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Memorandum by the President of the Conference on document A/CONF.62/WP.10

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At the 78th plenary meeting of the Third United Nations Conference on the Law of the Sea held on 28 June 1977, the Conference decided that the President should undertake, jointly with the chairmen of the three Committees, the preparation of an informal composite negotiating text which would bring together in one document the draft articles relating to the entire range of subjects and issues covered by parts I, II, III¹ and IV² of the revised single negotiating text. It was agreed that for this purpose the President and the Chairmen of the three Committees would form a team under the President's leadership and that the Chairman of the Drafting Committee and the Rapporteur-General would be associated with the team as the former should be fully aware of the considerations that determined the contents of the informal composite negotiating text and the latter should, *ex officio*, be kept informed of the manner in which the work of the Conference has proceeded at all stages.

It was understood that while the President would be free to proffer his own suggestions on the proposed provisions of any part of the composite text, in regard to any matter which fell within the exclusive domain of a particular chairman that chairman's judgement as to the precise formulation to be incorporated in the text should prevail. The adoption of this procedure was a recognition of the fact that each chairman was in the best position to determine, having regard to the negotiations that had taken place, the extent to which changes in his revised single negotiating text should be made in order to reflect the progress achieved in the course of negotiations where, in the chairman's opinion, such progress justified changes in the revised single negotiating text and also to decide, even where the negotiations had not resulted in substantial agreement, whether such progress as had been achieved warranted changes which would be conducive to the ultimate attainment of general agreement. It was also understood that, so far as issues on which negotiations had not taken place were concerned, there should be no departure from the revised single negotiating text unless it was of a consequential character. This understanding was scrupulously observed in the course of the preparation of the informal composite negotiating text. There is no question, therefore, of joint responsibility being assumed for the provisions of the text by the President and the chairmen of the three Committees. The chairman of each Committee bears the full responsibility for those provisions of the informal composite negotiating text which are the exclusive and special concern of his Committee. This is not an enunciation of a new doctrine of collective irresponsibility.

¹ *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. V (United Nations publication, Sales No. E.76.V.8), document A/CONF.62/WP.8/Rev.1.

² *Ibid.*, vol. VI (United Nations publication, Sales No. E.77.V.2) document A/CONF.62/WP.9/Rev.2.

The Conference also agreed that the composite negotiating text would be informal in character and would have the same status as the informal single negotiating text and the revised single negotiating text and would, therefore, serve purely as a procedural device and only provide a basis for negotiation without affecting the right of any delegation to suggest revisions in the search for a consensus. It would be relevant to recall here the observation made in my proposals regarding the preparation of this text that it would not have the character and status of the text which was prepared by the International Law Commission and presented to the Geneva Conference of 1958 and would, therefore, not have the status of a basic proposal that would stand unless rejected by the requisite majority.

Special attention was given, in the course of the preparation of the informal composite negotiating text, to the need for co-ordination between the different parts of the revised single negotiating text where there appeared to be contradictions or unnecessary repetition.

The time available for the preparation of the informal composite negotiating text was so limited that the niceties of draftmanship had to be sacrificed in the interests of speedy completion of the text. This would eventually be the responsibility of the Drafting Committee.

The main purpose of this explanatory memorandum is to convey to the Conference the reasons for the changes that have been effected in, and the deviations from, the revised single negotiating text, as well as to draw pointed attention to the principal issues which are regarded as indispensable elements of the package deal that is envisaged and which require further and intensive negotiation. At a later stage I hope to present to the delegations participating in the Conference a document indicating in greater detail those issues and also suggesting for their consideration the order of priority to be assigned to them for treatment in future negotiations.

The structure of the informal composite negotiating text does not retain the order of the four parts of the revised negotiating text, but has been established on the principle that the most logical progression in the proposed new convention on the law of the sea would be from areas of national jurisdiction, such as the territorial sea, through an intermediate area such as the exclusive economic zone, to the area of international jurisdiction. It is hoped that the structure that has been adopted will constitute a definite advance in the elaboration of a comprehensive convention on the law of the sea and will be in conformity with the considerations that led the General Assembly in its resolution 2749 (XXV) of 17 December 1970 on the Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Sub-soil thereof Beyond the Limits of National Jurisdiction to treat the problems of ocean

space as closely interrelated and which need to be considered as a whole.

The use of the expression "geographically disadvantaged States" which appears in various provisions of the text is contingent upon a decision by the Conference regarding the definition of that term.

The Conference will note that in paragraph 3 of article 154 it has been stated that the seat of the Authority will be at Jamaica. This provision appeared in part I of the informal single negotiating text and was incorporated in it by the chairman of the First Committee because of the position taken in Caracas by the Group of 77. It was decided that this provision be retained with an indication that, subsequently, two other countries, namely Malta and Fiji, had offered to accommodate the seat of the Authority. This question has yet to be discussed in the Conference.

In order to ensure the comprehensive character of the informal composite negotiating text, it was thought fit to include a preamble and final clauses although these two subjects have not yet been discussed in the Conference. Every effort has been made to avoid any provisions in the preamble and final clauses that could lead to needless controversy at this stage and it is hoped that they will be accepted in that spirit.

The memorandum will now deal seriatim with the provisions of the revised single negotiating text, parts I to IV, in relation to those of the informal composite negotiating text.

PART I OF THE REVISED SINGLE NEGOTIATING TEXT

At the time of the preparation of the revised single negotiating text, part I, the Chairman of the First Committee noted in his introduction to that text that there were still subjects that had not been given detailed consideration, namely the annex on the Statute of the Enterprise, the annex on the sea-bed disputes settlement system, articles 33 to 40 of the main body of the text dealing with the Tribunal, and a "Special Appendix" to the annex on basic conditions of prospecting, exploration and exploitation which was to deal with financial arrangements. While these areas of the revised single negotiating text, particularly the Statute of the Enterprise and articles 33 to 40 on the settlement of disputes have since received closer attention, there is still much to be done.

It should also be recalled that following the preparation of the revised single negotiating text at the fifth session, the First Committee devoted itself almost entirely to the question of a system of exploitation and succeeded only in reducing the problem to some basic questions which still remained to be solved. It may be claimed, however, that remarkable progress has since been made in overcoming what threatened to be a complete deadlock.

The issues and subjects falling within the First Committee's purview are now covered in part XI of the informal composite negotiating text. The financial terms of contracts which previously formed a special appendix are now included in a paragraph in annex II. This annex as a whole refers only to activities carried out under contractual arrangements. The annex on the sea-bed disputes settlement system was deleted in the light of the agreement reached in the First Committee, following extensive discussions in plenary, that the part of the Convention relating to First Committee matters would deal only with the jurisdictional aspects of settling sea-bed disputes and that the institutional and procedural aspects would be

covered by the part of the Convention dealing with the general question of settlement of disputes, viz. part XV and the relevant annexes. There is one exception in that there is now a provision in article 158 whereby the Assembly would select the members of the Sea-Bed Disputes Chamber from among the members of the Law of the Sea Tribunal.

As regards the substantive changes made in the provisions of part I of the revised single negotiating text now appearing as part XI and in annexes II and III, it must be recalled that:

- (i) At the fifth session the First Committee devoted itself almost exclusively to negotiation of the system of exploitation, namely the revised single negotiating text, article 22, and the related paragraphs of annex I;
- (ii) At intersessional consultations held in Geneva the proposed "mini-package" on the system of exploitation was developed in greater detail to include, most important of all, the setting up and financing of the Enterprise and also the question of refining and revising the temporary or interim system envisaged;
- (iii) At the beginning of the sixth session, in order to facilitate the First Committee's work, the Chairman established that the "mini-package" would comprise the resource policy of the Authority (revised single negotiating text, article 9), the system of exploitation (revised single negotiating text, article 22, related paragraphs of the annex, and provision for a periodic and definitive review of the system as proposed in articles 64 and 65, introduced intersessionally), and the setting up and financing of the Enterprise, particularly in the start-up phase.

The Chairman of the First Committee also established that in addition to this "mini-package" the Committee would need to take up the other elements which make up the larger package, viz. institutional questions and settlement of disputes. The Committee, through a Chairman's negotiating group, developed further the elements of a possible compromise on the revised single negotiating text, articles 9, 22 to 38, 41 and 49, and in paragraphs 8 (new) and 8 *bis* of annex I, and on the Statute of the Enterprise. It would thus be clear that most of the changes introduced in the present text have occurred in those articles and paragraphs.

Particular attention must, however, be drawn to the changes made by the Chairman of the First Committee and appearing in articles 150, 151, 153, 159 and 160, 169, 187 and 192 and in paragraphs 4, 5, 6 and 7 of annex II of the composite text. Most of the major changes are intended by the Chairman to overcome the fundamental difficulties that still remain as to the approach which should be adopted towards the temporary system of exploration and exploitation. In this regard, paragraph 2 (ii) of article 151 is of special importance. In order to meet the concern that the temporary system might not ensure the balance intended between on the one hand the area reserved for the Enterprise and developing countries and on the other hand the contract areas to be exploited by States parties and other entities in association with the Authority, which is the most important evaluation to be made by the Review Conference as stated in paragraph 2 of article 153, the Chairman has added to para-

graph 2 of article 151 the requirement that the contractual or other arrangements made by the Authority with States Parties and other entities are such as will enable the Authority to fulfil its most important function, as set out in paragraph 1 of that article. While specific reference has been made to technology and financial and other resources, the wording is not intended to determine the actual type or form of contract or other arrangement. It would not, for example, automatically impose joint arrangements.

In addition to the references to technology in subparagraph (ii) of paragraph 2 and paragraph 8 of article 151, there are numerous other references to transfer of technology to the Enterprise or to the development of the technological capability of the Authority. The Chairman of the First Committee felt that there was, undoubtedly, need to strengthen this most important requirement of the Authority and also the need to mention this aspect in the context of the qualifications of applicants, while fully realizing that, in the present text as a whole, the numerous references may not all be necessary or be appropriately placed and that, in addition to the problem of their coordination, the question as a whole and the implications, legal and financial, of the acquisition of technology by the Authority would need further and more detailed examination.

The question whether the new provision on scientific research in article 151 is sufficient to indicate the role that the Authority may be expected to play in this activity, which is very important to the international community, may require further discussion.

The Chairman of the First Committee feels that the present text has made a considerable advance on the revised single negotiating text in two other areas, those concerning the Enterprise and the question of review, and that perhaps the single most important factor in the emergence of a new compromise is to provide for the rapid creation of a viable Enterprise. The text now effectively gives a higher status to the role of the Enterprise as an operating entity vis-à-vis States parties and other entities. The introduction of joint arrangements as a possible option, the establishment of a special fund to cover the first mine site, and provisions concerning its acquisition of technology are intended essentially to facilitate its start-up.

For the first time the implications of a review clause for the duration and effectiveness of a temporary system of exploitation were considered by the First Committee but, while the need for periodic review was readily acknowledged, there was considerable scepticism as to what could be genuinely reviewed and whether it would be possible actually to revise the system. Many consequently rejected a review clause as a determining element for the acceptance of a temporary system of exploitation. As a possible compromise the Chairman of the First Committee has made a new proposal contained in paragraph 6 of article 153 which in his view is intended to allay that scepticism and also to deal with the legal vacuum that would arise should the review Conference fail to reach agreement. As there have been many and varied references to joint arrangements, and in this case to joint ventures, a thorough discussion of such methods of exploitation and their implications would serve a most useful purpose.

The negotiations on First Committee issues produced a series of suggested formulations. Small expert groups worked on two provisions, the specific measures of a resource policy in article 150, and paragraph 7 of annex II on the financial terms of a contract. For the first time the

different formulae for the control of sea-bed production were analysed as to their effects in terms of the number of mine sites that would be available over a 20 year period. A small expert group pursued this analysis by developing a common method for making calculations, to overcome the problem caused by contradictory sets of figures, and by reaching an agreement on the method of interpreting the formula suggested. It is the considered opinion of the Chairman of the First Committee that the new formula now contained in article 150 is a considerable improvement on that contained in the revised single negotiating text; although, of course, the quantitative aspects of the specific measures to protect developing countries from adverse effects require further negotiation.

Similarly, a small group of experts worked on the question of the "Special Appendix" on financial matters, first preparing a paper for discussion in the Chairman's negotiating group and later developing that paper in the light of several informal meetings held on that subject in the group. As with several other items this question still requires further technical work as well as negotiation. A foot-note has been included in order to underline the status of work on that issue and appended to paragraph 7 of annex II of the informal composite negotiating text.

The Chairman of the First Committee would like to emphasize that there is still a difference of approach with regard to the two main methods of payment to the Authority as a result of activities in the contract area, a difference of opinion as to whether those methods would be alternatives or not, and also as to which of the two methods is considered preferable. The first method calls for a system of royalties or what may more appropriately be called, in respect of the international sea-bed area, a fixed charge on production. This could take various forms. The second method calls for sharing of profits or, to use language analogous to that used in respect of production within the territory of a State, a tax on profits. Both systems have advantages and disadvantages. The royalty system allows for a definite payment to the Authority at an early stage and a foreseeable sum throughout the contract period irrespective of the amount of profits made. From the contractor's point of view, however, the system involves front-end payments or payments at a time when he could least afford them. The second system of payments, namely the share of profits, i.e. a net proceeds system, allows a contractor to pay when he can best afford to pay and could give the Authority a share of very high profits. Trends in modern land-based operations favour this system.

It must be kept in mind that the Authority, not being a sovereign State and lacking the usual range of measures for controlling a foreign-based operator, would need effective powers to scrutinize costs and profits of contractors.

The Chairman of the First Committee does not see the new paragraph (para. 7 of annex II of the informal composite negotiating text) as a compromise text but rather as a considerable step forward from the alternative approaches in the special appendix to the revised single negotiating text. The new paragraph is designed to focus the attention of Governments on the issues and to indicate to them what he regards as the elements of an eventual compromise—royalties and profit-sharing, in addition to a mining fee. It is realized that the acceptability of the proposed arrangements will depend on the figures which will ultimately have to be incorporated into the texts. It was considered premature at this stage to include figures

as these would require careful examination and negotiation. Although the informal working group had two specific proposals before it, the figures in each case are based on assumptions as yet to be accepted.

The outstanding questions to be negotiated on financial arrangements are:

- (i) whether payment to the Authority should be based on processing activities, as well as the mining operations themselves;
- (ii) whether the modern practice in land-based mining of a comparatively small royalty or production charge, and a greater emphasis on a share of profits, is appropriate to mining of the international sea-bed or whether primary emphasis should be placed on the royalty charge;
- (iii) whether an agreed basis can be found that will provide the Authority with effective powers to scrutinize costs and profits of contractors;
- (iv) with (i) and (iii) in mind the consideration that should ultimately determine the level of payment to the Authority;
- (v) whether there is a need in the convention for financial arrangements for activities other than those under contracts in the non-reserved area.

As noted above, it will be important to discuss whether and to what extent the system of exploitation will cover processing activities as well as mining activities. It may be useful to ascertain whether or not the system could be envisaged as incorporating the processing stage, at least in certain cases, and particularly where developing countries, and perhaps also the small developed countries, could be involved in operations.

While in the view of the Chairman of the First Committee the new text represents a considerable advance on the stages of negotiation reflected by the revised single negotiating text formulations, much work remains to be done on the corresponding provisions of the composite text. Apart from those questions which have earlier been mentioned as requiring further attention, there is the question of the Enterprise. Given the limited applicability of the new annex II, there may be a need to clarify the institutional provisions pertaining to the plans of work to be drawn up by the Enterprise. The work carried out on the financial terms of contracts may need to be complemented by a similar effort encompassing joint arrangements involving the Enterprise. There may still be some aspects of the general financial structure of the Authority affecting the Enterprise which could benefit from a further discussion, taking into account the report by the Secretary-General. That report will also be useful in further discussions on the question of joint arrangements.

While transitional arrangements do not appear in annex II for practical reasons that the Chairman of the First Committee considers obvious, it may still be necessary to consider how the Authority will fulfil its functions in the first several years of its coming into existence.

With respect to the question of a quota system or anti-monopoly clause, the consultations that have already been initiated will be continued and an addendum to the present text will be proposed. Such consultations might cover the relationship between an anti-monopoly provision and non-discrimination.

With respect to the institutional provisions, the Chairman of the First Committee felt that possibly the most important question, so far as the discussions at the sixth session were concerned, was the composition of the Coun-

cil. In his opinion, the formula now used does much to answer the doubts and queries raised by those who feel that its composition should ensure that the Council can reach the most appropriate decisions and that smaller States, developed and developing, will have the opportunity of becoming members at some point.

PART II OF THE REVISED SINGLE NEGOTIATING TEXT

The legal status of the exclusive economic zone has proved to be one of the most controversial issues facing the Conference. In the course of the final days of the sixth session, a group consisting of some of the delegations most interested in the issue made a concerted effort to seek a solution. Although the texts elaborated by this group are by no means a negotiated solution, it was felt by the Chairman of the Second Committee that they constituted a better basis for further negotiation than the articles in the revised single negotiating text. The Chairman of the Second Committee, therefore, decided that the texts which resulted from the work of the group and which were discussed in that Committee should be included in the informal composite negotiating text. The relevant provisions, which are contained in articles 55, 56, 58, 86 and 89 of the composite text, when read with related articles, retain the essential features of the specific legal régime of the exclusive economic zone without upsetting the balance implicit in the revised single negotiating text between the rights and duties of the coastal State and those of other States.

The question of the right of land-locked States and certain coastal States to participate in the exploitation of the living resources of the exclusive economic zone was similarly the subject of intensive negotiation during the sixth session. A possible compromise appeared to be within reach but could not be finally negotiated for want of time. In these circumstances, the group of land-locked and geographically disadvantaged States expressed a preference for the retention of the existing articles in the revised single negotiating text while expressing their readiness to negotiate further on this question. Consequently, although there was a possibility of introducing as article 71 a related provision agreed upon by the interested delegations and of amending article 72 in regard to restrictions on the transfer of rights, articles 58 and 59 of the revised single negotiating text were retained, unchanged, as articles 69 and 70 of the informal composite negotiating text.

The Chairman of the Second Committee was satisfied that there was widespread agreement that the definition of the continental shelf as appearing in article 76 of the composite text constituted one of the essential elements of the package deal. On this assumption and in accordance with the terms of that article a need has been recognized for a more precise definition of the outer edge of the continental margin. A specific proposal has been supported by a group of delegations claiming to be most directly interested in this matter. However, despite the need for such a definition, and although no alternative definition which is generally acceptable has been submitted, the inclusion of the suggested wording in the composite text was not considered justifiable at this stage.

On the question of payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles, the Chairman of the Second Committee decided that the relevant provision in article 82 of the composite text should reflect the efforts made in the Second Committee to provide more comprehensive indications of

the system which would apply to these payments and contributions. The incorporation of certain elements in the relevant article does not in any way imply that a consensus on this issue has been reached in the Second Committee.

As regards the right of access of land-locked States to and from the sea and freedom of transit the Chairman of the Second Committee was of the opinion that the inclusion in the composite text of the results of the extensive negotiations held during the fifth session of the Conference could have a beneficial effect on the process of negotiation.

On the question of the delimitation of the territorial sea, the exclusive economic zone and the continental shelf between adjacent or opposite States, the Chairman decided that the relevant articles as appearing in the revised single negotiating text should be retained as it had not been possible to devise a formula which would narrow the differences between the opposing points of view. The issue would, therefore, remain open to further negotiation.

Certain changes in the articles on archipelagic States have been introduced as the States most interested in the subject had reached agreement on the point.

PART III OF THE REVISED SINGLE NEGOTIATING TEXT

Protection and preservation of the marine environment

As regards the protection and preservation of the marine environment, the Chairman stated that the provisions contained in the revised single negotiating text constituted a generally acceptable package in which a proper balance was maintained. He considered this to be particularly so with regard to the key question of pollution from vessels.

Numerous proposals relating to the question were either withdrawn or resulted in an inconclusive debate concerning their incorporation in the informal composite negotiating text in the light of the carefully structured compromise which was reflected in the pertinent articles of the revised single negotiating text (articles 21, 27, 28, 30, 31 and 33 to 39).

Consequently, only in two instances (article 28, paragraph 1, of part III of the revised single negotiating text, where the word "applicable" was introduced to qualify the meaning of "international rules and standards" and in paragraph 7 of article 30, of the same text, where the language of the text was replaced by a new provision relating to the release of vessels through bonding or other appropriate financial security) did the negotiations result in full support for explicit changes in the language of the revised single negotiating text. It is not without significance that these two changes are now incorporated in the informal composite negotiating text, though in somewhat clearer terms, but leaving intact the structure of the compromise on the question of vessel source pollution. This was also, in effect, the general thrust of the negotiations on other articles examined at the sixth session relating to the protection and preservation of the marine environment.

It was apparent that by the introduction of technical changes or additions, the relevant provisions would gain in clarity or precision, or would be better correlated with the rest of the revised single negotiating text. In introducing these technical modifications of a technical character, it was firmly intended to preserve unchanged the substance of the "package" as reflected in the revised single negotiating text. Changes of this nature have been made in

the following articles of that text: 1, 6, 9 to 12, 14, 18, 20 (foot-note), 21 (4), 21 (5), 27 (8), 28 (1), 28 (3), 28 (4), 29, 30 (4), 34, 38 (1), 38 (2), 39, 40 (2) and 41. For the same reasons, a new provision was included dealing with the institution of civil proceedings.

As a result of some of these changes the provisions relating to international rules and national legislation to prevent, reduce and control pollution of the marine environment (articles 17 to 25 of the revised single negotiating text) as well as those dealing with enforcement (articles 23 to 32 of that text) have been brought closer together in the composite text. The Chairman of the Third Committee believes that the informal composite negotiating text is an improvement on the revised single negotiating text in that it expresses in a more coherent form, both conceptually and textually, the complementary nature of the two principal elements of the same process vis. the establishment of the relevant legal principles and rules and their practical implementation. Concerning the delicate question of the applicability of safeguards with respect to straits used for international navigation, an additional provision was added by the Chairman of the Third Committee to the corresponding article of the revised single negotiating text. This new provision was the result of negotiations by a group of States most directly concerned with the implications of the safeguards provisions for straits.

Marine scientific research

Negotiations on this question were protracted and extensive. The Chairman of the Third Committee was satisfied that there was general agreement that the régime of marine scientific research in the exclusive economic zone or on the continental shelf of the coastal State had to be compatible with the jurisdiction of the coastal State as provided for in the relevant provisions of part II of the revised single negotiating text. On this principle the coastal State must have the right to regulate, authorize and conduct marine scientific research in its exclusive economic zone and on its continental shelf and it follows that marine scientific research in the exclusive economic zone and on the continental shelf is to be carried out with the consent of the coastal State. This principle is reflected in article 247 of the informal composite negotiating text.

Given the importance of marine scientific research for increasing mankind's knowledge of the marine environment, it is imperative that the consent of the coastal State shall be granted to a research project which is conducted for peaceful purposes. This fundamental principle is embodied in the corpus of the régime itself in paragraph 3 of article 247. The negotiations had made it clear to the Chairman of the Third Committee that a balance should be established between the right and duty of the coastal State to grant consent and the exercise of its jurisdictional power to withhold it whenever the project is of direct significance for the exploration and exploitation of the natural resources of the economic zone or the continental shelf, or involves drilling into the continental shelf or the use of explosives or the introduction of harmful substances into the marine environment or the construction of artificial islands, installations and structures. The new version of this text, as compared with the revised single negotiating text, contains a provision which gives the coastal State two additional reasons for withholding its consent, namely, when the information regarding the nature and objectives of a project is inaccurate or when the State or international organization conducting the research has outstanding obligations from a prior research project.

These explicit conditions for withholding consent could be considered as safeguards in favour of the State conducting marine scientific research activities.

The obligation imposed on States to establish rules and procedures to ensure that consent will not be delayed or denied unreasonably constitutes an additional safeguard.

Under article 253 a marine scientific research project can be commenced if the coastal State has failed within a specified period of time to reply to a request for consent to carry out the project. This notion of implied consent is intended to counterbalance the right of a coastal State to regulate or authorize the conduct of a marine scientific research project in its economic zone or on its continental shelf.

To meet the concerns of several delegations which felt that research projects undertaken under the auspices of or by an international organization should be facilitated through a special régime, a new article—248—has been incorporated in the composite text.

Development and transfer of marine technology

In regard to the development and transfer of marine technology, the Chairman of the Third Committee considered the changes introduced in the composite text to be generally acceptable. In paragraph 1 of article 267 it appeared to him to be sufficient to refer only to fair and reasonable terms and conditions in preference to the cumbersome formulation contained in the corresponding article in the revised single negotiating text.

Article 274 of the composite text is designed to accommodate the concern of several delegations that cooperation in the field of transfer of technology to the developing States shall be extended to other competent international organizations as well as to the Enterprise. Some minor changes and adjustments for purposes of clarification were made in article 275.

PART IV OF THE REVISED SINGLE NEGOTIATING TEXT

In regard to the question of settlement of disputes which is covered by Part XV and annexes IV to VII of the informal composite negotiating text, the fundamental principles that have determined the substance of this part of the informal composite negotiating text have been the freedom of choice of court or tribunal; the agreement of the parties to the dispute on the choice of court or tribunal; the securing of finality in the form of a binding and conclusive settlement; and the designation of a specific procedure where the parties to the dispute fail to agree on the court or tribunal together providing a system of compulsory dispute settlement.

The provisions relating to the settlement of disputes are applicable, with some exceptions, to all the substantive parts of the proposed Convention. For that reason, while the provisions must remain general in their application, it has been necessary, in regard to certain aspects of this question, to maintain a close link with relevant provisions of the other parts, particularly in relation to the exceptions from comprehensive application (articles 296 and 297), activities in the Area (articles 15 and 37 to 41 of annex V) and such specific issues as the release of detained vessels (article 292).

The negotiations revealed that there was a wide measure of agreement that the acceptance of the jurisdiction

of the Sea-Bed Disputes Chamber for the resolution of conflicts arising from activities in the Area should not entail acceptance of the jurisdiction of the Law of the Sea Tribunal for other disputes. A provision to that effect has been added to article 287 in paragraph 2. The institutional arrangements for the settlement of disputes relating to activities in the Area have been covered in annex V (articles 15 and 37 to 41) and in annex VI.

Provision has also been made in paragraph 3 of article 28, whereby in a dispute which is not covered by a declaration of a State Party regarding choice of procedure, arbitration is deemed to have been accepted.

The new formulation of article 296 is intended to provide safeguards against an abuse of power by a coastal State and at the same time to avoid an abuse of legal process by other States. In paragraph 1 of this article provision has been made through procedural devices to avoid the abuse of legal process. Constraints have also been imposed on the challenge of discretionary powers in relation to living resources and marine scientific research.

The compromise provision appearing in article 18 of the revised single negotiating text has been retained in substance in article 297 of the informal composite negotiating text, due to the fact that there was a nearly equal division of views as to the need, or otherwise, for compulsory binding procedures. Certain new elements have been incorporated in relation to disputes concerning delimitation of sea boundaries between adjacent or opposite States. They are, firstly, the exclusion of adjudication of territorial claims, and secondly, that where a party has chosen a procedure not specified in this Convention, the other party to the dispute must have access to such procedure.

Subparagraph (b) of paragraph 1 of article 18 of the revised single negotiating text has been amended so as to give law enforcement activities similar immunity to military activities. The corresponding provision is in subparagraph (b) of paragraph 1 of article 297 of the informal composite negotiating text. Article 297.1 (c) has incorporated a change relating to disputes in respect of which the Security Council is exercising the functions assigned to it.

Provision relating to the exhaustion of local remedies, which is a well-recognized principle of international law, has been reintroduced in article 294 of the informal composite negotiating text.

There was very little discussion on the annexes to part IV of the revised single negotiating text with the exception of annex II of that part, and only incidental changes have been made in regard to these provisions in the informal composite negotiating text.

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In this explanatory memorandum an effort has been made to present the principal features of the informal composite negotiating text in their relationship to one another. It is hoped that it will simplify and facilitate the task of further negotiations.

(Signed) H. S. AMERASINGHE
*President of the Third Conference
of the United Nations Law of the Sea*