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Summary records of meetings of the First Committee
11th meeting

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11th meeting

Tuesday, 6 August 1974, at 3.15 p.m.

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

Report of the Chairman of the informal meetings

1. Mr. PINTO (Sri Lanka), speaking as Chairman of the informal sessions of the Committee, said that when he had last reported to the Committee at its 9th meeting, he had outlined in general terms the nature and progress of the work at hand. In the course of 13 informal sessions to date, the Committee had carried out the anticipated "third reading" of draft articles 2 to 21 inclusive of the draft articles prepared by the working group of Sub-Committee I of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. Those draft articles dealt with the status, scope, and basic provisions of the régime. A number of textual changes were being recommended to the Committee at the present stage, and were to be found in document A/CONF.62/C.1/L.3. It would be helpful to follow those changes in the report of the sea-bed Committee (A/9021 and Corr.1 and 3, vol. II, pp. 51 to 69).

2. The Committee had not wished to discuss draft article 1 on the limits of the area, since a final decision concerning those limits would depend on the results of the discussion of "limits" as a whole in the Second Committee. However, the proponents of some of the alternative texts had taken the opportunity to make certain changes, additions and corrections. Thus, in paragraph 1 (ii) of alternative (A) an erroneous reference to the "400 metre isobath" had now been corrected and changed to "the 500 metre isobath", while the two references to distances of "100 nautical miles" had been amended to "200 nautical miles". Foot-note 2 which envisaged the establishment of a "coastal sea-bed area" of unspecified maximum breadth in connexion with alternative (B), had been completed by insertion of the figure 200. An erroneous reference to "ocean space" in alternative (C) had been corrected to read "ocean floor".

3. At the outset of the discussion on draft article 2 on the common heritage of mankind, alternative (C), according to which the concept of an area to be treated as the common heritage of mankind would be incorporated in a preambular paragraph, had been withdrawn by its sponsors acting in a spirit of co-operation which had won the appreciation of the Committee. Discussion of the alternatives (A) and (B) had covered three main aspects: statement of the concept; its presentation in the context of those articles; and the function of the draft articles as interpretative of the concept. With regard to the first point there had been no objection to stating the concept as follows: "the Area and its resources are the common heritage of mankind". That formulation presupposed that the term "area" had been defined by reference to its limits in a separate article, perhaps an article along the lines of draft article 1. According to one view, article 2 ought to contain a statement of the concept and no more, or certainly no wording that might even by implication limit the concept or its necessary development. That view was reflected in alternative (A). Alternative (B) on the other hand, although beginning with a statement identical to the text of alternative (A), went on to place it in the context of the articles to follow, and to declare those articles to be interpretative of "this principle . . .". Foot-notes 6 and 7 of the original text of article 2 in the sea-bed Committee's report had been suppressed.

4. Early in the consideration of those draft articles, it had been agreed that interpretation of terms should be set out in an article designed for that purpose, along the lines of draft article O in volume II, page 164, of the report of the Committee. Accordingly, it had been decided that the proposal for interpreting the term "resources" contained in paragraph 2 of the original version of draft article 2 should be moved to article O. Subsequently it had been agreed that all proposals for definition or interpretation of terms used in the articles should be held in suspense until much later in the negotiations, when it would be appropriate to determine what terms really needed to be so defined or interpreted, and how best to do so.

5. In alternatives (A) and (B) under draft article 3 the phrase "exploration and exploitation of the resources of the area" had by consent been replaced by the phrase commonly used elsewhere in the text to describe that same idea, namely "the exploration of the area and the exploitation of its resources". Apart from that editorial change it had been agreed that the proposed interpretation of the term "activities" proposed in connexion with paragraph 2 of the original version of alternative (A) should be held in suspense in accordance with the agreement of the Committee on that point already mentioned. For similar reasons a statement that contemplated the possibility of an interpretation of the term "activities" as a second paragraph under alternative (C) had also been omitted.

6. The Committee had made considerable progress in dealing with draft article 4 which sought to prohibit the acquisition of sovereignty or sovereign or proprietary rights in the area, and to regulate the acquisition of rights of any kind of the resources of the area. The Committee had decided to treat the prohibition of acquisition of sovereign or proprietary rights in the area separately from the regulation of rights in resources. Accordingly, those subjects were dealt with in paragraphs 1 and 2, respectively, of the new version of draft article 4, which sufficiently took into account all views so as to obviate the need for entire alternatives. Division remained within the Committee only on whether to use the word "over" or the words "with respect to" in paragraph 2. In that connexion some believed that the word "over" might give the impression that only rights associated with ownership of the resources were contemplated, while in their view the term "with respect to" gave more flexibility since it would include, in addition, lesser or more limited rights, such as might be consistent with the retention of certain rights by the Authority. Others had felt that there was no difference in the meaning of the two expressions and pointed out that in at least one language the same word would be used to convey the meaning of both expressions.

7. No improvement could be made in the position regarding draft articles 5 and 6.

8. The co-operation of delegations holding opposing views on the question of whether or not scientific research in the area was to be subject to the jurisdiction and control of the International Authority had made possible substantial improvement of the text of draft article 7. Those delegations had agreed that that controversy might be confined to draft article 11 which dealt specifically with the subject of scientific research in the area, and should not be introduced into other draft articles such as draft article 7. Accordingly, the reference to scientific research in the first line of paragraph 1 had been removed with the consent of its supporters. Correspondingly, paragraph 3 which sought to endorse the idea of freedom of scientific research, and the adjective "industrial" which, when used to qualify exploration of the area, would by implication exclude from the scope of the régime exploration activities not carried out for commercial purposes, that is scientific research, had

also been withdrawn by their supporters, with the result that the text of paragraph 1 was agreed to by all. Foot-note 8 on page 53 had also been deleted.

9. The only other paragraph in that article purported to deal with all groups of States having special interests, although those foremost in the minds of the drafters had perhaps been the land-locked and geographically disadvantaged States. The latter believed that the reference to the special interests of "coastal States" in that context was inappropriate, and that the paragraph should be oriented towards redressing only the inequities suffered by all land-locked and otherwise geographically disadvantaged countries. Coastal States, while maintaining that exclusion of a reference to their special interests from that article could lead to a lack of balance, had urged the land-locked and geographically disadvantaged countries to consider covering that point, and indeed all others relating to their problems, including rights of access to the sea in one article, perhaps along the lines of article 19, and also to prepare, as soon as possible, a satisfactory interpretation of the term "geographically disadvantaged State". The land-locked and geographically disadvantaged States had agreed to give consideration to those and other matters relating to their particular interests.

10. By agreement, foot-note 11 had been deleted.

11. The report of the working group of the sea-bed Committee contained a proposal for combining draft articles 5 and 7, provisionally designated as draft article 7 A. While there was no disposition to press for the amalgamation of those two texts, some did not wish to see the idea disappear altogether, and it had been agreed that the text of former draft article 7 A should be set out in a foot-note to draft article 7. That foot-note held out the possibility that the text of former draft article 7 A might represent the amalgamation not only of draft articles 5 and 7, but also of draft article 8 on the preservation of the area exclusively for peaceful purposes. Foot-notes 12 and 13 had been omitted. It had not been possible to make any changes in article 8.

12. Two significant changes had been made in the alternative versions of draft article 10 dealing with general norms of exploitation. First, the supporters of alternative (A) had replaced that text by a new text making more specific reference to the economic impact of sea-bed exploitation on consumers and producers of raw materials, and thus more clearly covering some of the economic aspects emphasized in alternative (B). Secondly, the supporters of alternative (B) had replaced the words "minimize the fluctuation" in that text by the words "prevent the deterioration", thus making clear their objective of maintaining prices for land-based minerals at an appropriate level, and looking towards the establishment of a mechanism designed to prevent any deterioration in the price of those minerals.

13. It had been impossible to make any changes in draft article 11. However, the reference to a possible definition of the term "scientific research" had been deleted following agreement within the Committee on the whole question of an article on interpretation. No change was possible with regard to draft article 12.

14. In draft article 13, the Committee had accepted a proposal to add to subparagraph (*a*) a list of examples of activities in respect of which measures would have to be taken for the prevention of pollution and other hazards to the marine environment. The note that followed that draft article had been deleted. No change had been made in draft article 14.

15. In paragraph 1 of alternative (A) of article 15, the adjective "industrial" used in two places to qualify exploration and exploitation had been deleted following an agreement on that point within the Committee. Secondly, to the alternative versions (A) and (B) of paragraph 3 a third alternative version (C) had been added proposing the omission of the provisions of that paragraph, the only case, he believed, during the whole course of the discussions where an alternative had been added. In the course of the discussion it had been pointed out that paragraphs 1 and 2 of that draft article dealt with the right of a coastal State not to be harmed as a result of sea-bed exploitation activities, including the right to take certain measures in cases of emergency to prevent or minimize the possible effects of a hazard, while paragraph 3 dealt with the rights of a coastal State in quite a different case where a resource lay partly within the area subject to coastal State jurisdiction and partly outside that area. It had been suggested that an effort should be made at a later stage to separate those two ideas and incorporate them in two distinct articles.

16. No substantial changes had been made with regard to draft articles 16 to 21. However, a few purely editorial changes had been made. Thus, in draft articles 16 and 20, foot-notes calling for omission of those articles had been suppressed, and replaced by "alternatives" to the same effect, so as to maintain a uniform method of presentation. Draft article 18 had been the subject of another purely editorial change, namely the replacement of the words "exploration and exploitation of its resources" by the words "exploration of the area and the exploitation of its resources".

17. The square brackets around draft article 21 had been removed, which indicated a developing consensus on the need for the draft articles to include a system for the settlement of disputes. There was, of course, no indication as to what particular system for the settlement of disputes would eventually be favoured.

18. Draft article 9 entitled "Who may exploit the area" was the most important draft with which the Committee had had to deal thus far, and had generated the greatest amount of interest and controversy. There were four alternative versions of draft article 9 in the report of the working group, and there were still four such alternatives although the texts were different in two cases. Alternatives (A) and (D) remained as drafted the previous year. Alternative (B) was a new draft proposed by the Group of 77, while another new proposal made to the Committee had been designated alternative (C) and occupied the position of the former alternative (C) which had been withdrawn.

19. In his last report, he had emphasized the importance to the work of the Committee of the introduction of alternative (B), a text that enjoyed the support of States that were members of the Group of 77. The introduction of that proposal had marked a turning point in the discussions. While the basis of that draft article was that "all activities of exploration of the area and the exploitation of its resources . . . shall be conducted directly by the Authority", its sponsors had made it abundantly clear that the text had built into it an essential flexibility in that it provided that the Authority at its discretion might utilize "natural or juridical persons" in the conduct of sea-bed operations under contractual arrangements that would ensure the Authority's direct and effective control at all times.

20. Considerable interest had been shown in the proposal of the Group of 77. Some found the draft perhaps too concise, and sought clarification from the States members of the Group of 77 on a variety of points dealing mainly with four subjects: first, the means by which the Authority would maintain "direct and effective control at all times"; secondly, the modalities of sea-bed operations under that system and, in particular, how the contemplated "special tasks" might be co-ordinated and supervised in the course of what some might regard as necessarily a single operation from the earliest exploration phase to the stages of processing and marketing; thirdly, the basis for the underlying assumption of the financial viability of sea-bed operations conducted in accordance with the system implicit in the proposal; and fourthly, the fact that only "juridical or

natural persons" had been mentioned as entities which might be chosen as contractors for special tasks under the system seemed to exclude States and State enterprises.

21. All the replies given had stressed the essential flexibility of the proposal of the Group of 77. Its philosophy, if correctly interpreted, was sufficiently flexible to offer all the guarantees, including guarantees relating to investment, that could be reasonably expected by those entities currently possessing the technological and financial means to explore and exploit the sea-bed. Direct and effective control at all times would be maintained through contractual arrangements between the Authority and the entity employed to carry out a particular task or tasks. The provisions concerning the period of operation and other considerations of contracts concluded by the Authority would be such as to guarantee efficiency and an optimum yield. Those operations would be self-financing. It had been pointed out that the phrase "other related activities" in the first paragraph had been intended to cover all types of tasks up to and including the processing and marketing of minerals. Payment out of the proceeds would be made possible by contracting for the carrying out of a series of specialized tasks that extended up to and included a stage at which the operations would become remunerative. Although it had not been stated in specific terms, it seemed that what was contemplated was a system of profit sharing or production sharing between the Authority and the entity employed to carry out special tasks, a system which in the past seemed to have ensured the financial viability and efficiency of countless mineral exploitation operations. The supporters of alternative (B) had also explained that under the system they envisaged, the Authority when selecting contractors for sea-bed operations would take into account the ideological background of an applicant, while many had stated quite specifically and categorically that the phrase "juridical or natural persons" should be interpreted to include States and State enterprises, and not merely corporations established under the laws of a State whose economy was based on a system of private enterprise.

22. There were two issues of substance at the heart of the Committee's deliberations, namely the issue of control and the issue of the Authority's discretion to select contractors and make other decisions implied in its functions. With regard to the extent of the Authority's potential or actual control, the various positions were apparently drawing closer together. Considerable work still had to be done in connexion with the problems involving the scope of the Authority's discretionary powers. But a start had been made in that direction as many delegations had emphasized the need to incorporate into the treaty certain fundamental norms, as opposed to regulations dealing with matters of detail, governing the exercise of the Authority's powers. Incorporation of those fundamental norms, implemented through appropriate regulations, would ensure an element of clarity, certainty, and predictability, that would create the climate of confidence necessary to encourage and attract those who possessed the necessary technology and financial means to enter into association with the Authority for the exploitation of sea-bed resources. The Jamaican proposal which had been reproduced in the note following the draft articles in document A/CONF.62/C.1/L.3 had been submitted in the context of the Committee's discussion of draft article 9, although it had not been described by its sponsor as an alternative text for inclusion under that article. According to one opinion, since that proposal dealt with norms of sea-bed exploitation, it would be inappropriate to include it under draft article 9 or to place it in direct relationship to that article. According to another opinion, norms of exploitation were inseparable from the question "Who may exploit the area", and in fact lay at the root of the issues involved in any discussion of draft article 9. The Committee had finally agreed, bearing in mind the fact that the Jamaican proposal had implications for more than one of the draft articles, to present that particular proposal at the end of the 21 draft articles in the document.

23. Alternative (C), as had been mentioned, was a new proposal which reflected more precisely than any other alternative the concerns of its sponsor. More than any other proposal, it emphasized the need to secure access to sea-bed mineral resources. It should not be confused with the former alternative (C) in draft article 9 of the report of the working group of the sea-bed Committee, which had been withdrawn.

24. Having considered draft articles 1 to 21 inclusive in formal session, the Committee intended to proceed to a discussion of the second and third of the three issues recognized to be of crucial importance, namely the conditions of exploitation and the economic aspects of exploitation.

25. In his last report, he had stated his belief that the Committee was at a momentous stage in its work. It was therefore essential, and particularly in the days to come, to remain calm and exercise restraint at all times. The informal meetings of the Committee had no rules of procedure, only three guiding principles: good faith, goodwill, and, above all, good humour. Those three elements preserved and strengthened an atmosphere conducive to progress within the Committee. That atmosphere was of cardinal importance to the Committee. As discussions continued through the critical period, that atmosphere had to be preserved since, if it was shattered by words spoken in anger, a witticism ill-received, all would be the poorer. The roughest time was still ahead and members of the Committee were requested to preserve their sense of humour and respect the fine line that divided the frank from the offensive.

26. He said that his statement reflected his views alone and was therefore not binding on any delegation.

27. Mr. FONSECA TRUQUE (Columbia), speaking as the Chairman of the Group of 77, introduced alternative (B) to article 9, appearing in document A/CONF.62/C.1/L.3. The Group of 77 was fully aware of the Committee's responsibilities, as had been pointed out by the Chairman in his opening statement on 10 July, in which he had reminded delegations that the First Committee had been entrusted with the greatest responsibility, namely, that of designing international peace with norms and institutions hitherto unknown—and in which he had stated that despite the illusions which problems and new concepts might create elsewhere, "the realities of the new revolution of thought relating to the area of the ocean space would be worked out in that Committee" (see A/CONF.62/C.1/L.1).

28. Indeed, all delegations had recognized that the most important issue before the Committee and the one that must be given priority by it, was precisely article 9, which dealt with the system of exploration and exploitation of the resources of the area and, in particular, with the need to make clear who could exploit the area beyond national jurisdiction.

29. Conscious of the responsibility pointed out by the Chairman, the Group of 77 had spared no effort to achieve progress in the process of negotiating the new law of the sea, and after arduous and prolonged negotiations, the informal working group had been able to arrive at a text adopted by consensus, which the representative of Sri Lanka had just introduced in his report as the new alternative (B) to article 9.

30. A large number of delegations from the industrialized countries had recognized that the new alternative represented what was known in conference terminology as a real breakthrough in negotiations. Those delegations had put questions which had been answered individually by different delegations from the developing countries and also jointly in a statement that he himself had made to the working group on behalf on the Group of 77.

31. Nevertheless the developing countries genuinely wanted the phase of questions, answers and clarifications to be brought to a definite conclusion. They believed that all doubts had been

fully and adequately cleared away—especially bearing in mind the lengthy debates in the preparatory committee—and that what was needed now was the political will on the part of certain delegations to reconcile their differences and bring their positions into harmony with the aspirations of the majority.

32. He wished to make a few remarks in a constructive spirit in order to focus attention on the importance of the present stage of the proceedings and on the prospects that remained for achieving something definite at the Conference.

33. Perhaps it was necessary to review some of the events which inexorably had led the international community to adopt General Assembly resolution 2749 (XXV) by consensus. When the item concerning the sea-bed and the ocean floor beyond the limits of national jurisdiction had first been brought before the world Organization, the representatives of African, Asian and Latin American countries had recognized that the exploitation of the area would require a new international law, which would not merely regulate relations between States but would protect the rights and needs of the developing countries.

34. Bearing in mind the economic impact in the past few decades of the application of advanced technology on the mining of hydrocarbons and other non-renewable resources in the oceans, the representatives of the third world had concluded that the law of the sea, which had been drawn up before the development of current methods of mass exploitation of natural resources, would not be appropriate to the rational and equitable exploitation of sea-bed resources, which would require control by the international community rather than indiscriminate freedom of action.

35. Because there were no traditional legal standards on which to base a just law for the new area, it had been necessary to create the concept of the common heritage of mankind which had been adopted by the community of nations at the twenty-fifth session of the General Assembly in 1970 and which was now regarded by the overwhelming majority of States as an essential part of international law.

36. It must therefore be recognized, as the representative of one of the developing countries had said in the Committee, that the notion of the common heritage required a régime which would provide the necessary safeguards to ensure that the interests of States, or groups of States, and private enterprises were subordinated to the interests of the community as a whole.

37. The Group of 77 realized that it would be necessary to have the support and assistance of those States and enterprises that had the financial and technical capacity for efficient exploitation of the resources of the international area. Consequently, the merit of the proposed text was that it was simultaneously clear, balanced and flexible. Questions relating to the supervision of activities and other details could be taken up at a later stage of the Conference.

38. The first paragraph provided that "All activities of exploration of the area and of the exploitation of its resources, and all other related activities, including those of scientific research, shall be conducted by the Authority". That meant that the Authority, with a view to its conducting exploration and exploitation of the resources, must be given adequate powers to protect the interests of the international community, in accordance with the spirit of the Declaration of Principles, giving special consideration to the interests and needs of the developing countries, both coastal and—more especially—landlocked. The Authority would by no means—as had been claimed—be a supranational body: it had already been demonstrated that it would have jurisdiction only in the international area and a legal status similar to that of the other specialized agencies of the United Nations.

39. The supreme organ of the Authority would be the assembly, in which all States would be represented on an equal footing. Membership in the council would be based on the most equitable possible geographical distribution, without any conditions for voting, so that decisions would be democratic. The operational organ of the Authority, which would exercise direct and effective control over all exploitation of the resources beyond the limits of national jurisdiction, would function with the same impartiality.

40. The paragraph also mentioned scientific research because it was inevitably linked with resource exploration and exploitation. Other related activities included refining, processing and marketing of raw materials.

41. The second paragraph provided that "The Authority may, if it considers it appropriate, and within the limits it may determine, confer certain tasks upon juridical or natural persons through service contracts or association through any other means it may determine which ensure its direct and effective control at all times over such activities". That paragraph should be viewed as providing, within the concept of the common heritage, a suitable and satisfactory way of meeting all the concerns of the developed countries.

42. A mechanism proposed in the alternative of the Group of 77 would be fully capable of including in the service contract, conditions that would offer incentives to induce the industrial States and industrial corporations to commit some of their capital and their technology—which the Authority in its early stages would obviously lack—to the task of carrying out scientific research and the exploration and exploitation of the vast resources of the sea. No one could doubt that States—which were the subjects or even the juridical persons *par excellence* contemplated by international law—had the capacity, through their specialized bodies, to enter into service contracts with the Authority that would be in conformity with the procedures and characteristics of their respective economic systems and their ideologies. A service contract was of course a legal agreement under which one party performed a task in return for some kind of remuneration, which could take the form of some share in the production.

43. With regard to the type of financing, it must be borne in mind that such legal contracts were based on the principle that exploitation of the area would be carried out during a period long enough to cover companies for their investments and risks. Naturally provision for research, exploration and exploitation would be made in the form of exclusive contracts in order to provide broad guarantees for companies' investments.

44. Furthermore, it had been repeatedly demonstrated that the resources themselves, and the fact of sharing in the profits of their exploitation, were what guaranteed the financing of the resource extraction operations.

45. The concept of association could allow for the establishment of joint enterprises by developed and developing countries or by developed countries and the Authority, always keeping in mind the aim of speeding up the transfer of technology.

46. The words "any other means" implied a wide range of possibilities with the exception of licensing. It should be clearly understood that all the developing countries totally rejected the idea of licensing. They did not believe the claims that equitable distribution of the profits derived from exploitation of the common heritage could be effected through the use of a method which was typical of an era of paternalism and dependence which must be left behind once and for all.

47. Even less acceptable was the attempt to divide the Group of 77 by the fallacious argument that merely the revenue derived from licensing would benefit particularly the relatively less developed among the developing countries and the geographically disadvantaged countries. The developing countries had strengthened their solidarity and were sufficiently mature and experienced to understand that the only way to ensure the transfer of technology was by active participation in explora-

tion and exploitation of the common heritage. That was the path towards the objective of economic independence. The countries of the third world could not accept the licensing system because it would greatly widen the financial and technical gap which separated them from the developed countries. The vast resources of the seas should be administered directly by the Authority in a joint international co-operation effort for the benefit of all mankind.

48. The alternative submitted by the Group of 77 not only met those essential requirements; it represented a consensus of more than 100 States and was finally supported by China, Romania, Spain and other countries. It had the backing of more than four fifths of mankind and would ensure the equitable administration of the common heritage.

49. He was surprised that a Conference of plenipotentiaries whose task was to draft a treaty on the new law of the sea should still, when it was past the half-way mark, be continuing with statements reminiscent of a general debate, as if it had not yet advanced beyond the preparatory stage. In the same way some delegations seemed to ignore the irreversible process of development of the law arising out of the Declaration of Principles.

50. However, he was sure that all delegations sincerely wanted to arrive at sound conclusions which would ensure the success of the Conference, and he therefore thought that no one could doubt the willingness of the delegations of the industrialized countries to negotiate.

51. The developing countries had made a special effort in submitting a balanced and flexible compromise text which would be hard to improve upon.

52. The developed countries should consider the alternative prepared by the Group of 77 as objectively as possible. They should not underestimate the great progress in negotiations made in the past few years. He hoped that they would make a similar effort in the interests of co-operation and international equity.

53. Mr. FIGUEREDO (Venezuela) said that the text introduced by the Chairman of the Group of 77 represented a considerable step forward in negotiations. The concept of the common heritage of mankind could not be fully realized unless the Authority was given the powers proposed in that text. The Authority should have direct control at all times over the exploitation of the resources of the area, with due regard for the protection of those resources. Thus, the system of licences would not be the most effective, rational and equitable method of achieving the ends in view. There were other forms of association or contract which had proved successful and he believed that doubts concerning the proposal of the Group of 77 were the result of ignorance of present trends in methods of exploitation and of the ability of the developing countries themselves to find new ways of international economic co-operation in the optimum development of resources for the benefit of all countries.

54. Venezuela had had 50 years' experience in the exploitation of petroleum resources. The concept of the service contract was in sharp contrast, both in Venezuelan law and internationally, to that of licensing. The trend in most developing countries away from licensing was not simply a logical change in the distribution of the profits of exploitation but reflected those countries' awareness of the need to increase their control over the basic decisions affecting their economies. The question assumed even greater importance when it came to the exploitation of the resources of the common heritage of mankind, for without adequate controls such exploitation could affect not merely the economy of a particular country but that of the whole international community.

55. The first and fundamental distinction between service contracts and licensing was that the latter was a procedure by which the Authority granted property rights to a natural or legal person, the concessionaire, in respect of the exploration and exploitation of the resources in the concession area. Service contracts did not confer any actual rights on the contracting party, either for exploring or for exploiting the resources of the area. The first law in Venezuela concerning petroleum concessions had been the law on hydrocarbons and other fuels of 9 June 1922 and the concept had been retained to the present day. But in 1967 the concept of service agreements or contracts had been introduced into the law on hydrocarbons as a deliberate departure from the idea of licensing because of the antipathy of large sectors of the community to the latter and a new legal institution had thus been created. Autonomous institutes and State enterprises were thus able to exercise rights to explore, exploit, process and refine hydrocarbons either directly or through service contracts, and to promote and participate in joint enterprises, provided that the terms and conditions stipulated in each contract were more favourable for the nation than for the concessionaires.

56. Service contracts signed by the Venezuelan Petroleum Corporation, an autonomous State concern, at the end of 1971, covering areas in the southern part of Lake Maracaibo, afforded considerable advantages for the national interests in comparison with hydrocarbon concessions.

57. First, for example, in the case of licences, the licensee had free disposal of all the substance extracted, the State receiving only royalties, whereas under the service contract petroleum was extracted for the Government, the contractor receiving a percentage for sale in international markets. Secondly, licences were usually for a period of 40 years or more, whereas the service contract was for much shorter periods. In the present case periods had been fixed at three years for exploration and 20 for exploitation which would safeguard investment and provide the necessary State control over exploitation of the nation's heritage. Thirdly, the licence, by reason of its legal nature, greatly limited State intervention in the preparation, execution and supervision of plans, programmes and budgets. With service contracts, however, the official entity had full operative participation, through a committee and sub-committees composed of representatives of the corporation and the contractors. Fourthly, with regard to financial obligations, the licensee paid only the taxes fixed by law, whereas in the service contract the contractor had to provide the capital required to fulfil his contractual obligations and was not allowed to deduct it in any circumstances. He also had to pay contract, production and productivity fees. Lastly, with service contracts, the contractor gave the official entity an option for processing petroleum in a refinery in the United States of America and an option to participate in the capital.

58. Venezuela had had ample experience with the licensing system since the start of its petroleum industry in the 1920s. In the course of time, with growing awareness of sovereign rights, efforts had been made to improve the system, by export and other taxes, by control of activities, by conservation measures and so forth. However, it was clear that the licensing system, despite all those improvements, did not provide absolute sovereignty over resources that were essential to the economy.

59. Venezuela had therefore decided to end all licenses. In March 1974 the President of the Republic had set up a commission composed of representatives of various sectors of the nation to study possible measures to speed the termination of licences so that the State could assume control of exploration, exploitation, processing, refining, transport and marketing of hydrocarbons.

60. His delegation considered that it would be pointless to try to revive in the case of the seas a system that had become obsolete in the case of land-based resources. The experience it had had in common with other developing countries suggested appropriate solutions to the problem of exploiting natural resources which could serve as a basis for agreements between the Authority—the depository of the common heritage of

mankind—and bodies which were in a position to exploit the resources of the area.

61. Mr. BOJILOV (Bulgaria) said that there was no need for the Committee to enter into a detailed analysis of the report of the Chairman of the informal meetings since it was self-explanatory.

62. Although the progress of informal meetings had been impressive, it would be wrong to conclude that there was little left for the Committee to resolve. The Committee was in fact facing a wide range of complex issues whose solutions required protracted negotiations in a spirit of mutual accommodation.

63. The ocean space conceptual approach to the issue of the international régime and machinery had been injected into the work of the sea-bed Committee in clear-cut contradiction to the Declaration of Principles and the mandate of Sub-Committee I of the Committee and its working group. Over the previous years the discussion of "ocean space as a whole" had yielded no positive results, given rise to profound disagreements, and should therefore be discarded.

64. His delegation also hoped that the Committee might come to an agreement with respect to the precise wording of article 2. Alternative (B) of article 2 presented a concise, simple and sound text.

65. Article 9 presented one of the crucial problems to be resolved for which the Committee had a number of options. Alternative (A) stipulated that exploration and exploitation activities in the area should be conducted by a contracting party or group of contracting parties, or natural or juridical persons under its or their authority or sponsorship, subject to regulation by the authority and in accordance with the rules regarding exploration and exploitation. Alternative (C) submitted by the United States delegation was similar in content to alternative (A).

66. Alternative (B) submitted by the Group of 77 provided that all activities, including scientific research, should be conducted directly by the Authority.

67. In the view of his delegation, alternatives (A) and (B) embodied the two most extreme positions maintained in the Committee, and the gap between them was rather wide. In view of the central importance of article 9, greater efforts were needed to bridge that gap.

68. At the 36th plenary meeting of the Conference, his delegation had expressed the opinion that the International Authority should be empowered to exercise regulatory and licensing functions and, when appropriate, enter into contractual arrangements with States or undertake exploration and exploitation activities provided that they were feasible and profitable. Alternative (D) therefore might provide a middle term and serve as a basis for further constructive and meaningful negotiations. His delegation was nevertheless prepared to seek and accept other reasonable and viable methods of work to facilitate the Committee's task.

69. Mr. RATTRAY (Jamaica) said that it was essential for the Conference to face the challenge to its political will to apply the principle that the international sea-bed area and its resources were the common heritage of mankind. Some significant progress had been made, reflected in alternative (B) of draft article 9, submitted by the Group of 77, giving the Authority the dominant role in exploiting the resources of the area. The problem was how to reconcile the interests of those whose heritage the area was and the interests of those who had the necessary technology to exploit the area. The apprehensions of those who had the technology were largely based on their experiences of national systems; they should, however, bear in mind that such arguments were irrelevant in the present case, for a new international social order was to be established for which the Authority would be a catalyst. The Conference had recognized what the real issues were, and those who had apprehensions about the future should now try to work together with those who wanted the common heritage of mankind to be used for the benefit of mankind as a whole.

70. The proposal submitted by his delegation concerning fundamental norms for the system of exploitation should not be construed as limiting the rights of the Authority or diluting its powers. He supported alternative (B) of draft article 9 submitted by the Group of 77, which showed clearly that the principles embodied in the Declaration of Principles could be implemented only by an authority with the necessary powers to control activities in the international area. He hoped that all delegations would realize that alternative (B) of draft article 9 did not present any dangers to them, and that they would accept it.

71. Mr. KALONDJI TSHIKALA (Zaire), noting that article 9 was the most important article of all and dealt with the crux of the problem of the régime of the international area, expressed his support for alternative (B) which was clear, balanced and flexible. The problem was basically one of control; the Authority must exercise constant and effective, not theoretical, control over all activities in the area. Such control was provided for in alternative (B), which was why all under-industrialized countries supported it. The Declaration of Principles, which had established the international sea-bed area as the common heritage of mankind, required that the international area should be administered and controlled by some international authority which would have real power to control activities in the area, rather than simply apply the rules of the game for the benefit of exploiters of the area. He would oppose any system, such as a licensing system, which would not give the Authority adequate powers to control activities in the area. The best way of ensuring control was for the Authority to be represented in all stages of exploration and exploitation, including marketing of products from the area.

72. The Authority should administer the area for the benefit of mankind as a whole, particularly the under-industrialized countries, and the interests of the international community should therefore have priority over the interests of individual States. The economic consequences of exploitation on the development plans of many countries that were dependent on the exploitation and export of raw materials should not be underestimated.

73. The proposal submitted by the Group of 77 was the outcome of an earnest attempt to reconcile all points of view, while still providing for effective control over activities in the area by the Authority and ensuring that the interests of the international community would be paramount. The question of who would exploit the area was extremely important, but it was related to other aspects of the law of the sea, including conditions of exploitation. He appealed to all delegations to accept alternative (B) of draft article 9.

74. He shared the views of the representative of Venezuela who had analysed the dangers of licensing systems. Zaire had also had bad experiences with the system of granting concessions and had had to take very firm measures to prevent one company from becoming a state within the State. His country had abandoned the practice of granting concessions, and was now in control of all major sectors of its economy.

75. Miss MARTIN-SANE (France) proposed that the report of the Chairman of the informal meetings should be reported in full in the summary record of the meeting.

76. Mr. ILLANES (Chile), supported by Mr. FERNANDEZ (Nicaragua), proposed that the statement made by the representative of Colombia, speaking as Chairman of the Group of 77, should be reported in full in the summary record of the meeting.

77. The CHAIRMAN said that, if he heard no objection, the report of the Chairman of the informal meetings and the state-

ment by the representative of Colombia would be reported in full in the summary record of the meeting.

It was so decided.

78. Mr. RAKOTOSIHANAKA (Madagascar), agreeing with previous speakers that article 9 was the crux of the matter being considered by the Committee, expressed support for alternative (B) of draft article 9, submitted by the Group of 77. That text was supported by over 90 States, and although it had been said that alternatives (A) and (B) reflected extremist positions, he felt that alternative (B) was a compromise text which took account of all points of view and was designed to ensure that the international area would benefit mankind as a whole. He hoped that alternative (B) of draft article 9 would be accepted by all members of the Committee, if necessary after further negotiation. Alternative (B) aimed at providing the framework for a new kind of international co-operation to serve the interests of all members of the international community. He felt there were no grounds for apprehension regarding the role of individual States, as the international area belonged to the international community and not to one State. He pledged his delegation's full co-operation in all attempts to reach an acceptable solution.

79. Mr. NOVAKOVIĆ (Yugoslavia), supporting alternative (B) of draft article 9, submitted by the Group of 77, said that the most important principle in the Declaration of Principles was that the Authority should direct and control activities in the international sea-bed area. Even if the Authority concluded service contracts or organized exploitation in some other way, it must retain direct and effective control. He supported the principle that the resources of the area should be exploited directly by the Authority. The second paragraph of alternative (B) provided for exceptions to the rule that the Authority should directly exploit resources; the exceptional nature of that provision was indicated in the phrase, "if it considers it appropriate". With regard to scientific research, the Authority must have adequate powers, for otherwise it would depend on the goodwill of the developed countries for the necessary scientific data. It was not sufficient for the Authority simply to tax the income of entities exploiting the area; it must exercise direct and effective control over all activities in the area to ensure that it received a large part of the profits to be used for the benefit of all countries; that was provided for in alternative (B) of draft article 9.

Organization of work

80. Miss MARTIN-SANE (France), referring to the suggestion made by the representative of Colombia in his statement as Chairman of the Group of 77 that consideration of conditions of exploitation could be concluded by the end of the week, suggested that five full days should be reserved for consideration of that question.

81. Mr. DE SOTO (Peru), supported by Mr. RAKOTOSIHANAKA (Madagascar) and Mr. ILLANES (Chile), said that, although the Committee was moving on to consider the conditions of exploitation and the economic consequences of exploitation, it had not held an exhaustive debate on the system of exploitation. Alternative (B) of draft article 9 submitted by the Group of 77 relating to the system of exploitation marked a crucial stage in negotiations. He urged members of the Committee to take advantage of the momentum gathered and to proceed immediately with negotiations on article 9. The debate on conditions of exploitation could be held concurrently and should be concluded by the end of the week.

82. The CHAIRMAN, noting that members of the Committee were well aware of the need to negotiate treaty articles, urged representatives to avoid unproductive and time-consuming debates and to proceed with the matters under consideration. The Committee now had its first negotiable text (A/CONF.62/C.1/L.3) before it; article 9 of the draft dealt with the crux of the problem posed by the régime of the international area, and he suggested that it should be dealt with in informal meetings where the momentum had been gathered to bring the matter to an issue.

83. He proposed that, as agreed in informal meetings, the Committee should hold a very brief debate on the economic consequences of exploitation in formal meetings, and should conclude its consideration of that item by the end of the week. He also proposed that the Committee should consider conditions of exploitation in informal meetings and conclude its consideration of that item by the end of the week. Night meetings would be held, if necessary. He hoped that the Committee would be ready to give consideration to the question of the international machinery the following week.

84. Mr. THOMPSON FLORES (Brazil), supported by Mr. WEHRY (Netherlands), urged the Committee to proceed immediately with negotiations on the main issues before it, namely draft articles 1 to 21 and particularly draft article 9, before considering the international machinery.

85. Mr. ROMANOV (Union of Soviet Socialist Republics) said he felt that perhaps too many meetings, both formal and informal, were being held, leaving too little time for real negotiation.

86. After a procedural discussion in which Mr. RATINER (United States of America), Mr. ARCHER (United Kingdom), Mr. AL-IBRAHIM (Kuwait), Mr. THOMPSON FLORES (Brazil), Miss MARTIN-SANE (France) and the CHAIRMAN participated, the CHAIRMAN said that, if he heard no objection, he would take it that his proposed programme of work for the Committee for the next few days was accepted.

It was so decided.

87. The CHAIRMAN said that he would consult with members of the Committee on how best to organize negotiations on article 9 and also on the programme of work of the Committee for the next two weeks.

The meeting rose at 6.10 p.m.