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Statement made by Mr. P. B. Engo, Chairman of the First Committee, at the 39th meeting on 14 June 1977

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I call on the economic and technological giants of our era, the Federal Republic of Germany, Japan and others to show understanding.

We need the wisdom of the Chinese nation. Their membership in the third world must enhance the quality of our dialogue here.

To my brothers and friends in the third world, I can only appeal to you to maintain your capacity for understanding. Let not the might of our numbers lure us to the arrogance for which we condemn others.

We need you, Canada, Australia, Scandinavia, the Arab and Asian world, the Latins, the Eastern Europeans, all of you. Come let us work together.

The hour of decision is now. The stern warning of William Shakespeare's pen, through the character of Mark Antony haunts us. He speaks of failure:

> "A curse shall light upon the limbs of men, domestic fury and fierce civil strife shall cumber all" the oceans and our cities if we fail. "Blood and destruction shall be so in use and dreadful objects so familiar, that mothers shall but smile when they behold their infants quartered with the hands of war."

We could also give a response to a question that a great thinker in my own nation, Cameroon, Dr. Bernard Fonlon, has posed: "Shall we make or mar?"

As indicated at the end of the last session, I shall regard the conduct of the negotiations in this Committee at all levels as my personal responsibility, as Chairman. The Bureau of this Committee was elected to organize the negotiations. We do not intend to shirk our responsibility. We are reassured and encouraged by the overwhelming expressions of desire that we perform our function.

However, in the discharge of that responsibility, I ask for assurances that I can call on the services of any of you at will, and especially of those who by their imagination, experience, skill and standing will commend themselves as instruments of our common design. In spite of this, I shall remain fully and solely responsible to you collectively and to the Conference as a whole for the results that our mandate dictates. Having said that, you must all be constantly reminded that yours is the arduous duty to negotiate. Negotiation must have a finality in view.

In the light of all I have said, I propose that we take as our target the three groups of issues that I have enumerated. For the sake of continuity and organization, we could commence with the first, the issues relating to the system of exploitation. At appropriate moments we shall take on the other two.

I propose further to set up an informal Chairman's working group of the whole to commence work immediately. As I said, I shall call on some of your members to help me and this Committee in my task. I appeal to all of you to be ready to take on such responsibilities whether or not they meet with your personal convenience. On this occasion, and in the light of the effort he has already begun, I wish to draw on the experience of Minister Jens Evensen to be my special co-ordinator for this first subject. He has very kindly indicated his willingness to assume the responsibilities. He will represent me personally and report to me directly every day. I reserve the right and duty to ensure that the conduct of the negotiations for a package remains mine and that of my Bureau.

If there are no serious objections, I shall take it that we are determined now to proceed.

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The three weeks allocated by the Conference almost exclusively to the work of the First Committee ended with the meeting of the Chairman's working group last Saturday. As our endeavours have taken place informally behind closed doors, I consider it my duty to give to you periodically a frank appraisal of the progress of our ork. I have chosen to do so this morning, partly because we ouselves must, together with the Conference as a whole, assess the use to which we have put the past three weeks, and partly because the conclusion of a significant aspect of our work provides a convenient milestone.

I do not wish to do more than report briefly to you on the current situation. It will be a review of only a limited area because I have had little more than 24 hours in which to study and digest the reports reaching me. In the near future, it is my intention to offer modest leadership and guidance by circulating informally amongst you, concrete suggestions on the paths that, in my view, may lead to progress. It is my sincere hope that when I do, I shall be able to rely on your characteristic sense of duty and dedication to suggest to me any concrete ideas which could hold far greater prospects for the satisfactory solution of problems than my own. It is only through such a co-operative endeavour that I could hope to be fully armed with productive ideas necessary for the composite text envisaged for this session. I do not wish to produce texts for the sake of adding yet another document to the Conference. It is my sole ambition the next time I make any documentary contribution, to succeed in reflecting ideas with which all of you can live, even if grudgingly.

You may recall that at our first meeting on 25 May 1977, we adopted a programme of work in which it was decided to tackle a mini-package consisting of three groups of elements in the following order:

(i) The issues of exploitation, notably the modalities of the system of exploitation (including, *inter alia*, its duration), basic conditions for exploration and exploitation, the viability of the Enterprise and the resource policies of the Authority;

(ii) The institutional questions; and

(iii) The dispute settlement system.

With your approval, I proceeded to establish a working group of the whole, imposing on the head of the Norwegian delegation, Mr. Jens Evensen, the arduous responsibility of acting as my special co-ordinator. In future,

I would prefer that it be styled the chairman's negotiating group in order to underline the nature of its function.

That group has now concluded its work on the first item, viz. the issues of exploitation. In addition to brief periodic reports the co-ordinator has now submitted to me his frank appraisal of the negotiations so far, drawing attention to critical issues that still tend to divide us and making his personal recommendations on where compromise formulations may be sought. It is clear to me that through the work he has undertaken, these critical issues have been brought into sharper focus. In the process, it would appear that some important ideas postulated in part I of the revised single negotiating text[49] have been further refined and that this effort has brought the work of the Committee to a more advanced stage.

I wish to express personal thanks and congratulations to my friend Jens Evensen for a job well done and for the effectiveness and sense of urgency he has brought to bear on the task assigned to him. His reports to me have been a valuable asset.

I am sure he would wish to join me in paying even greater tribute to you, for the tremendous co-operation you have all demonstrated so far. It is gratifying to observe the portents as heralded in your response to my appeals: you are helping to make anachronistic the resort to ideological debate and wasteful rhetoric. That we now clearly share a common concern for staggering problems of great magnitude, involving our joint aspirations, is a healthy sign and a trend which must be maintained by all of us.

It may be recalled that it was the request of the Conference that in the first three weeks of the current session, every effort should be made at the level of heads of delegations to negotiate acceptable compromises on basic issues. In that period, we examined the main elements in the system of exploitation:

(1) The resource policy contained in article 9;

(2) The basic provisions on the organization of activities in the Area (articles 22 and 23), and the related provisions of annex I on the award of contracts and similar issues, including the so-called "banking system" (expressed in paragraphs 8 (*bis*) and 8 (new) of annex I);

(3) The financing and setting up of the Enterprise (particularly articles 41, 49 and annex II, paragraph 6); and

(4) The question of a review clause for the system of exploitation.

Regrettably, the co-ordinator has reported that it has not been possible so far to attain consensus on these issues. Opposing positions can hardly be described as having significantly changed. This is in spite of the fact that texts on which discussion might take place have been further refined. It would appear that although a desirable dialogue has begun, we are not talking enough across interest groups and with those who hold opposing views. I do not mean within the meetings of the group necessarily, but among individuals. We seem inadvertently preoccupied with the exposure rather than the solution of problems. It is essential that we begin that intense dialogue at various levels, if this session is to record any progress.

We have less than two weeks to the deadline set by the Conference to complete this first phase in our work. It is my intention to devote my full time, in the days and weeks ahead, to ensuring that we increase the momentum of that final drive in our race to the tape. It will call for sacrifices in your time and ideas. It will engage your co-operation at its most productive level. We must not fail because we cannot afford to fail.

I wish now to turn to specific topics with which we have dealt so far.

1. *The resource policy*

Fundamental differences still exist over a whole range of issues connected with the resource policy of the Authority. It seems to me that since last year, practically all delegations, some however reluctantly, are now willing to consider a clear limit on production from sea-bed resources. On the other hand, it seems that those most likely to be involved with the Authority in sea-bed mineral exploitation are reluctant to go beyond the terms of article 9 as set forth in the Revised Single Negotiating Text. Others who are likely to be most seriously affected by unlimited sea-bed mineral production, feel that article 9 of the revised single negotiating text must be expanded and elaborated on what they believe would be a more equitable basis. The resultant situation is that neither the actual limit of production nor the method of its calculation has been agreed.

Several delegations have assisted us by producing their figures and explaining the assumptions and methods of computation they have used. They have each attempted to analyse numerically the implications of formulae presented by the revised single negotiating text, the proposals by the Group of 77 and more recently by Mr. Evensen of the Norwegian delegation following the Geneva and subsequent consultations. Each tries by mathematical argument to justify a given stand. The Secretariat has again made a valuable contribution by producing calculation based on these formulae.

The impression given that the solution is a simple matter of mathematics would appear to me to be an erroneous one. This is the conclusion I reach on listening to the experts in debate. There are real issues of a political nature, which the mathematical calculations only in part tend to illustrate and they call for political decision plain and simple.

The negotiations on the resource policy seem to have centred on two questions:

(i) How should we define the general objectives, guidelines or principles which will govern all activities in the area?

(ii) Which specific limitations should, in the interest of protecting developing land-based producers of the minerals concerned, be imposed on the total volume of production of such minerals from the sea-bed area?

With regard to general objectives, divergent interests have induced some that can be and are conflicting. There are some who even see danger in the idea that the Authority should be empowered to ensure that agreed objectives are realized, and would prefer a mere statement of the objectives.

It does not appear that we are outside the realm of consensus on the fact that activities in the area shall be undertaken in accordance with the provisions of the first part of the convention, in such a manner as to foster the healthy development of the world economy and a balanced growth in international trade, and to promote

[49] *Ibid.*, vol. V (United Nations publication, Sales No. E.76.V.8), document A/CONF.62/W.P.8/Rev.1.

international co-operation for the over-all development of all countries, especially the developing countries. The more specific areas envisaged by these objectives do not appear to be the main source of divergency.

However, a sharp divergency of view springs from that aspect of over-all development which relates to the developing countries, and in particular the land-based producers among them. We have had to consider the proposal that the activities in the area shall be undertaken with a view to protecting developing countries from adverse effects on their export earnings or on their economies as a result of a reduction in the price of an affected mineral or in the volume of that exported mineral, or in the continued flow of investment to land-based mining.

In the revised single negotiating text and in all subsequent proposals this session, this theme has appeared in one form or another. The divergency appears to relate to the means by which this protection can be realized.

It would appear to me that one basic difficulty in formulating a resource policy in this field lies in the interpretation of this objective. In each of the proposals so far advanced, the variety of interpretations appear to be responsible, at least in part, for the differences in the proposed formulae for use in the resource policy formulation. The term "adverse effects" seems to lend itself to various meanings in various contexts, the most common being:

(i) A loss of income in real terms;

(ii) A loss of part of an anticipated increase in volume;

(iii) A smaller share of world supply (even if the contribution is larger than the previous).

In certain cases, it is assumed that if the export earnings of land-based producers were not reduced, then no adverse effects would have befallen the producers.

Under the revised single negotiating text, it is argued, with some justification, that the land-based producers will be incapable of expansion because of the potentially lower cost of sea-bed mining production. In formulations, such as that advanced by the Group of 77, this objective is pursued by specifically allocating a proportion of the annual increase in demand to land-based producers to ensure that they can expand production. Thus, the formulation of a resource policy must begin with a clear understanding of what construction we place on this objective.

Another formulation, used in compromise texts, employs the device of an initial period which would allow for the accumulation of a certain number of mining concessions up to the moment when commercial production from the sea-bed actually starts, and therefore raises problems as to whether the objective of fostering the healthy development of the world economy is being maintained at all times.

Turning to the second and perhaps more difficult aspect relating to the specific limitations, it would appear that the new convention will have to lay down in clear terms at least the nature of the limitation which is to govern the total volume of sea-bed production of the minerals concerned.

There is a fundamental question as to whether we are capable of making satisfactory predictions or assumptions for the future, given the many uncertain factors and, if I may add, the nature of the fluctuations in the past. However, it is important to note that there is strong objection from some States that the duty should not be left to the Authority and its technical organs to study and propose the specifics on production.

The differences in the various proposals may be found in three principal areas:

(i) The percentage assigned for sea-bed mining;

(ii) The method of calculation;

(iii) The applicable rate for the first few years.

This last aspect represents a new feature in our negotiations.

A higher percentage allowed for in the initial years is intended to accommodate the manifest interests of the existing mining industry. For this school of thought, an annual production from the sea-bed of up to the total increase in demand for nickel is barely enough to strengthen confidence within their industry and ensure adequate investment in this new and relatively uncharted field. For them, any reduction appears unrealistic.

Some would insist that this higher percentage would enable the Authority to get on its feet by generating funds for its activities in the Area. This would be achieved by way of fees, charges and taxes and the sharing of financial benefits.

On the other hand, it is argued that a 100 per cent allocation for sea-bed mining, as proposed in the revised single negotiating text, would have the effect of freezing expansion in land-based production. Even a 75 per cent quota, as suggested, would still leave little or no room to accommodate the growth of land-based mining. It may well freeze the production of land-based minerals, and after the five-year period proposed, their growth would be limited to only one quarter of the increase in world consumption. It is further argued that this formula would be detrimental for land-based producers, especially the developing countries among them. It would not only upset economic development programmes but perhaps destroy mining investment and industrial activity, thus discouraging the resource development of potential producers from developing countries.

Response to the validity of the point that benefits must accrue to the Authority seems, to this school of thought, to be that such benefit would be little compared to the damage caused to the developing countries' land-based producers, whose well-being is also a central feature in the principle of the common heritage. Since the Authority's activities in the area will be very limited in the initial stages, it is argued, the bulk of the benefit will accrue to the industrialized countries and private companies.

In the circumstances, it must be admitted that the seemingly simple question of how many mine sites should be allocated for sea-bed mining—the purpose of the several computations—is indeed a very complex one. We must together explore avenues of compromise. On the one hand, we must provide for the protection of the interests of land-based producers. On the other, we must avoid creating conditions that may make sea-bed mining a mere piece of paper.

2. *Organization of activities in the Area*

On the second subject of the system of exploitation envisaged by article 22 and related provisions of annex I, the old nagging problems persist, although there appears

to be a joint venture across interest lines to seek a valid solution.

It would appear that a general agreement is emerging that the activities in the Area must be under the organization and control of the Authority. This represents an important move forward. However, there is still no identifiable agreement on the extent of the Authority's role in the conduct of activities as to whether it should be one of dominance and full and effective control, or one of administration and over-all supervision. Thus, there appears to be no middle ground as to the scope of the discretionary powers of the Authority.

The industrialized countries who emphasize the merits of the so-called "parallel system", advocate a solution which would place the Enterprise on a footing of equality with States and companies. In effect, while they may recognize the overriding role of the Authority in the organization and control of all activities, they do not accept a similar primary role for it in the conduct of exploration and exploitation.

The developing countries are convinced, on the other hand, that the concept of a unified system is more appropriate for the implementation of the common heritage. Under this system, whatever its form, the dominant position of the Authority, as sole legal representative of mankind, is assured. Thus in that sense the Authority must, in principle, be the principal or actual exploiter of the Area.

In early attempts at compromise, various texts were circulated informally. There were those who felt that these enshrined a system which conferred an unfettered right of access on the entities of the industrialized countires virtually in perpetuity, and that consequently the concept which is very important to them—that at some time in the future the Authority's role will be to organize, control and conduct all sea-bed mining—will never be fulfilled. The idea that this apprehension might be allayed through a provision in the convention allowing for the possibility of establishing a new and different régime after an initial 20-year period has been met with scepticism in some quarters, although the purpose of a review clause, seen as the vehicle to bring about this change, has received wide support. The inclusion of such a review clause has, in a sense, never been in question: what has been open to question by some is simply the idea that such a clause would be sufficient in itself to bring about a change in the basic system even if the great majority in 20 years were to so desire. Several matters connected with this idea remain to be worked out, such as the details of how it might affect the Authority's power to award contracts in the initial 20-year period, and the mechanism of a possible moratorium at the end of that period. Such a mechanism could set the stage for a possible radical change in the system, following review, but without disrupting existing arrangements, commitments and relationships in the event that, by decision, or the lack of it, the system regarded as transitory would become indefinitely "permanent".

It is my belief that possibilities do exist for securing agreement around a system which, by its pragmatic and realistic approach, fully meets the needs of the industrialized countries at the current stage of investment and preparedness to embark on exploitation, while also strengthening the assumption that, at a later stage, the Authority will have a genuine management role as desired by a very large number of countries. Agreement on such a system now would obviate the need to depend, as some would wish to do, on the millenium promised by a clause on review.

The co-ordinator has made some valuable recommendations on the course that can be pursued and I intend to explore it fully. For the moment, I would comment that the answer to this problem does not appear to me to lie in a system either completely "unitary" or completely "parallel". I am myself bemused by the incredible shifts in definition regarding these terms. The solution may well lie with a system which establishes the Authority as the prime exploiter of the Area, but which at the same time gives realistic guarantees of access by States and companies sponsored by them and fair contractual arrangements with the Authority for the conduct of activities in the Area. Whether or not this access is described as creating a right could become academic, given the realities of the times and the mining industry. It will of course also involve a satisfactory solution of certain issues defined in the annex as issues for negotiation between the Authority and the applicant. The theory of automaticity is an irritant in this consideration and appears to have exited conveniently from our labours.

The doctrinal collision between the unitarians and the parallelists is not the only issue arising with regard to the formulation of the basic provisions on the organization of activities. There is also the question of whether there should be a provision which would ensure that no single State or group of States could, by virtue of technological supremacy in sea-bed mining, secure such number of contracts that would amount to a virtual monopolization of activities in the area. Whatever the views of the merits of this question, I think that we now all acknowledge that some provision along these lines will be necessary if we are to reach a generally acceptable convention. A provision, as mentioned, could be either in a positive form, providing for an equitable distribution of contracts, based on specified criteria, or in the more negative form, giving protection against monopolization or against a dominant position for a State or a group of States. Discussions so far on this issue tend perhaps to suggest that a negative formula, being of more limited scope and therefore more easy to establish as a lowest common denominator, might perhaps be the way out.

Whatever the outcome of the anti-monopoly negotiations, we shall obviously need a general commitment in the convention for the Authority not to discriminate in the exercise of its functions. It will also be necessary in this connexion to establish the principle that special consideration for developing countries shall not be deemed to be discrimination (article 23).

In describing the situation with regard to the questions of access, I have also by implication dealt with some important provisions in paragraph 8 *bis* of annex I. That paragraph raises however some other issues of principle. One of these concerns the principles to be laid down for the selection among the applicants, in situations where several applicants apply for the same site, or where the limitations laid down in the resource policy make it impossible to accommodate all those who have applied. What should be the principles governing the choice of the Authority in these situations?

Here again there are two main schools of thought. One attaches the greatest importance to maximizing the benefit for the Authority—and therefore to mankind— and consequently advocates that the choice should be made on

the basis of competition in terms of qualifications. The other school of thought attaches more importance to the need to ensure an equitable distribution of contracts as between State Parties, including entities sponsored by States. This question is closely linked to the anti-monopoly problem which I have referred to above. It may therefore be that the proponents of an equitable distribution principle might be accommodated within the terms of the outcome of the discussions on the anti-monopoly issue.

However that may be, there will probably need to be some priority given to those applicants who are ready to enter into joint ventures or other joint arrangements with the Enterprise for the exploration and the exploitation of the Area. This need arises from the need to ensure the financing of and the transfer of technology to the Enterprise, without which it cannot become a viable concern at an early date. I shall revert to this question later.

The last important issue with regard to the basic conditions laid down in the annex for contract with the Authority is the "banking system". We seem here to have reached a situation very close to consensus, with regard to the need for any applicant to indicate to the Authority, for the use of the Enterprise or developing countries, an area of an estimated commercial value which is equal to the estimated value of the area which he himself will exploit. Negotiations on this issue have centred largely on the question of whether the actual separation of that part of the area which is to be reserved for the Enterprise shall take place before or after the stage of exploration. I am fairly confident that on this issue the Committee will be able to reach a compromise. Such a compromise would not necessarily limit to the prospecting stage the efforts of the contractor on behalf of the Enterprise, but would on the other hand not require that he in every case carry the full burden of the exploration of that part which is to be reserved for the Enterprise.

In connexion with the banking system it would furthermore be important to include a provision which would make it clear that contractors who undertake to go into joint ventures or similar arrangements with the Enterprise for activities in the reserved area should be given certain financial incentives.

3. *Financing of the Enterprise*

With regard to the financing of the Enterprise a number of different sources for such financing have been indicated in the discussions. It is clear that one such source would be to set aside for the Enterprise a part of the income of the Authority from fees and other revenues paid by contractors. Especially in an initial phase this could represent a significant contribution, though hardly likely to represent a major part of the finance required to explore and exploit the Enterprise's first site. At the same time it has been pointed out that it should only be in the initial period that income from this source should be forwarded to the Enterprise. Obviously such transfer of income to the Enterprise from the Authority would reduce correspondingly the amount of revenue available for developing countries from the activities in the area. Fees and other revenues paid by the contractor to the Authority should therefore probably only in an initial period be transferred to the Enterprise, and only as may be necessary to assist in making the Enterprise a viable concern.

A second major source of finance could be the revenue accruing to the Enterprise from joint ventures and other forms of joint arrangements with States and private companies for activities in the Area. Given the favourable situation which the Enterprise will enjoy in the reserved area, a strong incentive to go into such joint ventures would exist both for States and for private companies. Joint ventures of this kind could be invaluable, not only for the purpose of developing finance, but also with a view to equipping the Enterprise with the necessary technology.

In addition to fees and revenues from joint ventures, as already mentioned, it will probably be necessary to include some form of contributions from Governments. A possibility here is the guarantee of loans, within certain specified limits and on a basis of agreed criteria for the scale of assessment. This way out has been suggested by one of the major industrialized countries. Another possibility would be direct mandatory monetary contributions by Governments. It would of course be necessary to agree on the basis for the scale of assessments and on limitations with regard to the amount. In either case, whether it be guaranteed debts or direct contributions, such sources of finance should probably be limited to the costs required for the very first mining project of the Enterprise, at least as regards the mandatory provisions which we might make in the convention itself. Judging from statements in the Chairman's working group, a system of guaranteed debts will probably stand a greater chance of becoming generally acceptable than would a system of direct mandatory monetary contributions.

Turning to the issue of transfer of technology, suggestions have been made that article 11 be amended so that it would refer not only to the transfer of technology to developing countries, but also to the transfer of technology to the Authority and to the Enterprise, as the operating arm of the Authority. Judging from the reactions to this suggestion it would seem possible and indeed necessary to act on these proposals.

4. *Institutional questions*

We must now look to the future and to the question of institutional arrangements, the second item on the agenda of our mini-package. As we have hardly dealt with this problem in the past, I propose that we spend this afternoon and tomorrow in a brief informal preliminary examination of the scope of the problems involved. On Thursday I would request that the Chairman's negotiating group take up the more detailed negotiations on the subject.

We shall examine the institutions proposed in the revised single negotiating text. As I said previously (see A/CONF.62/C.1/L.20) we need to examine the decision-making processes of the Assembly. You will recall the suggestion that the Assembly might find it difficult to reach a decision under the present procedure of article 25 and that the procedure might even be used to paralyse the Assembly. Any alternative procedure should aim at dispelling such concerns.

A comparison of the respective powers and functions of the Assembly and the Council would indicate the need to find the necessary balance. The non-interference provision specified in article 24, paragraph 4, would guarantee the independence of the Council, and it is extremely important, if only for this reason, that the Council should be so composed as to represent the divergent interests and enable decisions to be taken that would be in the interests of all parties concerned. In my statement at the end of the last session, I pointed out that we could spend decades in fruitless debate if we continued to believe that

interests may naively be categorized as developed versus developing countries. Neither group is without diversity of concrete interests given the common factor of uneven development. We should recognize the manifold, divergent interests and abandon this false assumption of a bi-polarized situation. As long as the situation is conceived in these terms it will be extremely difficult to find an acceptable solution.

Attention must also be given to the subsidiary organs such as the Technical Commission, the Economic Planning Commission and the rules and Regulations Commission, since they are very important to the actual operations of the Authority. According to articles 30, 31 and 32, the three commissions require highly specialized personnel. If there is reason to doubt that such personnel will be available from developing countries, we must find a way to ensure the independence and impartiality of the members of the Commissions.

5. *Settlement of disputes*

Thinking ahead, we must also bear in mind the last element in our mini-package, namely the system for the settlement of disputes.

You will recall that this was the third group of elements for that subdivision of the package. Although the Committee has not yet had the opportunity to discuss the subject, I wish to bring into focus certain crucial issues which must be faced when the subject is taken up again and given the thorough discussion it deserves.

First, let me emphasize once again that attention must be turned at the outset to the question of the jurisdiction and competence of the Tribunal we envisage. The draft articles of part I and annex III on the statute of dispute settlement system will offer useful clues. The Tribunal is clearly given jurisdiction to interpret and apply this part of the convention relating to activities in the Area. A dispute may thus arise when it is claimed that any organ of the Assembly or the Council has acted wrongfully on the following grounds:

(*a*) Violation of this part of the convention;

(*b*) Lack of jurisdiction;

(*c*) Infringement of any fundamental rule of procedure; and

(*d*) Misuse of power.

All the above grounds for challenging the actions of the organs of the Assembly or the Council clearly assume that where the convention itself or the Assembly and Council have delegated certain powers to be exercised in a certain manner, only the specific powers so delegated may be exercised, and also only in accordance with the manner prescribed. Failure to do so would give rise to a dispute. In this connexion it is useful to have in mind that any of the above grounds for challenging the actions of the organs of the Authority may arise at various levels:

(*a*) On the level of rejection or acceptance of an application;

(*b*) On the level of award of contract; or

(*c*) On the levels of numerous issues related to actual performance under the terms of the contracts.

Accordingly, in discussing the jurisdiction and competence of the Tribunal, it is useful to think of concrete examples of disputes that may arise on these various levels. It is only by doing so that it may be possible to draw the necessary distinction between categories of disputes and assign each category to a particular mode of settlement. The mode of settlement may be judicial or administrative.

The second important issue I want to focus upon relates to the developments which have occurred in the discussions on the general settlement of disputes system both in the plenary meetings and elsewhere in the Conference. I am aware that a group of delegations have expressed a preference for removing the machinery for the settlement of sea-bed disputes from the institutional arrangements of the Sea-Bed Authority and placing it in part IV of the single negotiating text. It is my view that this question as to the establishment of a sea-bed tribunal as one of the principal organs of the Authority, as has been envisaged all along, must be discussed thoroughly here. We must carry out our mandate by discussing all the substantive issues related to this settlement system, prepare draft articles thereon, and if necessary, make a recommendation as to its proper place in the convention. In those discussions it will become clear as to how the institution itself should be placed so as to offer the services required.

If I find no serious objection, I shall take it that we are now determined to press on with our work as outlined.

6. *Conclusion*

This is all that I can say at the moment. I ask my distinguished colleagues to chew over these points and I shall welcome anyone to my office or elsewhere who may have ideas on how these problems may be solved. I do not invite you to another general debate here. As I have said, I shall provide an opportunity for a brief exchange of views on the issues of exploitation when I am in a position to present you with an informal draft for consideration.

In two weeks, we must tighten still further our joint resolve with a view to achieving a consensus on outstanding issues. From this day on, I implore you to embark on a desperate quest for solutions. The aim of each pronouncement we make, whether under the formality of the Committee or the Chairman's negotiating group or among ourselves, should be to get a solution. It is no longer enough now merely to outline the problems or to emphasize their complexity; that would tend to insult the intelligence of those who listen. They know the nature and complexity of the problems, and repetitions only induce irritation. It is now more important to suggest genuine solutions, stating valid grounds for one's conclusions. We must also constantly bear in mind the truth that in elaborating an international treaty commanding universal acclamation, no State or group of States or even a community of interest can expect to have all of its needs and wants satisfied. We must all lose something in order to gain the greater freedom from situations which currently threaten to drive all of mankind, rich and poor, strong or weak, back to barbarism.