The attached report addressed to the President of the Conference and the Chairman of the First Committee by Minister Avenzen on the results of the informal intersessional consultations held in Geneva from 28 February to 11 March 1977 under his chairmanship is hereby forwarded to the delegations of States participating in the Conference, in conformity with the decision taken at the 75th meeting of the Conference on 17 September 1976.

H.E. Mr. Hamilton Shirley Amerasinghe
President of the Third United Nations Conference on the Law of the Sea

H.E. Minister Paul Hamela Engo
Chairman of the First Committee
Third United Nations Conference on the Law of the Sea

Informal consultations in Geneva, 28 February-11 March 1977, on matters relating to the First Committee of the Law of the Sea Conference, in particular the system of exploitation

I have pleasure in submitting to you the report set out below on the intersessional consultations which I had the honour of chairing in Geneva from 28 February to 11 March 1977.

I. Background and general information

The general background for the meeting was the widespread feeling that further progress in the Conference now hinges particularly on the questions pertaining to the sea-bed and ocean floor beyond national jurisdiction. The need for intersessional consultations on this issue was expressed in a number of statements at the conclusion of the last session of the Conference. I refer inter alia to the statement made at that time by the Chairman of the First Committee, the distinguished representative of Cameroon.

In response to this situation the Secretariat, acting at my request, convened the meeting in Geneva through its letter of 17 December 1976, which was sent to all heads of delegation of States participating in the Conference. Approximately 170 persons from 85 States participated (Enclosure 1). In keeping with the normal tradition for such intersessional activities the meetings were completely informal. The discussion was of a personal character and did not commit any delegations by the statements made.

Prior to the meetings I circulated to all heads of delegation some suggested compromise formulations, elaborated by me and tentative in form and contents, pertaining to articles 22, 23 and certain related provisions of the annex (Enclosure 2). I emphasized that these draft formulations were not meant to be regarded as an alternative to the RSST, but only as an attempt to identify a possible approach to compromise solutions on points which had proved difficult during the last session of the Conference. I also emphasized that these new
COMMENTS

The developing countries have expressed their concern at the possibility that
the Sea-Bed Tribunal might annul or in some way repeal the rules, regulations and
directives of a general nature issued by the organs of the Authority. Under
article 36, paragraph 1, it is possible only to question the legality of "measures"
taken by organs - in other words, specific acts and not general provisions.
However, it is feared that by questioning an act, an attempt may be made to annul the
general provision which constitutes its legal basis. To avoid this possibility, it
is proposed to provide expressly that the Tribunal, in giving its judgement, will
refrain from pronouncing on the general provision which constitutes the legal basis
of the specific measure questioned. Also added, at the end of our proposed
amendment, is the familiar concept contained in Article 59 of the Statute of the
International Court of Justice - namely, that the decision shall have no binding
force except between the parties and in respect of the particular case on which the
ruling is given.

Enclosure 4
3 March 1977

The attached paper is being circulated at the initiative of some participants
in the hope that it might promote a convergence of views on the system of
exploitation. It is intended as a point of reference and not as a basis for
discussion.

MODEL FOR SYSTEM OF EXPLOITATION

In order to arrive at a compromise regarding a text setting out the system of
exploitation, it might be useful to ascertain to what extent there is agreement on
the elements of such a system. A possible model might seek to:

1. Establish a conceptually unified system of exploitation in which the Authority
would have a central and indispensable role in all activities as the trustee of the
"common heritage".

2. Oblige the Authority to encourage sea-bed mineral exploitation, subject only
to the protective and compensatory principles of article "X". 8

3. Define the discretion of the Authority in controlling access to the Area for
all operators (i.e., the Enterprise as well as States and State-sponsored entities)
through the limiting reference to article "X" and thus

4. Set out clearly the ground rules for assured access to the Area by the
Enterprise alone, or by the Enterprise in association with States and State-sponsored
entities on a profit-oriented basis, subject only to the selection procedures in the
annex. In practice, the system would assure a role for States and State-sponsored
entities so long as their technological lead is maintained, i.e., for the foreseeable
future.

8 The article "X" referred to here would be a negotiated text containing
specific protective provisions along the lines of some of those contained in
article 9.
5. Provide a framework for the conclusion of a wide range of mutually profitable contractual relationships between the Enterprise, on the one hand, and States and State-sponsored entities on the other.

6. Offer scope for the gradual emergence of a co-operatively managed and operated Enterprise that would function independently.

Such a situation could continue indefinitely unless modified by policy decisions taken through special procedures in the relevant organ(s) of the Authority, or pursuant to a review procedure designed to enhance progressively the role of the Enterprise without prejudice to the principle that there will be permanent scope for association with it by States and State Enterprises. Such decisions might not be permitted to affect existing contracts, but to form the basis for succeeding generations of contractual relationships.

A "banking" principle might be included in the system - not as a permanent or essential feature, but as a compulsory element in early negotiations of the level of participation by the Authority in a particular contractual relationship:

The following text might reflect the ideas set out above:

**Article 22**

1. Activities in the area shall be organized, controlled and conducted exclusively by the Authority as determined by it in accordance with article "A"

   (i) directly through the Enterprise, or

   (ii) on its behalf, through association with the Authority in accordance with paragraph 3 below, by States Parties or State Enterprises, or with persons natural or juridical which possess the nationality of States Parties or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing.

Enclosure 5
7 March 1977

**ESTABLISHMENT OF RELATIONS BETWEEN THE AUTHORITY AND THE APPLICANT**

Note by Mr. Lauterpacht

1. This paper is submitted in response to requests for a note of the analysis contained in my statement of 4 March. That analysis sought to identify those matters pertinent to the conclusion of a contract between the Authority and an applicant which (a), on the one hand, are essentially "objective", i.e. matters of fact which can be established in the form of answers to an appropriately worded questionnaire issued by the Authority, and (b), on the other hand, may require a degree of elucidation, discussion and settlement between the Authority and the applicant.