OPENING STATEMENT BY C.W. PINTO (SRI LANKA), CHAIRMAN OF THE WORKING GROUP

You will recall that our Working Group was set up in the last days of Caracas on 19 August 1974 and charged with the responsibility of pursuing negotiations on articles 1-21 as contained in Committee document L.3, and particularly on article 9 as well as on "conditions of exploration and exploitation" as appropriate. Articles 1-21 deal with the status, scope and basic provisions of the regime, based on the Declaration of Principles. Our Group was thus requested to give special consideration to article 9, entitled "Who may exploit the area", and to what were called "conditions of exploration and exploitation".

You may recall that our Working Group met six times in the time available to us at the last session. As the Committee had already carried out a reading of Articles 1 to 21 and made certain refinements in the various texts, we decided to commence immediately with an examination of Article 9. In doing so, the Group's discussion centered around a very significant contribution of the Group of 77 - that Group's draft of Article 9 which appears as alternative B on page 6 of document L.3. I think all of us who were present would agree that the discussion of Article 9 was a most useful one and conveyed to many the feeling that now, at last, we had commenced the kind of detailed and frank negotiation that had eluded us for so long. Each Conference, as we all know, has its own rhythm and its own pace. Resolution of key issues comes upon us not a moment sooner, nor a moment later, than is dictated by the tide that ebbs and flows in response to the interaction of the various actors in the drama. At the end of Caracas I thought the tide was a fair one, and carried us forward. All of us, I am sure, that that tide will continue to favour us, and that we shall know how to use it to our best advantage.

In Caracas then, we went quite far in our discussion of Article 9, concentrating on paragraph 2 of that article, and towards the end it seemed that compromises - if not within reach - had at least come within the range of contemplation. But we were not able to devote much time to the other subject that had been assigned a certain priority - the conditions of exploration and exploitation. Four proposals had been placed before the Committee and introduced on behalf of their sponsors: there was the proposal of the Group of 77 contained in document L.7, the proposal of the United States in document L.9, and 8-power proposal in document L.8, and the proposal of Japan in L.9. There was also before the Working Group, as Working Paper No.2 of 23 August 1974, a rough comparative table dealing with those four proposals. I hope you have all these documents before you.
I think all of us must acknowledge that a very close relationship exists between the second paragraph of Article 9, Alternative B, and the conditions of exploration and exploitation; often identical issues arise in discussing Article 9 and the conditions. I felt, therefore, that an appropriate start for our work at this session of the Conference might be to examine in some depth the issues raised by the various proposals for conditions of exploration and exploitation. I suggest to you that as we study these proposals together, certain issues will emerge as being of central and critical importance. It may also be shown, I think, that these issues are so closely related to issues under Article 9 as to be virtually identical, or at least inseparable from them. You may wish to proceed immediately to study those central issues in some depth in our Group, and in our political or geographical or other smaller groups, and determine how views are to be reconciled, as reconciled they must be, and that soon.

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I would like, with your permission, to review briefly with you some of the main elements covered by the proposals before us concerning conditions of exploration and exploitation of the Area. Sharing our thoughts on this matter may help us to reach a conclusion as to how we might proceed most expeditiously on this subject which is of crucial importance. In doing so, I shall be referring to Working Paper No. 2, distributed under the date of 22 August 1974.

Items 1 and 2 of the Paper deal with the vesting of title to the Area and its resources and to the passing of title to the minerals obtained from the Area. These are issues of high political importance. It is my belief that our consideration of these might well be left until the end of our discussions. To take them up now could, in my opinion, lead to considerable delay. On the other hand, if we revert to them when other important issues have been resolved, we may not find too much difficulty in dealing with them.

Item 3 covers proposals regarding the Authority's right to determine which parts of the Area will be made available for activities. In my opinion, it should be possible to reach agreement on this item. Of course, a system for opening areas and the criteria and conditions by reference to which the Authority will make this determination will have to be discussed. Some may seek in this connection a more positive, explicit and unequivocal assurance with regard to access to the Area and its mineral resources, subject of course to certain conditions, and that the general posture maintained by the Authority will be one of encouraging seabed mining rather than one that might have the effect of inhibiting investment in such enterprises.

Item 4 attempts to compare the different stages of seabed operations as conceived by the authors of the four drafts before us. In general, one might see
agreement emerging around recognition of two basic stages, that of "prospecting" and that of "evaluation and exploitation". But there are other contemplated activities which could become the subject of some controversy. One proposal contemplates that scientific research will be one of the activities subject to controls under the Convention. The same proposal contemplates that the scope of the Authority's activities will cover, beyond exploitation, phases of processing, transportation and marketing. We shall have to decide precisely what activities we wish to cover here.

Item 5 deals with the arrangements to be entered into in regard to activities within the scope of the Convention. It deals with the nature of the legal relationships to be established by the Authority with entities actually carrying out activities in the Area. A basic division here relates to whether or not the Authority is to be the sole agent of the international community for the purpose of exploring and exploiting the Area; or put in another way, whether the Authority is to operate by means of service contracts or joint ventures in which it maintains direct and effective control at all times, including financial and administrative control, or whether it is to grant licences to operators, the inference being that an operator under a licence will have substantially more autonomy than an entity employed by the Authority under a service contract or as the junior partner in a joint venture. I think it would be useful in this context to encourage some discussion and elucidation, at this stage, of precisely what is meant by a service contract and a joint venture.

I would like, in this connexion, to recall the very interesting statement made by the representative of Canada last year in Geneva on 9 August. Subsidiary issues under this item include the question whether the Authority might be conceived of as granting licences at the prospecting stage, but assuming substantially more control in the exploitation phases of the operation, and questions relating to the exclusiveness or otherwise, and the reasonableness of the relationships arrived at between the Authority and the entity carrying out activities.

Item 6, which deals with conformance with the Convention and with the Authority's regulations, of arrangements entered into between the Authority and other entities, may not prove too difficult, since there would be no disagreement that the idea be reflected in some form. Similarly, little controversy need arise regarding the variety of entities with whom such arrangements may be concluded, covered by item 7. The widest range of entities could be considered. If necessary to afford reassurance to some, the inclusion of State enterprises might be made more clear. The nature and implications of State "sponsorship" may need to be discussed.

Item 8 on the qualifications of entities should not create too much difficulty. The kinds of qualifications, and the proof of those qualifications should, in every case, be such as good business might demand. However, a question that may be raised
in this connexion might concern the nature and degree of preference to be shown to
developing countries and entities from developing countries, and the way in which this
preference might be reflected among the conditions of exploration and exploitation
without leading to an impairing of efficiency.

Item 9 deals with procedures for application to carry out activities with respect
to the seabed – and I use the phrase "to carry out activities in the Area", as I do
throughout this statement, without prejudice to whether those activities are carried
out as contractor for the Authority or in partnership with it, or under some other form
of authorization granted by the Authority. Some procedures, such as a written proposal
accompanied by appropriate supporting data, will be necessary and might form part of the
conditions of exploitation. It might be suggested, however, that such procedures are of
a subsidiary nature and might better be left for determination by the appropriate organ
of the Authority when it comes into being.

Item 10 is similar. An "application fee" or its equivalent, is surely
contemplated by all, so that the only question for discussion might be whether the
reference to a fee, and the classification and quantum of fees are of such a nature as
need to be negotiated and specified for inclusion in the conditions of exploitation, or
whether this is the type of detail better left to the appropriate organ of the
Authority.

Item 11 on the selection of entities is important to several delegations. Here
one basic division seems to be among those who would wish to see acceptance of the
first qualified applicant on a first-come-first-served basis, and those who would wish
to establish some form of competitive bidding, or again some combination of both
systems as has also been proposed. It would be helpful if those who favour selection
on the basis of competition were to give a clearer indication of the criteria on the
basis on which applicants will be selected. For the time being, only one criterion,
i.e. an applicant offering the widest possible direct participation of developing
countries, is mentioned.

While item 12 is a matter of practical importance, it is not perhaps a matter of
basic controversy. It concerns whether or not the rights under arrangements entered
into with the Authority may be transferred. To put it more accurately, under what
circumstances could such rights be transferable, since all proposals do contemplate
transfer. At one end of the scale, transfer can take place only with the consent of the
Authority. At the other end, rights are to be freely transferable to any such entity
which agrees to comply with the Convention and the orders of a judicial organ established
under it.

Item 13 on the maximum number of arrangements that may be entered into with a
particular entity, does not seem to be of fundamental importance and may not cause too
much difficulty eventually. We would want to decide whether provision ought to be made on this matter in the conditions of exploitation or subsequently by the Authority. To decide to include a limit at this stage could raise this to the level of a fundamental issue.

Item 14 on the right of an entity that has entered into an arrangement with the Authority to prospect, to participate in subsequent stages of operations, is of considerable importance. Under some proposals an entity having satisfied specified conditions would have the "right" to proceed to the subsequent stages of evaluation and exploitation, while on another view an entity which has performed satisfactorily will have, at most, a "priority" for acceptance by the Authority of services at further stages of the operation.

Another item of critical importance is item 15 on the security of tenure. All proposals, differing solely in the matter of emphasis, provide for security of tenure of an entity that has entered into arrangements with the Authority. Although items 14 and 15 are of fundamental importance, much agreement has accumulated around them, and they should prove not difficult to deal with. Some proposals speak only of the performance entity's view, while another emphasizes the Authority's rights and obligations. In my opinion, if we were right now to do no more than simply string all the proposals together, you could come up with a fairly acceptable provision on security of tenure. In my opinion, a solution is only a drafting step away, it will be a very important step for us to take. It will call for frankness and trust on all sides. I believe it will open the way to the successful conclusion of our negotiations.

Item 16 on enforcement is also of considerable importance. However, it seems generally agreed that the Authority should have the right to take certain enforcement measures under specific circumstances. Some proposals go into greater detail than others, and one difference, thought not necessarily fundamental, is that one set of proposals provides explicitly for the inter-position of a Tribunal decision between an alleged breach and any enforcement measures while others do not. This does not in my view necessarily mean rejection at this stage by any group of an institutionalized system of settlement of disputes.

We may consider it useful when dealing with the item of enforcement not to be-devil the negotiations with a reference to regulation of production. I would urge that that battle be fought with regard to item 29 and confined to that battle-ground.

Most proposals contemplate certain measures will have to be taken in the event of "force majeure". One view lays emphasis on the problem that would face an entity carrying out activities on the seabed, while another view chooses to emphasize the measures that might be taken by the Authority. But as with the case of item 15 this may well be simply a question of emphasis and not a case of disagreement on the
principle, and views may quickly be reconciled.

Item 18 on the applicable law will also need to be carefully discussed and negotiated. On one view, private law would have a role to play with respect to the arrangements between the Authority and an entity. On another view these arrangements must be interpreted solely in the light of the Convention, the rules and regulations laid down by the Authority and the terms and conditions of the specific arrangements entered into with the Authority; or in other words, the law of the contract will be the sole law, and the impact of all other laws will be excluded.

Item 19 on the transfer of technology should raise no serious difficulty, since all groups would wish to see the transfer of technology facilitated as much as possible, and that programmes for training should be established.

Item 20 on financial arrangements will require careful consideration. Here the idea of regular financial payments by way of licence fees and royalties, more relevant to a licensing system, contended with the idea of production-sharing or of sharing in the proceeds of production. This is a major policy matter, and a frank discussion of the nature and benefits as well as any hidden weaknesses of each system will help us toward a reconciliation of views.

Item 21 on whether rights under arrangements should be restricted to one or other of a specified category of minerals, item 22 on the maximum size of the areas, and item 23 on the maximum duration of arrangements, are all technical matters which should not offer too much difficulty in our negotiations. But here again we may face the question whether these matters are of a nature to be dealt with in the conditions of exploitation, or whether they may more appropriately be left to be dealt with by the Authority when it comes into being. One cannot but help observing that while the less technologically advanced countries have been discreetly silent on these questions, the technologically advanced countries have not hesitated to speak frankly on the basis of their technological expertise. Unfortunately, they do not speak with one voice, and the cleavage in opinions, which are after all to be assumed to be based on hard scientific facts and assessments, is so great as to justify a mild query as to this understanding these countries themselves have at this stage of the proceedings regarding which they have so much more experience.

Item 24, on performance requirements, item 25 on relinquishment of areas, and item 26 on re-nomination of areas are also technical matters which, though dealt with by some propostals, may not be such as to raise serious objection. It is to be expected that common sense might dictate that such regulatory measures are useful. Similarly items 27, on forfeiture of rights, and 28, on the application of operational rules, standards and practices are matters which might well be covered in dealing with conditions of exploitation and should not cause too much difficulty.
Presented in the tabulation under item 28 on the application of operational rules (Group of 77), but sufficient to stand alone as item 29, is the issue of production-control. Here is one of the most important issues of our negotiations. But on close examination we may conclude that what is in issue here is not so much "production-control" as contrasted with "no production-control", but rather how production can be controlled in appropriate circumstances in order to protect the economies of primary producing and developing countries without inhibiting investment in seabed operations or deterring the collaboration of important countries in this entire venture. It may be that while "production-control" as such is an ugly term to some countries, those same countries would not object to certain just measures regulating exploitation in a general way and at the appropriate stage for the benefit of the entire international community.

Item 30 on inspection and supervision may also call for detailed consideration, since the direct and effective control of the Authority at all times is fundamental to the proposal, while the degree of autonomy given to an entity under other proposals would suggest that the State to which the entity belongs might be the appropriate controlling element, perhaps subject to overall supervision by the Authority itself.

Item 31 on non-interference with "other activities", item 33 on suspension or termination of arrangements, item 34 on operational safety and item 35 on insurance cover important technical matters, but not necessarily matters which would give rise to fundamental difficulty. We will, of course, have to consider whether they are to be dealt with here or subsequently by the Authority. One may foresee that issues concerning these matters could be resolved with relative ease. Some are, of course, connected to more basic questions that are to be discussed, and thus should be kept in mind. For example, items 31 and 33 might be recalled when dealing with item 15 on security of tenure.

Item 32 on liability is certainly important, but need not necessarily cause too much controversy. The conditions of exploitation would need to contain some provision on responsibility for damage caused in the course of activities, and our objective and fairminded search for the party, who should be called upon to bear that responsibility, to determine the broad principles affecting such responsibility should not meet with too much difficulty.

Finally, we have item 35 which is, of course, of fundamental importance for many, if not all delegations. The major issue here is not whether or not in the conditions of exploitation, or elsewhere in the Convention, a system of settlement of disputes should be included. We have passed that stage. That the Convention will contain a provision establishing a method of settling disputes is one of the few
matters on which universal agreement has been demonstrated. What is not yet agreed is what that provision will contain, and in particular, whether it will institutionalize the process through establishment of a permanent tribunal, whether recourse to that tribunal will be compulsory, and the nature and binding force of its decisions.

Although formally referred to under item 35, the system for settlement of disputes affects many other items, such as item 15 on security of tenure, item 16 on enforcement, item 17 on force majeure, and item 33 on suspension and termination of arrangements.

Having thus briefly reviewed the major issues before us, I would like, with your permission to summarize the position after a fashion and, if possible, give a kind of weightage to some problems over others, suggesting to you that some items might be dealt with first in the belief that others will thereafter be easier to resolve. I would thus like to recognize two broad categories of items: first, fundamental items for immediate negotiation as the next following stage of our work in this Group; and second, items which though very important, are of a subsidiary character and may be taken up subsequently. If I may dispose of the second category first, I suggest to you that items 6, 7, 8, 9, 10, 19, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32, 34 and 36 may be put in second place. I do not mean that we should forget all about them. All I suggest is that they will be easier to deal with later, when we have reconnoitered our differences on other items.

Now, within the first category of items, items for immediate negotiation, we may recognize two groups, the one more basic than the other. I suggest that the items basic are the following:

12. Assignment or transfer of rights under arrangements entered into;
13. Minimum number of arrangements with a particular entity;
18. Applicable law; and 30. Inspection and supervision.

Going now to the areas of critical concern to us, issues demanding immediate negotiation and reconciliation of view, I would suggest to you three groups of issues: first, issues of the scope of the Authority's power, and these are: Item 4, on the phases of activities to be controlled by the Authority; item 5 on arrangements relating to activities, which raises questions touching who may exploit the Area; item 3 on the Authority's right to open areas to exploitation; and item 29, the possibly related right of the Authority to control production; second, issues concerning the method of entering into arrangements and basic principles of those arrangements, item 12 on the selection of entities, item 14 on participation in a subsequent stage or stages of operations or activities, and item 26, on financial arrangements. And third, issues relating to settlement of disputes, referred to in item 35, but touching many items, notably items 15, 16, 17 and 33.
Assignment of weight of importance, and placing of issues in groups is necessarily coloured by personal assessments. It may be that many of you have different ideas about the relationships between items and how to deal with them. I have given you in this statement my personal view. It is also my view on the ordering of our work. Any comments you may have on what I have said, would be most welcome, but my views have not been placed before you for adoption. In the light of comments made here or in private, we could move smoothly into a systematic and expeditious negotiation of positions on these various items in a manner generally agreed.

I hope our discussions will be frank and constructive. I urge you not to hesitate to give your views on any subject simply because it appears scientific and technical, and you do not have access to your country's principle experts in the field. There is no subject so "technical" or "scientific" that constructive comment on it, based on common sense, would not be welcome and help us to move forward.

While urging you to be frank, I need hardly remind you of the need to temper frankness with good humour, and to present your particular truth with kindness, and without malice - as indeed all of you have always done. Nothing has greater potential to sterilize the debate and waste the time of our group as the word designed and calculated to hurt. But I only tell you things that you already know, and I feel sure that you will mark well these and any other similar pitfalls as we proceed.

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I have still to seek your views immediately on two matters related to the organization of our work. First on the methods we should adopt, and second on our general programme and timing. As to our method, may I suggest to you that the meetings of our Working Group might take place in the mornings, and that the afternoons be reserved for group meetings and informal consultations of all kinds within groups and, as President Annesley has emphasized, between groups. This might be the best way to assure progress.

Second, there is the matter of setting ourselves a tentative goal in time, sometimes pessimistically referred to as a deadline. President Annesley has spoken, I believe, of an assessment of progress to be made by him within 2 weeks of the commencement of the Conference. It may be useful for us to work within a parallel scheme. Could we try to aim, perhaps at reaching a reconciliation of views on articles 1-21, on the basic article 9 and on the conditions of exploration and exploitation by Friday April 4, that would leave us time to get down to drafting and to deal with other important subjects such as the composition and functions of the international machinery, and related organizational subjects.

I will convey your views to the Chairman of our Committee, Mr. Paul Ego, and seek direction from him as to how we might proceed. Mr. Ego has asked me to keep
him currently and fully informed of our progress. I intend to report to him regularly, and to seek his guidance in facing the many problems we shall certainly encounter.

Summary of Suggestions

I Fundamental items for immediate negotiation

Group A

(a) Issues relating to the scope of the Authority's power:

Item 4 - Stages of operations etc.
" 5 - Arrangements relating to activities
" 6 - Authority to open areas
" 29 - Production control

(b) Issues concerning the method of entering into arrangements and basic principles of these arrangements:

Item 14 - Selection of entities
" 15 - Participation in subsequent stage of operation
" 20 - Financial arrangements

(c) Issues relating to settlement of disputes:

Item 35 - Settlement of disputes
" 13 - Security of tenure
" 16 - Enforcement
" 17 - Force majeure
" 33 - Suspension or termination of arrangements entered into

Group B

Item 12 - Assignment or transfer of rights under arrangements entered into
" 13 - Maximum no. of arrangements with a particular entity
" 16 - Applicable law
" 30 - Inspection and supervision

II Items of subsidiary character

Item 6 - Conformity of arrangements with Convention
" 7 - Entities with whom arrangements may be entered into
" 8 - Qualifications of entities
" 9 - Procedures for application
" 10 - Application fee
" 12 - Transfer of technology, including training
" 21 - Right under arrangements restricted to specified category of resources
" 22 - Maximum size of areas according to category of resources, and delimitation
" 23 - Maximum duration of arrangements entered into
" 24 - Performance requirements
" 25 - Relinquishment of areas
" 26 - Renunciation of areas
27. - **Forfeiture of rights**
28. - **Application of operational rules, standards and practices**
29. - **Non-interference with other activities**
30. - **Liability**
31. - **Operational safety**
32. - **Insurance**

**BASIC CONDITIONS OF EXPLORATION AND EXPLOITATION**

The Authority shall take measures pursuant to this Convention, including the adoption of rules and regulations, to promote and encourage scientific research and the exploration of the Area and the exploitation of its resources and other related activities, and to ensure maximum financial and other benefits in accordance with these Basic Conditions. To that end the Authority shall avoid discrimination in the granting of opportunities for such activities and in the implementation of its powers, and ensure that all rights granted pursuant to this Convention are fully safeguarded. Special consideration by the Authority under this Convention for the interests and needs of the developing countries, and particularly the land-locked among them, shall not be deemed to be discrimination.

**RIGHTS IN THE AREA AND ITS RESOURCES**

1. The Area and its resources being the common heritage of mankind all rights in the resources are vested in the Authority on behalf of mankind as a whole. These resources are not subject to alienation.

**RIGHTS IN MINERALS**

2. Rights in the minerals or processed metals derived from the Area shall pass from the Authority only in accordance with the provisions of this Convention, the rules and regulations prescribed by the Authority in accordance with this Convention, and the terms and conditions of the relevant contracts, joint ventures or other form of association entered into by it.

**ACCESS TO THE AREA AND ITS RESOURCES**

3. The Authority shall from time to time determine the part or parts of the Area in which the exploration of the Area and the exploitation of its resources and other related activities may be conducted. In doing so the Authority shall be guided by the following principles:

(a) The Authority shall encourage the widest possible conduct of general survey operations, and to that end shall each year, after consultation with all Contracting States, open for general survey such broad oceanic areas as are determined by it to be of interest for this purpose.