer and the distribution of revenues, the Authority would be empowered to give special consideration to the interests and needs of developing countries, particularly the land-locked and geographically disadvantaged among them. Such special consideration would not be deemed to be discrimination.

17. Title to the resources would be vested in the Contractor at the moment the resources were recovered from the Area pursuant to a contract. A contract would be entered into by the Authority if the applicant was qualified by virtue of his financial standing and technological capability. The Enterprise and States Parties would be presumed to be so qualified. An applicant would also be required to submit a work programme to the Authority which would fully take into account the Authority's rules and regulations. All contractors would be required to accept the supervision of the Authority. Subject only to these requirements, the Authority would award a contract; but if it had received simultaneously an application for a contract in the same area, the contract would be awarded on a competitive basis. If no such competing application were received, a properly qualified applicant would be granted a contract within 90 days and the Authority would not have the right to refuse to enter into such a contract if the financial arrangements criteria set forth in paragraph 9 (d) had been satisfied and the contract was in all other respects in strict conformity with the Convention and the Authority's rules and regulations. It would be the obligation of the Contractor to provide the funds, materials, equipment, skills and know-how as necessary for the conduct of operations under the contract. The Paper made clear that the procedural and substantive provisions of Annex I relating to contracts would apply mutatis mutandis to the Enterprise. It was emphasized that the parallel system could only serve as the basis for a compromise if the Enterprise were on an equal footing with other applicants for contracts.

18. When this Paper was introduced it was also indicated that certain matters in articles 28 and 31 would need to be taken up since they were connected with the system of exploitation. In that respect the Revised Single Negotiating Text was not acceptable but a system in which the Authority could disapprove contracts when an applicant failed to meet objective criteria specified in the Convention could be acceptable. Under this approach, the Authority would be deemed to have approved contracts within a stated period of time unless the Council took a decision to disapprove a contract submitted by the Technical Commission. In those cases, the Council would be required to state in what particular respect the applicant had failed to meet the specified objective criteria and the applicant, in turn, would be given the opportunity to remedy such defects. The contract would then be resubmitted to the Technical Commission, and consequently to the Council. Although Workshop Paper No. 3 was presented essentially as a counter proposal to Workshop Paper No. 1, it was felt that this move was desirable in order to lay the groundwork for an accommodation at the appropriate time.

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19. Workshop Paper No. 3 was supported by a number of delegations from developed countries. These dlegations accepted the principle of direct operations by the Authority provided that the Convention guaranteed access for States Parties and other entities on equal and acceptable economic terms and that the Convention specified the conditions for treating favourably the Enterprise and the developing countries.

Further suggestions

20. At a later point in the discussions in the Workshop some other concrete suggestions were presented concerning article 22, particularly as formulated in Workshop Paper No. 1. This was done in order to give the Workshop an opportunity to find middle ground between that paper and Workshop Papers Nos. 2 and 3. These suggestions would have the effect of ensuring firstly, that the exclusive conduct of activities in the Area by the Authority would take place in accordance with the provisions of the Convention; secondly, that the manner in which the Authority may determine a form of association with States Parties or other entities would, again, be in accordance with the provisions of the Convention; and thirdly, the Authority would be able to exercise its control over activities in the Area in order to secure continuous and consistent compliance with the Convention, the rules, regulations and procedures of the Authority, and any plans of work and contracts approved by the Authority.

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FINAL REPORT BY THE CO-CHAIRMEN ON THE ACTIVITIES OF THE WORKSHOP (9 AUGUST TO 8 SEPTEMBER 1976)

Addendum

Co-Chairmen's assessment of the discussions

Main features of the discussions

1. The central question to be resolved by article 22 and the related provisions of annex I would seem to be whether any dual system of exploitation would be permitted, particularly one in which States Parties and other entities would be assured of access to the area. A further question would necessarily arise as to whether that part of the system allowing for activities by States Parties and other entities would take a higher or lower position compared to the other part of the system whereby the Authority would directly exploit through the Enterprise, or whether it would be necessary to ensure that the two systems worked strictly in parallel. There is the further question of whether such a dual system would be of a permanent or temporary nature. In relation to this central question, the concept of the common heritage of mankind was considered highly important, although there were variations in the way the concept should be implemented. On the one hand, the concept would impose the obligation to ensure that the system of exploitation did not create a monopolistic situation with respect to activities in the area; on the other hand there would be an obligation to ensure, through a viable system, that the resources of the sea-bed would be explored and exploited in an efficient manner.

2. On the issue of assured access, one group of countries would prefer to set out in an exhaustive manner all basic conditions relating to exploration and exploitation. A qualified applicant would be entitled to a contract and the Authority would be obliged to enter into a contract with the qualified applicant. The Authority would have little or no discretionary power in this regard. Another group of countries, on the other hand, placed great importance on retaining certain discretionary powers for the Authority, particularly regarding qualifications and selection of an applicant, and the conclusion of a contract. They regarded this as an important role to be played by the Authority. However, it is doubtful that any delegation supports an automatic assurance of access, since there seems to be general agreement that the Authority will presumably have some degree of discretion in applying the relevant provisions of annex I. The question is rather the degree

of allowable discretion and the manner in which that discretion could be used. In expanding the conditions or criteria for the entry into negotiations and the conclusion of contracts or in introducing further value judgements, the most important consideration for the Authority would be to avoid acting in such manner as could be regarded as inconsistent or even discriminatory. These questions could conceivably be answered in terms of the purposes of the negotiations, in as much as the negotiations would be the actual means whereby the Authority would ensure conformity with the provisions of the Convention and all applicable rules, regulations and decisions taken by the Authority.

3. Another aspect of the central question raised by article 22 and necessarily related to the purposes of the annex is the principle of ensuring equal rights for all States Parties, either to carry out or to participate in activities in the area in order that the Authority may give equal opportunities to all States. Several proposals, in this respect, had stressed the need to give special consideration to the developing countries, and among them to the particular needs of the land-locked and geographically disadvantaged States. While there would appear to be no disagreement on the need to promote the interests of the developing countries in as much as this subject was discussed, it was clear from a number of comments that the Convention would need to specify the circumstances in which that principle would take effect, in order to eliminate the possibility of discriminatory treatment. Any special consideration for developing country applicants should be kept separate from the question of the Enterprise, in as much as the Enterprise, as the operating arm of the Authority, would serve mankind as a whole.

4. The Workshop did not discuss in any detail matters relating to the Enterprise, but it was generally felt that the Enterprise should be a viable institution; in expressing such views, it was also made clear that a viable Enterprise would be a component part of a generally acceptable system of exploitation.

Issues relating to application and selection procedures

5. Three main issues were identified: the question of whether an element of competition should be introduced into the selection process, in order for the Authority to obtain the best terms from a contract; secondly, the particular character of States when applying for a contract; and thirdly, the question of whether or not the conditions of paragraphs 7 and 8 of annex I should be formulated on the basis of the Authority's right to refuse to enter into negotiations and conclude contracts.

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6. On the first question which involved selection of applications by the Authority and the establishment of time-limits for the receipt of competing applications, the value of this approach could be queried on the grounds that genuine applicants would be discouraged from conducting activities in the Area because of this publicity, and access would be denied as the end result. A response to that query could be that according to the Revised Single Negotiating Text, prospecting did not confer any exclusive rights on the prospector and that there would therefore be no question of discouraging activities. However, there may be no real problem in this respect since more than one application for virtually the same area and the same minerals might not in fact occur. It must not be forgotten that since competition was incompatible with the practices of certain countries, this process might therefore be unacceptable; competition could be considered as discriminating against these States and as being inconsistent with the common heritage concept. The objective of optimum benefits for the Authority could presumably be achieved on the basis of the financial arrangements to be contained in paragraph 9 (d). Finally, any competitive process through publication of applications, would need to take account of the genuine interests of those applicants who had conducted the prospecting involved.

7. On the second question, States applying for contracts could be assumed to have all the necessary qualifications for entering into negotiations; on the other hand, the character of States could be taken into account only when assessing these qualifications.

8. On the third question, various categories were identified: (1) those which would be evident from the application itself; (2) those which would require further investigation by the Authority; and (3) those which would entail some value judgement on the part of the Authority. The specific items which might belong in each category were not agreed.

9. The following items could fall in the first category: compliance with procedures, rules and regulations concerning the submission of applications; the area to which an application relates, assuming that an investigation was not necessary; compliance with and acceptance as binding of provisions of the Convention, the rules and regulations adopted by the Authority and the decisions of its organs; acceptance of control by the Authority at all stages of operations in accordance with the Convention; the undertaking that the applicant would fulfil obligations covered by the contract in good faith; compliance with environmental rules and regulations; and prior prospecting activities.

10. The items which might belong in the second category could be the financial standing of the applicant, its technological capability, its satisfactory performance under any previous contracts, its compliance in its work plan with the rules and policies of the Authority, and its compliance, in general, with the resource policy of the Authority, and lastly, its bona fide nature.

11. For the third category the following items could be identified: the respective contributions of the Authority and the applicant including the contribution of funds, materials, equipment, skills, know-how, necessary for the conduct of operations covered by the contract; the financial arrangements between

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the Authority and the applicant; the volume of financial and technological resources which an applicant was willing to place at the disposal of the Enterprise; and the promotion of the interests of developing countries by association or other means. On that last item, the particular needs of the developing land-locked and geographically disadvantaged States could be taken into account.

12. In relation to the items identified, it could be agreed that the Authority should not select applicants solely on the basis of financial and economic considerations but also according to social and political considerations. Furthermore, the selection process could ensure the widest possible participation among all States.

13. It might not be necessary or possible to list all relevant items in one place, and it might be better to tackle the issue of what conditions justified a refusal of a contract by the Authority in the manner already set out in both the Revised Single Negotiating Text and Workshop Paper No. 1 which had not attempted to list all relevant considerations. A more central question might be the actual purpose of the negotiations, which should be to ensure that a contract concluded with an applicant was in accordance with the Convention and with all applicable rules and regulations, as interpreted by the Authority. This kind of formulation could be a possible basis for a compromise particularly given the fact that there was no agreement on the question of whether such a list should be exhaustive or not.

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14. The co-Chairmen wish to point out that the subject of the system of exploitation was not dealt with in all its aspects, leaving a number of important issues, for example, the reservation of areas and the financial arrangements, for future discussion.

15. Although this session does not show any tangible results, the co-Chairmen are of the opinion that the negotiating process is now under way. It is based on two important requirements: the need to have the real and effective participation of all delegations, and the need to have a thorough and detailed discussion of the issues involved. Only this kind of process can lead to the necessary appreciation of the various positions held and, finally, to durable results.

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FIRST COMMITTEE

Final report by the Co-Chairmen on the activities of the Workshop (9 August to 8 September 1976)

Corrigendum

1. Page 3

Paragraph 12, the first sentence should read

The Authority was empowered to determine, after exploration, that, in a certain part of the contract area, activities should only be conducted by it either through the Enterprise or in association with developing countries, the Enterprise having the first right of refusal.

2. Page 4

(a) Paragraph 14

(i) Lines 10 and 11 should read

for taking all necessary measures to ensure that such entities complied with the provisions of Part I of the Convention, Annex I and the rules, regulations and procedures adopted by the Authority in accordance with article 28. All

(ii) Line 15: for particularly read including

(iii) Line 22: delete inverted commas

(b) Paragraph 16, line 6 should read

activities in the Area directly by entering into contracts with the Authority.

3. Page 5

Paragraph 18, line 9: for respect read respects

4. Page 6

Paragraph 20, line 4 should read

to find a middle ground between that paper and Workshop papers Nos. 2 and 3. These

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COMMITTEE II

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Fifth session
New York, 2 August-17 September 1976

REPORT BY MR. ANDRES AGUILAR M., CHAIRMAN OF THE SECOND COMMITTEE, ON THE WORK OF THE COMMITTEE AT THE FIFTH SESSION OF THE CONFERENCE

A. INTRODUCTION

1. During this session, the Second Committee held no formal meetings. All its activities were conducted through informal meetings of the Committee itself and of negotiating and consultative groups. Consequently, there are no records of these proceeding or of their outcome, except for the general references contained in the summary records of the meetings of the General Committee of the Conference. 1/

2. For that reason I felt it necessary to prepare a report that might provide the Governments of the States participating in the Conference with an over-all view of the Committee's work at this session. For the purposes of orderly and clear presentation, I have divided this report into the following parts: background; organization and methods of work; work accomplished by the various negotiating groups set up during the current session and assessment of the results; and conclusions.

3. At the 98th informal meeting of the Second Committee, held on 15 September, I had the opportunity to put forward many of the considerations contained in this report and to hear the observations and comments of a number of delegations with regard to various items and questions. As I stated on that occasion and would like to reiterate now, both those considerations and the ones contained in this document reflect solely my personal opinion and do not therefore bind any delegation.

B. BACKGROUND

4. The efforts made by the Second Committee during this session should be seen as a continuation of the process begun at Caracas at the first substantive session of the Conference. It may be said that the system followed by the Second Committee has been that of formulating successive versions with a view to preparing a text based on consensus. It is therefore necessary to recall the stages through which the work of our Committee has passed in order to have a correct view of what we were proposing to do and of what has been done at the current session.

1/ See documents A/CONF.62/BUR/SR.22-26.

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5. At Caracas, after a general debate on each of the items assigned to the Committee, it was possible to identify with accuracy the main trends and to present, in a systematic way, the formulas which best reflected those trends. The outcome of that work was document A/CONF.62/C.2/WP.1, entitled "Main trends".

6. At Geneva, after a new reading of the document on the main trends and with the material derived from meetings of consultative groups on specific questions and from informal groups outside the framework of the Conference, a single informal negotiating text was prepared which no longer contains alternative solutions and has very few blank spaces. That text is contained in part II of document A/CONF.62/WP.8.

7. In New York, at the spring session, a further step in that process was undertaken. After a reading, article by article, of the single negotiating text prepared at Geneva and by virtue of the mandate which I received from the Conference, I prepared a revised text which has served as a basis for our work during the current session (document A/CONF.62/WP.8/Rev.1/Part II).

8. On beginning our work on 2 August 1976, again in New York, we were faced with various possible courses of action. One possibility was to make a new attempt to revise the whole of part II of the single negotiating text, article by article, or chapter by chapter, as suggested by several delegations. The view prevailed, however, that it was preferable to use the time available for a detailed study of those few particularly complex and controversial questions that had given rise to the most difficulties at the previous sessions.

9. The Conference, at its inaugural meeting of this session, agreed to leave the Committees free to decide whether to focus their discussions on key questions, using document A/CONF.62/L.12 as a guide, and, if so, to decide which those questions should be, the order in which they would be considered and the way in which to conduct the negotiations so as to achieve rapid progress with the participation of all delegations. 2/

C. ORGANIZATION AND METHODS OF WORK

10. At its first four informal meetings of this session, the Committee dealt with the organization of its work and the most appropriate methods for achieving the best results.

11. The Committee, after lengthy consideration of the various possibilities, took the decision to concentrate its attention during the first three weeks of its work on the following questions, which were described as priority questions in view of the interest which they held for a large number of delegations:

(i) The legal status of the exclusive economic zone. Rights and duties of the coastal State and of other States in the exclusive economic zone.

(ii) Rights of access of land-locked States to and from the sea and freedom of transit.

2/ See document A/CONF.62/SR.71.

(iii) Payments and contributions in respect of the exploitation of the continental shelf beyond 200 miles.

(iv) Definition of the outer edge of the continental margin.

12. Subsequently, at its 95th informal meeting, held on 20 August, the Committee decided to continue consideration of those questions and to begin the study of two more, namely:

(v) Straits used for international navigation, and

(vi) Delimitation of the territorial sea, the exclusive economic zone and the continental shelf between adjacent or opposite States.

13. The Committee agreed to consider those questions in negotiating groups open to all Member States without prejudice to the possibility of later establishing other consultative and negotiating machinery. In view of the close link between questions (iii) and (iv), it was decided to assign to a single negotiating group the task of studying both questions. Accordingly, the following negotiating groups were finally set up:

Negotiating Group 1, to consider question (i).

Negotiating Group 2, to consider question (ii).

Negotiating Group 3, to consider questions (iii) and (iv).

Negotiating Group 4, to consider question (v).

Negotiating Group 5, to consider question (vi).

14. In addition, the Committee decided to hold a number of informal meetings of the Committee itself in order to provide an opportunity for all delegations to present their views or to comment on articles of the revised single negotiating text relating to questions other than those described as priority questions.

15. As will be explained in greater detail below, in nearly all the negotiating groups, after a general exchange of views aimed at clarifying the existing differences, it was agreed to set up smaller consultative groups with a view to facilitating the negotiating process.

16. The negotiating groups entrusted me with the task of choosing the members of the small consultative groups. The criterion that I followed in carrying out that task was to ensure a balanced representation of opposing interests, bearing in mind at the same time the need for proper geographical representation and the desirability of including in those groups several delegations which, by virtue of the position that they have taken vis-à-vis those problems, could contribute to the search for compromise formulas.

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17. Both in the negotiating groups and in the small consultative groups, I refrained for several reasons from presenting compromise formulas. In the first place, I had already indicated in my introductory note to the revised single negotiating text the path towards possible solutions to some of the questions dealt with in those groups and I did not consider it justified at that stage to go further. In the second place, the preparation and circulation of texts of that kind under the authority of the Chairman or other members of the Bureau of the Committee could give rise to misunderstandings with regard to the status of the revised single negotiating text. In my view, at that stage it was for the delegations themselves to present compromise formulas and only in the event that agreements had emerged was it correct to place such agreements on record at a formal meeting of the Committee.

D. WORK ACCOMPLISHED BY THE NEGOTIATING GROUPS AND ASSESSMENT OF THE RESULTS

18. During the current session of the Conference, 58 informal meetings of the Second Committee and of the negotiating groups were held. Below I give details of the activities of each of those groups together with, as stated above, my personal assessment of the results.

(a) Negotiating Group 1

19. Negotiating Group 1 decided, at its 1st meeting, to divide the item assigned to it into two subitems: (1) the legal status of the exclusive economic zone; and (2) the rights and duties of States with respect to the living resources of the exclusive economic zone.

20. The Group held 10 meetings in all. The first five were devoted, in general terms, to a discussion of the first subitem.

21. In the debate held by the Group, one delegation indicated the guidelines which, in its view, should be followed in order to arrive at a satisfactory formula for article 53 (Highly migratory species). That view was supported by a number of delegations. While it has not been possible to go more deeply into that subject during the current session, I understand that there is a desire on the part of the States most directly concerned with that problem to proceed with consultations during the intersessional period, and I hope that such consultations will produce satisfactory results.

22. With regard to article 56 (Catadromous species), the States most directly concerned communicated to the Negotiating Group the agreement that they had reached with regard to the following proposal:

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Article 56

Catadromous species

1. A coastal State in whose waters catadromous species spend the greater part of their life cycle shall have responsibility for the management of these species and shall ensure the ingress and egress of migrating fish.

2. Harvesting of catadromous species shall be conducted only in waters landwards of the outer limits of exclusive economic zones. When conducted in exclusive economic zones, harvesting shall be subject to this article and the other provisions of the present Convention concerning fishing in the zone.

3. In cases where catadromous fish migrate through the exclusive economic zone of another State or States, whether as juvenile or maturing fish, the management, including harvesting, of such fish shall be regulated by agreement between the State mentioned in paragraph 1 and the State or States concerned. Such agreement shall ensure the rational management of the species and take into account the responsibilities of the State mentioned in paragraph 1 for the maintenance of these species.

23. At the 7th meeting, it was decided to set up a small consultative group to deal with the first subitem, namely, the legal status of the exclusive economic zone. On the other hand, a similar consultative group was not set up for the second subitem because I was informed that the groups of States most directly concerned with that question had agreed to organize, outside the framework of the Committee, a consultative group composed of 21 States: 20 designated in equal proportions by the respective groups, which had chosen by common accord the remaining member, who had been given the task of presiding over the group.

24. The small consultative group on the legal status of the exclusive economic zone held seven meetings. At the first of those meetings, it was decided to focus the discussion on articles 44, 46, 47 and 75 of part II of the revised single negotiating text.

25. Unfortunately, I cannot say that the meetings of that group achieved practical results. I should like to state, however, that the group was very close to reaching a generally acceptable solution.

26. I continue to believe that the comments which I made with regard to this point in various paragraphs of my introductory note, particularly in paragraphs 17 and 18, indicate the appropriate path for a compromise solution in connexion with that subject.

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27. In that regard, it should be noted that the discussion within the consultative group in fact centred on articles 44 and 46 with a view to reformulating them in order to avoid assimilating the exclusive economic zone in any way to the territorial sea or the high seas. For that purpose, formulas were presented which were favourably received as a basis for the final settlement of that difference of views.

(b) Negotiating Group 2

28. The Group held six informal meetings. At the first four meetings, there was a general exchange of views on the articles of chapter VI of part II of the revised single negotiating text. At the 4th meeting, it was decided to set up an informal consultative group. The last two meetings of the Negotiating Group were held for the purpose of receiving the reports on the work carried out in those consultations.

29. The small consultative group held seven meetings in which it conducted two readings, article by article, of chapter VI, making it possible to determine the degree of support enjoyed by various proposals for amending some of those articles.

30. At the final informal meeting of the Second Committee, held in the afternoon of 15 September, Mr. Njenga, Under-Secretary of State of Kenya and Vice-Chairman of the Committee, who had presided over the final meetings of the consultative group, presented a detailed report on the results of the work of that group, with a clear indication of the points on which, in his view, the group had reached an agreement acceptable to the majority of the participants.

31. Unfortunately, at the same informal meeting of the Second Committee the delegation of one of the transit States and several delegations of land-locked States expressed reservations - some of them more procedural than substantive in nature - regarding the observations contained in the aforementioned report. I cannot conceal my disappointment at this unexpected situation.

32. I personally feel, on the basis of Mr. Njenga's report and of my own observations, that the text of chapter VI represents a good compromise solution and could, with minor changes, have been the basis for a formal agreement at the present session.

(c) Negotiating Group 3

33. This Group held seven meetings. At the first five meetings, the two items assigned to it were discussed simultaneously in general terms.

34. With regard to the question of a definition of the outer edge of the continental margin, the discussion centred on a proposed formula to complement the definition of the continental shelf contained in article 64 of part II of the revised single negotiating text. With regard to the second item, the general aspects of the system established in article 70 were discussed. At its 5th meeting, the Group decided to set up a small consultative group. Subsequently, two meetings of the Negotiating Group were held to hear preliminary reports on the work of the consultative group.

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35. The consultative group, which held six meetings, spent much of its time considering various aspects of the question of sharing of the revenue derived from exploitation of the continental shelf beyond 200 miles. In the course of this discussion, the group was able to identify certain elements which could serve as a basis for possible agreement on the question.

36. Specifically, the following points were discussed in some detail: the rate of contributions and the possibility of revising it in the light of the experience obtained when exploitation of the area began; whether all States with a continental shelf extending beyond 200 miles had to contribute or whether the developing countries or some of the relatively less developed among them would be exempt from the contribution; which States would benefit from the contributions and, finally, what authority would be responsible for collecting and distributing them.

37. With regard to the question of a definition of the outer edge of the continental margin, the discussions of the small consultative group centred on a detailed study of its implications and on the possibility of applying in practice the formula presented by one delegation to complement the definition contained in the revised single negotiating text. There was mention of the possibility that another delegation would present an alternative formula, but no other text was ever submitted at the meetings.

38. The course of the discussions made it appear that it would be possible to work out some sort of concrete agreement on these questions at the present session. I regret to say, however, that these hopes did not materialize. At the final meeting of the consultative group, some delegations explained that they had taken part in the deliberations in a constructive spirit but that they were adhering to their original position that the continental shelf should not extend beyond 200 miles. For their part, the delegations of States with a broad continental shelf repeated their position that for them the question was one of the most important bases of the "package deal" and that accordingly a compromise solution might lie in a system of revenue-sharing, the details of which should be the subject of negotiation.

39. For my part, I continue to feel, on the basis of the results of the discussions held in Caracas, in Geneva and particularly in New York at the spring session, that recognition of the rights invoked by the States with continental shelves extending beyond 200 miles is in fact one of the main components of the package deal on the items assigned to the Second Committee.

(d) Negotiating Group 4

40. This Group, which was assigned the item on straits used for international navigation, held three meetings.

41. Virtually all the statements were of a general nature and centred on chapter II of part II of the revised single negotiating text. The debate showed that chapter II appears to provide an acceptable negotiating basis for the great majority of delegations. However, some States bordering straits said that their acceptance of the text was conditional on the incorporation into it of certain changes aimed at achieving a better balance between their interests and the interests of users of the straits.

42. Several delegations did in fact propose amendments. Since only a few delegations took part in this discussion and many of them commented on only certain of the proposals, it is very difficult to judge the extent to which each of the proposals gained acceptance.

43. I noted, however, that a number of delegations wished to give careful study to some of the proposals and to hold consultations. In fact, I have been informed that consultations on this subject between several interested delegations have already taken place at this session. I trust that they will make it possible for us to conclude our work on this chapter at the next session.

(e) Negotiating Group 5

44. Negotiating Group 5, which deals with the delimitation of the territorial sea, the exclusive economic zone and the continental shelf, held two meetings. At the conclusion of the second meeting, it was decided to establish a smaller group for the purpose of holding informal consultations.

45. This small negotiating group held only one meeting. The debate at this meeting, which was conducted at a high level, focused on articles 62 and 71 relating respectively to the delimitation of the exclusive economic zone and the continental shelf, although there were some incidental references to article 14 (Delimitation of the territorial sea).

46. This discussion confirmed the fact that the central point at issue is the value to be attributed to the method involving the median or equidistant line in solving the problems connected with the delimitation of these marine areas. Some delegations felt that this method should be given primary importance, while others thought that the problems should be solved in accordance with equitable principles. For my part, I continue to believe, after having listened to this debate, that paragraph 1 of articles 62 and 71, which already appears in the single negotiating text drawn up at Geneva, may well be the solution which could bring about general agreement since it does not overlook the method involving the median or equidistant line but at the same time restricts its use to those cases in which it can produce results that are in accordance with equity.

47. It should be borne in mind in this connexion that this paragraph 1 appears to cause difficulties only for certain delegations, as is clear from the debate held on the matter at the last session and at the present one.

48. With regard to paragraph 3 of articles 62 and 71, the discussion showed that, even though opinions were again divided, it was possible to find a compromise formula. Some proposals were made along those lines, but they all gave rise to comment and it therefore cannot be said that an alternative to the wording contained in the text has as yet been found on this question.

E. INFORMAL MEETINGS OF THE COMMITTEE TO DEAL WITH MISCELLANEOUS MATTERS

49. As has been stated earlier in this report, the purpose of these meetings was to give all delegations an opportunity to make observations or comments on articles of the revised single negotiating text relating to issues which had not been dealt with in any of the five negotiating groups established at the present session.

50. I believe that the Committee's decision to hold several meetings for this purpose was a wise one since it made it possible to take stock of those issues which, although of more limited interest, are nevertheless important.

51. It is not easy to sum up these meetings at which widely differing issues were discussed. It is, however, possible to group in several categories the observations and comments made at the meetings.

52. Those issues which affect a very limited number of delegations can be placed in a first category. Such issues obviously can be solved only by agreement among the States concerned, and in this connexion I wish to repeat the recommendation that consultations concerning them should begin or - in some instances - continue. An example of the fruitful results that can be obtained by this means is the agreement announced in the Committee by Indonesia and Malaysia concerning a possible amendment to article 119, paragraph 7.

53. A second category would include those articles that are of interest to a larger number of delegations but can also be dealt with through consultation among the States concerned. The articles in chapter VII (Archipelagic States) and in chapter IX (Enclosed or semi-enclosed seas) can be placed in this category. According to information which I received privately from some of the delegations concerned and which was later confirmed publicly in the Committee, there have already been consultations at this session on chapter VII, which still includes provisions containing some blank spaces which at some point will have to be filled in.

54. It is advisable to employ the same system in connexion with chapter IX, concerning which a number of proposals were made at these meetings which met with a favourable reception from some of the delegations of countries interested in this problem.

55. In the third category can be placed those proposals which have been presented from the very beginning of the Conference in the same or similar terms and which have not won support at any time or have, at best, received negligible or limited support or very general expressions of sympathy obviously prompted by considerations of friendship or good neighbourliness.

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56. Finally, the fourth category consists of articles of the revised single negotiating text concerning which no comments or observations of any kind were made at this stage. Although I would not presume to interpret this silence as an expression of agreement with all these articles, it may be inferred that they command broad support.

57. Generally speaking, this category can be said to include more than 50 articles of the 131 comprising part II of the revised single negotiating text, the transitional provision - concerning which some delegations have expressed reservations - not being one of them.

F. CONCLUSIONS

58. As is clear from what has been said above, the Committee worked very hard at the present session. A sound selection was made of questions which called for priority consideration, and a serious negotiating process was begun in connexion with them. I believe that we have seen the timely and fortunate development of a spirit of negotiation, which, of course, calls for recognition of the fact that a solution to controversial problems must be sought through mutual concessions. This spirit was apparent in the work of the Negotiating Groups and, particularly, in the small consultative groups. On the whole, the discussions held by these groups avoided a repetition of arguments that were already all too well known, and attention was focused on the consideration of specific proposals.

59. I believe that success was also achieved with the method that consisted in dealing with the various questions in plenary meetings as a first stage for the purpose of determining how much interest delegations showed in each one of them and establishing as accurately as possible the existing differences of opinion, after which meetings with a limited membership were held in an appropriate setting to conduct intensive, fruitful negotiations.

60. No concrete results were achieved at this session regarding any of the questions considered by the various Negotiating Groups. However, the process of negotiating on these complex and controversial issues is under way, and the work that has been done serves to afford Governments a very clear idea, at least in some cases, of the road to follow in seeking a final agreed formula.

61. In fact, it might have been possible to work out and even to formalize an agreement on certain matters if the general atmosphere at this session had been more favourable. There is no question that the difficulties relating to other items before the Conference, some of which have begun to receive detailed study only recently, have made it difficult to complete the work of the Committee in certain areas.

62. All these considerations lead me to believe that at the next session our organization and methods of work should be similar to those adopted at the present session. I do not, however, believe that we can foresee at this time what may prove most appropriate next year. I have therefore not thought it advisable to propose to the Committee that the present organization of work should be maintained at the next

session. The most prudent course is to await the outcome of whatever work is done between the two sessions and, in the meantime, give some thought to other possible formulas for the organization and methods of work which will permit more intensive and fruitful efforts to be made.

COMMITTEE !!!

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REPORT OF MR. A. YANKOV, CHAIRMAN OF THE THIRD COMMITTEE, ON THE WORK OF THE COMMITTEE AT THE FIFTH SESSION OF THE CONFERENCE

1. The Third Committee worked according to the organization of work as suggested by me in my proposals to the Committee made at the 26th meeting of the Committee held on 6 May 1976 1/ and further expanded at the 28th meeting of the Committee held on 3 August 1976. 2/ This procedure was determined by the understanding that part III of the Revised Single Negotiating Text was a relatively well-balanced document and as such could be used as the starting point for all the negotiations conducted in the Third Committee. This, of course, did not preclude other proposals which supplemented the Revised Single Negotiating Text to be taken into consideration. As agreed upon in the 26th meeting of the Committee, there were no general discussions on any item but negotiations were concentrated on particular key issues, without closing the door to delegations who wished to bring up matters of special interest to them.

2. I have endeavoured to discharge my responsibilities as Chairman in the most flexible and legitimate manner. I have always adhered to the principle of complete and open participation of all interested members of the Committee and I have emphasized throughout the whole history of the Committee, that adherence to this principle of full participation and openness will ensure the effectiveness and legitimacy of our work. At the same time, I have stressed that it was important to follow a selective and restrictive approach, thereby enabling us to achieve greater efficiency. Throughout the present session, my primary intention has been to harmonize and to seek improvement in the clarity and presentation of critical areas in the Revised Single Negotiating Text wherever necessary. It gives me great personal satisfaction to report that the Third Committee has made important progress towards the elaboration of draft articles on the three items allocated to the Committee, namely: the protection and preservation of the marine environment, marine scientific research, and the transfer of technology.

1/ A/CONF.62/C.3/SR.26.

2/ A/CONF.62/C.3/SR.28.

3. This progress can clearly be seen when one considers that following the Caracas session, the Committee had before it numerous proposals presented by delegations. During the Geneva session, I was entrusted with the responsibility to draft a single negotiating text which took into consideration, as far as possible, all these proposals. During the spring session in New York, I endeavoured to refine and revise the Single Negotiating Text with the outcome that the articles contained in the Revised Single Negotiating Text were considered by many delegations to constitute a viable basis for negotiations and compromise. The efforts of the present session have resulted in the drafting of several articles which numerous delegations participating in the negotiations have provisionally accepted.

4. Besides the 28th meeting which was held on 3 August 1976, the Committee held five other formal meetings, namely, the 29th, 30th, 31st, 32nd, and 33rd meetings on 10, 14 and 15 September during which I made comprehensive oral reports on the negotiations conducted during the session both at the Committee level and at the level of the negotiating groups on all three items before the Committee. These reports reflect my personal assessment. During these meetings, 34 delegations made statements on the items of the protection and preservation of the marine environment, 50 delegations on marine scientific research and a smaller number on transfer of technology. Most of the statements expressed the view that the Chairman's reports were comprehensive, accurate and objective and reflected a lucid picture of the debate and negotiations that took place during the current session. What is contained in these reports takes into consideration the views expressed by delegations as well as my own assessment of what transpired during the last seven weeks. Following is a report on the negotiations held during the present session on the three items before the Committee.

I. PROTECTION AND PRESERVATION OF MARINE ENVIRONMENT

5. In accordance with the organization of work as agreed upon by the Third Committee at its 28th meeting on 3 August 1976, the Committee concentrated its efforts on key issues related to vessel source pollution.

6. The Committee was, however, sensitive to the paramount need to improve all aspects of the Revised Single Negotiating Text wherever doubts or objections remained, and was flexible enough to receive and take adequate note of such suggestions and comments as delegations deemed appropriate with regard to other aspects of marine pollution.

7. In the course of 13 informal plenary meetings held from 10 August to 9 September 1976, the Committee examined primarily the provisions of those articles relating to protection and preservation of marine environment in which delegations identified crucial issues of vessel source pollution. Thus, the Committee first devoted its attention to the competence of coastal States to establish laws and regulations for the prevention and control of pollution from vessels in the territorial sea. In this connexion, the Committee examined concurrently, article 21, paragraph 3, in part III of the Revised Single Negotiating Text as well as article 20 in part II of that text. The Committee recognized a link between these two provisions and considered proposals both to make a clearer cross-reference in

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article 21, paragraph 3 to part II of the Revised Single Negotiating Text and to change the scope of article 20, paragraph 2, in part II. Subsequently, the Committee studied the legislative powers of the coastal State to prevent and control vessel source pollution in the economic zone and in special areas within the economic zone in the light of the provisions contained in article 21, paragraphs 4 and 5, of part III of the Revised Single Negotiating Text.

8. The Committee then considered the issues relating to the enforcement of applicable laws and regulations by the flag State, port State and coastal State as well as closely-related questions of safeguards as reflected in the provisions contained in articles 27, 28, 30, and 38, in part III of the Revised Single Negotiating Text.

9. It is, I believe, a clear indication of the Committee's seriousness of purpose and dedicated efforts in attempting to resolve critical questions, that the informal plenary meetings of the Third Committee completed two readings of the pertinent provisions concerned with vessel source pollution before the Committee was ready to refer the outstanding issues to a negotiating group for further and more specialized study. This was the case with regard to articles 21, 27, 28 and paragraphs 1 to 7 of article 30. There was, therefore, ample opportunity at the Committee level to review and comment on both the basic provisions of the Revised Single Negotiating Text and the amendments thereto submitted by delegations at the current session.

10. In total, 142 proposed amendments were submitted to 25 articles of chapter I of part III of the Revised Single Negotiating Text and four proposed amendments were submitted to two articles of chapter I, section 3 of part II of the Revised Single Negotiating Text.

11. Since the Secretariat distributed copies of all the proposed amendments, and will maintain records of such amendments for our future work, I do not consider it necessary, at this moment, to quote them. Nevertheless, for the record, I will mention the articles with regard to which amendments have been suggested but have yet to be the subject of further study by the Third Committee. These are articles 7, 8, 9, 10, 11, 14, 17, 19, 20, 21 (1), 21 (2), 21 (4), 22, 26, 29, 33, 35, 36, 40, 41, 42 and 44.

12. I would also like to stress that, in my view, most of the proposals offered by delegations were intended to clarify the Revised Single Negotiating Text and remove ambiguities wherever necessary. The basic concepts reflected in the Revised Single Negotiating Text received very wide support and there were very few proposals that would alter the balance of the "package".

13. As I have indicated, the Committee entrusted a negotiating group with the further study of questions pertaining to pollution from vessels. Mr. Jose Luis Vallarta of Mexico conducted these negotiations through 11 meetings of the Group as well as additional efforts outside the Group's meetings. I shall now inform you of the results of the work of these negotiations.

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Negotiations on vessel source pollution

14. The Negotiating Group attempted to reduce and consolidate proposed amendments to critical articles on vessel source pollution in order to expedite the work of the Committee. The Negotiating Group was convened for 11 meetings and a few additional consultations were organized among sponsors of proposals on certain articles.

15. The Negotiating Group studied issues relating to article 21, paragraphs 3, 4, and 5 and articles 27 and 28. As it was already pointed out, I have reported the progress of negotiations in detail during the 31st meeting of the Third Committee. The results of the deliberations of the Negotiating Group can be summarized as follows:

Article 21, paragraph 3

16. The Negotiating Group agreed that there is an obvious link between article 21, paragraph 3 of part III and article 20, paragraph 2 of part II. During these consultations, the view was expressed that there is a contradiction between these two articles since article 20, paragraph 2 of part II unduly erodes the sovereignty recognized in article 21, paragraph 3 of part III. On the other hand, other delegations expressed the view that article 20, paragraph 2 of part II is a necessary complement of article 21, paragraph 3 of part III and an indispensable safeguard for the right of innocent passage. It is my understanding that delegations will be ready to divide paragraph 2 of article 20, part II into two parts for further study and consideration. The first part would refer to the first phrase, "Such laws and regulations shall not apply to or affect the design, construction, manning or equipment of foreign ships ...". The second part would refer to the second phrase "... or matters regulated by generally-accepted international rules unless specifically authorized by such rules".

Article 21, paragraph 5

17. The Negotiating Group agreed on a text of paragraph 5 of article 21 on special areas within the economic zone. The agreed text incorporates a clearer basis for coastal State initiative regarding the establishment of special areas and measures that may be applied therein. The text also provides a prominent role to be played by the competent international organization in connexion with consultations and agreement regarding coastal State initiatives for special areas. A few delegations wished to record their general reservations to the text.

Article 27, paragraph 1

18. Proposals to amend the Revised Single Negotiating Text wording were withdrawn.

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Article 27, paragraph 2

19. Amendments to this paragraph provide an elaboration on the subject of certificates "required by and issued pursuant to" international rules and standards. The obligation of flag States to ensure periodical inspections to verify conformity of the certificates with the actual condition of the vessel were also clarified.

Article 27, paragraph 6

20. The accepted amendment to this paragraph would require a "written request" for the flag State to initiate an investigation of a violation alleged to have been committed by one of their vessels.

Article 27, paragraph 8

21. Amendments to this paragraph clarify the obligation for flag State penalties to be adequate in severity to discourage violations wherever the violations may occur.

Article 28, paragraph 3

22. Amendments to this paragraph qualify the obligation of port States to investigate discharge violations upon the request of any State. The amended text would also allow States "damaged or threatened" by violations to request investigations.

23. The Negotiating Group was unable to resolve the various issues related to paragraph 4 of article 28. In connexion with paragraphs 2 and 4 of this article, the Group agreed that they should be re-examined once the Group had had the opportunity to study article 30 and the amendments thereto.

24. It is my view that there are several unresolved issues. In addition to the major question of harmonizing part II and part III with respect to coastal State competence in the territorial sea, other questions are the nature, civil or criminal, of proceedings to be taken by the port State, the universal character of port State jurisdiction and the degree of acceptance needed for the establishment and application of international rules and standards.

25. The Negotiating Group under Mr. Vallarta's leadership proved to be a very useful instrument to expedite the progress of the Committee on particular issues. Concentrated negotiations reduced the number of proposals to amend articles of the Revised Single Negotiating Text, and as I have just noted, several agreed texts also emerged. I would like to take this opportunity to express my sincere appreciation to Mr. Vallarta for his dedicated and skillful efforts.

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II. MARINE SCIENTIFIC RESEARCH

26. On the subject-matter of marine scientific research, the negotiations were concentrated on particular key issues such as the régime for the conduct of marine scientific research and the question of consent without ruling out the possibility for delegations who wished to bring up matters of special interest to them to do so. Our starting point was an understanding that the areas of already existing agreements should constitute the basis for the negotiations on the future régime to be established for the conduct of marine scientific research in the economic zone and on the continental shelf, a question of crucial importance not only for the Third Committee but for the outcome of the Conference as a whole. My earnest belief is that the areas of agreement are much larger than those of disagreement, since in my opinion, there is a generally-shared understanding that the consent of the coastal State should constitute the fundamental principle for regulating the conduct of marine scientific research in the economic zone and on the continental shelf, and that safeguards should be provided for the coastal States, as well as accommodations for the States conducting research in order to meet the concerns of all interested parties. There is a general agreement that marine scientific research activities should be promoted and facilitated for the benefit of mankind.

27. On the item of marine scientific research, we had 13 informal plenary meetings of the Committee, as well as some meetings of a special negotiating group at the level of heads of delegations. This special group of heads of delegations was created on my initiative and responsibility, on the basis of a fair and equitable geographical distribution and a balanced representation of different interests and trends. My belief was that the latitude for bargaining and manoeuvring had approached its possible limitations, and that a political decision on this matter was essential for the meaningful continuation of the negotiations.

28. Three main trends were represented in the group, namely the adherents to a régime of full consent; the States which still had some reservations concerning the consent régime, and a third group of countries which had adopted a more flexible approach, amounting to the establishment of a régime of qualified consent. After a preliminary exchange of views, several proposals were submitted suggesting new language and modifications to a number of articles in the Revised Single Negotiating Text, starting with article 57. During the discussion of section 3 of chapter II, and mainly on article 60, 58 different States made a total of 266 interventions on marine scientific research.

29. Altogether, 41 proposals were submitted. On article 57, we received seven proposals, on article 58 four proposals, on article 59 two proposals, on article 60 10 proposals, on article 61 five proposals, on article 62 two proposals, on article 64 five proposals, on article 65 two proposals, on article 66 one proposal, on article 67 two proposals and on article 69 one proposal. All these proposals were circulated informally to all delegations attending the Third Committee.

Article 57

30. On article 57, the proposals submitted were considered at informal meetings, as well as in a smaller negotiating group. Since article 57 referred to the

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territorial sea, it proved to be less controversial than some of the subsequent articles. There was a view that such an article is not needed, as the coastal State has the exclusive right to regulate, authorize and conduct marine scientific research in its territorial sea. However, there was a general agreement that in a convention on the law of the sea, such an article will be a logical part of a régime for the marine scientific research, which will cover not only the territorial sea but also the economic zone and continental shelf. Most of the suggestions were incorporated into a new consolidated article which was accepted as a possible compromise text pending the resolution of subsequent articles. The text of this new consolidated article is as follows:

Article 57. "Coastal States in the exercise of their sovereignty have the exclusive right to regulate, authorize and conduct marine scientific research in their territorial sea. Scientific research activities therein shall be conducted only with the express consent of and under the conditions set forth by the coastal State."

Article 60

31. There was a proposal for a new article numbered 57 bis, whose intention was to harmonize the approach regarding the régime for the economic zone with the régime to be established for the territorial sea. Consequently, the idea contained in this proposal was incorporated in a draft prepared by me on article 60, which I have called a "test proposal".

32. There was a generally-shared understanding that the outcome of the negotiations on the whole chapter on marine scientific research depends on a satisfactory solution on the provisions of article 60, namely the question of the régime to be established for the marine scientific research activities in the economic zone and on the continental shelf. In response to these concerns, the Committee agreed to postpone discussion of articles 58 and 59 and decided to focus its attention to the consideration of article 60.

33. Article 60 constitutes the core of the discussions on the item of marine scientific research. It was felt by many delegations that a solution regarding the still existing differences would enable the Third Committee to achieve substantial break-through within the context of the Committee, which might have facilitated the discussion on key issues in other committees as well. That is why I devoted much time, effort, and, in some cases, persistence to combine in one article ideas which will reflect, in a coherent way, the concerns of different delegations.

34. Ten proposals were originally submitted to amend the text of article 60 as contained in the Revised Single Negotiating Text. After some consideration, I suggested that similar proposals, submitted by different delegations should, as far as possible, be amalgamated and thereby reduce the number of proposals. As a result of this, the 10 proposals were reduced to 6, and later, to 4. At this stage, it became very apparent to me that we were moving in divergent directions from the Revised Single Negotiating Text furthering the division between the

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existing trends, instead of moving to a compromise. This compelled me to take the initiative to present a text which was an attempt at compromise, taking into consideration the various concerns of different interest groups, and an effort to avoid a deadlock on this subject.

35. I began with the hypothesis that it will be convenient to assure appropriate balance between the general consent of the coastal State for the conduct of the marine scientific research and the guarantees for the researching States. In my view, the acceptance of the principle of consent of the coastal State, which will be subject to some exceptions and conditions, is reasonable and realistic, and I believe that such a régime could function in a satisfactory way. It is to this end that I have submitted informally the following text with the understanding that it does not constitute a revision of article 60 of the Revised Single Negotiating Text, but is a mere test proposal.

"1. Coastal States, in the exercise of their jurisdiction, have the right to regulate, authorize and conduct marine scientific research in their economic zone and on their continental shelf.

2. Marine scientific research activities in the economic zone and on the continental shelf shall be conducted with the consent of the coastal States in accordance with the relevant provisions of this Convention.

3. Coastal States shall normally grant their consent for marine scientific research activities by other States or competent international organizations in the economic zone or on the continental shelf of the coastal State. To this end, coastal States shall establish rules and procedures insuring that such consent will not be delayed or denied unreasonably.

4. Such marine scientific research activities in the economic zone or on the continental shelf shall not interfere with activities performed by the coastal State in accordance with its jurisdiction, as provided for in this Convention.

5. Coastal States may withhold their consent to the conduct of a marine scientific research project of another State or competent international organization in the economic zone or on the continental shelf if that project:

(a) Bears upon the exploration and exploitation of the living and non-living resources;

(b) Involves drilling into the continental shelf, the use of explosives, or the introduction of harmful substances into the marine environment;

(c) Involves the construction, operation or use of such artificial islands, installations and structures as are referred to in article 48 of Part II of this Convention."

36. In extensive negotiations that followed, more than 42 delegations made 78 interventions, and the text was viewed by a majority of delegations as a basis

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for negotiations, while some were opposed to it. To further this process of negotiations, I decided to hold meetings of the group of heads of delegations to which I have already made reference with the hope that a political decision could be taken on this issue.

37. The exchange of views that was carried out gave me an initial feeling that there was substantial goodwill and enough common ground to try to reach a compromise by accommodating opposing views. However, some delegations had difficulties in making a final statement on the issues of consent and its modalities because of the interrelationships they felt existed either for reasons of substance or functional connexions with provisions in other parts of the Revised Single Negotiating Text, and, more specifically, with the provisions of part II related to the economic zone, and the provisions of part IV providing ways for settlement of disputes. Although there was no agreement on a compromise formula at this session, it is my fervent hope that this endeavour, which we have started, will not be lost and that it will be possible in the future to capitalize on the gains we have made.

Article 64

38. Because of lack of time and the necessary consensus on article 60, we were unable to have a substantial discussion on article 64, although concrete proposals concerning some changes were made. From the general discussion, it seems that there might be a general acceptance of the idea to delete in paragraph 1 (a), article 64, the reference to subparagraph 2 (a) of article 60. In this way, the régime of tacit consent will cover all the cases for which the consent of the coastal State is required. However some delegations expressed the view that article 64 should be deleted since its provisions were not in conformity with the concept of prior and express consent.

III. TRANSFER OF TECHNOLOGY

39. On transfer of technology, the Committee as a whole met in two informal meetings under my chairmanship and two meetings of a smaller, open-ended group, chaired by Mr. Cornel Metternich of the Federal Republic of Germany.

40. It was agreed that we should follow the selective and restrictive approach which proved useful in other fields. Since the question of the participation of the International Sea-Bed Authority in the field of transfer of marine technology proved to be one of the key issues, we concentrated on articles 85 and 86 of part III of the Revised Single Negotiating Text.

41. The interest shown in the matter is reflected in the active participation of the delegations. One hundred and thirty interventions altogether were made during the course of the discussions. Ten amendments were introduced on article 85, and eight amendments on article 86. Besides articles 85 and 86, reference was also made to a number of other articles, in particular, articles 79, 84, 87 and 89. One amendment was introduced on article 78, and a suggestion was made to add a new article, possibly as article 89 bis, for the time being, on the question of

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co-operation of States with competent international organizations in the field of transfer of technology. Reference was also made to part I of the Revised Single Negotiating Text, in particular to article 11 and annex I, paragraph 10, concerning the role of the Authority in the transfer of technology.

42. On article 85, some amendments sought to strengthen the role of the Authority by giving it a co-ordinating role in transfer of technology in the International Area. Other amendments intended to link the role of the Authority in the transfer of technology to the deliberations on the scope of the Authority taking place in the First Committee.

43. On article 86, the amendments dealt mainly with: the reference to particular interests, such as rights and duties of holders, suppliers and recipients of technology and the establishment of an over-all system of co-ordination and a joint international fund for activities of the Authority in the field of transfer of technology. There was no opposition to the suggestion to replace in subparagraphs (b), (c) and (d) the words "developing States" by the words "States which may need and request technical assistance in this field, in particular, developing States ...".

44. The role of the International Sea-Bed Authority as mentioned in articles 85 and 86 led to amendments suggesting deletion of both articles. According to some views, if article 85 is to be retained, a cross-reference to part I of the Revised Single Negotiating Text would be sufficient.

45. In the extensive discussions which took place, the idea seemed to emerge that a procedural device should be found which would facilitate the co-ordination between Committee I and Committee III in order to deal with the substantive issues raised by articles 85 and 86.

46. I am convinced that the amendments presented in our meetings and the different views expressed on articles 85 and 86 will help us considerably in finding a solution to these problems. A resolution of this problem would facilitate a final agreement on the chapter on transfer of technology. I have the impression that the amendments presented to articles other than those discussed above do not represent substantial difficulties, and would not deter the acceptance of the proposed text.

47. The smaller negotiating group under the chairmanship of Mr. Metternich proved very useful and enabled the negotiations to progress. Mr. Metternich has provided me with valuable assistance in previous sessions of the Conference and I would like to take this opportunity to express my sincere appreciation to him for his wise and dedicated efforts.

48. In conclusion, I wish to reiterate that the issues outlined above are not the only ones requiring further elaboration and study, but due to lack of time negotiations could only be carried out on those issues only. Undoubtedly, during the future session, the remaining issues will also be considered. All the proposed amendments and compromise formulae presented or drafted during this session have

been recorded and will also be taken into account during our future work. It is my fervant hope that, at our next session, it will not be necessary to go back to previously stated positions, but our starting point should be where we left off at the end of this session. It will be a great set-back if the achievements and progress made during this session will be lost, since in my personal opinion we have successfully narrowed the issues before the Committee, and I believe that our common objective is almost within our grasp.

49. We shall follow in our future negotiations a comprehensive approach with regard to all issues in order to achieve a well-balanced and viable convention on the law of the sea. It is my conviction that the consensus procedure should continue to be applied since it has proved to be a constructive and efficient method of work. That is why at the end of this session I feel a spirit of optimism and I would like to express my readiness to fully co-operate and make all the necessary contributions to assist the President of the Conference to reach a successful conclusion.

50. Finally, I would like to take this opportunity to express my sincere thanks and appreciation to all delegations for their valuable contribution, co-operation and understanding. I also wish to extend my gratitude to the members of the bureau and the Secretariat for their support and assistance in the discharge of my duties.
