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Report by Mr. P. B. Engo, Chairman of the First Committee on the work of the Committee

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Argentina, Bahamas, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Surinam, Trinidad and Tobago, Uruguay and Venezuela: draft tribute to the Amphictyonic Congress of Panama

[*Original: Spanish*]
[*13 August 1976*]

The Third United Nations Conference on the Law of the Sea, at its fifth session,

Considering that the current year 1976 marks the one hundred and fiftieth anniversary of the Amphictyonic Congress of Panama, convoked by the Liberator Simon Bolivar for the laudable and visionary purpose of uniting the Latin American peoples,

Considering likewise that a spirit of universality prevailed at the Congress of Panama, which was ahead of its time and which foresaw that only on the basis of union and reciprocal co-operation is it possible to guarantee peace and promote the development of nations,

Considering further that the Congress of Panama evoked the prestigious and constructive Greek Amphictyony and anticipated the ecumenical and creative image of the United Nations,

Decides to render to the Amphictyonic Congress of Panama, in a plenary meeting of the Third United Nations Conference on the Law of the Sea, at its fifth session, a public tribute acknowledging its expressive historic significance.

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Report by Mr. P. B. Engo, Chairman of the First Committee on the work of the Committee

[*Original: English*]
[*6 September 1976*]

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. Part I of the single negotiating text that I submitted at the end of the Geneva session in 1975[44] 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, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, adopted without discussion by the United Nations General Assembly on 17 December 1970.[45] 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.[46] 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 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. Part I of the revised single negotiating text[47] 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 single 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

[44] See *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.

[45] Resolution 2749 (XXV).

[46] Resolution 3201 (S-VI).

[47] See *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/Rev.1.

made in the First Committee, the General Committee and in the plenary meetings of the Conference remain valid.

I. 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 Mr. 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 the advice the President of the Conference had requested of me relating to the procedures for dealing with the dispute settlement system at the level of the plenary meetings of the Conference. 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 26th meeting of the Committee 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 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 4); 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 (A/CONF.62/C.1/WR.5 and Add.1) also contains the main elements of discussions in the group. 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 I of the negotiating text and related paragraphs 7 and 8 of annex I.

The various terms of reference and the 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 General Committee 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.

II. Negotiation of issues

The final report of the Co-Chairmen of the workshop 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 position on the system of exploitation, specifically article 22 and ceratin 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 must admit 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: namely, to set aside the possible differences in philosophical approach, and endeavour to determine in a pragmatic way 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 at 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 towards a compromise, or at the very least to state the problems in concrete form to induce fruitful negotiation. I am gratified to note that ideas from that revised text have been taken into account and, to quite a large extent, incorporated in the texts drafted during this session.

Now, despite these efforts at new drafts and the leadership shown by the Co-Chairmen of the workshop under difficult and sometimes impossible circumstances, we are faced with a problem of the first magnitude, a problem, in fact, that lies at the heart of our negotiations. It is a long, highly instructive and even necessary road we have 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 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 from every aspect, 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 most important question 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 central problem it may 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 convention 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 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 in association or side by side 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 politicans 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 lie 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 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 (A/CONF.62/C.1/L.17) which will facilitate the decisions we shall have to take on this subject.

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 attention 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 them 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 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 crossroads 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, 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 "handouts" 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.

What appears to divide the developing countries from the technologically advanced ones 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. Nevertheless, the 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. 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 extracted 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.

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 general agreement, 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 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 as we now have, after this session, a much better understanding of what are the points at issue, we would be failing in our responsibility to the international community if on major points of importance we were 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 interior 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.

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.

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.

DOCUMENT A/CONF.62/L.17

Report by Mr. Andrés Aguilar M., Chairman of the Second Committee, on the work of the Committee

[Original: Spanish]
[16 September 1976]

I. 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 proceedings or of their outcome, except for the general references contained in the summary records of the 22nd to 26th meetings of the General Committee of the Conference.

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 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.

II. BACKGROUND

4. The efforts made by the 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 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