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

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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

proposing to do and of what has been done at the current session.

5. At Caracas, after a general debate on each of the items assigned to the Committee, it was possible to identify with accuracy the main trends and to present, in a systematic way, the formulas which best reflected those trends. The outcome of that work was document A/CONF.62/C.2/WP.1, entitled "Main trends".⁴⁸

6. At Geneva, after a new reading of the document on the main trends and with the material derived from meetings of consultative groups on specific questions and from informal groups outside the framework of the Conference, a single informal negotiating text was prepared which no longer contains alternative solutions and has very few blank spaces. That text is contained in part II of document A/CONF.62/WP.8.⁴⁹

7. In New York, at the fourth session, a further step in that process was undertaken. After a reading, article by article, of the single negotiating text prepared at Geneva and by virtue of the mandate which I received from the Conference, I prepared a revised text which has served as a basis for our work during the current session and which is contained in part II of document A/CONF.62/WP.8/Rev.1.⁵⁰

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

9. The Conference, at its inaugural plenary meeting of this session, agreed to leave the Committees free to decide whether to focus their discussions on key questions, using document A/CONF.62/L.12/Rev.1 as a guide, and, if so, to decide which those questions should be, the order in which they would be considered and the way in which to conduct the negotiations so as to achieve rapid progress with the participation of all delegations.

III. ORGANIZATION AND METHODS OF WORK

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

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

- (i) The legal status of the exclusive economic zone. Rights and duties of the coastal State and of other States in the exclusive economic zone.
- (ii) Rights of access of land-locked States to and from the sea and freedom of transit.
- (iii) Payments and contributions in respect of the exploitation of the continental shelf beyond 200 miles.
- (iv) Definition of the outer edge of the continental margin.

⁴⁸*Ibid.*, vol III (United Nations publication, Sales No. E.75.V.5), document A/CONF.62/L.8/Rev.1, annex II, appendix I.

⁴⁹*Ibid.*, vol. IV (United Nations publication, Sales No. E.75.V.10).

⁵⁰*Ibid.*, vol. V (United Nations publication, Sales No. E.76.V.8).

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

- (v) Straits used for international navigation, and
- (vi) Delimitation of the territorial sea, the exclusive economic zone and the continental shelf between adjacent or opposite States.

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

Negotiating group No. 1, to consider question (i).

Negotiating group No. 2, to consider question (ii).

Negotiating group No. 3, to consider questions (iii) and (iv).

Negotiating group No. 4, to consider question (v).

Negotiating group No. 5, to consider question (vi).

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

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

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

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

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

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

(a) *Negotiating group No. 1*

19. Negotiating group No. 1 decided, at its 1st meeting, to divide the item assigned to it into two subitems: the legal status of the exclusive economic zone; and the rights and duties of States with respect to the living resources of the exclusive economic zone.

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

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

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

*“Article 56**“Catadromous species*

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

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

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

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

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

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

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

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

(b) *Negotiating group No. 2*

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

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

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

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

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

(c) *Negotiating group No. 3*

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

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

35. The consultative group, which held six meetings, spent much of its time considering various aspects of the question of sharing of the revenue derived from exploitation of the continental shelf beyond 200 miles. In the course of this discussion, the group was able to identify certain ele-

ments which could serve as a basis for possible agreement on the question.

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

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

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

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

(d) *Negotiating Group No. 4*

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

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

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

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

(e) *Negotiating group No. 5*

44. Negotiating group No. 5, which deals with the delimitation of the territorial sea, the exclusive economic zone and the continental shelf, held two meetings. At the conclusion of the second meeting, it was decided to establish a smaller group for the purpose of holding informal consultations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. CONCLUSIONS

58. As is clear from what has been said above, the Committee worked very hard at the present session. A sound selection was made of questions which called for priority consideration, and a serious negotiating process was begun in connexion with them. I believe that we have seen the timely

and fortunate development of a spirit of negotiation, which, of course, calls for recognition of the fact that a solution to controversial problems must be sought through mutual concessions. This spirit was apparent in the work of the negotiating groups and, particularly, in the small consultative groups. On the whole, the discussions held by these groups avoided a repetition of arguments that were already all too well known, and attention was focused on the consideration of specific proposals.

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

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

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

62. All these considerations lead me to believe that at the next session our organization and methods of work should be similar to those adopted at the present session. I do not, however, believe that we can foresee at this time what may prove most appropriate next year. I have therefore not thought it advisable to propose to the Committee that the present organization of work should be maintained at the next session. The most prudent course is to await the outcome of whatever work is done between the two sessions and, in the meantime, give some thought to other possible formulas for the organization and methods of work which will permit more intensive and fruitful efforts to be made.

DOCUMENT A/CONF.62/L.18

Report of Mr. A. Yankov, Chairman of the Third Committee, on the work of the Committee

[Original: English]
[16 September 1976]

1. The Third Committee worked according to the organization of work as suggested by me in my proposals to the Committee made at the last session at the 26th meeting of the Committee held on 16 March 1976¹ and further expanded during that session at the 28th meeting of the Committee held on 3 August 1976. This procedure was determined by the understanding that part III of the revised single negotiating text² was a relatively well-balanced document and as such could be used as the starting point for all the negotiations conducted in the Committee. This, of course, did not preclude other proposals which supplemented the revised single negotiating text to be taken into consideration. As agreed upon in

the 26th meeting, there were no general discussions on any item but negotiations were concentrated on particular key issues, without closing the door to delegations who wished to bring up matters of special interest to them.

2. I have endeavoured to discharge my responsibilities as Chairman in the most flexible and legitimate manner. I have always adhered to the principle of complete and open participation of all interested members of the Committee and I have emphasized throughout the whole history of the Committee, that adherence to this principle of full participation and openness will ensure the effectiveness and legitimacy of our work. At the same time, I have stressed that it was important to follow a selective and restrictive approach, thereby enabling us to achieve greater efficiency. Throughout the present session, my primary intention has been to harmonize and to

¹*Ibid.*

²*Ibid.*, document A/CONF.62/WP.8/Rev.1.