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

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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.

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

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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.

seek improvement in the clarity and presentation of critical areas in the revised single negotiating text wherever necessary. It gives me great personal satisfaction to report that the Committee has made important progress towards the elaboration of draft articles on the three items allocated to it, namely: the protection and preservation of the marine environment, marine scientific research, and the transfer of technology.

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

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

I. PROTECTION AND PRESERVATION OF MARINE ENVIRONMENT

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

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

7. In the course of 13 informal plenary meetings held from 10 August to 9 September, the Committee examined primarily the provisions of those articles relating to protection and preservation of marine environment in which delegations identified crucial issues of vessel source pollution. Thus, the Committee first devoted its attention to the competence of coastal States to establish laws and regulations for the prevention and control of pollution from vessels in the territorial sea. In this connexion, the Committee examined concurrently article 21, paragraph 3, of part III of the revised single negotiating text as well as article 20 of part II of that text.⁵² The Committee recognized a link between these two provisions and considered proposals both to make a clearer cross-reference in article 21, paragraph 3, of part III, of the text to part II and to change the scope of article 20, paragraph 2, of part II.

Subsequently, the Committee studied the legislative powers of the coastal State to prevent and control vessel source pollution in the economic zone and in special areas within the economic zone in the light of the provisions contained in article 21, paragraphs 4 and 5, of part III.

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

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

10. In total, 142 proposed amendments were submitted to 25 articles of chapter I of part III of the revised single negotiating text and four proposed amendments were submitted to two articles of chapter I, section 3, of part II of the text.

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

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

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

Negotiations on vessel source pollution

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

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

Article 21, paragraph 3

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

Article 21, paragraph 5

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

Article 27, paragraph 1

18. Proposals to amend the wording of revised single negotiating text were withdrawn.

Article 27, paragraph 3

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

Article 27, paragraph 6

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

Article 27, paragraph 8

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

Article 28, paragraph 3

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

23. The negotiating group was unable to resolve the various issues related to paragraph 4 of article 28. In connexion with paragraphs 2 and 4 of this article, the group agreed that

they should be re-examined once the group had had the opportunity to study article 30 and the amendments thereto.

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

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

II. MARINE SCIENTIFIC RESEARCH

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

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

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

29. Altogether, 41 proposals were submitted. On article 57, we received seven proposals, on article 58 four proposals,

on article 59 two proposals, on article 60 10 proposals, on article 61 five proposals, on article 62 two proposals, on article 64 five proposals, on article 65 two proposals, on article 66 one proposal, on article 67 two proposals and on article 69 one proposal. All these proposals were circulated informally to all delegations attending the Committee.

Article 57

30. On article 57, the proposals submitted were considered at informal meetings, as well as in a smaller negotiating group. Since article 57 referred to the territorial sea, it proved to be less controversial than some of the subsequent articles. There was a view that such an article is not needed, as the coastal State has the exclusive right to regulate, authorize and conduct marine scientific research in its territorial sea. However, there was a general agreement that in a convention on the law of the sea, such an article will be a logical part of a régime for the marine scientific research, which will cover not only the territorial sea but also the economic zone and continental shelf. Most of the suggestions were incorporated into a new consolidated article which was accepted as a possible compromise text pending the resolution of subsequent articles. The text of this new consolidated article is as follows:

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

Article 60

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

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

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

34. Ten proposals were originally submitted to amend the text of article 60 as contained in the revised single negotiating text. After some consideration, I suggested that similar proposals, submitted by different delegations should, as far as possible, be amalgamated and thereby reduce the number of proposals. As a result of this, the 10 proposals were reduced to six, and later, to four. At this stage, it became very apparent to me that we were moving in divergent directions from the revised single negotiating text furthering the division between the existing trends, instead of moving to a compromise. This compelled me to take the initiative to present a text

which was an attempt at compromise, taking into consideration the various concerns of different interest groups, and an effort to avoid a deadlock on this subject.

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

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

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

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

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

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

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

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

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

36. In the extensive negotiations that followed, more than 42 delegations made 78 interventions, and the text was viewed by a majority of delegations as a basis for negotiations, while some were opposed to it. To further this process of negotiations, I decided to hold meetings of the group of heads of delegations to which I have already made reference with the hope that a political decision could be taken on this issue.

37. The exchange of views that was carried out gave me an initial feeling that there was substantial goodwill and enough common ground to try to reach a compromise by accommodating opposing views. However, some delegations had difficulties in making a final statement on the issues of consent and its modalities because of the interrelationships they felt existed, either for reasons of substance or functional connexions, with provisions in other parts of the revised single negotiating text, and, more specifically, with the provisions of part II related to the economic zone and the provi-

sions of part IV providing ways for settlement of disputes.⁵³ Although there was no agreement on a compromise formula at this session, it is my fervent hope that this endeavour, which we have started, will not be lost and that it will be possible in the future to capitalize on the gains we have made.

Article 64

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

III. TRANSFER OF TECHNOLOGY

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

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

41. The interest shown in the matter is reflected in the active participation of the delegations. One hundred and thirty interventions altogether were made during the course of the discussions. Ten amendments were introduced on article 85, and eight amendments on article 86. Besides articles 85 and 86, reference was also made to a number of other articles, in particular, articles 79, 84, 87 and 89. One amendment was introduced on article 78, and a suggestion was made to add a new article, possibly as article 89 *bis*, for the time being, on the question of co-operation of States with competent international organizations in the field of transfer of technology. Reference was also made to part I of the revised single negotiating text,⁵² in particular to article 11 and annex I, paragraph 10, concerning the role of the Authority in the transfer of technology.

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

43. With regard to article 86, the amendments dealt mainly with: the reference to particular interests, such as rights and duties of holders, suppliers and recipients of technology, and the establishment of an over-all system of co-ordination and a joint international fund for activities of the Authority in the field of transfer of technology. There was no

opposition to the suggestion to replace in subparagraphs (b), (c) and (d) the words "developing States" by the words "States which may need and request technical assistance in this field, in particular, developing States . . .".

44. The role of the International Sea-bed Authority as mentioned in articles 85 and 86 led to amendments suggesting deletion of both articles. According to some views, if article 85 is to be retained, a cross-reference to part I of the revised single negotiating text would be sufficient.

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

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

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

48. In conclusion, I wish to reiterate that the issues outlined above are not the only ones requiring further elaboration and study but, owing to lack of time, negotiations could only be carried out on those issues. Undoubtedly, during the future session, the remaining issues will also be considered. All the proposed amendments and compromise formulae presented or drafted during this session have been recorded and will also be taken into account during our future work. It is my fervent hope that, at our next session, it will not be necessary to go back to previously stated positions, but that our starting point should be where we left off at the end of this session. It will be a great set-back if the achievements and progress made during this session are lost, since in my personal opinion we have successfully narrowed the issues before the Committee, and I believe that our common objective is almost within our grasp.

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

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

⁵³*Ibid.*, document A/CONF.62/WP.9/Rev.1.