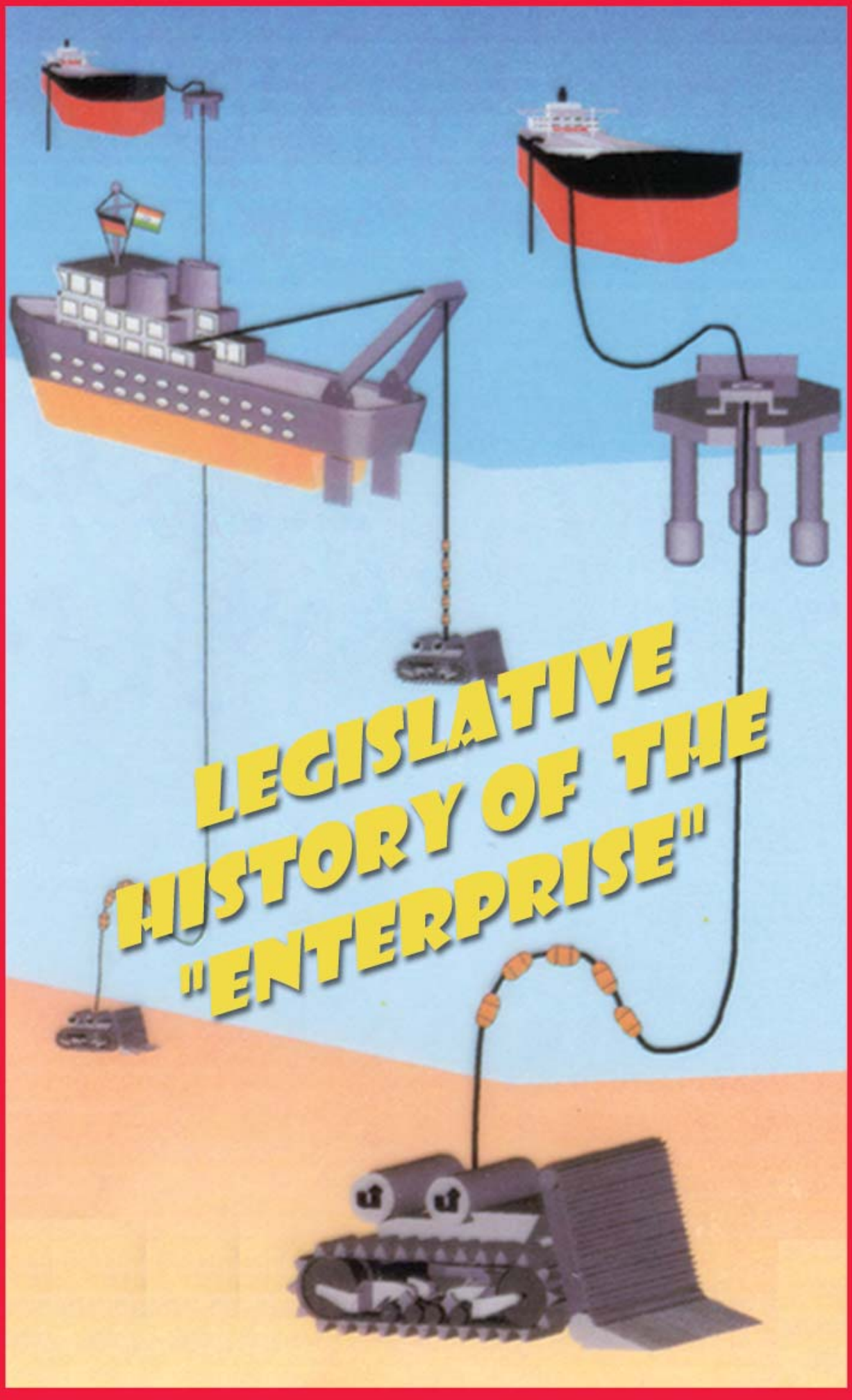
LEGISLATIVE
HISTORY OF THE
"ENTERPRISE"

LEGISLATIVE HISTORY OF THE "ENTERPRISE" UNDER THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA AND THE AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE CONVENTION

Published in Jamaica 2002 by
International Seabed Authority
14-20 Port Royal Street
Kingston, Jamaica
Tel: (876) 922 9105-9
Fax: (876) 922 0195
http://www.isa.org.jm

National Library of Jamaica Cataloguing-In-Publication Data

United Nations Convention on the Law of the Sea.
Legislative history of the "Enterprise" under the United Nations Convention on the Law of the Sea and the Agreement Relating to the Implementation of Part XI of the Convention.
p. ; cm.

ISBN: 976-610-468-9.

1. Maritime law.
I. Title.

341.45 – dc. 20

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Introduction

1. The present study is prepared by the Office of Legal Affairs of the International Seabed Authority. The purpose of the study is to facilitate a better understanding of the legislative history of the Enterprise, the operational arm of the Authority.

2. Upon the entry into force of the United Nations Convention on the Law of the Sea ("the Convention") on 16 November 1994, the International Seabed Authority ("the Authority") was established and became fully operational. The Agreement relating to the Implementation of Part XI of the Convention ("the Agreement") entered into force on 28 July 1996. In accordance with Section 2 of the Annex to the Agreement, the Secretariat of the Authority shall perform the functions of the Enterprise until it begins to operate independently of the Secretariat.

3. The Enterprise regime under the Convention and the Agreement was intensively negotiated in the following meetings of the United Nations:

- Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction (1969-73) ("the Seabed Committee"),
- the Third United Nations Conference on the Law of the Sea (1973-82) ("UNCLOS III"), and
- Secretary General's informal consultations on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea (1990-94) ("the Informal Consultations").

4. Accordingly, the present study is compiled in three parts, with Part One introducing early discussions in the Seabed Committee, Part Two devoted to work done by UNCLOS III, and Part Three dealing with developments during the Informal Consultations, all focusing on the mechanism of the Enterprise and the related issues.

5. By its resolution 2467 A (XXIII) of 21 December 1968, the United Nations General Assembly established the Seabed Committee and requested the Secretary-General (resolution 2467 C) to undertake a study on the question of establishing in due time "appropriate international machinery" for the promotion of the exploration and exploitation of the resources of the Area, and the uses of these resources in the interest of mankind, irrespective of the geographical location of States, and taking into special consideration the interests and needs of developing countries, and to submit a report thereon to the Committee for consideration during one of its sessions in 1969. UNGA resolution 2574 (XXIV) of 15 December 1969 requested the Secretary-General to prepare further studies on various types of international machinery, particu-

larly a study covering in depth the status, structure, functions and powers of the international machinery having jurisdiction over the peaceful uses of the seabed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction, including the power to regulate, coordinate, supervise and control the activities relating to the exploration and exploitation of their resources, for the benefit of mankind as a whole irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries, whether landlocked or coastal. With submission of both reports and comprehensive discussions conducted in the early sessions of the Seabed Committee in 1969 and 1970, there was no mention of the idea of establishing within the "international machinery" a separate apparatus which later became known as "the Enterprise" until the Committee's 1971 Session, when thirteen Latin-American and Caribbean countries submitted a 45-article working paper which, for the first time, not only used the term "the Enterprise", but also tried to define the term and design its scope and functions.

6. By the time the report of the Seabed Committee was submitted to the First Committee of the UNGA at its Twenty-eighth Session for consideration at the end of 1973, the Enterprise regime, still based on the originally proposed model in 1971, was taking shape with more specific functions added. In the subsequent nine years of negotiations during UNCLOS III, the Enterprise regime was developed into a much more sophisticated package. The Convention contains one general provision (Article 170) stipulating in principle the nature, functions and legal capacity of the Enterprise. Annex III contains the basic conditions of prospecting, exploration and exploitation, while Annex IV is the Statute of the Enterprise.

7. At the beginning of the United Nations Secretary-General's informal consultations, the Enterprise was identified as one of the nine issues as representing areas of difficulty for universal acceptance of the regime for exploration and exploitation of seabed resources beyond the limits of national jurisdiction, as contained in the Convention. The fifteen meetings held during the five-year informal consultations led to the adoption by the UNGA of the Agreement during its Forty-eighth Session on 28 July 1994 in New York. The Enterprise regime and transfer of technology provisions under the Convention were revised under the Agreement in the following manner:

The Enterprise will conduct its initial deep seabed mining operations through joint ventures. The functions of the Enterprise are to be performed by the Secretariat of the Authority until it begins to operate independently of the Secretariat. The Secretary-General of the Authority shall appoint from within the staff of the Authority an interim Director-General to oversee the performance of the functions of the Secretariat. The Agreement also spells out the functions of the Secretariat of the Authority as regards the Enterprise.[1]

The question of the functioning of the Enterprise independently of the Secretariat shall be taken up by the Council of the Authority, either upon the approval of a plan of work for exploitation for an entity other than the Enterprise, or upon the receipt by the Council of an application for a joint venture

operation with the Enterprise. If such joint ventures accord with sound commercial principles, the Council must then issue a directive under article 170 (2) of the Convention, providing for such independent functioning of the Enterprise. Plans of work for the Enterprise are now to take the form of a contract between the Authority and the Enterprise and the obligations applicable to other contractors are to apply also to the Enterprise.

The Agreement also relieves States Parties of any obligation to fund mine sites for the Enterprise. In the light of the approach taken for the operation of the Enterprise, the Agreement provides that Annex III, article 5 of the Convention shall not apply. Thus the transfer of technology is no longer mandatory. Under the Agreement such technology must first be sought on fair and reasonable commercial terms and conditions on the open market, or through joint venture agreements. Even in cases where such efforts are unsuccessful, other States are obliged only to co-operate with the Authority in facilitating its acquisition on such terms and conditions consistent with the effective protection of intellectual property rights.

[1] Agreement, Annex, Section 2, para. 1, (a) to (h). See page 372 of this publication for the text.

PART ONE

EARLY DISCUSSIONS IN THE COMMITTEE ON THE PEACEFUL USES OF THE SEABED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION

I. COMMITTEE ON THE PEACEFUL USES OF THE SEABED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION (1969-71)

By its resolution 2467 A (XXIII) of 21 December 1968, the General Assembly established the Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction ("the Seabed Committee").[1] The General Assembly instructed the Seabed Committee:

(a) To study the elaboration of the legal principles and norms which would promote international co-operation in the exploration and use of the seabed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and to ensure the exploitation of their resources for the benefit of mankind, and the economic and other requirements which such a regime should satisfy in order to meet the interests of humanity as a whole;

(b) To study the ways and means of promoting the exploitation and use of the resources of the Area, and of international co-operation to that end, taking into account the foreseeable development of technology and the economic implications of such exploitation and bearing in mind the fact that such exploitation should benefit mankind as a whole;

(c) To review the studies carried out in the fields of exploration and research in this Area and aimed at intensifying international co-operation and stimulating the exchange and the widest possible dissemination of scientific knowledge on the subject;

(d) To examine proposed measures of co-operation to be adopted by the international community in order to prevent the marine pollution which may result from the exploration and exploitation of the resources of the Area.[2]

By resolution 2467 C (XXIII), the General Assembly also requested the Secretary-General to undertake a study on the question of establishing in due time "appropriate international machinery" for the promotion of the exploration and exploitation of the resources of the Area, and the uses of these resources in the interests of mankind, irrespective of the geographical location of States, and taking into special consideration the interests and needs of developing

countries, and to submit a report thereon to the Committee for consideration during one of its sessions in 1969. The Assembly called on the Committee to submit a report on this question to the Assembly at its Twenty-fourth Session.[3]

Accordingly, during the Second Session of the Seabed Committee held at the United Nations headquarters in New York in March 1969, some delegations suggested that an international body should be established with powers, inter alia, to conduct operations relating to the exploration and exploitation of the mineral resources of the seabed and ocean floor.[4] As stated by the representative of Kuwait,

His delegation conceived the machinery as a technical and administrative body entrusted with the task of organizing, controlling, administering, directing and co-ordinating scientific research, geological and topographic surveys and all other operations relating to the exploration and exploitation of the resources of the Area beyond the limits of national jurisdiction in co-operation with competent international organizations and specialized national private and governmental institutions. Only such a body would be able to instil confidence in the minds of potential operators that the rights which they have been granted would be upheld. Such rights would be embodied in service contracts which would be of fixed duration and would apply to particular phases of operations. The operations, might, whenever feasible, be carried out in part by the machinery itself but would in general be carried out in association with private enterprise or on the basis of joint ventures with government enterprises or international consortia that would represent either private enterprises or governmental and intergovernmental concerns. The form of association should be adopted to the operation in question.

In his opinion, the project machinery should be governed by certain fundamental principles, the most important of which were the following:

(1) exploitation for the benefit of mankind as a whole, taking into account the special interests and needs of the developing countries, including landlocked countries;

(2) rational and complementary exploitation of seabed resources;

(3) prevention of marine pollution and other hazards harmful to living resources of the sea and coastal regions;

(4) active participation of developing countries in all operations relating to the exploration and exploitation of seabed resources, including scientific research;

(5) organization of a long-term training programme with a view to enabling developing countries to contribute more effectively to the functioning of the machinery;

(6) remuneration: (a) equitable distribution of income, through appropriate United Nations machinery, according to the principle of the maximum benefit of mankind; (b) a fair return to investors and adequate remuneration to concerns engaged in various operations;

(7) allocation of a certain percentage of income to the United Nations in order to increase its resources and enable it to expand its activities in the field of international development.

The machinery which his delegation envisaged would have a special legal status as an autonomous body co-operating closely with governments, international organizations and national institutions. The composition of the executive body and the secretariat of the machinery should be based on the principles of universality and equitable geographical distribution so that all political, economic and social systems might be represented.[5]

On 18 June 1969, the Secretary-General submitted his report entitled "Study on the Question of Establishing Appropriate International Machinery for the Promotion of the Exploration and Exploitation of the Resources of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction, and the Use of These Resources in the Interests of Mankind."[6] Under Part II (Possible Functions and Powers of International Machinery) of the report, the relevant issues were discussed in the following manner:

…The exercise of exclusive rights by a international agency would be in accordance with some versions of the "common heritage" approach to seabed resources, whereby these resources are to be regarded as trust property, to be held and developed in the general interest, although it should be noted that that concept is in fact compatible with various forms of machinery and is not necessarily to be identified with the exercise of sole rights by an international body. If exclusive rights were to be awarded, however, there would be a number of ways (or combination of ways) in which they might be exercised: the agency itself might carry out direct exploration and exploitation operations, with its own staff and facilities; it might arrange for others to perform these operations on its behalf by a system of service contracts or possibly by issuing licences; or joint ventures could be undertaken with other bodies (for example, with government enterprises or international consortia).

Although it is difficult to separate questions relating to the legal status and structure of a possible operating agency from questions relating to the functions, there are several general issues which would be raised with respect to any operating body. These issues, which concern financial arrangements and functions and operational functions, respectively, are considered briefly below. Although numerous other legal matters would need to be considered in connection with the establishment of an operating agency, including the question of the grant of juridical personality, these issues relate less to the substantive functions which might be performed than to the structure of the organization, and have not therefore been dealt with.

As regards financial arrangements and functions, although an operating agency might become financially self-supporting or profitable, initial capital would be required. This might be supplied directly by participating States, either in equal amounts or according to some agreed criteria, or loans might be raised from international financial institutions or from private sources, or some combination of these means might be used. The question of financial arrangements would be particularly important in respect of the development of mineral resources since it is generally agreed that very large sums, perhaps to

the order of $100 million, might be required, and thus the possibility of raising public or international loans might be an important function of the organization. The distribution of profit would also require careful regulation, either in the constituent instrument or by the controlling body of the institution, the special position of the developing countries would have to weighed against the need to secure an adequate return for those (whether individual governments or other entities) supplying the initial capital.

As regards operating functions, an agency with direct responsibility would require the grant to it of a full range of legal capacities, including the power to own and sell property. The sale, especially on a large scale, of minerals would raise the possibility of competition with existing, land-based producers, for which extension regulation might be required. In the case of hydro-carbons, the question of national fuel policies would be involved. The employment of extraction and beneficiation processes would also present problems with respect to the use of patents and industrial or trade secrets. Operational functions which involved the award of contracts would raise in addition the question of how such awards were to be made so as to give due weight to economic considerations on the one hand and to the need to ensure that contracts were shared amongst the participating States, or at least not allowed to fall entirely into the hands of a few countries.

…

If machinery were to be established with exclusive rights to conduct exploration and exploitation of the ocean floor, it is most likely to take the form of a separate international organization. Such an organization, in order to carry out effectively its functions of direct exploitation would have to be endowed with extensive powers and possess international legal personality. For example, it would have to be given the power and facilities to exploit seabed resources, to hold property and the locus standi *to enable it to make claims with respect to damage or loss. The organization would need an appropriate structure, consisting of several organs composed of government representatives and its own secretariat.*[7]

In accordance with the UNGA resolution 2574 C (XXIV) of 15 December 1969, the Secretary-General submitted his report entitled "Study on International Machinery"[8] which was prepared to supplement and to be read together with the previous report submitted as requested by UNGA resolution 2467 C (XXIII) of 21 December 1968. The second report, later presented to the 1970 Session of the Seabed Committee, elaborated the status, structure and powers of "the international machinery." It went further by suggesting that it include a plenary, an executive organ, a secretariat and a mechanism for the settlement of disputes. With regard to direct exploitation by this "international machinery," it was predicted under the report that:

An extensive range of powers would be necessary to enable the machinery itself to engage in prospecting and exploitation activities with its own staff and facilities. A lesser range of powers would be required for the machinery to arrange for others to perform these operations on its behalf by a system of service contracts; or to undertake joint ventures with other bodies.

Under service contracts, the contractor would not be in the position of licensee operating under licensing regulations. He would be an agent performing specified service for a fee, although it would also be possible to have other arrangements, such as, for example, some share in the production or in the value thereof. He would not in principle acquire any rights of ownership over mineral production, which would remain with the machinery. The use of such contractual arrangements could apply to all phases of mineral development. For example, it could be extended to the marketing, etc., of mineral production.

In the undertaking of joint ventures, the machinery would enter into an agreement with an operator whereby, in return for a share of the production or other consideration, the operator would participate with the machinery in the development of mineral resources. Joint participation of this nature could assume a variety of forms, whether in respect of organization, financing, operations, or marketing. It may be presumed, however, that such arrangements would not normally involve any relinquishing of the machinery's rights of supervision and control.

However, with comprehensive discussions on the issue summed up and reflected in these earlier studies, there were no mentioning of the idea of setting up within this international machinery a separate operative apparatus which later became known as "the Enterprise." It was not until the Seabed Committee's 1971 Sessions[9] when the issue of an Enterprise was discussed in Sub-Committee I, which was entrusted with the following in accordance with General Assembly resolution 2750C (XXV) of 17 December 1970:

To prepare draft treaty articles embodying the international regime – including an international machinery – for the area and the resources of the seabed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, taking into account the equitable sharing by all States in the benefits to be derived therefrom, bearing in mind the special interests and needs of developing countries, whether coastal or landlocked, on the basis of the Declaration of Principles Governing the Seabed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, economic implications resulting from the exploitation of the resources of the Area[10] as well as the particular needs and problems of landlocked countries.[11]

The delegation of Trinidad and Tobago presented on behalf of the Group of Latin American and Caribbean Countries a working paper on the regime for the Seabed and Ocean Floor and the Subsoil Thereof beyond the Limits of National Jurisdiction hereafter reproduced. In introducing this paper, the delegation of Trinidad and Tobago stated that:

In keeping with the principle of common heritage, the co-sponsors of the working paper envisage the establishment of a system in which mankind, in the capacity of owner, would participate directly in the administration and management of the Area and the exploitation of its resources. Although in its initial stages it may not be possible under the system for mankind by itself to undertake activities in the Area, it may none the less enter into arrangements

with third parties for the attainment of its objectives. Such arrangements, however, must in no way derogate from the basic and fundamental principle of the common heritage with its element of non-appropriation which is integral to it. To give effect to this, a body should be created which would itself, as the agent of mankind, undertake direct scientific investigation and the exploration of the Area and exploitation of its resources on behalf of all mankind. It would be therefore more in consonance with the principle of the common heritage for such a body in the early stages to enter into joint ventures, production-sharing and profit-sharing arrangements with other entities, public or private, national or international rather than to grant or issue licences to such entities. The concept of a licensing or concession system is in our view inconsistent with the principle of the common heritage. The co-sponsors of document A/AC.138/49 therefore reject it. In the partnership system envisaged, ownership of the Area and its resources remains vested in mankind, on whose behalf the international body exercises exclusive jurisdiction over the Area and its resources. It is with this philosophical but pragmatic approach that the co-sponsors have examined the question of the elaboration of an international regime (including international machinery) for the seabed and ocean floor and its resources beyond the limits of national jurisdiction.

In that 45-article working paper on the regime for the Seabed and Ocean Floor and the Subsoil Thereof beyond the Limits of National Jurisdiction,[12] articles 15-18, 20, 33-35, and 38 which are of direct relevance to the concept of the Enterprise, read as follows:

Article 15

The Authority shall itself undertake exploration and exploitation activities in the Area; it may, however, avail itself for this purpose of the services of persons, natural or juridical, public or private, national or international, by a system of contracts or by the establishment of joint ventures. The Authority itself may also undertake scientific research. It may authorize other persons to carry out or undertake such research, provided that the Authority may supervise any research authorized by it.

Article 16

In order to ensure the participation of developing countries on terms of equality with developed countries in all aspects of the activities carried out in the Area, the Authority:

(a) shall establish oceanographic institutions on a regional basis for the training of nationals of developing countries in all aspects of marine science and technology;

(b) shall provide to developing countries on request technical assistance and experts in the field of oceanographic exploration and exploitation;

(c) shall adopt all appropriate measures to ensure the employment of qualified personnel from developing countries in all aspects of the activities carried out in the Area;

(d) shall give priority to the location in developing countries of processing plants for the resources extracted from the Area;

(e) shall, in the conclusion of contracts and the establishment of joint ventures, give due consideration to entities from developing countries; shall make adequate plans to promote the creation and development of such entities and reserve zones within the Area for preferential exploitation by such entities.

Article 17

Authorization for scientific research shall be granted to any entity offering, in the judgement of the Council, the necessary guarantees as to its technical competence and undertaking to assume responsibility for any damage that may be caused to the marine environment and to comply with the regulations adopted in this regard by the Authority.

Such authorization may be denied whenever, in the judgement of the Council, there are reasons to believe that the proposed activities do not have a peaceful purpose, or that they are to be pursued with a view to financial gain or that they are likely to involve risks to the marine environment.

Authorization may also be revoked at any time for violation of the applicable regulations adopted by the Authority.

Article 18

The Authority shall at all times have access to all research data as well as to interim and final results of research. Such results and data must be communicated to the Authority before their publication or communication to other institutions or governments.

…

Article 20

The principal organs of the Authority shall be the Assembly, the Council, the International Seabed Enterprise (ISBE) hereinafter referred to as the Enterprise, and the Secretariat.

…

SECTION 3 - THE ENTERPRISE

Article 33

The Enterprise is the organ of the Authority empowered to undertake all technical, industrial or commercial activities relating to the exploration of the Area and exploitation of its resources (by itself, or in joint ventures with juridical persons duly sponsored by States).

Article 34

The Enterprise shall have an independent legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

Article 35

(Questions relating to the structure and functions of the Enterprise).

…

Article 38

The Secretary-General shall act in an advisory capacity to the Enterprise.

While it was the first time a concrete proposal had ever been made for the establishment of an International Seabed Enterprise as the operative arm of an International Seabed Authority in the Seabed Committee, the Committee's Report of 1971 for the first time referred to the Enterprise as one of the organs of the international machinery.[13]

End Notes

[1] United Nations General Assembly resolution 2467 A (XXIII); In accordance with the decision taken by the First Committee at its 1648th and 1649th meetings on 19 and 20 December 1968, the Seabed Committee was composed of the following Member States: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Cameroon, Canada, Ceylon, Chile, Czechoslovakia, El Salvador, France, Iceland, India, Italy, Japan, Kenya, Kuwait, Liberia, Libya, Madagascar, Malaysia, Malta, Mauritania, Mexico, Nigeria, Norway, Pakistan, Peru, Poland, Romania, Sierra Leone, Sudan, Thailand, Trinidad and Tobago, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Yugoslavia.

The following Member States which requested accredited observer status were represented at the Sessions of the Committee: Barbados, Burma, Denmark, Guyana, Jamaica, Netherlands, New Zealand, Nicaragua, Philippines, Portugal, South Africa, Spain, Sweden, Turkey, Ukrainian Soviet Socialist Republic and Venezuela. *See Official Records of the United Nations General Assembly, Twenty-fourth Session, Supplement No. 22 (A/7622), Report of the Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction ("SBC Report"),* pp. 2-3, paras 6-7.

[2] United Nations General Assembly resolution 2467 A (XXIII); *Official Records of the United Nations General Assembly, Twenty-fourth Session, Supplement No. 22 (A/7622), SBC Report,* p.1.

[3] Ibid, p. 2, para.5.

[4] A/AC.138/12 and Add.1, p.41.

[5] A/AC.138/SR.5, UNGA A/AC.138/SR.1-6, 2 June 1969, SBC, First and Second Sessions, Summary Records of the First to Sixth Meetings, pp.50-51.

[6] A/AC.138/12 and Add.1, UNGA, 18 June and 30 June 1969, reproduced in Official Records of the United Nations General Assembly: Twenty-fourth Session, Supplement No. 22(A/7622), SBC Report 1969, at pp. 81-161.

[7] A/AC.138/12, paras 71-74; A/AC/138/12/Add.1, para.84.

[8] Originally issued as document A/AC. 138/23, reproduced in *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 21(A/8021), SBC Report, Annex III,* pp.61-123.

[9] In Geneva from 12 to 26 March and from 19 July to 27 August in New York. The Committee met again at United Nations headquarters on 14, 15 and 22 October 1971.

[10] United Nations General Assembly resolution 2750 A (XXV).

[11] United Nations General Assembly resolution 2750 B (XXV).

[12] Submitted by Chile, Colombia, Ecuador, El Salvador, Guatemala, Guyana, Jamaica, Mexico, Panama, Peru, Trinidad and Tobago, Uruguay, Venezuela, and *originally issued as A/AC.138/49, Official Records of the General Assembly, Twenty-sixth Session, Supplement* No. 21 (A/8421), pp.93-101.

[13] *Official Records of the General Assembly, Twenty-sixth Session, Supplement No.21(A/8421), SBC Report, p.26, para.70.*

II. TWENTY-SIXTH SESSION OF THE GENERAL ASSEMBLY (1971)

With regard to the international machinery, one of the major relevant issues discussed in the Seabed Committee was the scope and functions thereof. Proposals on different types of international machinery were put forward in the form of working papers,[1] ranging from various kinds of arrangements and machinery with varying degrees of control over activities in the Area, to machinery with substantial central control over activities in the Area. With respect to commercial exploration and exploitation, the functions envisaged varied from the granting of licences to States or commercial entities, individually or in combination, to direct exploration and exploitation including production, processing and marketing of resources by the Authority itself, whether exclusively or through joint ventures and service contracts. The direct exploitation system could apply to all designated portions of the international seabed area. Other proposals that were put forward included: the functions of the international machinery should

(1) enable it to control production and markets so as to avoid fluctuation in the prices of raw materials which would be harmful to developing countries producers of land-based raw materials;

(2) develop with the progress of technology and the resulting increase of activity in the international seabed area;

(3) not be confined to seabed alone.[2]

Industrialized countries such as the United States, the United Kingdom and France put forward their propositions as follows.

On 23 May 1970, President Nixon made an announcement on United States oceans policy (A/AC. 138/22). He stated, *inter alia*,

The treaty should establish an international regime for the exploitation of seabed resources beyond this limit.[3] The regime should provide for the collection of substantial mineral royalties to be used for international community purposes, particularly economic assistance to developing countries. It should also establish general rules to prevent unreasonable interference with other uses of the ocean, to protect the ocean from pollution, to assure the integrity of the investment necessary for such exploitation and to provide for peaceful and compulsory settlement of disputes.

This was followed by the U.S. proposal in the working paper entitled Draft United Nations Convention on International Seabed Area submitted by the United States on 3 August 1970 (A/AC/138/25), which stated, *inter alia*,

All exploration and exploitation of the mineral deposits of International Seabed Area shall be licensed by the International Seabed Resource Authority… The International Seabed Resource Authority, on its own initiative or at the request of any interested Contracting Party or Sponsoring Party, may inspect any licensed activity in co-operation with the Trustee-Party or Sponsoring Party, as appropriate, in order to ascertain that the licensed operation is being conducted in accordance with this Convention.[4]

In the working paper entitled "International Regime" submitted by the United Kingdom (A/AC.138/26), specific proposals were made on the licensing system of the international machinery. According to the United Kingdom,

The most suitable regime might be one under which licences (either for all minerals or for special minerals) would be issued by the international body to Member States only, such States being then responsible for sub-licensing operators under their own legislation…[5]

France suggested that, for the international regime to be established, it would be desirable to establish a distinction between two types of exploitation:

- one for minerals where exploration…and exploitation require mobile equipment: this could be the case with manganese nodules scattered over the ocean bed and recoverable by dredging;

- the other for minerals where the same operations entail the use of fixed installations (as with hydrocarbons).[6]

According to France, this distinction should normally lead to two different types of regime with different provisions:

The system for the first type (mining with mobile equipment) would take the form of simple registration with an international organization, accompanied by a declaration of the areas to be explored or exploited, and without any exclusive rights. Exploration and exploitation would be subject to the international regulations for the protection of life at sea, for respect for the freedom of the high seas, for protection against pollution of the sea, etc. the rules applicable to exploration and exploitation would be set out in a list of conditions laid down by an international convention, which would fix the period of validity of each registration with the possibility of renewal.

For the second type, exploration and exploitation rights would be exclusive and States would be granted areas, within which they would issue licences.[7]

It was reported that with regard to the international regime to be established, the views expressed in Sub-Committee I showed that "more than 31 States favoured a comprehensive machinery while those delegations for a regulatory and licensing nature numbered approximately 13 and 12 respectively."[8] At the Twenty-sixth Session of the General Assembly, when the report of the Seabed Committee on the work of its 1971 Session was considered in the First Committee (at its 1843rd and 1844th meetings, on 2 and 6 December, and at its 1849th to 1855th meetings, from 10 to 16 December 1971), certain developing countries expressed their views on the subject. These views are summed up as follows.

1. The international regime to be established would have to be as powerful as to undertake the necessary activities in connection with the exploration and exploitation of the international area. A system of merely granting licences for the exploitation and exploration of the international submarine zone would be incompatible with the principle that the zone is the common heritage of mankind. Thus the legitimate beneficiary of the resources of the zone, that is, mankind as a whole, should not be relegated to the simple role of a mere spectator without enjoying direct participation in both the

exploration and the exploitation of the resources which belong to mankind. The final objective of the international regime to be established, as a fundamental feature of the 13-Latin American-countries-working paper, would be to exploit the seabed directly.[9] *These views were expressed by countries such as Iran, Mexico and Yugoslavia.*[10]

2. Geographically disadvantaged such as landlocked and developing States should not be prevented from enjoying their equitable share solely because of the lack of skilled manpower, of capital resources and of the necessary transport and infrastructure to undertake such ventures. As these States might have difficulty in exploring and exploiting even under regional or subregional co-operation, it would be preferable if the international machinery itself had sufficient financial power and administrative authority to conduct operations or arrange for them to be carried out on its behalf by contractors rather than on the basis of initiatives by individual States. This position was expressed by countries like Zambia[11] *and Chile.*[12]

***3.* (a) PERU**

The intention of the capitalist powers to make use of such wealth in their exploitation was also revealed in the drafts they submitted for the establishment of the international regime. According to those drafts substantive benefits from extraction, transformation and trading in the resources of the seabed would be retained by private companies which would be granted licences or royalties in exchange for rights and royalties which they in turn would pay as compensation. We have already pointed out the incongruity between such proposals and the concept of the common heritage of mankind. Our observations are not gratuitous but flow from the text of the draft resolutions that have been submitted, in which it is established that the rights and royalties to be handed to the international agency would first of all be used to cover administrative expenses and then to encourage efficient exploitation, research, protection of the marine environment and technical assistance to the contracting parties, and only when all those expenses had been deducted, would what was left be distributed through regional organizations to the developing countries.

... So no one is now misled by confusing the concept of the common heritage of mankind with the establishment of a regime for the seabed that would allow the private enterprises of those great Powers to take over the non-living resources of the sea adjacent to the coasts of the developing countries. Quite the contrary: the latter group of countries, interpreting the common heritage of mankind in its true meaning, advocate establishment of an international authority with the sufficient power to administer the Area and, directly or in association, to take part in the exploration, exploitation, transformation and commercialization of the resources thus extracted so that the resultant benefits once the enterprises have received the amounts due them taking into account the investment they have made, amortization and reasonable utilities, can then be devoted to the developing countries.

The first reaction of the more advanced States to the establishment of a regime of the kind we have just proposed shows that their interests are not in keeping with the concept of the common heritage of mankind. That is a fact that the members of the Third World will have to take into account when they analyse the different drafts submitted thus far.[13]

(b) EL SALVADOR

Generally speaking, we might say that we note three basic trends concerning exploration and exploitation. The first is one that would reduce the regime to an ordering or registering of licences, and therefore would rest upon private enterprises wholly. The second trend seeks the utilization of the seabed through an immense multinational enterprise in which States would be partners and direct exploiters. The third trend seeks the solution in the establishment of an enterprise of mixed economy that would enjoy the administrative ability of private enterprise, but would have at its disposition methods of control that would ensure a rationalized utilization of the resources and the administration and would avoid having profits squandered on excessive salaries.

... my country is co-sponsoring one of the drafts submitted, the one dealing with the establishment of an enterprise of mixed economy. We understand that this draft is flexible enough to bring together the very justified views of those who support a different solution, and I think it can lead to an understanding among all the interests at play.[14]

(c) JAMAICA

It is the view of my delegation that unless and until a fundamental shift is made by the developed countries regarding their philosophy on the regime and machinery to be established no progress - I repeat, no progress - can be made in the Seabed Committee. In particular, a drastic change is essential in their attitude to the International Seabed Authority being enabled to exploit directly and to regulate the exploration and exploitation of the resources of the seabed area.[15]

(d) CHILE

... ten drafts of a treaty on the regime of the seabed were presented, including a Latin-American draft, of which Chile is a co-sponsor. In that draft the overriding principle is repeated: namely, that the seabed and ocean floor beyond the limits of national jurisdiction, and their resources, are "the common heritage of mankind," and that the benefits derived from the exploitation of those resources should be distributed equitably among all States regardless of their geographic position, and with special consideration being given to the interests and needs of the developing countries, whether they be coastal or landlocked. ... The authority which exercises jurisdiction over the Area and its resources, and the administration of the zone on behalf of mankind, has been conceived of as having sufficient powers to carry out on its own the

activities of exploration and exploitation of the zone. In order to do this, it could draw on the services of natural or legal persons by using either a system of contracts or a system of the establishment of joint companies.

My delegation considers that other ideas proposed, such for example as the creation of a system of licences of concessions, is incompatible with the principle - for which acceptance was gained at the cost of such severe labours - of the common heritage of mankind contained in the Declaration of Principles proclaimed in resolution 2749 (XXV). The opposition that has been expressed to the United States draft is based on two considerations: firstly, that the system of licences would permit control of production to be exerted by super-businesses which in the past have already controlled weighty economic and political structures and which, through a licence granted in a selective area, manipulate or have a decisive influence on the markets of certain minerals, control prices, and in general exert power which might go beyond certain vital necessities of the international community; secondly, that it is essential to regulate future production in order to avoid fluctuations in the prices of certain raw materials, which means that it is necessary to provide the regime and the agency with real power over the Area and its resources.[16]

(e) ZAMBIA

… we have every reason to fear the current rapid progress in marine technology by the technologically developed countries, which could sooner, rather than later, lead to national appropriation and use of the seabed and ocean floor. Contemporary technology is in a position to exploit the seabed and ocean floor, and the subsoil thereof, with regard to its economic and military potential, in addition to the danger of radioactive pollution resulting from such exploitation.

To prevent such exploitation and to ensure exploitation for the benefit of mankind as a whole, it is vitally necessary, as envisaged in resolutions 2749 (XXV) and 2750 (XXV), that international machinery to give effect to the provisions of an international regime be established by an international treaty of a universal character, to determine the limits of national jurisdiction and to ensure an equitable distribution of the profits of the seabed and ocean floor amongst all States.

… Landlocked countries have a particular and very special interest in exploiting the riches of the seabed and ocean floor beyond the limits of national jurisdiction, considering that they are excluded from participation in the exploitation of the living resources of the sea, not only in territorial waters, but also in adjacent waters and fishing zones, and have no access to the wealth of the continental shelf.

...

Participation in exploration and exploitation by a landlocked developing country or other countries presupposes a system of allocation which may be adopted with respect to the areas of the international seabed zone. Such an allocation could most appropriately be made if areas were allocated in

such a way that all States might have an equal opportunity from the outset to be engaged in the exploration and exploitation of different areas. Land-locked and developing States should not be prevented from enjoying their equitable share solely because of the lack of skilled manpower, of capital resources and of the necessary transport and infrastructure to undertake such ventures. As these States might have difficulty in exploring and exploiting even under regional or subregional co-operation, it would be preferable if the international machinery itself had sufficient financial power and administrative authority to conduct operations or arrange for them to be carried out on its behalf by contractors rather than on the basis of initiatives by individual States.[17]

(f) BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

… the Committee now possesses a number of interesting draft agreements and treaties pertaining to the regime of the seabed, the ocean floor and the subsoil thereof...

Among the various drafts of agreements and treaties submitted to the Committee, we should like to refer particularly to the Soviet draft treaty on the use of the seabed for peaceful purposes which is contained in the report of the Committee (A/8421)...

The draft treaty contains a number of cardinal principles pertaining to the activities of States for industrial exploration and exploitation of seabed resources...

That draft also contains a basic scheme for a future international organ...

The Byelorussian SSR delegation believes that the Soviet draft, together with the constructive proposals submitted by various other countries, could serve as a good basis for the preparation of a draft treaty on the peaceful uses of the seabed and the ocean floor and provide the necessary, just and most favourable conditions for the effective exploitation of the resources of the seabed and the ocean floor and the subsoil thereof in the interests of humanity as a whole.[18]

***(g)* YUGOSLAVIA**

With reference to the study of the problem of the international regime and machinery, I should like to say that we are happy to see before the Special Committee, in addition to the draft documents and working papers of many countries, also papers submitted by Tanzania and the group of Latin American countries, since they, in our opinion, represent the points of view of the developing countries, which are vitally interested in this area. We have noted with special interest the idea advanced by the Latin American countries on the possibility of having an international organization engaged in research and exploitation of the seabed, including the proposal that an international enterprise be set up as the organ of an international organization, which would conduct business on behalf of and in the interest of the international organiza-

tion, that is, the international community represented in the international organization. In contrast to this, we look upon the idea of the so-called licensing with reservations, since it is inconsistent with the principle of the common heritage.[19]

(h) MEXICO

We contend that a system of merely granting licences for the exploitation and exploration of the international submarine zone would be incompatible with the principle that the zone is the common heritage of mankind. The legitimate beneficiary of the resources of the zone, that is, mankind as a whole, should not be relegated to the simple role of a mere spectator without enjoying direct participation in both the exploration and the exploitation of the resources which belong to mankind. For these reasons, the countries of Latin America prepared a working paper which has already been submitted to the Committee, whose fundamental feature is that it provides for the establishment of an international body for the seabed whose final objective would be to exploit the seabed directly.[20]

(i) IRAN

In regard to the international regime to be established, the views expressed in Sub-Committee I showed that more than 31 States favoured a comprehensive machinery while those delegations for a regulatory and licensing nature numbered approximately 13 and 12, respectively. Evidently, in order for the "common heritage of mankind" to become a reality which is a goal set out by the United Nations, the machinery would have to be as powerful as to undertake the necessary activities in connection with the exploration and exploitation of the international area. While the views of delegations on this matter are not the same, however, we share the views of the representative of El Salvador that there is room for hope that formulas of understanding can be devised.[21]

The General Assembly resolution adopted in December 1971[22] contained the following provision of relevance to the international regime and machinery

The General Assembly,

...

1. Notes with satisfaction the encouraging progress of the preparatory work of the Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction towards a comprehensive conference on the law of the sea, in conformity with its mandate contained in General Assembly resolution 2750 C (XXV), in particular with regard to the elaboration of the international regime and machinery for the seabed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction;

...

End Notes

[1] For relevant working papers submitted to the SBC, *see* United Nations General Assembly, A/AC.138/SC.2/L.6, 24 March 1970, SBC, Economic and Technical Sub-Committee, Interim Report, Annexes I-VI, and *General Assembly Official Records: Twenty-fifth Session, Supplement No. 21 (A/8021), SBC Report, United Nations, New York, 1970,* Annex VIII, List of Documents of the Committee, pp. 191-194; *General Assembly Official Records, Twenty-sixth Session, Supplement No. 21 (A/8421), SBC Report, United Nations, New York, 1971,* Annex VIII, List of Documents of the Committee, pp. 263-266.

[2] *General Assembly Official Records: Twenty-sixth Session, Supplement No. 21 (A/8421), SBC Report, United Nations, New York, 1971,* pp. 25-26.

[3] In the context of the announcement by President Nixon on United States Oceans Policy (A/AC. 138/22), "this limit" means "the point where the high seas reach the depth of 200 metres."

[4] United Nations General Assembly: Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction, "Draft United Nations Convention on the International Seabed Area: Working Paper," A/AC/138/25, pp. 4-5.

[5] *General Assembly Official Records: Twenth Session, Supplement No. 21 (A/8421), SBC Report, United Nations, New York, 1971,* Annex VI, p.180.

[6] *General Assembly Official Records: Twenty-fifth Session, Supplement No. 21 (A/8021), SBC Report, United Nations, New York, 1970,* Annex VII, Establishment of a regime for the Exploration and the Exploitation of the Seabed, Proposals submitted by France, p.186. Originally issued as document A/AC.138/27.

[7] Ibid.

[8] *United Nations General Assembly, Twenty-sixth Session, First Committee, Provisional Verbatim Record of the Eighteen Hundred and Fifty-fourth Meeting, A/C.1/PV. 1854,* p.6.

[9] Ibid and A/C.1/PV. 1853, p.16.

[10] Ibid.

[11] A/C.1/P.V/1851, pp. 16-17, 19-20, 22.

[12] A/C.1/P.V. 1850, pp.56-57.

[13] Provisional Verbatim Record of the 1844th Meeting of First Committee, United Nations General Assembly, Twenty-sixth Session, A/C.1/PV.1844, 10 December 1971, (hereinafter all Provisional Verbatim Record of meetings of the First Committee held during each Session of the UNGA referred to in the form of A/C.1/PV.—), pp.8-11.

[14] A/C.1/PV.1844, pp.31-32.

[15] A/C.1/P.V.1850, 10 January 1972, p. 28.

[16] A/C.1/P.V. 1850, p. 56-57.

[17] A/C.1/P.V. 1851. pp. 16-17, 19-20, 22.

[18] A/C.1/PV.1851, pp. 38-40, 41.

[19] A/C.1/PV.1851, p.47.

[20] A/C.1/PV.1853, p.16.

[21] A/C.1/PV.1854 p. 6.

[22] *Official Records of the General Assembly, Twenty-sixth Session, Annexes,* Agenda item 35, New York, 1971, p. 3.

III. COMMITTEE ON THE PEACEFUL USES OF THE SEABED AND OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION (1972)

The Seabed Committee held two Sessions in 1972: the first in New York from 28 February to 30 March, and the second in Geneva from 17 July to 18 August.

At its 33rd meeting, on 6 March 1972, Sub-Committee I adopted its programme of work for 1972. Item 1 dealt with the status, scope and basic provisions of the regime based on the Declaration of Principles Governing the Seabed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction [UNGA resolution 2749 (XXV) of 17 December 1970]. Item 2 of the programme of work referred to the status, scope, functions and powers of the international machinery in relation to:

(a) organs of the international machinery, including composition, procedures and dispute settlement;
(b) rules and practices relating to activities for the exploration, exploitation and management of the resources of the Area, as well as those relating to the preservation of the marine environment and scientific research, including technical assistance to developing countries;
(c) the equitable sharing in the benefits to be derived from the Area bearing in mind the special interests and needs of developing countries, whether coastal or landlocked;
(d) the economic consideration and implications relating to the exploitation of the resources of the Area, including their processing and marketing;
(e) the particular needs and problems of landlocked countries; and
(f) relationship of the international machinery to the United Nations system.

At the 55th meeting of Sub-Committee I, the Vice-Chairman summarized the discussions on item 2. Following are the excerpts from his statement [1] of 4 August 1972 which are of relevance to the international regime and the Enterprise:

(a) ORGANS OF THE INTERNATIONAL MACHINERY, INCLUDING COMPOSITION, PROCEDURES AND DISPUTE SETTLEMENT:

…It appears to be a fairly common view that the international machinery should be the executive and administrative arm, so to speak, of the regime, and that both the regime and machinery should be established by an international treaty, or treaties. Many speakers argued that participation in the treaty, or treaties, and therefore in the activities of the regime and the machinery, should be open to all States. They considered that that would accord with the Declaration of Principles in resolution 2749 (XXV).

Some speakers considered that the machinery should have international legal personality and explained that by this they meant that it should have, for example, power to conclude agreements to own and dispose of property, and to conclude contracts.

…Many speakers contended that the machinery should have strong and clearly defined powers to enable it to achieve the primary purpose of the regime which, as set out in the Declaration of Principles, is to provide for the orderly and safe development and rational management of the international seabed area and its resources, and for expanding opportunities in the use thereof, and to ensure the equitable sharing by States in the benefits derived therefrom.

It is fair to add in this regard that the differences of opinion concerning the scope of the machinery, which I mentioned earlier, in turn have given rise to differences in regard to the nature and functioning of some of the component parts of the machinery.

It would seem from many of the statements we have heard that consensus or near-consensus may exist as to the need for the basic machinery to consist of at least four kinds of main organs or procedures:

first – there would be an Assembly, or plenary body, which would be the main legislative and policy-making organ. Many speakers set forth their views on the powers that should be vested in the Assembly and it was possible here to note a degree of broad accord in the Sub-Committee. Many speakers, for example, argued in favour of giving each member of the Assembly one vote in its deliberations, but agreement does not seem yet to exist as to how decisions will be taken.

second – there would be a Council, or executive body which would execute the policy decisions of the Assembly. Agreement exists that the composition of the Council should be such as to enable it to be representative and to operate effectively. There are differences however in regard to the size of the Council, the interests that should be represented therein, the manner in which the Council should be composed, and the decision-making process.

third – I could detect no dissent from the view that it will be necessary to establish an administrative service or secretariat.

fourth – many speakers said that it will be necessary to establish procedures for the settlement of disputes...

...Of course, other suggestions for the creation of major organs of machinery were made. One suggestion, for example, was for the establishment of an economic and technical commission, or similar body, which might have specific responsibilities in regard to the actual conduct of operations. Another suggestion was for the creation of an enterprise, which would have the power to undertake all activities relating to exploration and exploitation, either directly or through a system of contracts for services or joint ventures.

...

(b) RULES AND PRACTICES RELATING TO ACTIVITIES FOR THE EXPLORATION, EXPLOITATION AND MANAGEMENT OF THE RESOURCES OF THE AREA, AS WELL AS THOSE RELATING TO THE PRESERVATION OF THE MARINE ENVIRONMENT AND SCIENTIFIC RESEARCH, INCLUDING TECHNICAL ASSISTANCE TO DEVELOPING COUNTRIES:

...some representatives argued that the machinery should be responsible mainly for issuing licences to States for purposes of exploration and exploitation, as well as for certain activities associated with this function.

On the other hand another group of States contended that the machinery alone should have the power to explore and exploit in the international seabed area, for example, through a corporation or enterprise which would be part of the machinery and which could make use of contractors or participate in joint ventures.

A third group of States appeared to see a solution lying in a mixed system of some sort whereby the authority might both issue licences and have the power to explore and *exploit itself, either directly or through agents engaged for the purpose.*

…A few speakers, including some whose delegations favoured giving the machinery a power of direct operation, said that, in the initial stages at least, licensing would necessarily be one of the main functions of the machinery because it would take time for this machinery to develop the capacity to operate itself. They saw this matter of timing as a practical problem, however, and one that could be resolved within the Authority at an appropriate stage.

Some speakers argued that States should be the basic entity authorized to take part in seabed operations, and that States in turn could sub-license operators to carry out exploration and exploitation, or undertake it themselves. The view was also expressed that the machinery ought to grant licences directly to physical and juridical persons, and without interposing a State between itself and the individual operator.

Some speakers put forward views as to the types of licences that might be issued for the areas and types of minerals they should cover; and how the rules covering the granting of licences should be drawn up.

During the Spring Session of the Committee, a Working Group on the International Regime was established with a mandate to draw up, in the first instance, a working paper showing areas of agreement and disagreement on the various issues. The Working Group would thereafter attempt to negotiate questions of substance on the points where no agreement existed. The drafting stage would be reached after further consideration; the aim then would be to produce draft treaty articles.

At the start of its meetings during the July/August Session, the Working Group had before it an informal working paper which had been prepared as a preliminary attempt to reflect within a single paper, through the use of square

brackets and alternative texts, areas of agreement and disagreement on matters relating to the status, scope and basic provisions of the regime, as these had been indicated in the debates in the Committee and in Sub-Committee I. The paper contained twenty-one texts on the following aspects of the status, scope and basic provisions of the regime based on the Declaration of Principles: limits of the Area; common heritage of mankind; activities regarding exploration and exploitation of the resources of the Area; non-appropriation and no claim or exercise of sovereignty or sovereign rights; no claim or acquisition of rights incompatible with the regime; non-recognition of claims inconsistent with the Convention; use of the Area by all States without discrimination; applicability of principles and rules of international law; benefit of mankind as a whole; preservation of the Area exclusively for peaceful purposes; who may exploit the Area; general norms regarding exploitation; scientific research; transfer of technology; protection of the marine environment; due regard to the rights and interests of coastal States; the legal status of superjacent waters; non-interference with other activities in the Area; responsibility to ensure observance of the regime; and settlement of disputes.

On 28 July 1972 the Working Group completed a first reading of the texts, designed to ensure that the opinions of members were fully and accurately reflected. As a result of that first reading, the working paper was revised to take into account the opinions expressed. During a second reading of the revised texts, an attempt was made to narrow the areas of disagreement as far as possible and to merge alternative texts where there was no fundamental difference of approach. At the conclusion of its meetings, the Working Group had completed its second reading of the following texts: the common heritage of mankind; activities regarding exploration and exploitation; non-appropriation or claim or exercise of sovereignty or sovereign rights, or of rights incompatible with the treaty articles, and the non-recognition of any such claims or exercise of rights; and use of the Area by all States without discrimination.

The result of the Group's work is contained in document A/AC.138/L.18/Add.3. Following are the excerpts relevant to the international regime and the Enterprise:

TEXTS ILLUSTRATING AREAS OF AGREEMENT AND DISAGREEMENT ON PROGRAMME OF WORK, ITEM 1 "STATUS, SCOPE AND BASIC PROVISIONS OF THE REGIME, BASED ON THE DECLARATION OF PRINCIPLES"

PART I
[BASIC] [FUNDAMENTAL] [GENERAL] PRINCIPLES
EXPLANATORY NOTE

Following the completion of its first reading the Working Group began its second reading of the texts, during which an attempt was made to narrow

the areas of disagreement as far as possible and to merge alternative texts. The Working Group did not, however, have time to complete its second reading of all the texts. The texts which received a second reading were those which appear under the following four headings: common heritage of mankind; activities regarding exploration and exploitation, etc.; non-appropriation and no claim or exercise of sovereignty or sovereign rights, no claim etc., of rights incompatible with the treaty articles, and non-recognition of claims etc.; and use of the Area by all States without discrimination. The second text mentioned, relating to activities regarding exploration and exploitation, etc., replaces texts III and VII of the working paper, and the third text, dealing with non-appropriation etc., replaces texts IV, V and VI of the working paper. Because of this consideration of different texts in the course of the second reading, and in order to distinguish texts that have received a second reading, the latter have been given Arabic numerals while texts which have not received a second reading continue with the Roman numerals originally used in the working paper. Thus texts 2, 3, 4 and 5 are a result of the Group's second reading of texts II, III, IV, V, VI, VII and VIII; texts IX to XXI are the texts resulting from the first reading that have not yet received a second reading.

...

XII. WHO MAY EXPLOIT THE SEABED

[All exploration and exploitation activities in the Area shall be conducted by a Contracting Party or group of Contracting Parties [or natural or juridical persons under its or their authority or sponsorship].] [, subject to regulation by the Authority and in accordance with the rules regarding exploration and exploitation set out in these Articles.]

[All activities of exploration and exploitation of the resources of the Area and other related activities shall be conducted [by or on behalf of the Authority,] [or] [by a Contracting Party or group of Contracting Parties [or natural or juridical persons under its or their sponsorship], all subject to the general supervision and control of the Authority].] [, and to the rules regarding exploration and exploitation set out in these Articles.]

OR (A)

[Subject to the power of the Authority set out in the following paragraph, all activities of exploration for and exploitation of the resources of the Area shall be conducted pursuant to a licence issued by the Authority to a Contracting Party or group of Contracting Parties. A Contracting Party or group of Contracting Parties to whom a licence has been issued may authorize a natural or juridical person or persons to carry out the activities covered by the licence. Nevertheless, the Contracting Party or Parties remain responsible to the Authority and other Contracting Parties for ensuring that the activities so authorized are carried out in accordance with these Articles.

In addition to licensing activities by Contracting Parties, the Authority may decide to conduct activities of exploration for and exploitation of the resources of the Area when it is in a position to finance such activities.]

[NOTE: The Group will have to consider whether to set out here, as is done in some proposals, the general rules regarding exploitation of the seabed. These could include rules on licensing, fees payable, areas to be allotted, work requirements, work plans, inspection, revocation of licences, integrity of investments, notice to mariners and other safety procedures. On the other hand, the Group may decide to omit them from Part I of the Articles.]

XIII. GENERAL NORMS REGARDING EXPLOITATION

AS MANAGEMENT AIMS OR GUIDELINES

[The Authority established pursuant to Article ...] [shall have exclusive jurisdiction [to administer] [over] the Area and its resources for mankind as a whole and] [shall provide for] [inter alia] the orderly and safe development and rational management of the Area and its resources and for expanding opportunities in the use thereof, and ensure the equitable sharing by States [Contracting Parties] in the benefits derived therefrom taking into particular consideration the interests and needs of the developing countries, whether landlocked or coastal.]

[In the exercise of its powers the Authority shall at all times take duly into account the primary purpose of promoting the development of developing countries inter alia *by (a) avoiding or compensating, where necessary, possible adverse effects of exploitation of any part of the Area on such development, (b) contributing an appropriate part of its revenues to such development, and (c) furthering participation of developing countries in the activities undertaken by it or on its behalf. Sharing of benefits shall be equitable and, in principle, related to need, taking into consideration [the stage of economic development of each Member State.]] [existing levels of development as well as potential for development of the developing countries.]*

[The Authority and the Contracting Parties shall pay due regard to the need for minimizing adverse effects of the development of the seabed resources on the prices of land-based minerals.][2]

AS OBJECTIVES OBLIGATIONS WITH RESPECT TO EXPLORATION AND EXPLOITATION

[The exploration of the Area and the [development and] exploitation of its resources shall be carried out in an orderly, safe and rational manner, so as to provide for] expanding opportunities in the use thereof, and to ensure the equitable sharing by States [Parties] in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether landlocked or coastal.]

[Exploitation of the resources of the Area shall be carried out in a rational manner so as to ensure their conservation and to minimize any fluctuation in the prices of minerals and raw materials from terrestrial sources that may result from such exploitation and adversely affect the exports of the developing countries.]

[The benefits obtained from exploitation of the resources of the Area shall be distributed equitably among all States [Parties], irrespective of their geographical location, giving special consideration to the interests and needs of developing countries, whether coastal or landlocked.][3]

[The proceeds from any tax levied by a State in connection with activities relating to the exploitation of the Area, either in respect of profits realized, services provided or equipment and materials supplied, or in respect of remuneration or interest received, by individuals or bodies corporate under its jurisdiction shall be paid by the State to the Authority for distribution among the developing countries].

At the 77th meeting, on 30 March, the representative of Kuwait introduced a draft decision (A/AC.138/L.11), consideration of which was deferred until the Second Session. A revised proposal (A/AC.138/L.11/Rev.1) was reintroduced by the representative of Kuwait on 14 August 1972.[4] When introducing the revised text, the delegate of Kuwait declared that the submission of the proposal had been motivated by the evidence of operational activities undertaken by certain States in the international area. Such actions, according to him, were contrary to the General Assembly resolution 2574 (XXIV)[5] and General Assembly resolution 2749 (XXV)[6], as well as UNCTAD resolution 52 (III): "The Exploitation, for Commercial Purposes, of the Resources of the Seabed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction."[7] No action was taken by the Committee on this draft decision.

End Notes

[1] *Statement by the Vice-Chairman of Sub-Committee I on Item 2 of the work programme: "Status, scope, functions and powers of the international machinery" at the 55th meeting* held on Friday, 4 August 1972, (A/AC.138/SC.I/L.17).

[2] With reference to the three paragraphs above, the USSR delegate referred to the explanatory note to Article 9 of the provisional draft articles submitted by the USSR, reproduced in Section 11 of the Comparative Table (p.34 of the English text).

[3] It was noted in the original texts (A/AC.138/L.18/Add.3) that "the Group may wish to consider whether to set out here, as is done for example, in the U.S. draft, Art. 5(1), the basic principles of benefit-sharing, or to deal with this subject in a subsequent chapter of the Articles."

[4] For the revised proposal originally issued as A/AC.138/L.11/Rev.1, *see Official Records of General Assembly: Twenty-seventh Session*, Supplement No. 21 (A/8721), New York, 1972, Draft decision submitted by Algeria, Brazil, Chile, China, Iraq, Kenya, Kuwait, the Libyan Arab Republic, Mexico, Peru, Venezuela, Yemen and Yugoslavia, p.69.

[5] United Nations General Assembly resolution, A/RES/2574 (XXIV), 15 January 1970, *Question of the reservation exclusively for peaceful purposes of the seabed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind.*

[6] United Nations General Assembly resolution, A/RES/2749 (XXV), 28 January 1971, *Declaration of Principles Governing the Seabed and the Ocean Floor and the Subsoil Thereof, beyond the Limits of National Jurisdiction.*

[7] Proceedings of the United Nations Conference on Trade and Development, Third Session, 13 April-21 May 1972, Vol. 1. United Nations, New York, 1973, p. 79.

IV. TWENTY-SEVENTH SESSION OF THE GENERAL ASSEMBLY (1972)

The report of the Seabed Committee on the work of its 1972 Sessions was considered in the First Committee of the General Assembly at its 1903rd to 1909th meetings, from 27 November to 4 December, at its 1911th to 1915th meetings from 5 to 7 December, and at its 1918th meeting, on 11 December 1972.

Following are the views expressed by delegations in the debate in the Committee which are relevant to the international machinery and the Enterprise:

(a) POLAND

The Polish delegation, for one, has put forward in its working paper (A/AC.138/44) the concept of a "developing organization," that is, an organization expanding its functions and powers as well as its organizational structure in various stages according to the growing needs.

It is our submission that such a "developing organization" could be a reasonable compromise between the attitude of those States which want that organization to have relatively wide powers and that of those which are in favour of an organization of a rather limited competence in order to avoid creating a bureaucratic and expensive international structure.[1]

(b) KUWAIT

... My delegation has consistently advocated establishing an international machinery with comprehensive powers and extensive regulatory and operational functions. The international machinery would act as the administrator of a trust for the benefit of mankind as a whole. The international machinery should organize, administer and control all activities in the seabed area so as to ensure its rational exploitation. It should also prevent abuse, waste and mismanagement. It should establish an order of priority based on the requirements of world development, taking into account the special situations of developing countries which produce minerals of a non-renewable and wasting character. It should enforce a ceiling on the production of minerals of which a surplus exists in world markets.

In addition to the equitable sharing of benefits among all States, especially the developing countries, we should like the international machinery to allocate a reasonable proportion of the benefits derived from seabed exploitation for the purpose of international development within the framework of the United Nations system and to help the world organization solve its present financial crisis and avoid its recurrence.[2]

(c) GHANA

... The question of the regime and machinery is one of the most complex in the range of issues under consideration by the Seabed Committee, and the fact that some broad framework has begun to emerge is a tribute to the diligent work of the Group dealing with it.

In our view, there seems to be a consensus that:(1) there is an area beyond national jurisdiction that is to be reserved for peaceful purposes for the benefit of mankind, particularly the developing countries; (2) the resources of the Area are the common heritage of mankind; and (3) the exploration and exploitation of the resources of the seabed area and the ocean floor beyond the limits of national jurisdiction should be governed by an international regime and regulated by international machinery with strong and comprehensive powers, including perhaps the power to engage in exploitation activities through a system of joint ventures with Member States.[3]

The United Nations General Assembly resolution 3029 B (XXVII), adopted on 18 December 1972, on the Law of the Sea item (1) during the Twenty-seventh Session, contained the following provisions which are of relevance to the international regime and machinery:

THE GENERAL ASSEMBLY,

Recalling its resolution 2749 (XXV) of 17 December 1970, containing the Declaration of Principles Governing the Seabed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction,

Noting that, in the said Declaration, the General Assembly declared, inter alia, *that the exploration of the area of the seabed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the Area) and the exploitation of its resources should be carried out for the benefit of mankind as a whole, and that an international regime applying to the Area and its resources and including appropriate international machinery should be established,*

...

4. Declares that nothing in the present resolution or in the study shall prejudice the position of any State concerning limits, the nature of the regime and machinery or any other matter to be discussed at the forthcoming United Nations Conference on the Law of the Sea.[4]

End Notes

[1] A/C.1/P.V. 1905, 29 November 1972, pp. 26-27.

[2] A/C.1/P.V. 1908, 1 December 1972, pp. 28-29.

[3] A/C.1/P.V 1909, 7 December 1972, p. 8.

[4] *"Reservation exclusively for peaceful purposes of the seabed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and use of their resources in the interests of mankind, and convening of a conference on the law of the sea." Resolutions adopted by the General Assembly during its Twenty-seventh Session, Official Records of the General Assembly: Twenty-seventh Session,* Supplement No. 30 (A/8730), p. 22. The resolution was adopted on the basis of the draft resolution under the same title as recommended by the First Committee in its report (A/8949, 16 December 1972, pp. 16-19).

V. COMMITTEE ON THE PEACEFUL USES OF THE SEABED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION (1973)

The Seabed Committee held its 1973 Sessions in New York from 5 March to 6 April and in Geneva from 2 July to 24 August. In view of the close links that existed between the two items on Sub-Committee I's programme of work - the regime and the machinery - it was decided to entrust the Working Group on the International Regime established during the 1972 Session of the Seabed Committee with the task of dealing with the matters included in item 2 of the programme of work, on the international machinery.[1]

In the March-April Session in 1973 the Working Group completed its second reading of texts relating to the international regime. In addition, it began consideration of a working paper relating to the international machinery. Consideration of the texts relating to the international machinery was continued during the July-August Session.

With regard to the international machinery, the Working Group carried out a first reading of texts concerning the following subjects: establishment of international machinery; nature of the Authority; status of the Authority; operation of vessels and emplacement of installations by the Authority; installations and other facilities for the exploration of the Area and the exploitation of its resources; privileges and immunities; relationships with other organizations; fundamental principles of the functioning of the Authority; purposes of the Authority; powers and functions of the Authority; principal organs of the Authority; the Assembly; powers and functions of the Assembly; the Council; powers and functions of the Council; the system of settlement of disputes (including the Tribunal); the Enterprise; the Operations Commission; the International Seabed Operations Organization; the Exploration and Production Agency; the Exploitation Commission; the Secretariat; the Rules and Recommended Practices Commission; the Planning/Price Stabilization Commission; the Scientific and Technological Commission; the Legal Commission; the International Seabed Boundary Review Commission; the Inspection and Conservation Commission; and miscellaneous provisions.[2]

The Working Group completed its second reading of texts concerning the following subjects: the Assembly; powers and functions of the Assembly; the Council; powers and functions of the Council; the system of settlement of disputes (including the Tribunal); the Enterprise; the Operations Commission; the Permanent Board; the Management and Development Commission; the International Seabed Operations Organization; the Exploration and Production Agency; and the Exploitation Commission.[3]

The Working Group, in discharging its mandate, attempted to reflect areas of agreement and disagreement concerning all those items in the series of texts. Square brackets were used and alternative texts prepared in order to indicate areas where it did not prove possible to accommodate views in a single text. It

should be noted (a) that the Working Group did not take a decision concerning headings or margin notes, or the question of the eventual position of texts; (b) that some members expressed reservations as to whether certain subjects dealt with in the texts fell within the terms of reference of the Working Group; and (c) that some members did not consider the matters covered by the texts as necessarily exhaustive.[4]

In the Working Group it was considered that there were a number of additional matters which might need to be dealt with. They could include general rules and regulations regarding exploration of the Area and exploitation of its resources, which, according to the type of administration adopted as regards exploration and exploitation, might cover such subjects as notice to mariners and other safety procedures, areas to be allotted, work requirements, work plans, inspection, service contracts, licensing, joint ventures, fees payable, revocation of service contracts, revocation of licences; integrity of investments; regional arrangements; the participation of disadvantaged countries; the statute of the Tribunal; criteria for the sharing of benefits; the parties of the treaty and other final clauses; and transitional provisions. The list was not accepted in its entirety by all delegations.[5]

The Chairman of the Working Group made periodic reports to the Sub-Committee on the progress made in the Working Group. Those reports, which represented the personal views of its Chairman and were not binding on any delegation, were by decision of the Sub-Committee reproduced *in extenso* in the records for the 70th and 73rd meetings. The Chairman's final report is in the records of the 75th meeting of the Sub-Committee.[6]

The excerpts from the texts prepared by the Working Group which are of relevance to the Enterprise are reproduced below:

TEXTS ILLUSTRATING AREAS OF AGREEMENT AND DISAGREEMENT ON ITEMS 1 AND 2 OF THE SUB-COMMITTEE'S PROGRAMME OF WORK [7]

EXPLANATORY NOTE

Part I of this document contains draft articles relating to item 1 of the Sub-Committee's programme of work, entitled "Status, scope and basic provisions of the regime, based on the Declaration of Principles (resolution 2749 (XXV))." Part II contains draft articles relating to item 2 of the Sub-Committee's programme of work, "Status, scope, functions and powers of the international machinery."

Draft articles with Arabic numerals have received a second reading by the Working Group, while draft articles with Roman numerals and draft article "O" on [Interpretation] [Definition] have only been the subject of a first reading and may not necessarily reflect with accuracy the various views within the Working Group.[8]

[(UNITED NATIONS) CONVENTION ON THE SEABED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION]

PART I: [BASIC][FUNDAMENTAL][GENERAL] PRINCIPLES

...

9. WHO MAY EXPLOIT THE AREA

(A)

All exploration and exploitation activities in the Area shall be conducted by a Contracting Party or group of Contracting Parties or natural or juridical persons under its or their authority or sponsorship, subject to regulation by the Authority and in accordance with the rules regarding exploration and exploitation set out in these articles.

OR (B)

All activities of scientific research and exploration of the Area and exploitation of its resources and other related activities shall be conducted by the Authority directly or, if the Authority so determines, through service contracts or in association with persons natural or juridical.

OR (C)

All exploration and exploitation activities in the Area shall be conducted by the Authority either directly or in such other manner as it may from time to time determine. If it considers it appropriate, and subject to such terms and conditions as it may determine, the Authority may decide to grant licences for such activities to a Contracting Party or group of Contracting Parties or through them to natural or juridical persons under its or their authority or sponsorship, including multinational corporations or associations.

Licences may also be issued for this purpose to international organizations active in the field, at the discretion of the Authority.

OR (D)

All exploration and exploitation activities in the Area shall be conducted by a Contracting Party or group of Contracting Parties or natural or juridical persons under its or their authority or sponsorship, subject to regulation by the Authority and in accordance with the rules regarding exploration and exploitation set out in these articles. The Authority may decide, within the limits of its financial and technological resources, to conduct such activities.

PART II: INTERNATIONAL MACHINERY

...

38 to 44. THE ENTERPRISE

1. The Enterprise shall be the organ of the Authority responsible for carrying out all technical, industrial and commercial activities relating to the exploration of the Area and the exploitation of its resources, whether on

its own account or under contracts of operation and/or association and/or joint ventures with juridical persons.

2. The Enterprise shall have an independent legal personality for the purpose of carrying out the activities referred to in article 1.

(a) It shall have full authority to conclude contracts except those which under this agreement, shall be subject to approval by the Council.

(b) It may acquire such movable or immovable property as may be necessary for the efficient performance of its functions.

(c) It shall have financial autonomy for the purpose of performing its functions.

3. The management and administration of the Enterprise shall be the responsibility of a Governing Board consisting of seven members.

4. The members of the Governing Board shall elect from among their number the President and Vice-Presidents of the Board and shall adopt its rules of procedure.

5. The decisions of the Governing Board shall be adopted by simple majority.

6. The Governing Board shall recruit whatever technical and administrative staff it may need for the performance of its functions.

7. The Enterprise shall submit annual reports to the Council and shall prepare such reports as may be requested of it by the Assembly.

8. The Enterprise shall be empowered to exploit the Area on its own account. This right shall be subject to the approval by the Council of a plan of exploitation.

9. The Enterprise shall request from the Council authorization to conduct any negotiations (with other juridical persons) that have as their purpose the exploitation of the Area.

10. The Enterprise shall be empowered to prepare drafts of contracts of operation and to initiate negotiations with a view to establishing joint ventures for the performance of activities within its competence in specified parts of the Area.

11. (Question relating to the budget of the Enterprise).[9]

End Notes

[1] *Report of the Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction, Vol.1, Official Records of the General Assembly, Twenty-eighth Session, Supplement No.21 (A/9021), pp. 17-37.*

[2] Ibid, pp.21-22, para.41.

[3] Ibid, p.22, para.42.
[4] Ibid, p.22, paras 45-46.
[5] Ibid, p.22, para.47.
[6] Ibid, p.21, para.37.
[7] For full text *see* Annex I: Report of Sub-Committee I, *Report of the Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction, Vol.2, Official Records of the General Assembly: Twenty-eighth Session,* Supplement No.21(A/9021), pp. 39-165, originally issued as A/AC.138/94/Add.1.
[8] Ibid, p.47.
[9] Ibid, pp.137-138. As elaborated under footnote no.60 on page 138, "the view was expressed that the above article concerned the operational arm of an Authority which would carry out all the activities related to exploration of the Area and the exploitation of its resources, either on its own or in association with third parties. As such, it bore only a formal resemblance to the so-called 'alternatives' under headings 38 to 44 below. Those 'alternatives' texts flowed from proposed systems of an essentially different nature, since they would allow through *inter alia* the issuance of licences, activities (in some cases all activities) to be carried out by parties other than the Authority and only partially under its control. Hence, supporters of the above articles did not consider any of the following texts to be an alternative in any real sense. Another view was expressed that all the proposals contained in the subsequent articles were in fact viable alternatives to the Enterprise."

VI. TWENTY-EIGHTH SESSION OF THE GENERAL ASSEMBLY (1973)

The report of the 1973 Session of the Seabed Committee was considered in the First Committee at its 1924th to 1933rd meetings from 15 to 22 October, its 1936th and 1937th meetings on 25 October, its 1939th meeting on 26th October, its 1946th meeting on 5 November and its 1948th meeting on 6 November 1973.[1]

Following are the views expressed by delegations in the discussion which are of relevance to the international machinery and the Enterprise.

(a) FEDERAL REPUBLIC OF GERMANY

... The Federal Republic of Germany supports the efforts to establish an effective international machinery for the seabed. It will be the task of such a machinery to protect the common interests of all peoples in the resources of the international ocean space and to make the economic benefits derived from marine resources accessible to the developing countries as well. To this end, the machinery will have to rely on the political co-operation and support of as large a number of States as possible. Its structure should be such as to enable it to function effectively and also to generate funds which will be available for promoting general progress, especially in the countries of the third world.

The best way of attaining that aim seems to be for the machinery to promote the use of the most modern marine technology and to levy an adequate charge thereon, without itself assuming the economic risks of deep-sea mining.[2]

(b) GERMAN DEMOCRATIC REPUBLIC

... The delegation of the German Democratic Republic holds the view that the fundamental question of the seabed regime needs thorough discussion and that after these questions are settled it may be possible to negotiate on setting up a seabed organization. As far as the general purpose of the organization is concerned, it should focus on matters of principle related to the seabed and its subsoil and should comprise only non-commercial functions.[3]

(c) COLOMBIA

... Without going into the substantive questions, I think it would be appropriate to refer to two examples that allow us to assess how great has been the progress in the preparation for a future conference.

... Another example of the items submitted to Sub-Committee 1 that can be cited is the idea of creating a corporation or enterprise for the exploration and exploitation of the seabed. At the end of the last session in Geneva, it seemed to be generally accepted that initiative could be termed one of the crucial points of the future Conference.[4]

(d) BULGARIA

... It would of course be wrong to assert that the Committee made no progress at all in preparing an international regime and in the laying down of bases for a status of international machinery.

... however, we could not get the impression even, much less the conviction that the Committee had actually discharged its functions. The draft tests that have been prepared on the establishment of an international regime and the creation of an international machinery, on the whole, represent five or six alternative versions that reflect the positions of individual States on questions which should be the subject of an international legal regulation acceptable to all. The vital problems connected with the development of the legal content of the concept of the common heritage, with the definition of the scope of an international regime, with the establishment of the structure of international machinery and with the correlation of the powers and functions of its organs, and so on, continue to be the subject not only of legal and technical but also political controversy. That is why the texts illustrating the fields in which agreement has been achieved, or in which there are differences, are really an embryo of the draft articles of a treaty on the establishment of an international regime and the creation of international machinery for the seabed and the ocean floor beyond the limits of national jurisdiction, which the Committee had the task of presenting to the Conference on the Law of the Sea.[5]

(e) TUNISIA

...my delegation nevertheless feels that substantive progress has been achieved in the consideration of the many and complex problems of the new law of the sea to be established, since the work of the Committee has successfully brought out certain guidelines….

... There also has been brought out the idea of co-operation or enterprise *that would exploit the Area under adequate international machinery.*[6]

On 16 November 1973 the General Assembly adopted at its Twenty-eighth Session resolution 3067 (XXVIII) on the law of the sea item.[7] It was decided under the resolution to convene the First Session of the Third United Nations Conference on the Law of the Sea and establish the mandate of the Conference. The mandate of the Conference was to adopt a Convention dealing with all matters relating to the law of the sea, taking into account the subject matter listed in paragraph 2 of General Assembly resolution 2750 C (XXV)[8] and the list of subjects and issues relating to the law of the sea formally approved on 18 August 1972 by the Seabed Committee.[9]

End Notes

[1] *Report of the Committee on the Peaceful Uses of the Seabed and Ocean Floor beyond the Limits of National Jurisdiction, Volumes 1-6, Official Records of the General Assembly, Twenty-eighth Session, Supplement No.21 (A/9021).*

[2] *Provisional Verbatim Record of the Nineteen Hundred and Twenty-sixth Meeting, First Committee, United Nations General Assembly, Twenty-eighth Session,* A/C.1/PV.1926, 16 October 1973, p.11.

[3] *Provisional Verbatim Record of the Nineteen Hundred and Twenty-seventh Meeting, First Committee, United Nations General Assembly, Twenty-eighth Session,* A/C.1/PV.1927, 17 October 1973, pp. 4-5.

[4] *Provisional Verbatim Record of the Nineteen Hundred and Twenty-Eighth Meeting, First Committee, United Nations General Assembly, Twenty-eighth Session* A/C.1/PV.1928, 18 October 1973, p. 28.

[5] *Provisional Verbatim Record of the Nineteen Hundred and Thirtieth Meeting, First Committee, United Nations General Assembly, Twenty-eighth Session,* A/C.1/PV.1930, 19 October 1973, p. 12.

[6] *Provisional Verbatim Record of the Nineteen Hundred and Thirty-second Meeting, First Committee, United Nations General Assembly, Twenty-eighth Session,* A/C.1/PV.1932, 22 October 1973, p. 37.

[7] *Resolution 3067 (XXVIII) of the General Assembly of the United Nations Convening the Conference,* adopted on 16 November 1973 at the 2169th Plenary meeting of the Third United Nations Conference on the Law of the Sea ("the UNCLOS III"), Official Records, Vol.1, Summary Records of Meetings, p.vii.

[8] *Resolutions Adopted by the General Assembly [on the Report of the First Committee (A/8097)]: Reservation Exclusively for the Peaceful Purposes of the Seabed and the Ocean Floor, and the Subsoil thereof, Underlying the High Seas beyond the Limits of Present National Jurisdiction, and Use of Their Resources in the Interests of Mankind, and Convening of a Conference on the Law of the Sea,* adopted at the 1933rd Plenary meeting on 17 December 1970, A/RES/2750 (XXV), 14 January 1971.

[9] For the "list"*, see Report of the Committee on the Peaceful Uses of the Seabed and Ocean Floor beyond the Limits of National Jurisdiction, Official Records of the General Assembly, Twenty-eighth Session,* Supplement No.21 (A/8721), pp.4-8, paragraph 23.

PART TWO

WORK OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

I. FIRST AND SECOND SESSIONS OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA (NEW YORK, 3–15 DECEMBER 1973, CARACAS, 20 JUNE-29 AUGUST 1974)

The First Session of the Third United Nations Conference on the Law of the Sea ("UNCLOS III") was devoted to procedural matters. It was decided that three main committees would be established to deal with the subjects covered by the three Sub-Committees of the Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction. Therefore, the First Committee of the Conference would take over the subjects handled by Sub-Committee I of the Seabed Committee.[1]

At its 15th meeting on 21 June 1974, during the Second Session of UNCLOS III, the Conference, on the recommendation of the General Committee, decided to allocate the subjects and issues which had been prepared in accordance with General Assembly resolution 2750C (XXV)[2] to the First Committee as follows:

Item 1: International regime for the seabed and ocean floor beyond national jurisdiction

- 1.1 Nature and characteristics
- 1.2 International machinery: structure, functions, powers
- 1.3 Economic implications
- 1.4 Equitable sharing of benefits bearing in mind the special interests and needs of the developing countries whether coastal or landlocked.
- 1.5 Definition and limits of the Area
- 1.6 Use exclusively for peaceful purposes[3]

Item 23: Archaeological and historical treasures on the seabed and ocean floor beyond the limits of national jurisdiction.[4]

From the 21st meeting to the 42nd, 46th and 48th meetings, general statements were made in the Plenary. A certain number of delegations expressed their views regarding the international regime and the Enterprise. Following are excerpts of the relevant views expressed.

(a) The representative of **Iran** stated that the powers of the International Authority should be as wide as possible. It should not only have the right to

undertake directly the exploration and exploitation of the resources of the international zone but also be empowered to resolve all problems arising from such operations.

As to the structure of the Authority, his delegation felt that the supreme power must rest with a general assembly made up of representatives of all Member States. Machinery must be established to carry out technical, industrial and trade activities related to the exploitation of the international zone. In fact it would amount to the establishment of a real semi-commercial "Enterprise." The Authority might possibly grant exploitation licences to other entities.[5]

(b) The representative of **Egypt** said that the exploration and exploitation of the resources of the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction should be carried out for the benefit of mankind as a whole, in accordance with the principle embodied in General Assembly resolution 2749 (XXV). It was in the interests of the whole international community to agree upon an equitable distribution of the resources of the seas and oceans, rather than allow the continuing exploitation of the developing nations by the developed nations. His delegation would never approach the issue from a purely national point of view but would always take account of the universal dimensions of the question. He therefore supported the creation of an international regime with the necessary economic and technical capacity for exploiting marine resources beyond national jurisdiction and distributing them equally among all nations. The international machinery established under such a regime should have legal personality. Its principle organ should be an Assembly with representatives of all States Parties to the Convention, which would be a truly democratic organ and the chief repository of power. An executive council with limited membership would represent all geographical regions and all different interests on an equitable basis. Each Member State would have one vote. Operations relating to the exploration and exploitation of resources of the Area beyond national jurisdiction would be carried out by a competent body under the direct and effective control of the Assembly.[6]

(c) The representative of **Sweden** said that the Declaration of Principles was not complete, however, and did not provide any guidance on who should exploit the resources of the zone. Some had suggested that exploitation should be carried on directly by the proposed International Seabed Authority or, if the Authority so decided, under contract or in co-operation with States or companies, while others had felt that exploration and exploitation should be carried on by States or individuals. His Government believed that the Authority should grant permits for the exploration and exploitation of the resources of the international zone, but that it should also be able to engage in exploration and exploitation directly in co-operation with States or individuals. A flexible solution giving the Authority extensive powers would mean that the best technological and financial approach could be made to each project, thus providing optimum economic advantages for the benefit of all mankind. His delegation attached considerable importance to the question of the distribu-

tion of the benefits derived from the zone and its resources. Particular account should be taken of the interests of the developing countries and of the need to find some means of reducing to a minimum the effect of exploitation on the situation of developing countries which produced raw materials. That was a question that should be dealt with by the Authority itself, which should be given as much independence as possible to manage its own affairs. The Convention should merely provide general guidelines.[7]

(d) The representative of **India** said that the definition of the basic principles governing the international seabed area and its resources would not present much difficulty as the general principles had already been unanimously approved by the General Assembly in resolution 2749 (XXV). He shared the majority view that the proposed International Seabed Authority should, in the initial period, be a simple organization consisting of an assembly representing all Member States, a smaller Council which would supervise the work of the Authority under the overall control of the Assembly, a corporation conducting the exploitation of the seabed resources, and a secretariat recruited on the basis of geographical representation. No single State or group of States should have a preferential position in any decision-making organ of the Authority, and the basis of representation should be geographical, not functional or political. The Authority should have comprehensive powers, and it should be entitled to decide whether to exploit the resources of the international seabed area directly, or by entering into contracts with the competent international or other corporations, or by any other means, without sacrificing its effective supervision and control over the entire operation. The resources of the seabed, the common heritage of mankind, should remain vested in the Authority, and the rights of any operator should derive from a contract rather than from any other source such as a simple licence to explore the Area. The Authority should also be competent to regulate the production of seabed minerals and to protect the interests of producers and consumers of those minerals. It should determine how the benefits derived from the exploitation of the seabed resources should be distributed among the various States and how seabed technology would be transferred to the developing countries.[8]

At its first meeting on 10 July 1974, the Chairman of the First Committee proposed to hold a short opening debate, after which the Committee would be converted into an informal body of the whole to examine the material sent forward from the Seabed Committee with a view to eliminating brackets and alternatives in the documents thus providing a basis for realistic negotiations later.[9]

During the general discussion, a number of delegations expressed their views regarding the international regime and the Enterprise.

(a) The representative of **Peru** stated that his country was in favour of the creation of an International Authority responsible solely for exploitation of the resources of the international area. That was the position set forth by 13 Latin American delegations, including that of Peru, in working paper A/AC.138/49 submitted to the Preparatory Committee in 1971. That position

had later been taken up in the Preparatory Committee by the African and Asian countries.

At the other extreme was the position of various industrialized countries which with varying shades of difference were in favour of exploitation of the international area by a system of licences granted without discrimination to national or transnational firms, or to States. A variation of that method was to grant States exploitation licences for specific zones.

His delegation realized that the industrialized countries, many of which had firms capable of carrying out exploration and exploitation in the near future, were anxious to facilitate access to the Area for those firms, but it did not consider that that would faithfully reflect the Declaration of Principles Governing the Seabed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction in the proposed Convention: indeed his delegation had made it clear that a system of licences would not allow for the joint management which was the essential and perhaps revolutionary aspect of the common heritage. Moreover, the work of the Seabed Committee in 1973 had shown that there was no prospect of such a system being adopted, since a large majority of States were opposed to it.

Towards the end of the last Session of the Preparatory Committee, however, a new trend had emerged on the part of certain industrialized States, in favour of maintaining a system of licences but accepting in principle that the Authority could carry out direct exploration and exploitation in the Area in association or through contracts with other legal entities. Public or private enterprises could thus operate in the Area in two ways: under licence or under contract with the Authority. That was merely an ingenious method of ensuring access to the Area for firms, while giving superficial satisfaction to the developing countries which favoured an operational and representative Authority with the necessary means of control over the Area.

His delegation did not believe that such a proposal, which had been submitted as a compromise, really was a compromise between two extreme positions. The Authority would obviously not survive competition from a system of licences. Furthermore, that solution would be contrary to Peru's position of principle, based on the Declaration of Principles, and would also be impracticable.

The industrialized powers' difficulty in accepting an operational Authority was due to the fact that it would mean an end to the existing international division of labour between developing and developed countries. The main overt objection to an operational Authority was that it would need vast funds and technical means which were beyond its scope. That would be so if those who possessed the funds and techniques – the industrialized countries – failed to place them at the disposal of the Authority. For that very reason the developing countries would be willing, without giving up their ideals, to allow bodies possessing capital and techniques to participate in the seabed activities until such time as the Authority could assume direct responsibility for such activities. The Authority's contribution to such a co-operative undertaking would be the Area's resources which it possessed in the name of all mankind.

The Authority should, however, control operations under appropriate contracts with the participating bodies. His delegation would accept their participation only on that condition.

The Authority should include an operating body, to be called the Enterprise, which would be responsible for technical liaison with the participating bodies and for carrying out voting system for the composition of the subsidiary bodies and the executive body which could be called the Council.[10]

(b) The representative of **Canada** said that with respect to the type of body within the Authority that would undertake decisions on the exploitable mineral resources, despite differences that seemed more apparent than real, one gathered that there was a consensus in favour of a body which would enter into contracts with competent entities, on behalf of the Authority, for the exploration and development of the resources of the Area, especially since the Authority would not be in a position to act on its own at the outset.

Whether the contracts were called permits, licences, agreements or joint ventures, it was the substantive content that was important, and there would appear to be various interpretations concerning the definition of such terms.[11]

(c) The representative of **Chile** said that the draft submitted by the Latin American countries in document A/AC.138/49, which in general corresponded to the African texts and to the definition submitted by the Group of 77 and presented at the 25th Plenary meeting by the representative of Kenya, provided for an Authority, entrusted with controlling exploration and exploitation, and empowered to undertake direct exploration to control both the whole process of marketing and the arrangements for the distribution of profits, to combat pollution and to control scientific research within the Area. The Authority would also be entrusted with distributing the profits, preserving the marine environment, promoting the development of the Area, and undertake planning and the transfer of science and technology. The Latin American text also provided for an "enterprise" that would itself be empowered to exploit the Area or to call in other enterprises or establish joint companies to exploit the resources.

His country considered that such a system would enable the States concerned to participate in the various activities and would at the same time ensure effective control over the whole economic process. Under the licensing system recommended by certain delegations, there would be a risk of departing from the objectives of the Declaration of Principles by making it possible for the best part of the Area and its resources to fall very quickly under the control of large consortia which would not represent the interests of the developing countries.

His delegation reserved its right to state its views in greater detail on that point at the appropriate stage, and wished only to add that the draft Convention which had been considered and revised in second reading by the Working Group clearly reflected the main problems to be solved. The first concerned the powers of the Authority, which the developing countries - as well as scientists, intellectuals and various bodies that had studied the question - felt should be broad, under a strong regime.

In connection with those powers, the question arose as to who would exploit the Area and how it would be exploited: the developing countries had replied that they wished the Authority itself to assume responsibility for exploitation, either directly or by some other means to be determined by the Authority itself, but still under its control; and they had declared themselves to be in favour of the "Enterprise" to which he had referred. At the same time, the question had arisen as to who would control the Authority. Finally, certain delegations had sought to resolve in advance the problem of rules governing the relations between the Authority and those who would undertake the exploitation of the resources of the Area - a question which should not be tackled until the fundamental problems had been settled.[12]

(d) The representative of **Trinidad and Tobago** said that the fundamental issue before the Committee was the question of who should explore and exploit the international seabed area beyond the limits of national jurisdiction; the successful resolution of that issue would provide the basis for resolving all other issues pertaining to the international regime and machinery. To grasp fully the thrust of the question, it should be placed in its proper perspective by a consideration of how the international area could be explored and exploited in the interest of the international community whose heritage it was; and from that consideration would logically follow the question of who might explore and exploit the Area. There were two conceptual approaches to that issue: the first envisaged a strong International Authority with comprehensive powers, which would govern and control the Area and would by itself or in association with others, ensure the exploration of the Area and the exploration of its resources in the interest of the international community; the second provided for an intergovernmental organization with administrative status through which States and private enterprises could explore and exploit under contractual arrangements.

The draft submitted by 13 Latin American countries (A/AC.138/49), which the Trinidad and Tobago delegation had introduced in the Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction at Geneva in 1971, embodied the first approach and was currently receiving increasing support from a majority of developed countries. That approach sought to keep control over all activities undertaken in the international area and over all benefits from the Area in the interest of the international community; that did not, however, exclude outside co-operation with the Authority. The other approach provided for a relinquishing of control by the international community to States or private entities, thus subordinating common benefit to private interests. It would be very difficult to reconcile the implementation of a common heritage with profits derived from that heritage accruing to a small number of States and private entities. The main difference between the two approaches was the consideration of the locus of control and the extent of control for all activities deriving from the exploration and exploitation of the international area.[13]

(e) The representative of **Japan** stated that it followed from the notion of the common heritage that the resources of the seabed should be exploited in the most efficient and profitable manner possible. For that reason, the international organization which would be created should grant licences to contracting States which, in turn, would authorize physical or juridical persons, irrespective of their nationalities, to explore and exploit mineral resources in that part of the seabed area specified by the licences. Such a licensing system would make full use of the efficiency which characterized private entities and would be free of the disadvantages inherent in the bureaucracy that would develop if the exploitation were carried out directly or indirectly by an international organization. Moreover, in terms of the organization's budget, that system would be satisfactory. The choice of a system which granted the proposed Enterprise exclusive exploitation rights would inevitably entail setting up a costly organization, which would make the programme less profitable and would not serve the best interests of the international community as a whole.

The alternative of an Enterprise having a monopoly on the exploitation, run by experts from the developed countries, would not be conducive to that kind of situation. Individual States would be able to acquire the necessary competencies only by engaging in exploitation activities either directly or in association with the technologically advanced States or companies from those States. A State would be authorized to request only a limited number of licences over a specified period of time.[14]

(f) The representative of **Cuba** stated that the Cuban delegation began with the premise that the International Authority should have the exclusive right to exploit the Area either directly or through the intermediary of an Enterprise, irrespective of the fact there might be need during the initial stage for the assistance of developed countries. A licensing system would be incompatible with the notion of the common heritage since it would leave the Area to the mercy of companies whose methods were only too well known.[15]

(g) The representative of **Nigeria** felt that, as for the operational organ, the time had come to relinquish the two extreme proposals, the one envisaging exclusive exploitation of the resources by the Authority, and the other advocating an Authority that would merely license others to carry out exploitation. The first of those proposals would certainly delay effective exploitation for many years, while the second would divert the benefits of exploitation to a few. The only realistic approach to the problem would be to issue licences to competent States and organizations to exploit specified areas of the seabed beyond the limits of national jurisdiction. From the financial benefits derived from such licences and its share of the profits of the exploitation, the Authority could accumulate enough funds to start exploitation and exploration on its own later.[16]

(h) The representative of the **Federal Republic of Germany** said that the regime and the Authority would have the common function of ensuring the optimum utilization and most efficient management of the common heritage of mankind. The Authority, as the Chairman had said, would have immense political significance for the future. Consequently, the very costly development of

technology and the considerable investments required should not become an open-ended burden on the regime and the Authority. The problem could best be solved by States and companies, and the Authority should grant them, for limited periods and in limited areas, licences to explore and exploit the resources of the seabed and ocean floor.[17]

(i) The representative of the **United Kingdom** indicated that in 1971, the United Kingdom had tabled a detailed proposal for a licensing system. That proposal had not been supported and his delegation did not propose to press it at the Conference; however, after giving careful consideration to the alternative possibilities, it had concluded that a licensing system still remained the best way of achieving the objectives he had outlined. He therefore proposed that in order to prevent the Area and its resources from becoming the monopoly of a few highly developed nations, any licensing system should set a limit to the size of the Area which any licensee State would be entitled to exploit at any one time.[18]

(j) The representative of **Jamaica** said that the Committee's mandate rested on the Declaration of Principles, that is to say, the ten commandments laid down in General Assembly resolution 2749 (XXV). He had recalled those fundamental principles in order to bring out the true nature of the common heritage area, and of the regime and machinery essential to maintain its integrity. Once the fundamental postulates of the Declaration of Principles were accepted, the task of negotiating and formulating the necessary machinery fell into its true perspective. It was to be regretted that negotiation had frequently been conducted in the context of confrontation between developed and developing countries. In the present case, however, if they remained loyal to the commandments laid down in the Declaration, there could be no confrontation. The common heritage belonged to mankind as a whole and should be administered as such. The Conference should therefore decide, not who might exploit the common heritage, but how the heritage could be exploited for the benefit of mankind as a whole, with due regard to the interests and needs of the developing countries. For that reason some delegations had proposed that the resources of the Area should be exploited directly by the commercial arm of the Authority - the Enterprise. He hoped that negotiations would begin by abandoning such doctrinal concepts as "licensing," which were contrary to the concepts of the common heritage.[19]

(k) The representative of **Austria** was of the opinion that with regard to the legal system of exploration and exploitation of the Area, the International Authority should be given the opportunity to choose between the enterprise system and the licensing system, so that it could use the most efficient system depending on the needs of the time and the development of deep-sea mining technology.[20]

(l) The representative of **Poland** felt that on the question of who should exploit the Area, the Area should be open for activities by all States and other entities acting under their authority. Some delegations had suggested that the organization should have the exclusive right to explore and exploit the Area

and its resources, but that approach was not consistent with the Declaration of Principles, which provided that States should have direct access to the Area and directly exploit its resources. Moreover, if the organization alone was entitled to exploit the Area, that might delay the development of its activities. Big international monopolies which would prove the most powerful might also misuse that system and dictate their own terms to the organization. His delegation was ready to discuss the problem openly, and considered that the representative of Nigeria had made a constructive suggestion in proposing that the organization could begin by issuing licences and then, after accumulating sufficient funds, go into direct operational activities.[21]

(m) The representative of **Romania** said that the Committee's work on the regime for the international area, the common heritage of mankind, was made easier by the fact that several matters could be tackled on the basis of the Declaration of Principles. For example, there could be no question of an armaments race in an international area which was to be used exclusively for peaceful purposes, a principle which should be developed in the future Convention. The regime should also reflect the principle of the equality of States. The idea that the resources of the international area could be exploited by States or by private enterprises was not consistent with that principle and could neither guarantee the equitable distribution of the benefits derived nor safeguard the interests of the developing countries. The best solution would be to establish an International Authority with the necessary powers to manage and exploit the natural resources of the Area and with its membership open to all States.[22]

(n) The representative of **Colombia** said that the Convention should provide for the establishment of an assembly with legislative powers, in which no State would have a casting vote, an executive Council consisting of groups of technical advisers responsible for carrying out the decisions of the Assembly, the members of which would be elected for a term of two years, a Tribunal with the power to settle disputes which might arise in administering the exploitation of the Area, an Enterprise which would directly exploit the resources under the supervision of the Assembly and ensure the transfer of technology, and finally an administrative Secretariat.[23]

(o) The representative of **Kenya** felt it necessary to restate that the international machinery should have the power to undertake all exploration activities in the Area, the exploitation of its resources and all other related activities, either directly or in such ways as it deemed appropriate, while retaining direct and effective control at all times over such activities. Accordingly, in the view of his delegation, the following five organs should be established to constitute a strong authority: an Assembly - the plenary organ; a Council - the executive organ; an Enterprise - the operational organ; a Secretariat, to service all the organs of the Authority; and finally a Tribunal, for the settlement of disputes relating to the Convention.

With respect to the Enterprise, his delegation believed that any apprehension about the setting up of that organ might be dispelled if the text of the Convention itself were to include the conditions under which it would operate.

The Enterprise should be entrusted with the responsibility of arranging the appropriate modalities for the exploration and exploitation of the Area so as to ensure optimum recovery and to guarantee participation by the Authority at all levels of activities.[24]

(p) The representative of **Madagascar** stated that, with respect to the international regime and machinery to be set up, rules should be established to achieve the desired objectives. A weak machinery which would merely co-ordinate the activities of different States by issuing licences would merely perpetuate the *status quo* without meeting the need for an equitable sharing of the resources of the common heritage. Only an Authority representative of the entire international community and having wide powers could safeguard the real freedom of the high seas and the rational exploitation of the seabed for the benefit of all peoples without distinction. His delegation would prefer a business type of machinery which could explore and exploit the international area directly. That universal and democratic Authority must have real legislative and regulatory powers, and its structure and methods should not reflect artificial categories based on wealth and power.[25]

(q) The representative of **Switzerland** said that he did not believe that the competence of the Authority should be limited nor did he wish that it should operate in an exclusive manner with respect to the exploration and exploitation of the Area. The issuing of exploration and exploitation licences did not appear to be incompatible with the exercise by the Authority of similar activities or with the concept of the common heritage of mankind, inasmuch as those licences would be issued under conditions guaranteeing that the exploitation would be carried out within the framework of applicable principles.[26]

(r) The representative of **Sweden** said that previous speakers had expressed different views on the question of who should exploit the resources of the Area. His delegation was in favour of an Authority empowered to issue licences for the exploration and exploitation of the natural resources of the seabed and its subsoil, such licences being granted, in principle, directly to States, but possibly also to natural or juridical persons furnished with the necessary guarantees. The Authority should also be empowered to carry out such exploration and exploitation activities themselves, either on its own or in joint ventures with States or public or private companies. The sooner the Authority was able to engage successfully in such activities, the sooner there would be a real balance between the Authority and the technologically most advanced States and companies.[27]

(s) The representative of **Thailand** stated that with regard to the structure of the International Authority, he had no objections to its being made up of four or five principal organs, namely an Assembly, a Council, an operating arm, a Secretariat, and a machinery for the settlement of disputes; the functions of those organs would have to be defined in the Convention.[28]

(t) The representative of **Nepal** stated that the Authority should have comprehensive powers so as to ensure that the exploration, exploitation and management of marine resources would benefit all mankind. It should carry out

the work of exploration and exploitation directly but, during an interim period, it could be authorized to work in collaboration with other specialized agencies or to grant licences to States, individuals or bodies corporate to carry out such work on a revenue-sharing basis.[29]

(u) The representative of **Denmark** said that of the three systems of exploration for the exploitation of resources contained in the draft articles prepared by the Working Group of Sub-Committee 1 of the Seabed Committee, his delegation favoured a mixed system under which the International Authority, States and private companies would all be given an opportunity to exploit marine resources. Although it might seem natural to confer exclusive rights of exploitation on the Authority, it had to be admitted that the technological skill and financial means required were available in only a few of the most developed countries. The regime must take that fact into account and must level out as fast as possible existing differences in capabilities. The system should provide the transfer of technology to the Authority, possibly as a condition of granting licences. The distribution of revenues from the Authority should not begin before it had amassed sufficient capital for seabed exploitation. The licensing system proposed by the representative of the United Kingdom would ensure the orderly development of seabed resources and would reserve areas of the seabed for later exploitation by the Authority and by countries which did not yet possess the necessary technological or financial means.[30]

(v) The representative of **Philippines** said that the International Authority must be effective, it must function under a mandate given by all States, it should have authority to exploit resources directly, and its decision-making and legislative powers must not be subject to veto by any State. Its effectiveness would depend on its ability to ensure the orderly and safe development and rational management of the Area and its resources. It must ensure that States would receive equitable shares in the benefits from the Area, taking into consideration the interests and needs of the developing countries in keeping with the Declaration of Principles contained in General Assembly resolution 2749 (XXV).

The Authority should have the right of direct exploitation although, in the early stages, it should be authorized to grant exploration licences.[31]

(w) The representative of **Portugal** said that with regard to the structure, functions and powers of the future international machinery, he advocated the earliest possible establishment of a powerful International Authority within which the contracting parties to the Convention would jointly and democratically manage the international seabed area and its resources on the basis of equality and mutual benefits. The Authority should discharge its regulatory duties for the exclusive benefit of the peoples of all countries and should not only systematically develop and manage the Area, but also ensure the equitable sharing by all States of the benefits derived from the exploitation of its resources, taking into particular consideration the interests and needs of the developing countries. The Authority should be vested with such functions and the fulfilment of its purposes. It should consist of an Assembly comprising

representatives of all the contracting States, which would be the supreme organ, exercising control with a more restricted membership which should formulate policies and submit them to the Assembly; an Enterprise entrusted with the exploitation of the Area; and, lastly, a Secretariat and a Tribunal.[32]

(x) The representative of **Mexico** stated that the Authority should consist of a non-discriminatory and democratic plenary Assembly, which would formulate general policy to govern the activities of the Authority; a Council with restricted membership but which would be representative of the various interests at stake, which would carry out the policy approved by the Assembly and supervise its implementation; and, finally, an Enterprise, which would be responsible for all the technical, industrial and commercial activities. The idea of an Enterprise, which had been advanced by Mexico and twelve other Latin American countries in document A/AC.138/49, was intended to establish the straightforward principle that the Authority should itself undertake the exploration of the Area and the exploitation of its resources. Should it require technical or financial resources, it could conclude service contracts or enter into partnership with mixed companies; if it decided upon the latter, its contribution could be the resources to be exploited. The international machinery would naturally retain control in all cases over mixed companies or the activities of entities which had signed such contracts.

One of the important features of the Latin American draft was that it did not enable the Authority to grant licences or concessions for the exploration or exploitation of the Area. The reason was perfectly simple: any licensing system conferred ownership of the resources extracted on the operator, with the result that part of the common heritage was diverted into other hands and the Authority was deprived of its marketing functions, with the resulting loss of its main source of revenue and benefits.[33]

(y) The representative of **Ethiopia** said that as for the international machinery, his delegation saw no difficulty in the establishment of the principal organs proposed in the draft articles, provided that all parties to the Convention were duly represented and that there would be no veto or weighted voting system in the decision-making process. It was impossible to say whether one system of exploitation or another was the only way to apply the concept of the common heritage. The two main approaches - an Enterprise and licences - should be combined. The Authority could choose from several systems and employ one or another according to circumstances.[34]

(z) The representative of **Tanzania** said that with regard to the first issue, there was inherent in it the question of who owned the Area. The reply of course was that it was jointly owned by all mankind. History had fully demonstrated that in order to guarantee that wealth produced from resources went back to its lawful owner, that owner must himself have full control of the means of production. A licensing system did not guarantee the participation of the owner in the profits derived from the exploitation. That did not mean that entities outside the Authority should not participate in the activities in the international area, because it would be necessary to call on them. They should

not however be allowed to determine the fate of the common heritage as they had ruled the economies of developing countries. In short, the Authority must itself exploit the Area, although it might have to do so with the co-operation of other entities, but in that case, their role must be directly controlled by it.

If the aim was to ensure that all the activities in the Area benefited mankind as a whole, the entire world community must be fully involved in the decision-making mechanism; hence the need to ensure that in the international institutions and their organs, all peoples were equitably represented, the decision-making procedures were democratic and that the Authority had strong and comprehensive powers. The machinery should have an Assembly of representatives from all States, where the policy decisions would be made, a Council, in which all regions would be equitably represented and where the procedures would observe the equality of all, other specialized organs to deal with the various technical matters, such as the Enterprise, a Secretariat and a Tribunal for the peaceful settlement of disputes.[35]

(aa) The representative of **Fiji** said that he unreservedly supported the principle of an Authority which was itself empowered to explore and exploit the resources of the international area, but only when it had the necessary financial means; for the moment, it could undertake operations in association with States or groups of States or consortia, which did not exclude the possibility of its participation in joint enterprises on a non-contributory basis at any time. His delegation would be in favour of the conclusion of work contract agreements under which the Authority would retain the ownership of the resources of the Area and the enterprises, whether public or private, would be allowed to exploit particular sectors in exchange for part of the resources obtained from them, the rest reverting to the Authority either in kind or in cash.[36]

(bb) The representative of the **Republic of Korea** said that the developing countries should not only share in the benefits derived from the exploitation of the resources of the international area but also participate effectively in all aspects of the exploration and management of the common heritage. In that connection, the proposal made by the Latin American countries in document A/AC.138/49 merited serious consideration. That proposal stated that the International Authority would engage in its own exploration and exploitation activities but would also be able to avail itself of natural or juridical, private or public, national or international persons through either a system of contracts or the establishment of joint ventures. The Tanzanian draft proposal, according to which the International Authority would be empowered to explore and exploit the resources either by its own means or by issuing licences to individuals or groups, juridical or natural persons, under the sponsorship of its members, seemed to strike a reasonable balance between the licensing system of the developed nations and the Enterprise system of the developing nations, and might well provide the basis for a compromise.[37]

(cc) The representative of **Pakistan** stated that as for the international machinery, it should be vested with comprehensive powers to deal with the exploration of the Area and the exploitation of its resources, the equitable

distribution of benefits derived therefrom, bearing in mind the special needs of the developing countries, the conservation of the marine environment and the regulation of the conduct of scientific research in the Area. It should in fact be an international economic Enterprise working for the benefit of all mankind. There was no doubt that a consensus was emerging with regard to the structure of the machinery. His delegation agreed that there should be an Assembly, in which all States were represented on the basis of sovereign equality, a Council composed of a smaller number of States on the basis of equitable geographical distribution, a Secretariat, and an operating arm which would conduct all technological, commercial and industrial activities relating to the exploration of the Area and the exploitation of its resources. In addition, suitable machinery must be established for the settlement of disputes.[38]

(dd) The representative of **Yugoslavia** said that as to who might explore and exploit the Area, Yugoslavia, like most developing countries, could not accept that the Authority should limit its activity to co-ordinating licensing in the Area. The resolution concerning the law of the sea adopted at the Fourth Conference of Heads of State or Government of the Non-Aligned Countries held at Algiers in 1973 reaffirmed the need to set up an International Authority in the direct exploitation of the Area, allowing at the same time other forms of exploitation if adopted by the Authority.[39]

(ee) The representative of **Congo**, turning to the question of who would exploit the Area, said he considered that such a role belonged to the international community and should be exercised through an international public Enterprise under the control and in the interest of all members. In view of the large financial and technical resources required, an intermediate stage of co-operation should be envisaged between public and private capital in the form of mixed economy companies, with the public capital holding a substantial majority share so as to ensure the greatest degree of joint management – an essential characteristic of the concept of common heritage.

With regard to the structure and functions of the international machinery and its various organs, her delegation, just as many others, envisaged an Authority consisting of five organs: a plenary organ, the Assembly, composed of all the States Parties to the instrument establishing the Authority on the basis of equality of sovereignty; an executive organ with a limited composition, the Council, whose members would be elected by the Assembly, taking duly into account the need for equitable geographic distribution and the diversity of situations of the different countries; an Enterprise, the organ which would ensure technical liaison with any participants and which could carry out activities in the Area on its own account; a Secretariat and a system for the settlement of differences with simple rules of procedure.[40]

(ff) The representative of **Tunisia** said that the Authority responsible for the international area must have wide powers in order that it might effectively control its exploration and exploitation. It must therefore have a full, autonomous, legal personality and be composed of the following bodies: a General Assembly, which took the most important decisions and on which all States

were represented on an equal footing; an Executive Council responsible to the Assembly, and faithfully reflecting its composition; an operational body exclusively responsible for the exploration and exploitation of the resources of the Area and legally empowered to carry out the necessary control and conclude contracts profitable enough to cover the cost of exploration and exploitation and show reasonable profit. The body must be flexible enough to allow for the development of technology and to progress from the phase of co-operation and indirect exploitation to that of direct and even exclusive exploitation. In addition to the administrative Secretariat, there must be some body responsible for the settlement of disputes.[41]

(gg) The representative of the **USSR** said that a fundamental question, underlying the solution of other questions, was that of deciding who was entitled to explore and exploit the resources of the seabed. A number of delegations had argued that only an international organization should be so entitled. They had appealed to the Conference to reject the "doctrine of licences" apparently making such rejection a condition for the reaching of agreement. But what was proposed as a substitute for the licensing system? Clearly, the advocates of an international organization thought that it should involve private companies and large monopolies in the exploitation of the resources of the seabed on a contractual basis. But it would be unrealistic to suppose that capitalist monopolies would work for an international organization for purely altruistic motives, forgetting their own interests and the need for a substantial return on their invested capital. Experience showed only too well that capitalist monopolies did not act in that way. The report of the Secretary-General (A/CONF.62/25) stated in section 11.4 that nodule projects would be undertaken, under free market conditions, as long as the prospective return on investment would be greater than the expected rate of return on alternative investments in traditional land mining. In other words, private monopolies would work for the seabed organization only if their profits were guaranteed. The interests of the international community would be the least of their concerns. Thus, the exploitation system proposed by some delegations would not only deprive a State of its lawful rights to resources but would also enable a small number of capitalist monopolies to obtain large profits from their exploitation. Clearly, such a system would be incompatible with the idea of the common heritage of mankind and the requirement that the Conference should establish a regime which would take account of the interest and lawful rights of all States.

States themselves must have the right to exploit the resources of the seabed in accordance with the Convention and with licences obtained from the seabed organization. In such a system, part of the income from the exploitation of the resources would be distributed among the States which were parties to the Convention, with special account being taken of the need of the developing countries. One of the requirements of the system, provisionally called a "licensing system," must be that only States, or groups of States, parties to the Convention would be entitled to obtain licences, even when the exploitation was to be carried out by natural or juridical persons. But the State would bear

full responsibility for the observance by such persons of the provisions of the Convention and the rules concerning the exploitation of the resources of the seabed. The number of licences issued to any State must be limited, in order to prevent the seizure of parts of the seabed by one or a number of States or the establishment of monopolies. The procedure for the issue of licences must also include provisions to prevent any one State from obtaining licences for the exploration and exploitation of the potentially richer parts of the seabed while other States were allocated areas with poor prospects or small deposits of minerals. To protect the interest of countries which were unable to undertake the exploitation of resources immediately after the entry into force of the Convention, sections of the seabed must be reserved for them in all the potentially richer areas. All the provisions he had referred to must be reflected in documents worked out by the First Committee. They must of course include a provision concerning the equitable distribution of benefits among all Sates, with special account being taken of the interests and needs of the developing countries. The Committee must draw up not only the appropriate articles of the Convention but also the rules governing the exploration and exploitation of the resources of the seabed.[42]

(hh) The representative of **Greece** stated that with regard to the structure of the Seabed Authority - a matter of the utmost importance for the effective functioning of the regime - there appeared to be broad agreement that it should be composed of five organs: Assembly, Council, operative arm, a Secretariat and an organ for the settlement of disputes.

With regard to the system of exploitation - which was the core of the problems before the Committee - his Government believed that in principle the powers and functions assigned to the international machinery should enable it to manage and control all aspects of seabed operations, including exploitation of the Area. However, it had been generally recognized by members of the Committee that the Authority would not have the necessary financial and technological resources - at least in the initial period - to undertake exploitation of the Area itself. It might therefore wish to enter into contractual arrangements with private entities and enterprises in the industrially developed countries, which possessed the necessary equipment for exploitation of the Area during that initial period, until such time as the Authority had acquired the requisite financial and technological capability, knowledge and expertise from its own resources and trained personnel from developing countries, among others, to undertake and carry out the exploration and exploitation of the Area itself.[43]

(ii) The representative of **Algeria** said that he believed that the principle that the seabed and its resources were the common heritage of mankind and should be exploited in the interests of mankind, with due regard to the needs and interests of developing countries, should be clearly reflected in the proposed regime and machinery. There seemed to be general agreement on the establishment of international machinery but there were serious divergences of view regarding the powers of the machinery. In his delegation's view the

machinery should have all the powers required for management, exploration, exploitation and control of the international area. It should therefore have a General Assembly, with full powers for decision in all matters relating to exploration, exploitation, marketing and distribution of benefits, an executive body with limited membership based on equitable geographical distribution with no country or group of countries having any preponderance of power, and an operational organ to be responsible for direct exploration and exploitation of the international area and the marketing of products.[44]

(jj) The representative of **Finland** said that the new International Authority should have all necessary powers, not only to regulate seabed mining, but also to carry out new projects and promote mining as a whole. There seemed to be a consensus as to the necessity of establishing an International Authority to administer the exploration and exploitation of the riches of the seabed and the relevant research.

Until more was known about the tasks to be entrusted to the Authority, his delegation preferred to leave open its position concerning the establishment of an enterprise agency. It felt too difficult to overcome, in view of the experience accumulated in the establishment of similar organs. [45]

(kk) The representative of **Bolivia** said that in the first place, the Authority or machinery to be established in the international area should be given full powers to promote, carry out and control all activities related to exploration, exploitation, marketing of resources and equitable sharing of benefits, protecting of human life, maintenance of the ecological balance of the marine environment, and scientific research.

In the initial period, however, and until it had acquired the economic means to carry out all the activities itself, the Authority could assign some of its activities to interested States, under strict control and subject to licences or operation and service contracts. Private enterprises or transnational corporations could apply for licences or enter into contracts, provided that they were sponsored by one or more States who would be responsible for them.[46]

(ll) The representative of **Libya** said that his delegation supported the establishment of an International Seabed Authority, clearly insulated from great-power politics, and with adequate powers to ensure the application of the regime. The Authority would exercise jurisdiction, not sovereignty, over the Area and its resources, and would be responsible for distributing the profits derived from exploitation of the resources, preserving the marine environment, promoting the development of the Area, planning, and the transfer of science and technology. The main function of the Authority should be to control all economic and related activities in the Area and to carry out direct exploration and exploitation of the seabed and its resources. The licensing system that had been proposed was unacceptable to his delegation; it would be a departure from the principles of General Assembly resolution 2749 (XXV) as it would mean that the international seabed area could easily fall under the control and monopoly of a few powerful States. A licensing system would not be in keeping with the interests of the developing countries, which were well aware that

joint management was the most important and revolutionary aspect of the concept that the international area was the common heritage of mankind.

The Authority should consist of a plenary organ, in which all States Parties to the Convention would be represented and in which each member would have one vote, an executive organ with restricted membership whose composition should reflect the different views of the regional groups, an operational organ and a Secretariat.[47]

(mm)The representative of **Ghana** said that he supported the enterprise system under which the International Seabed Authority would engage directly in exploitation of the Area, for that was the only way to ensure proper regulation of production and marketing.[48]

(nn) The representative of **Tanzania** said that his delegation had made two fundamental changes in its position since submitting document A/AC.138/33 to the Seabed Committee in March 1971. On the question of who should exploit the international seabed Area, his delegation had previously supported parallel exploitation of the resources of the Area by the International Seabed Authority and by other entities, but it now called for the exploitation of the Area exclusively by the Authority.[49]

During the Session the Chairman of the informal meetings, Mr. Pinto of Sri Lanka, reported to the Committee on progress made. While he said that his statements "reflected his views alone" and were therefore "not binding on any delegation,"[50] they were reproduced *in extenso* in the records of the 9th, 11th and 14th meetings.[51] The informal meetings reviewed draft articles 1-21 relating to principles of the regime, as set forth by the Seabed Committee and contained in its report. Discussion of the system of exploration and exploitation proceeded on the basis of the four alternative texts of draft article 9 prepared by the Working Group of Sub-Committee I of the Seabed Committee. During the discussion several proposals were made. The work of the informal meetings on those 21 articles resulted in a new text as contained in the following reproduced document A/CONF./62/C.l/L.3. This new text also incorporated a new alternative B of article 9 (Who may exploit the Area) as introduced by the Group of 77 at the 11th meeting of the First Committee to replace the former alternative B of article 9.[52]

DRAFT ARTICLES CONSIDERED BY THE COMMITTEE AT ITS INFORMAL MEETINGS[53] (ARTICLES 1-21)

EXPLANATORY NOTE

This document contains the texts of draft articles which are the result of the Committee's reading of Part I of Appendix III of the Report of Sub-Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction, which deals with the status, scope and basic provisions of the regime, based on the Declaration of Principles [resolution 2749 (XXV]. References to the comparative table (A/AC.138/L.10), to the first reading or second reading by the Working Group of Sub-Committee I of the

Seabed Committee, and to the introductory note have been omitted, as being unnecessary at this stage. Several footnotes which are no longer relevant have also been omitted, while in the remaining footnotes, references of the "working group" have been replaced by references to the "Committee." Consequential and other minor editorial changes have been made.

Draft articles 1-21 are presented at this stage without the introductory note which appeared at the beginning of the report of Sub-Committee I of the Seabed Committee, pending completion of the work of the First Committee on the other draft articles.

Wording taken from the Declaration of Principles continues to be underlined, while marginal notes refer to the corresponding paragraph of the Declaration. Draft article I is regarded by the Committee as having been subjected only to a first reading and hence is given a Roman numeral in accordance with the practice followed by Sub-Committee I of the Seabed Committee.

The Committee decided not to deal, for the time being, with proposals for definition or interpretation of terms. Provision would continue to be more for an article on interpretation of terms (article "O") but the Terms to be covered and their interpretation would be added at a later stage.

[(DRAFT) CONVENTION ON THE SEABED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION]

PART 1: PRINCIPLES

Article 1
Limits of the Area

(A)

1.(i) The limit of the seabed to which these articles apply shall be the outer limit of the continental shelf established within the 500-metre isobath.

(ii) In areas where the 500-metre isobath referred to in paragraph 1 of this draft is situated at a distance of less than 200 nautical miles measured from the baselines from which the territorial sea of the coastal State is measured, and in areas where there is no continental shelf, the limit of the seabed shall be a line every point on which is at a distance of not more than 200 nautical miles from the nearest point on the said baselines.

OR (B)

1. The Area shall comprise the seabed and the subsoil thereof seaward of the outer limit of the Coastal Seabed Area in which the coastal State by virtue of article …..[of the Convention……] exercises sovereign rights for the purpose of exploiting the mineral resources of the coastal seabed area.

OR (C)

1. The Area shall comprise the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction.

OR (D)

1. The limit of the seabed to which these articles apply shall be the outer lower edge of the continental margin which adjoins the abyssal plains or when that edge is at a distance of less than 200 miles from the coast, up to that distance.

(A)

2. (Procedures for notification, record and publication of actual limits of national jurisdiction. In this connection see also article XL, International Seabed Boundary Review Commission.)

OR (B)

Omit this provision.

Article 2
(Common heritage of mankind)

(A)

This Area and its resources are the common heritage of mankind.

OR (B)

The Area and its resources are the common heritage of mankind. This principle shall be implemented and interpreted in accordance with the provisions of these articles.

Article 3
(Activities regarding exploration and exploitation, etc.).

(A)

1. *All activities in the Area, including scientific research and the exploration of the Area and the exploitation of its resources and other related activities shall be governed by the* provisions of these articles and shall, unless otherwise provided in these articles, be subject to regulation by the Authority established pursuant to article…….

OR (B)

The provisions of these articles shall govern the exploration of the Area and the exploitation of its resources and other related activities which are specified herein. The Authority shall have the functions with regard to those activities which are conferred on it by the terms of these articles.

OR (C)

All activities in the Area shall be governed by the international regime established by these articles. The International Authority established under article ... shall enjoy in respect of these activities such powers as are conferred upon it by the terms of these articles.

Article 4
No claim or exercise of sovereignty, etc.

1. No State shall claim or exercise sovereignty or sovereign rights over any part of the Area, nor shall any State or person, natural or juridical, appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights, nor such appropriation shall be recognized.

2. No State or person, natural or juridical, shall claim, acquire or exercise any rights [over] [with respect to] the resources of the Area except as hereinafter specified in these articles. Subject to the foregoing, no such claim, acquisition, or exercise of such rights shall be recognized.

Article 5
(Use of the Area by all States without discrimination)

The Area shall be open to use exclusively for peaceful purposes by all States, whether coastal or landlocked, without discrimination [in accordance with the provisions of these articles]

Article 6
General conduct in the Area and in relation to the Area

(A)

States shall act in and in relation to the Area in accordance with the provisions of these articles, the applicable principles and rules of international law including [those contained in] the Charter of the United Nations [and taking into account] the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970, in the interests of maintaining international peace and security and in the interests of peaceful coexistence and the promotion of international co-operation and mutual understanding.

(B)

All activities in the Area and in relation to the Area shall be in accordance with the provisions of these articles and the purposes and principles of the Charter of the United Nations.

Article 7
Benefit of mankind as a whole

The exploration of the Area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether landlocked or coastal, and taking into particular consideration the interests and needs of the developing countries.

[2. Participation of landlocked and other geographically disadvantaged States in the exploration of the Area and the exploitation of its resources shall be promoted and protected, having due regard to the special needs and interests of these States, in order to overcome the adverse effects of their disadvantaged geographical location on their economy and development.]

Article 8
Preservation of the Area exclusively for peaceful purposes

The Area shall be reserved exclusively for peaceful purposes, [and every effort shall be made to exclude it from the arms race][and its use for military purposes shall be prohibited].

[The Contracting Parties undertake to conclude further international agreements as soon as possible] with a view to effective implementation of this article.

[The emplacement of nuclear weapons and of other weapons of mass destruction in the Area is prohibited]

[Nuclear and thermonuclear weapon test explosions are prohibited in the Area.]

Proposal to replace third and fourth paragraphs:

[The activities of all nuclear submarines in the Area and in the seabed area of other States shall be prohibited. The emplacement of nuclear weapons and all other weapons in the Area and in the seabed area of other States shall be prohibited.]

Article 9
Who may exploit the Area

(A)

All exploration and exploitation activities in the Area shall be conducted by a Contracting Party or group of Contracting Parties or natural or juridical persons under its or their authority or sponsorship, subject to regulation by the Authority and in accordance with the rules regarding exploration and exploitation set out in these articles.

OR (B)

All activities of exploration of the Area and of the exploitation of its resources and all other related activities including those of scientific research shall be conducted directly by the Authority.

The Authority may, if it considers it appropriate, and within the limits it may determine, confer certain tasks to juridical or natural persons, through service contracts, or association or through any other such means it may determine which ensure its direct and effective control at all times over such activities.

OR (C)

1. All activities of exploration and exploitation in the Area shall be conducted in accordance with legal arrangements with the Authority pursuant to this convention, regulations included in this convention and those promulgated by the Authority pursuant to this convention.

2. The Authority shall enter into legal arrangements for exploration and exploitation with Contracting Parties, groups of Contracting Parties and natural or juridical persons sponsored by such Parties, without discrimination. Such Parties or persons shall comply with this convention, regulations included in this convention, and those promulgated by the Authority pursuant to this convention.

OR (D)

All exploration and exploitation activities in the Area shall be conducted by a Contracting Party or group of Contracting Parties or natural or juridical persons under its or their authority or sponsorship, subject to regulation by the

Authority and in accordance with the rules regarding exploration and exploitation set out in these articles. The Authority may decide, within the limits of its financial and technological resources, to conduct such activities.

Note: The Committee will have to consider whether to set out here, as is done in some proposals, the general rules regarding resource activities in the Area. These could include, inter alia, according to the type of administration adopted as regards exploration and exploitation, rules on: notice to mariners and other safety procedures, areas to be allotted, work requirements, work plans, inspection, service contracts, licensing, joint ventures, fees payable, revocation of service contracts, revocation of licences and integrity of investments. On the other hand, the Committee may decide to omit them from part 1 of this article.

Article 10
General norms regarding exploitation

(A)

1. The exploration of the Area and the exploitation of its resources shall be carried out in an efficient manner so as to provide for orderly and safe development and maximum benefits to producers and consumers of raw materials and of products which are made from them. Such resources development shall ensure expanding opportunities in the use thereof and ensure the equitable sharing of States Parties in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether landlocked or coastal.

OR (B)

The exploration of the Area and the exploitation of its resources and other related activities shall be carried out in a safe orderly and rational manner so as to ensure their conservation and optimum utilization and to regulate production in the Area so as to prevent the deterioration in the prices of minerals and raw materials from land and off-shore sources that may result from such exploitation and adversely affect the exports of developing countries, especially those who are producers of wasting and non-renewable materials. The mineral resources of the Area shall be considered as being complementary to resources produced from land and off-shore areas. The benefits derived from exploration of the resources of the Area shall be distributed equitably among all States, irrespective of their geographical location, giving special consideration to the interests and needs of developing countries, whether coastal or landlocked.

[2. An amount equal to the proceeds of any tax levied by a State in connection with activities relating to the exploitation of the Area, whether in respect of profits made, services rendered or the supply of equipment or materials, or in respect of salaries paid or interests disposed of, by persons physical or juridical under its jurisdiction, shall be paid by that State to the Authority with a view to its being shared among developing countries. When the proceeds envisaged are greatly reduced because the State itself undertakes the

exploitation or agrees to fiscal exemptions, a compensatory amount will be paid by this State to the Authority.]

Note 1: *The view was expressed in respect of this article that there is a need to take into account, in the regulations under the machinery, provisions allowing the Authority and States Parties to pursue measures designed to facilitate the stabilization of commodity prices on a global basis, as, for example, through international commodity agreements.*

Note 2: *The Committee may wish to consider whether to set out here, as is done, for example, in the United States draft, article 5, paragraph 1, the basic principles of benefit sharing, or to deal with this subject in a subsequent chapter of the articles.*

Article 11
Scientific research

(A)

1. Every State, whether coastal or landlocked, has the right to undertake scientific research in the Area (ocean space), provided due regard is paid to the rights and interests of other States, and of the Authority, concerning legitimate activities in the Area.

2. Every State shall:

(i) Encourage scientific research in the Area;

(ii) Promote international co-operation in scientific research, in particular:

(a) By participation in international programmes and by encouraging co-operation in scientific research by personnel of different countries;

(b) Through effective publication of research programmes and dissemination of the results of research through international channels;

(c) Through measures to strengthen research capabilities of developing countries, including the participation of their nationals in research programmes.

3. No such research activities shall form the legal basis for any claim with respect to any part of the Area or its resources;

OR (B)

1. Neither these articles, nor any rights granted pursuant thereto shall affect the freedom of scientific research in the Area. Each contracting Party agreed to encourage, and to obviate interference with, scientific research in the Area. Contracting Parties shall promote international co-operation in scientific research concerning the Area exclusively for peaceful purposes:

(a) By participation in international programmes and by encouraging co-operation in scientific research by personnel of different countries;

(b) Through effective publication of research programmes and dissemination of the results of research through international channels;

(c) Through measures to strengthen research capabilities of developing countries, including the participation of their nationals in research programmes.

2. No such research activities shall form the legal basis for any claim with respect to any part of the Area or its resources;

OR (C)

Scientific research in the Area shall be carried out exclusively for peaceful purposes, for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or landlocked, and taking into particular consideration the interests and needs of developing countries.

Without prejudice to the scientific research activities carried out by the Authority itself, it shall grant authorization on a non-discriminatory basis for such activities to any person, natural or juridical, provided that there are the necessary guarantees of technical competence, responsibility for any damage that may be caused to the marine environment and compliance with the applicable regulations adopted in this regard by the Authority.

States shall promote international co-operation in scientific research in the Area, in particular through:

(a) International programmes directed toward the training of nationals of developing countries in all aspects of marine science and technology;

(b) Technical assistance to developing countries;

(c) Employment of qualified personnel from developing countries in all aspects of the activities carried out in the Area;

(d) Notification to the Authority of research programmes, and dissemination of their results by the same channel.

Article 12
Transfer of technology

(A)

Contracting Parties shall co-operate in promoting the transfer of technology and know-how relating to the exploration of the Area and the exploitation of its resources to developing countries and to other countries in need of such technology or know-how.

Opportunities shall be given for the training of personnel of those countries in all aspects of marine technology, particularly by participation, as far as possible, in the exploration of the Area and the exploitation of its resources.

OR (B)

States shall promote, through the Authority:

(a) Programmes for the promotion of transfer of technology to developing countries with regard to the exploration of the Area and the exploitation of its resources, including, inter alia, facilitating the access of developing countries to patented and non-patented technology, under just and reasonable conditions;

(b) The elaboration of techniques adapted to the production and trade structures of developing countries;

(c) Measures directed towards the acceleration of domestic technology of developing countries and the opening of opportunities to personnel from developing countries for training in marine science and technology and their full participation in activities in the Area.

OR (C)

Contracting parties shall take necessary measures for promoting the transfer of technology and scientific knowledge relating to the exploration of the Area and the exploitation and utilization of its resources, so that all States benefit therefrom on an equitable and non-discriminatory basis.

Contracting Parties undertake to establish and to carry out concrete programmes, within the framework of the over-all policy of the United Nations in this field, for transferring scientific knowledge and technology, including patented technology, to the developing countries.

The Authority shall establish permanent means for the acquisition, dissemination and transfer of scientific knowledge and technology, as well as for training of personnel from developing countries in marine science and technology, so as to ensure their full participation in activities in the Area.

OR (D)

Revenue derived from seabed exploration and exploitation shall be used, through or in co-operation with, other international or regional organizations, to promote efficient, safe and economic exploitation of mineral resources of the seabed; to promote research on means to protect the marine environment; to advance other international efforts designed to promote safe and efficient use of the marine environment; to promote development knowledge of the Area; and to provide technical assistance to Contracting Parties or their nationals for these purposes, without discrimination.

Article 13
Protection of the marine environment

With respect to [all] activities in the Area, appropriate measures shall be taken for the adoption and implementation of international rules, standards and procedures for, inter alia:

(a) The prevention of pollution and contamination, and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from activities such as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations and pipelines and other devices related to exploration of the Area and exploitation of its resources:

(b) The protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.

Article 14
Protection of human life

With respect to [all] activities in the Area, appropriate measures shall be taken for the adoption and implementation of international rules, standards and procedures for the protection of human life.

Article 15
Due regard to the rights, etc. of coastal States

(A)

1. [All] activities [of exploration and exploitation] [in the Area] [in the regions of the Area adjacent to its limits] shall be conducted with due regard to the rights and legitimate interests of coastal States in the region of such activities, as well as all other States, which may be affected by such activities. Consultations, [including a system of prior notification] shall be maintained with the States concerned, with a view to avoiding infringement of such rights and interests. [Such activities of exploration and exploitation shall be conducted with the concurrence of the coastal State or States concerned.]

OR

1. All activities of exploration and exploitation in the region adjacent to the boundary between the Area and the areas under State jurisdiction shall be conducted with due regard to the rights and legitimate interests of both the coastal State and the Authority.

2. Neither these articles nor any rights granted or exercised pursuant thereto shall affect the right of coastal States to take such measures as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the Area.

OR

2. (a) Any State facing grave and immediate danger from pollution or threat of pollution, following upon a hazardous incident or acts related to such an incident in the Area, which may reasonably be expected to result in major harmful consequences for that State, may take such measures as may be necessary to prevent, mitigate or eliminate such danger subject to the provisions of this Convention.
(b) Measures taken in accordance with subparagraph (a) shall be proportionate to the damage which threatens the State concerned and shall not go beyond what is reasonably necessary to achieve the objective referred to in subparagraph (a).

3. Resources of the Area which lie across the limits of national jurisdiction shall not be explored or exploited, except in agreement with the coastal State or States concerned. Where such resources are located near the limits of national jurisdiction, their exploration and exploitation shall be

carried out in consultation with the coastal State or States concerned, and where possible through such State or States.

OR (B)

1. Coastal States and the Authority shall co-operate closely in respect of all activities conducted in a zone under their respective jurisdiction adjacent to the boundary of the Area, not exceeding ... miles in breadth. [Legal effect shall be given to such co-operation by the adoption of a non-discriminatory convention to be elaborated for this purpose.]

2. Coastal States shall transfer to the Authority a portion of the financial benefits obtained from the exploitation of the natural resources of maritime areas adjacent to the limits of the Area. [A special Convention shall be negotiated on this subject.]

OR (C)

Omit this provision

Article 16

Legal status of water superjacent to the Area, etc.

(A)

[Except as provided in these articles, nothing herein] [Neither these articles nor any rights granted or exercised pursuant thereto] shall affect the legal status of the waters superjacent to the Area [as high seas] or that of the air space above those waters.

[2. [Except as provided in these articles.] The use of the Area for the purpose of the exploration of the Area and exploitation of its resources shall not conflict with freedom of navigation, fishing, scientific research, laying and maintenance of submarine cables and pipelines and other freedoms of the high seas].

(B)

Omit this provision.

Article 17

Accommodation of activities in the marine environment and in the Area.

1. All activities in the marine environment shall [be conducted with reasonable regard for] [not result in any unjustifiable interference with] the exploration of the Area and the exploitation of its resources.

2. The exploration of the Area and the exploitation of its resources shall [be conducted with reasonable regard for] [not result in any unjustifiable interference with] other activities in the marine environment.

Note: The Committee may wish to consider whether to include here or elsewhere in these articles a more detailed treatment of "non-interference rules" relating to such matters as prevention of interference with recognized sea-lanes and restrictions on resource exploitation in areas with a high pollution risk; see, for example, the USSR draft, articles 4, 10, 12, the United States draft, article 21, the Maltese draft, article 72, and other relevant texts.

Article 18
Responsibility to ensure observance of the international regime and liability for damages

[1. Every State shall have the responsibility to ensure that activities in the Area, including those relating to [the exploration of the Area and the exploitation of] its resources whether undertaken by government agencies, or non governmental entities or persons under its jurisdiction, or acting on its behalf, shall be carried out in conformity with the provisions of these articles. The same responsibility applies to international organizations and their members for activities undertaken by such organizations or on their behalf. Damage caused by such activities shall entail liability, [on the part of the State or international organization concerned, in respect of activities which it undertakes itself or authorizes.][A State Party to these articles shall be responsible for any damage caused to another State Party to these articles as a result of its activities on the seabed].

[2. A group of States acting together shall be jointly and severally responsible under these articles.]

[3. Each Contracting Party shall:

(i) Take appropriate measures to ensure that those conducting activities under its authority or sponsorship comply with these articles;

(ii) Make it an offence for those conducting activities under its authority or sponsorship in the Area to violate the provisions of these articles; such offences shall be punishable in accordance with administrative or judicial procedures established by the authorizing or sponsoring party;

(iii) Be responsible for maintaining public order or manned installations and equipment operated by those authorized or sponsored by it;

(iv) Be responsible for damages caused by activities which it authorizes or sponsors to any other Contracting Party or its nationals;

(v) Be responsible for carrying out all measures necessary for the restoration or any damaged property or area to its condition immediately prior to such damage.]

[4. Every [Contracting Party][State] shall take appropriate measures to ensure that the responsibility provided for in paragraph 1 of this article shall apply mutatis mutandis to international organizations of which it is a member.]

Article 19
Access to and from the Area

Landlocked States [and other geographically disadvantaged States] [shall have the right of] [free] access to and from the Area [in order to enable them to derive benefits, in accordance with the provisions of this Convention, from the Area and its resources]

Article 20
Archaeological and historical objects

1. Particular regard being paid to the preferential rights of [the State of country of][the State of cultural][the State of historical and archaeological] origin, all objects of an archaeological and historical nature found in the Area shall be preserved [or disposed of by the Authority for the benefit of the international community as a whole].

[2. The recovery and disposal of wrecks and their contents more than [fifty] years old found in Area shall be subject to regulation by the Authority without prejudice to the rights of the owner thereof.]

OR (B)

Omit this provision

Article 21
Settlement of disputes

All disputes arising out of the interpretation or application of these articles shall be settled in accordance with the provisions of article.…..

Note: *An article of this kind, which does no more than foresee more detailed provision for settlement of disputes, may be all that is required under part I of these articles. Any further detailed consideration which the Committee may wish to give to this subject may take as a starting-point paragraph 15 of the Declaration of Principles.*

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Article 0
[Interpretation] [Definition]
A definition article may be required when the negotiation is completed.

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Note: *During the discussion of article 9 the following proposal was made by one delegation and it was agreed to reproduce the text of the proposal at the end of these draft articles since it contained some elements relating to various issues before the Committee:*

1. All activities of exploration and exploitation shall be conducted pursuant to regulations promulgated by the Authority and no such exploration or exploitation shall be carried out except under and in conformity with such regulations and the provisions of this Convention.

2. Regulations promulgated pursuant to paragraph 1 of this article shall include adequate provisions for:

(a) the orderly and rational exploration and exploitation of the Area and its resources;

(b) the securing of adequate measures of control by the Authority over all phases of the exploration, exploitation and marketing of the

resources in order to secure the objectives of the common heritage of mankind;

(c) the widest and most equitable participation on a non-discriminatory basis, in the activities necessary for the exploration and exploitation of the Area and its resources including the provision of goods and services;

(d) the securing of the maximum benefits for mankind as a whole from the exploration and exploitation of the Area and its resources ensuring at the same time that such benefits are equitably shared having special regard to the interests and needs of developing countries, coastal and landlocked;

(e) the assurance to consuming countries, on a non-discriminatory basis, of adequate supplies at reasonable prices of the products arising from the exploration and exploitation of the Area and its resources, due regard being paid to the availability on fair and equitable terms of similar or competitive land-based products.

3. Regulations pursuant to this article shall be made on the recommendation of the Council and approved by the Assembly by a two-thirds majority present and voting, provided that such majority shall include at least a majority of the total membership of the Assembly.

At its 14th meeting, on 19 August, the First Committee, as proposed by Brazil, established a Working Group and appointed Mr. Pinto of Sri Lanka as Chairman of the Group to pursue negotiations on the system of operations in the Area, the 21 articles relating to principles of the regime as contained in document A/CONF.62/C.1/L.3, particularly article 9 thereof, and on the subject of conditions of exploration and exploitation.[54]

The Working Group met for the first time on 21st August and had held six meetings prior to its report to the First Committee at the 17th meeting of the Committee on 27 August 1974.[55] The Chairman of the Working Group reported, *inter alia,* that it had been agreed that the Group should concentrate on draft article 9 and the conditions of exploration and exploitation, since that would accord more with its terms of reference, as approved by the Committee, which laid emphasis on that subject. It had also been agreed that the most practical way to proceed would be to begin discussing draft article 9. It had been felt that in due course a point would be reached when it would be appropriate to discuss the conditions of exploration and exploitation, at which time the Group would undertake consideration of that subject.[56]

Of the principal matters discussed, he continued that mention should be made first of the question of who could explore and exploit the Area. Both paragraphs of alternative B of draft article 9 were relevant to that issue. The first paragraph empowered and required the Authority to conduct directly all activities of exploration and exploitation and other related activities, including those of scientific research, in other words, the Authority was itself required to explore and exploit the Area, using finance, technology and other resources

acquired by it for that purpose. The second paragraph conferred on the Authority discretionary powers to utilize "juridical or natural persons" in the conduct of the activities contemplated. That might be viewed as a preliminary phase of the Authority's existence when, having yet to acquire the means to explore and exploit the Area, it contracted with others to discharge some of its functions and responsibilities. It was necessary to stress the integral nature of a concept that was fundamental to both paragraphs of alternative B since some of the obstacles to agreement on the provisions of the second paragraph could be comprehended and assessed only in the light of the basic concept of the Authority as the sole representative of mankind for carrying out exploration and exploitation in the Area.[57]

While maintaining an awareness of that fundamental concept, the Group had decided to focus its attention for the time being on the second paragraph of alternative B.[58]

As he further explained, "…the second paragraph referred to 'juridical or natural persons' as possible instruments of the Authority for exploration and exploitation activities. There was no specific mention of States or State enterprises for that purpose. The supporters of alternative B had frequently and categorically stated that the phrase 'juridical or natural persons' was also intended to include States and State enterprises. However, States in which the juridical concept of the private company had been rejected and was no longer known, and where the concept of juridical personality might differ from that in other States, might be apprehensive regarding the reference to 'juridical or natural persons' – which could, in that unqualified form, be interpreted not merely as excluding States and State enterprises, but also as discriminating against them in favour of private companies, since the latter immediately came to mind when reference was made to the 'juridical persons' familiar under the law of States with a different social and economic system. Specific reference to 'States' and possibly to 'State enterprises' would be necessary in the second paragraph of alternative B if such apprehensions were to be allayed."[59]

"It had been noted that alternative B of draft article 9, as currently worded, made no mention of States as such. Should it be decided, in order to meet the concerns of some countries, to make specific mention of a right of participation of States in exploration and exploitation activities, it would be necessary to consider whether that right should be conferred only on States Parties to the Convention – the 'Contracting Parties' – or simply on 'States,' whether or not they were parties to the Convention. Some held the view that, since the resources of the Area were the common heritage of mankind, all States, whether or not parties to the Convention, should have the right to participate in exploration and exploitation, provided they undertook to accept the Authority's conditions. On the other hand, it might be said that the right of participation should be available only to those who were legally bound by the Convention and had accepted in full the obligations and responsibilities flowing from it."[60]

End Notes

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. I, (United Nations Publication, Sales No. E.75.V.3), Summary Records of Meetings, First Session and Second Session, pp. 3-32.

[2] *Resolutions Adopted by the General Assembly [on the Report of the First Committee (A/8097)]: Reservation Exclusively for the Peaceful Purposes of the Seabed and the Ocean Floor, and the Subsoil Thereof, Underlying the High Seas beyond the Limits of Present National Jurisdiction, and Use of Their Resources in the Interests of Mankind, and Convening of a Conference on the Law of the Sea*, adopted at the 1933rd Plenary meeting on 17 December 1970, A/RES/2750 (XXV), 14 January 1971.

[3] *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol.III, (United Nations Publications, Sales No. E.75.V.5), pp.59-60, Documents of the Conference, Document A/CONF.62/29, Organization of the Second Session of the Conference and allocation of items: decisions taken by the Conference at its 15th meeting on 21 June 1974.

[4] Ibid.

[5] *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. I, (United Nations Publications, Sales No. E.75.V.3), Summary Records of Meetings, 23rd Plenary meeting, 1 July 1974, Second Session (20 June – 29 August 1974) of UNCLOS III, p. 72, para. 24 and para. 26).

[6] Ibid, p.76, para.72.

[7] Ibid, p. 77, paras 84 -85.

[8] *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. I, (United Nations Publications, Sales No. E.75.V.3), Summary Records of Meetings, 27th Plenary meetings, 3 July 1974, Second Session of UNCLOS III (20 June - 29 August 1974), p. 96, para. 7.

[9] *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. II, (United Nations Publications, Sales No. E.75.V.4), Summary Records of Meetings, 1st meeting of the First Committee, 10 July 1974, Second Session of UNCLOS III (20 June – 29 August 1974), p.3, para.8.

[10] Ibid, 2nd meeting of the First Committee, 11 July 1974, p. 8, paras 2–35.

[11] Ibid, 2nd meeting of the First Committee, 11 July 1974, pp. 8-9, paras 38-40 & 43.

[12] Ibid, 2nd meeting of the First Committee, 11 July 1974, pp. 9-10, paras 46, 49, 50, 53 & 54.

[13] Ibid, 3rd meeting of the First Committee, 12 July 1974, p. 11, paras 14-15.

[14] Ibid, 4th meeting of the First Committee, 15 July 1974, p. 13, paras 3-5.

[15] Ibid, p. 14, para. 14.

[16] Ibid, p. 15, paras 31-32.

[17] Ibid, p. 15, para. 35.

[18] Ibid, p. 16, para. 53.

[19] Ibid, 5th meeting, 16 July 1974, p. 17, para. 56.

[20] Ibid, p. 18, para. 5.

[21] Ibid, p. 18, para. 9.

[22] Ibid, p. 18, para. 13.

[23] Ibid, p. 19, para. 20.

[24] Ibid, p. 20, paras 27 & 30.

[25] Ibid, pp. 20-21, para. 38.

[26] Ibid, p. 21, para. 47.

[27] Ibid, p. 21, para. 50.

[28] Ibid, p. 23, para. 70.

[29] Ibid, 6th meeting of the First Committee, 16 July 1974, p. 24, para. 3.

[30] Ibid, p. 24, para. 7.
[31] Ibid, p. 25, para. 14.
[32] Ibid, 7th meeting of the First Committee, p. 30, para. 7.
[33] Ibid, p. 30, para. 17.
[34] Ibid, p. 32, para. 23.
[35] Ibid, p. 33, paras 36 & 40.
[36] Ibid, p. 33, paras 42- 43.
[37] Ibid, p. 34, para. 50.
[38] Ibid, p. 34, para. 56.
[39] Ibid, p. 35, para. 61.
[40] Ibid, p. 35, paras 68–69.
[41] Ibid, 8th meeting of the First Committee, 17 July 1974, p. 36, para. 3.
[42] Ibid, pp. 38-39, paras 27-28.
[43] Ibid, p. 39, paras 33 & 37.
[44] Ibid, p. 41, para 52.
[45] Ibid, p. 41, paras 57-59.
[46] Ibid, p. 42, paras 63-64.
[47] Ibid, p. 43, paras 79-80.
[48] Ibid, p.44, para. 83.
[49] Ibid, p. 44, para. 84.
[50] Ibid, p.55, para. 26; p.72, para. 22.
[51] Ibid, 9th meeting of the First Committee, 30 July 1974, pp.44-45, paragraphs 1-8; 11th meeting of the First Committee, 6 August 1974, pp. 53-55, paragraphs 1-26; 14th meeting of the First Committee, 19 August 1974, pp. 70-72, paras 6-22.
[52] In his report to the First Committee at its 11th meeting on 6 August 1974, the Chairman of the informal meetings indicated that draft article 9 entitled "Who may exploit the Area" was the most important draft with which the Committee had had to deal thus far, and had generated the greatest amount of interest and controversy. He informed the Committee that there were four alternative versions of draft article 9 in the report of the Working Group (of the Seabed Committee), and there were still four such alternatives. While alternatives (A) and (D) remained as drafted, he clarified, alternative (B) was a new draft proposed by the Group of 77, and another new proposal made to the Committee had been designated alternative (C) and occupied the position of the former alternative (C) which had been withdrawn.
[53] *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. III (United Nations publication Sales No. E.75.V.5), Documents of the Conference, First Session: New York, 3-15 December 1973; Second Session: Caracas, 20 June-29 August 1974, pp. 157-164.
[54] *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. II (United Nations publication Sales No. E.75.V.4), Summary Records of Meetings, 14th meeting of the First Committee, 19 August 1974, p.69, paragraphs 37-39.
[55] Ibid, 17th meeting of the First Committee, 27 August 1974, p.84, para. 2.
[56] Ibid, pp.84-85, para. 3.
[57] Ibid, p. 85, para. 6.
[58] Ibid, p. 85, para. 7.
[59] Ibid, p. 85, para. 8.
[60] Ibid, p. 85, para. 9.

II. THIRD SESSION OF THE UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA (GENEVA, 17 MARCH – 9 MAY 1975)

During the Third Session of UNCLOS III, the First Committee worked through formal meetings and through its Working Group. At the 19th meeting, on 26 March 1975, the Chairman made a statement proposing that at the current Session there should be no further statements of principle or of national positions and that, as the time had come for negotiations, the work of the Committee and its Working Group should be reduced in favour of work in small informal negotiating groups.[1] At its 19th meeting, on 26 March, 20th meeting, on 25 April, and its 21st and 22nd meetings on 28 April, the Committee discussed the structure, powers and functions of the international machinery. A number of delegations presented their views on the international machinery and the Enterprise:

(a) The representative of **Australia** said that his Government considered that the institution to be established should represent all groups of interests and that the Authority's machinery should give it the widest latitude to decide what types of arrangement it would use. For that reason his Government was willing to support a "dualist" formula under which the Authority could explore and exploit the Area itself, if it had the necessary financial and technical means, but could also conclude various types of contracts with States or juridical persons undertaking exploration and exploitation on its behalf.[2]

(b) The representative of **Peru** said that the main operative body, the Enterprise, would consist of a small number of experts responsible for undertaking the activities provided for in paragraph 1 of article 9. It would award contracts for service by partnership or other means, to third parties, on behalf of the Authority, its activities would be carried out under the supervision and authority of the Council and would be administered by a small Governing Board.[3]

(c) The representative of **Argentina** stated that by considering the question of the regime and that of the machinery and economic implications separately the Committee might be overlooking the conceptual unity of the future convention; it should be guided in its work by the ideas underlying the Declaration of Principles contained in General Assembly resolution 2749 (XXV). In order to achieve the aims set forth in the Declaration, a strong Authority which could not relinquish the powers vested in it or dispose of the resources of the Area would have to be established. The same legal regime should be applied to the whole of the Area to be explored and exploited by the Authority either directly or by means of contracts with third parties.

He wished to emphasize some points in connection with the machinery which his delegation considered essential. The Assembly, on which all Member States would be represented, should be the supreme organ of the Authority. It would meet annually but could also hold special sessions. The Convention should confer on the Assembly regulatory powers, which it would exercise in

accordance with rules laid down in the treaty. The Council, a body of limited membership, would perform the functions assigned to it in the Convention and those delegated to it by the Assembly and would be held responsible by the Assembly for implementing that body's instructions and recommendations. Its membership would be based essentially on the principle of equitable geographical distribution and also on appropriate representation of all the interests involved, particularly those associated with activities in the Area. His delegation was opposed to any form of weighted vote and any system involving a veto; each delegation should have one vote. The Enterprise would be one of the principal organs of the Authority, as the organ responsible for carrying out all operations in the Area, either by itself or by the means described in the second paragraph of article 9. The Enterprise would be responsible to the Council and the Assembly.[4]

(d) The representative of **Mexico** stated that in view of the stage the discussions had reached, his delegation wanted to outline its views on the basic characteristics of the Enterprise and its relationship with the other two main organs. First, there was a link between article 9, concerning the regime, and the powers conferred on the Enterprise. Draft article 9 contained the fundamental rule that all activities of exploration of the Area and of the exploitation of its resources would be conducted directly by the Authority, on the understanding that in certain cases the Authority might delegate those activities to natural or juridical persons. In order, therefore, to carry its functions in the former case, the Authority would need an operational instrument - the Enterprise - whereas when it exercised them indirectly, it would conclude contracts or set up joint ventures. The essential purpose of the Enterprise would be to acquire revenue and distribute it fairly, with due regard to the interests of the developing countries. The Enterprise would co-exist with two other main organs, the Assembly and the Council. The Assembly would lay down policy and conditions of exploitation, and decide on the quantity of minerals to be mined, marketing conditions and the status of joint ventures. The Council would have competence to consider and approve the Enterprise's proposals for exploring and exploiting the resources of the Area. In order to operate efficiently, the Enterprise should have some autonomy and have legal personality. It should submit periodic reports to the Council, which would transmit them to the Assembly with its own comments and recommendations.[5]

(e) The representative of **Trinidad and Tobago** said that the activities of the proposed machinery should be governed by five basic principles: optimum use of resources, optimum sharing of resources, equitable distribution of revenue, sharing of benefits so that no State would be placed at an undue disadvantage, and supervision in the international area in order to protect the environment. It was clear that those functions had political, commercial and technical aspects, and would give the International Authority the balanced structure it needed. It might indeed, have a type of balance that was unique among international organizations. First there would be a type of hierarchical

relationship between a plenary body and an executive body. The plenary Assembly would lay down policy guidelines, and all organs would be ultimately accountable to it. The Council would carry out the instructions given by the Assembly, but as a permanent organ authorized to take decisions, it, too, would be very important. Its membership would be determined on the basis of political considerations. To counterbalance those political organs, two other principal organs would have commercial and technical functions: the Enterprise, and what might for the moment be called the production regulation unit or planning unit, both of which would be composed of technocrats. The Enterprise would examine the feasibility of proposed projects and negotiate contracts. The production regulation unit would be an advisory body whose primary function would be to evaluate potential commercial production and its likely impact on the objectives of the Authority. Co-ordination between the production regulation unit and the Enterprise, and between them and the Council, would be essential. The two organs would counterbalance each other, inasmuch as the Enterprise, by reason of its functions, might be tempted to maximize benefits whereas the production regulation unit would be concerned with the best use of resources.[6]

(f) The representative of **Switzerland** said that in its statement at the 5th meeting of the Committee, his delegation had declared its support for a strong but flexible Authority, capable of dealing with the extraordinarily difficult problems awaiting it and of adapting to new circumstances. With regard to the powers to be conferred on the Authority, his delegation had advocated provisions enabling natural or legal persons, and the Authority itself, to undertake, on a non-discriminatory basis, exploration and exploitation of seabed resources, provided such exploration and exploitation was carried out according to rules which took account of the interests of all parties, especially those of the least privileged members of the international community.[7]

(g) The representative of **Zaire** stated that the Authority envisaged in the text of draft article 9 submitted by the Group of 77 should have some freedom to conclude contracts and be empowered to conclude various types of contracts, not one type only. Nevertheless, the basic principle governing the machinery was direct exploration and exploitation of the Area by the Authority. The organs of the Authority should be an Assembly, a Council, an Enterprise, and a planning and price stabilization body.

The Enterprise would be the operational organ through which the Authority would carry out the task assigned to it in article 9, namely, the exploration and exploitation of the Area, either on its own account or through service or partnership contracts. The Enterprise would operate in the Area, and would be subject to the Council and the Assembly. It would be an operational organ and would not have power to conclude service or partnership contracts.[8]

(h) The representative of **Mauritania** stated that the Enterprise would be a technical body whose essential function would be to enable the Authority itself to undertake the timely exploration and exploitation of the resources of the Area.[9]

(i) The representative of **Mongolia** stated that the Authority should supervise seabed mining operations in the international area and ensure the continuous and orderly exploitation of the resources of the seabed for the benefit of all peoples; it should enable all States to explore and exploit the seabed in accordance with the principles of international law; it should foster the exchange of scientific, technical and technological knowledge between industrially developed and developing countries; it should encourage co-operation among Member States in the exploration of the Area and make the results obtained available to all interested States, particularly the economically less developed and the landlocked States, and it should see to it that the marine environment was not adversely affected by exploitation or pollution.[10]

(j) The representative of **Greece** said that an operational organ would be needed to enable the Authority to carry out its functions. That body should be capable of acting at a technical level without any bureaucratic obstruction. It would be strictly operational and technical, would have no power of decision and would act on the specific instructions of the organs having decision-making power.[11]

(k) The representative of **Poland** said that the question of the functions and powers of the proposed organization (Authority) was closely linked with the problems of the basic provisions governing the conditions of the exploration and exploitation of seabed resources, which were still under discussion within the Working Group. The functions of the organization would depend to a large degree on the system of exploration and exploitation that was adopted. In 1971, Poland had submitted a working paper (A/AC.138/44) to the Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction in which it had expressed its views for the first time on the main questions concerning the organization, and particularly on its functions and powers, but the situation had changed since 1971, and his delegation was prepared to modify its position to some extent. For instance, it was ready to accept wider functions for the organization, namely, to agree that the organization should be directly involved in exploration and exploitation activities. In that respect the best system of exploitation would be a mixed one, under which exploitation was conducted either directly by the organization, by States or groups of States or by natural or juridical persons acting under their authority or sponsorship. It should be pointed out in that connection that acceptance of the possibility of direct exploration and exploitation of seabed resources did not exclude the possibility of the organization entrusting certain tasks to other entities through service contracts, association or other legal arrangements. Moreover, as to the exploration and exploitation by States, it should be understood that States would be acting under the control of the organization and in accordance with the rules and regulations concerning such activities. The organization would therefore have wide operational functions in the exploration and exploitation of seabed resources.[12]

(l) The representative of **Yugoslavia** said that the Enterprise, the Authority's agency responsible for operations, should undertake all the activi-

ties entrusted to it by the Convention, the Assembly or the Council. It should engage in such activities either on its own or by entering into contracts, joint ventures or other forms of association with natural or legal persons. The Assembly, however, should not be precluded from seeking other forms of participation in exploration and exploitation activities in the Area in accordance with article 9 of the draft articles presented by the Group of 77.[13]

(m) The representative of the **German Democratic Republic** said that his delegation agreed with the representative of Poland on the functions and nature of the organization. It should consist of an Assembly, a Council, a Secretariat, an exploitation commission and an operations commission. The Assembly would set up the subsidiary bodies it needed to perform its functions; every Member State would be represented in it, and it would have regular annual sessions. It would decide, by means of recommendations, on matters of substance. The Council, as the executive organ, would be set up by the Assembly…

The exploitation commission should comply with the Council's decisions and be responsible for the exploration and exploitation of the international area. It would recruit the staff it needed, purchase and install the necessary equipment, and put raw materials on the world market. It might conclude agreements on behalf of the organization and would spend the funds allocated to it. The exploration and exploitation plans it prepared would have to be approved by the Council before implementation. Moreover, an operations commission, acting under the Council's authority, would have to be set up to co-ordinate the exploration and exploitation activities of States.[14]

(n) The representative of **Romania** considered that all States should be represented in the Assembly, which should have wide powers. The Council – the executive organ of the Authority – should have only limited powers, which it would exercise under the control of the Assembly. Moreover, one organ should be specifically responsible for direct exploration and exploitation in the international area under the control of the Assembly…

The Assembly should have policy-making powers and be able to give directions to the Council and to the operational body. It would elect the members of the Council, approve the budget of the Authority, consider reports from the Council and the operational body, promote scientific research in the Area and adopt criteria for the equitable sharing of the benefits derived from the Area and its resources…The Council and the operational body should have only executive powers.[15]

(o) The representative of the **Federal Republic of Germany** stated that the confidence of the industrialized countries in the outcome of the Conference, at least with regard to the work of the First Committee, would depend largely on the establishment of satisfactory machinery. It was only natural to expect the degree of usefulness, active participation and knowledge contributed to the common cause by a member to be taken into account in designing the machinery. There was wide agreement on the need for an Assembly, a Council with subsidiary organs and a Secretariat. The Assembly should have

power to lay down general policy guidelines, whereas the Council, as its executive organ, should supervise the exploration of the Area and the exploitation of its resources in accordance with the Convention. It should adopt and amend rules and regulations, in addition to the basic conditions, in order to ensure non-discriminatory and orderly exploration and exploitation. It should also consider and approve recommendations to the Assembly, adopt the Authority's administrative and financial regulations, specify and implement the revenue distribution system in accordance with the Convention and request advisory opinions from the tribunal on any relevant issue. It might establish a subsidiary organ to approve the contracts negotiated by the Secretariat and supervise compliance with the Convention and with the terms of contracts.[16]

(p) The representative of **Bulgaria** stated that the International Authority should have regulatory and licensing functions and be empowered, when appropriate, to enter into contractual arrangements with States or to undertake exploration and exploitation itself. It was premature to specify its powers and functions and those of its organs in detail, since that was related to the outcome of the negotiations on article 9, in particular to the conditions of exploration and exploitation. His delegation was prepared to show some flexibility, but would be greatly concerned if the Authority were to be thought of as a kind of super-organization with cumbersome, unwieldy and expensive machinery: it should be an effective tool for applying the common heritage principle.

The Authority's principal organs should be an Assembly, a Council, a Secretariat and an operational board which would co-ordinate, organize and, when appropriate, undertake exploration and exploitation. The board should operate under the guidance of the Council and be responsible to it.

…The operational board might be empowered, subject to the approval of the Council, to enter into service contracts for joint ventures with States and to undertake exploration and exploitation itself and when that became feasible.[17]

(q) The representative of **China** stated that the organization should have broad powers, including the right to direct exploration and exploitation of seabed resources, and should regulate all activities in the international area, such as scientific research, production, processing and marketing…

The machinery should have an Assembly, a Council and an Enterprise. The Assembly, the supreme organ, should be composed of all States and should formulate policy on all important matters and give instructions to the Council and other subsidiary organs. The Council, as an executive organ, should be responsible to the Assembly and operate according to the guidelines laid down by it. The Enterprise would be subordinate to the Assembly and the Council, and would be responsible for all operations related to the exploration, exploitation and scientific research.[18]

(r) The representative of **Australia** said that the structure and operation of the Authority should be simple, efficient and economical. Its principal organs should be an Assembly, a Council, an Enterprise and a Secretariat, all of whose powers and relationship should be defined in detail in the Convention.

His delegation attached particular importance to the proposed Enterprise. The Enterprise should possess a personality separate from the Authority; it should have its own governing body, appointed by the Assembly, and a chief executive officer. Its function would be to carry out exploration and exploitation of the Area on behalf of the Authority either on its own account or in association with States, State enterprises or private persons.[19]

The Working Group continued its negotiations on the basic conditions of exploration and exploitation with the aid of an anonymous paper submitted to the Working Group. At the 19th and 20th meetings of the Committee, the Chairman of the Working Group, Mr. Pinto of Sri Lanka, gave a progress report on the work done relating to its mandate.[20] At the 23rd meeting he presented a final report.[21]

Following a request by the Conference at its 55th meeting on 18 April 1975, the Chairman of the First Committee prepared an Informal Single Negotiating Text (ISNT) covering the main issues within the mandate of the First Committee that was designed to facilitate the process of future negotiations. The excerpts from that document which are relevant to the Enterprise are reproduced below:

A/CONF.62/WP.8[22]
Informal Single Negotiating Text
(7 May 1975)

...

PART III: THE INTERNATIONAL SEABED AUTHORITY

Establishment of the International Seabed Authority
Article 20

1. There is hereby established the International Seabed Authority which shall function in accordance with the provisions of this Convention.

2. All States Parties to this Convention are members of the Authority.

3. The seat of the Authority shall be at Jamaica.

4. The Authority may establish such regional centres or offices as it deems necessary for the performance of its functions.

Nature and fundamental principles of the functioning of the Authority
Article 21

1. The Authority is the organization through which States Parties shall administer the Area, manage its resources and control the activities of the Area in accordance with the provisions of this Convention.

2. The Authority is based on the principle of the sovereign equality of all of its members.

3. All members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with this Convention.

Functions of the Authority
Article 22

1. Activities in the Area shall be conducted directly by the Authority.

2. The Authority may, if it considers it appropriate, and within the limits it may determine, carry out activities in the Area or any stage thereof through States Parties to this Convention, or State enterprises, or persons natural or juridical which possess the nationality of such States or are effectively controlled by them or their nationals, or any group of the foregoing, by entering into service contracts, or joint ventures or any other such form of association which ensures this direct and effective control at all times over such activities.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this article and in order to promote the earliest possible commencement of activities in the Area, the Authority, through the Council, shall:

(i) Identify as early as practicable after coming into force of this Convention the economically viable mining sites in the Area for exploration and exploitation of no more than ....(size, etc).;

(ii) Enter into joint ventures in respect of these sites with States Parties to this Convention or State enterprises or persons natural and juridical which possess the nationality of such States or are effectively controlled by them or their nationals or any group of the foregoing. Such joint ventures shall be subject to the conditions of exploration and exploitation established by and under this Convention and shall always ensure the direct and effective control of the Authority at all times.

4. In entering into such joint ventures as provided for in paragraph 3 (ii) of this article, the Authority may decide on the basis of the available data to reserve certain portions of the mining sites for its own further exploitation.

Article 23

1. In the exercise of its functions the Authority shall take measures pursuant to this Convention to promote and encourage activities in the Area and to secure the maximum financial and other benefit from them.

2. The Authority shall avoid discrimination in the granting of opportunities for such activities and shall, in the implementation of its powers, 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 landlocked among them, shall not be deemed to be discrimination.

3. The Authority shall ensure the equitable sharing by States in the benefits derived from activities in the Area, taking into particular consideration the interests and needs of the developing countries whether coastal or landlocked.

Organs of the Authority
Article 24

1. There are established as the principal organs of the Authority an Assembly, a Council, a Tribunal, an Enterprise and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with this Convention.

...

The Enterprise
Article 35

1. The Enterprise shall be the organ of the Authority which shall, subject to the general policy directions and supervision of the Council, undertake the preparation and execution of activities of the Authority in the Area, pursuant to article 22. In the exercise of its functions, it may enter into appropriate agreements on behalf of the Authority.

2. The Enterprise shall have international legal personality and such legal capacity as may be necessary for the performance of its functions and the fulfilment of its purposes. The Enterprise shall function in accordance with the Statute set forth in Annex II to this Convention, and shall in all respects be governed by the provisions of this Convention. Appointment of the members of the Governing Board under subparagraph 2 (ii) of article 26 (ii) of this Convention shall be made on the basis of equal representation of all geographical regions enumerated in subparagraph 1 (c) of article 27 and in accordance with the provisions of the Statute set forth in Annex II to this Convention.

3. Members of the Authority are ipso facto *parties to the Statute of the Enterprise.*

4. The Enterprise shall have its principal place of business at the seat of the Authority.

...

ANNEX I
BASIC CONDITIONS OF GENERAL SURVEY, EXPLORATION AND EXPLOITATION

PART A

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. Title to the minerals or processed substances derived from the Area shall pass from the Authority only in accordance with the provisions of this

Convention, the rules and regulation 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 associated activities may be conducted. In doing so the Authority shall be guided by the following principles.*

(a) The Authority shall encourage the conduct of general survey operations, and to that end shall regularly, after consultation with all States Parties, open for general survey the seabed and ocean floor of such oceanic areas as are determined by it to be of interest for this purpose. General survey may be carried out by any entity which meets the environmental protection regulations of the Authority and enters into a contract with it.

The Authority may, upon the proposal of a State Party to this Convention or on its own initiative, open for evaluation and exploitation the seabed and ocean floor of oceanic areas determined by it, on the basis of sufficient supporting data, to be of commercial interest. Such evaluation and exploitation shall be conducted directly by the Authority in accordance with Part B and, within the limits it may determine in accordance with subparagraph 8 (f), through States Parties to this Convention, or State enterprises, or persons natural or juridical which possess the nationality of such States, or are effectively controlled by them or their nationals, when sponsored by a State Party, by entering into contracts for associated operations in accordance with paragraphs 5 and 6.

Provided, however, that the Authority may refuse to open any part or parts of the Area pursuant to this paragraph when the available data indicate the risk of irreparable harm to a unique environment or unjustifiable interference with other uses of the Area.

PART B

4. The Enterprise may at any time, in any part or parts of the Area determined by the Authority to be open for activities pursuant to paragraph 3 of these Basic Conditions, carry out directly scientific research or a general survey or exploration of the Area or operation relating to evaluation and exploitation of the resources of the Area, including feasibility studies, construction of facilities, processing, transportation and marketing pursuant to a Plan of Operations approved by the Council, subject to the following conditions:

(a) The Enterprise shall submit to the Council in the form prescribed by it for the purpose such information, including a detailed financial analysis of costs and benefits, as would enable the Council to review the financial and technical aspects of the proposed Plan of Operations, as well as a Work Programme, which shall accommodate the objectives of the Authority as reflected in article 23 above;

(b) If on the basis of such information and after taking into consideration all relevant factors, the Council determines that the proposed Plan of Operations offers optimum benefits to the Authority, the Council shall approve the Plan;

(c) Activities in the Area conducted directly by the Enterprise shall, mutatis mutandis, *be subject to the relevant Basic Conditions set forth in part C.*

(d) To the extent that the Enterprise does not currently possess the personnel, equipment and services for its operations, it may employ them under its direction and management on a non-discriminatory basis if they meet the qualifications set forth in paragraph 5. The terms and conditions of such employment shall be in accordance with the relevant provisions of these Basic Conditions.

(e) Minerals and processed substances produced by the Enterprise shall be marketed in accordance with rules, regulations and procedures adopted by the Council in accordance with the following criteria:

(i) The products of the Enterprise shall be made available to States Parties;

(ii) The Enterprise shall offer its products for sale at not less than international market prices; it may, however, sell its products at lower prices to developing countries, particularly the least developed among them;

(iii) Production and marketing of the resources of the Area by the Enterprise shall be maintained or expanded in accordance with the provisions of article 9 above;

(iv) The Enterprise shall, except as specifically provided in this part, market its products without discrimination.

PART C

CONTRACTS FOR ASSOCIATED OPERATIONS

5. On the application of any State Party to this Convention, or State enterprise, or person or juridical which possesses the nationality of a State Party or is effectively controlled by it or its nationals and is sponsored by a State Party or any group of the foregoing (hereinafter called the "applicant"), the Authority may enter into a contract, joint venture or any other such form of association, for the conduct of scientific research, or for the carrying out of a general survey or exploration of the Area, or of operations

relating to evaluation and exploitation of the Area including such stages as feasibility study, construction of facilities, processing, transportation and marketing (hereinafter called the "contract").

6. Every contract entered into the Authority pursuant to paragraph 4 shall:

(a) Be in strict conformity with this Convention and the rules and regulations prescribed by the Authority in accordance with the Convention;

(b) Ensure direct and effective fiscal and administrative control by the Authority at all stages of operations through appropriate institutional arrangements entered into pursuant to this part.

QUALIFICATION OF APPLICANTS

7. (a) The Authority shall adopt appropriate administrative procedures and rules and regulations for making an application pursuant to paragraph 5, and the qualifications of any applicant referred to therein. Such qualifications shall include (1) financial standing, (2) technological capability, and (3) past performance and work experience.

(b) States Parties which apply to enter into contracts with the Authority shall be presumed to possess the qualifications specified in subparagraph (a). They shall be deemed to have waived their sovereign immunity with respect to financial and economic obligations covered by such contracts.

(c) Each applicant shall, in addition, submit to the Authority a work programme which shall accommodate the objectives of the Authority as reflected in this part and the rules and regulations adopted thereunder.

(d) Each applicant shall undertake to comply with the provisions of this Convention and the rules and regulations adopted by the Authority, and to accept control by the Authority in accordance therewith.

SELECTION OF APPLICANTS

8. (a) Upon receiving an application pursuant to paragraph 5 with respect to activities of evaluation and exploitation, the Authority shall first ascertain whether any competing application has been received for the area applied for. If no such competing application has been received, the Authority shall enter into negotiations with a view to concluding a contract with the applicant in respect of the area applied for, provided that the applicant has completed the procedures and possesses the qualifications prescribed pursuant to paragraph 6 and, after a consideration of all relevant factors is

deemed to offer the Authority optimum benefits. The Enterprise may not refuse to enter into a contract if the criteria in subparagraph 9 (d) have been satisfied, and the contract in all other respects is in strict conformity with the provisions of this part and of the rules, regulations and procedures adopted thereunder, subject to the stated resource policy established by the Authority.

(b) Applicants shall be required to comply with requirements of the Authority to achieve the objectives set forth in article 12 above.

(c) If the Authority receives more than one application in respect of substantially the same area and category of minerals, selection from among the applicants shall be made on a competitive basis taking into account the extent to which each applicant satisfies the requirements of paragraph 6. The Authority shall enter into negotiations with a view to concluding a contract with the applicant which, after a consideration of all relevant factors, is deemed to offer the Authority optimum benefits including financial arrangements in accordance with subparagraph 9(d).

(d) The principles set forth in subparagraphs (a), (b) and (c) shall be applied mutatis mutandis *in prescribing procedures, rules and regulations for the selection of applicants for contracts with respect to activities other than evaluation and exploitation.*

(e) When a contractor that has entered into a contract with the Authority for one or some of the stages of operations referred to in paragraph 4 has completed performance under it, he shall have priority among applicants for a contract or contracts for one or more further stages of operations with regard to the same area and resources; provided, however, that where the contractor has not carried out his obligations satisfactorily, such priority may be withdrawn.

(f) The total number of contracts for evaluation and exploitation entered into by the Authority with a single State Party or with natural and juridical persons under the sponsorship of a single State Party shall not exceed…per cent of the total area open under paragraph 3, and shall be equal for all States Parties.

(g) Within the limits specified in subparagraph (f) the Council may every year determine the number of contracts to be entered into by the Authority with a single State Party or with natural and juridical persons under the sponsorship of a single State Party in order to give effect to the provisions of articles…

RIGHTS AND OBLIGATIONS UNDER THE CONTRACT

9. (a) Any State Party, or any State enterprise or person natural or juridical which possesses the nationality of a State Party or is effectively controlled by it or by its nationals, when sponsored by a State Party or any group of the foregoing which enters into a contract for

activities relating to evaluation and exploitation with the Authority pursuant to paragraph 5 (hereinafter called the "Contractor") shall, except as otherwise agreed by the Authority, be required to use its own funds, materials, equipment, skills and know-how as necessary for the conduct of operations covered by the contract, and to post a bond by way of guarantee of satisfactory performance under the contract.

(b) The costs involved in the performance of the contract pursuant to subparagraph (a) shall be recoverable by the respective parties out of the proceeds of operations. The Authority shall in its rules and regulations establish a schedule pursuant to which such costs will be recovered in the manner specified in subparagraph (d) of this paragraph.

(c) The proceeds of operations pursuant to the contract after deduction of costs, which shall be calculated according to accounting principles to be determined by the Authority and the terms of the contract, shall be apportioned between the Authority and the Contractor in the manner specified in the contract in accordance with subparagraph (d) of this paragraph.

(d) (Financial arrangements)

10. The Contractor shall:

(a) Transfer in accordance with the rules and regulations and the terms and conditions of the contract to the Authority, at time intervals determined by the Authority, all data necessary and relevant to the effective implementation of the powers and functions of the organs of the Authority under this Convention in respect of the contract area. The Authority shall not disclose to third parties, without the prior consent of the Contractor, such of the transferred data as are deemed to be proprietary by the Contractor. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment shall not be deemed to be proprietary. Except as otherwise agreed with the Authority the Contractor shall not be obliged to disclose proprietary equipment design data.

(b) Draw up programmes for the training of personnel, and take all such other action as may be necessary to fulfil its obligations pursuant to subparagraph 8 (b).

11. The Authority shall, pursuant to this Convention and the rules and regulations prescribed by the Authority, accord the Contractor the exclusive right to evaluate and/or exploit the contract area in respect of a specified category of minerals and shall ensure that no other entity operates in the same contract area for a different category of minerals in a manner which might interfere with the operations of the Contractor. The Contractor shall have security of tenure. Accordingly, the contract shall not be cancelled, modified, suspended or terminated, nor shall the exercise of any right under

it be impaired, except for gross and persistent violations of the provisions of this part and the rules and regulations adopted by the Authority thereunder, and after recourse to procedures provided under this part for the settlement of any dispute that may have arisen. The Authority shall not, during the continuance of a contract, permit any entity to carry out activities in the same area for the same category of minerals.

RULES, REGULATIONS AND PROCEDURES

12. The Authority shall adopt and uniformly apply rules, regulations and procedures consistent with the purposes and fundamental principles of the functioning of the Authority and with these basic conditions in the following subjects:

(1) Applications to enter into contracts
(2) Qualifications of applicants
(3) Selection of applicants
(4) Progress report
(5) Submission of data
(6) Application fees and bonds to secure satisfactory performance
(7) Inspection and supervision of operations
(8) Mining Standards and practices, including operational safety
(9) Prevention of interference by the Contractor with other uses of the sea and of the marine environment
(10) Apportionment of the proceeds of operations
(11) Direct participation of personnel of developing countries, particularly the landlocked among them and of other countries lacking or less advanced in ocean mining and mineral processing technology, and the transfer of such technology to such countries
(12) Passing of title to minerals and processed metals for the Area
(13) Avoiding or minimizing adverse effects on the revenues of developing countries derived from exports of the minerals and products thereof from the Area
(14) Transfer of rights by a Contractor
(15) Activities in reserved areas
(16) Financial and accounting rules

In respect of rules, regulations and procedures for the following subjects the Authority shall uniformly apply the objective criteria set out below:

(17) Protection of the marine environment:

The Authority shall take into account in adopting rules and regulations for the protection of the marine environment, the extent to which activities in the Area such as drilling, dredging, coring and excavation as well as disposal, dumping and discharge in the Area of sediment or wastes and other matters will have a harmful effect on the marine environment.

(18) Size of area:

The Authority shall determine the appropriate size of areas for evaluation which may be up to twice as large as those for exploitation in order to permit intensive continued survey and evaluation operations. Areas for exploitation shall be calculated to satisfy the production requirements agreed between the Authority and the Contractor over the term of the contract taking into account the state of the art of technology then available for ocean mining and the relevant physical characteristics of the Area. Areas shall neither be smaller nor larger than are necessary to satisfy this objective. In cases where the Contractor has obtained a contract for exploitation, the area not covered by such contract shall be relinquished to the Authority.

(19) Duration of activities:

(a) General survey shall be without time limit except in the case of violations of the Authority's regulations to protect the environment in which case the Authority may prohibit the violator from conducting general survey operations for a reasonable period of time.

(b) Evaluation should be of sufficient duration as to permit a thorough survey of the specific area, the design and construction of mining equipment for the Area, the design and construction of small and medium size processing plants for the purpose of testing mining and processing systems.

(c) The duration of exploitation should be related to the economic life of the mining project taking into consideration such factors as the depletion of the ore body, the useful life of mining equipment and processing facilities, and commercial viability. Exploitation should be of sufficient duration as to permit commercial extraction of the minerals of the Area and should include a reasonable time period for construction of commercial scale mining and processing systems, during which period commercial production should not be required. The total duration of exploitation, however, should also be short enough to give the Authority an opportunity to amend the terms and conditions of the contract at the time it considers renewal in accordance with rules and regulations which it has issued subsequent to entering into contract.

(20) Performance requirements:

The Authority shall require that during the evaluation stage, periodic expenditures be made by the Contractor which are reasonably related to the size of the contract area and the expenditures which would be expected of a bona fide *contractor who intended to bring the Area into full-scale commercial production within the time limits established by the Authority. Such required expenditures should not be established at a level which would discourage pro-*

spective operators with less costly technology than is prevalently in use. The Authority shall establish a maximum time interval after the evaluation stage is completed and the exploitation stage begins to achieve full-scale commercial production. To determine this interval, the Authority should take into consideration that construction of large-scale mining and processing systems cannot be initiated until after the termination of the evaluation stage and the commencement of the exploitation stage. Accordingly, the interval to bring an area into full-scale commercial production should take into account the time necessary for this construction after the completion of the evaluation stage and reasonable allowance should be made for unavoidable delays in the construction schedule.

Once full-scale commercial production is achieved in the exploitation stage, the Authority shall within reasonable limits and taking into consideration all relevant factors require the Contractor to maintain a reasonable level of commercial production throughout the period of the contract.

(21) Categories of minerals:

In determining the category of mineral in respect of which a contract may be entered into, the Authority shall give emphasis inter alia to the following characteristics:

(a) Resources which require the use of similar mining methods; and

(b) Resources which can be developed simultaneously without undue interference between Contractors in the same area developing different resources.

Nothing in this paragraph shall deter the Authority from granting a contract for more than one category of mineral in the same contract area to the same applicant.

(22) Renunciation of areas:

The Contractor shall have the right at any time to renounce without penalty the whole or part of his rights in the contract area.

13. The Authority shall have the right to take at any time any measures provided for under this Convention to ensure compliance with its terms, and in the performance of the control and regulatory functions assigned to it thereunder or under any contract. The Authority shall have the right to inspect all facilities in the Area used in connection with any activities in the Area.

SUSPENSION OR TERMINATION

14. A Contractor's rights in the contract area shall be suspended or terminated only if the Contractor has conducted his activities in such a way as to result in gross and persistent violations of this part and rules and regulations and were not caused by circumstances beyond his control, or if a Contractor has wilfully failed to comply with any decision of the (dispute settlement organ).

15. [Circumstances under which terms and conditions (e.g. financial conditions) of contract may be revised- to be drafted].

FORCE MAJEURE

16. Non-performance or delay in performance shall be excused if and to the extent that such non-performance or delay is caused by force majeure. *The party invoking* force majeure *may take appropriate measures including revision, suspension of termination of the contract; provided, however, that in the event of a dispute the parties shall first have recourse to the procedures for the settlement of disputes provided for in this part.*

TRANSFER OF RIGHTS

17. The right and obligations arising out of a contract shall be transferred only with the consent of the Authority, and in accordance with the rules and regulations adopted by it. The Authority shall not withhold consent to the transfer if the proposed transferee is in all respects a qualified applicant, and assumes all the obligations of the transferor.

APPLICABLE LAW

18. The law applicable to the contract shall not be solely the provisions of this Convention, the rules and regulations prescribed by the Authority, and the terms and conditions of the contract. The rights and obligations of the Authority and of the Contractor shall be valid and enforceable notwithstanding the law of any State, or any political subdivision thereof to the contrary. No contracting State may impose conditions on a Contractor that are inconsistent with the principles of this Convention.

LIABILITY

19. Responsibility or liability for wrongful damage arising out of the conduct of operations by the Contractor or the Authority shall lie with the Contractor or the Authority as the case may be. It shall be a defence in any proceeding against a Contractor that the damage was the result of an act or omission of the Authority. Similarly, any responsibility or liability for wrongful damage arising out of the exercise of the powers and functions of the Authority shall lie with the Authority. It shall be a defence in any proceeding against the Authority that the damage was a result of a act or omission of the Contractor. Liability in every case shall be for the actual amount of damage.

SETTLEMENT OF DISPUTES

20. Any dispute concerning the interpretation or application of this Convention, its rules and regulations or the terms and conditions of a con-

tract and arising between the Authority and a Contracting State or any State enterprise or person natural or juridical which possesses the nationality of a Contracting State or is effectively controlled by it or its nationals, or any group of the foregoing shall on the application of either party be subject to the procedure for settlement of such disputes provided for in this Convention

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ARRANGEMENTS FOLLOWING PROVISIONAL ENTRY INTO FORCE OF THE CONVENTION

21. In the period immediately following provisional application of this Convention, the Authority shall, with respect to the first (…) such contracts, joint ventures or other such form of association, give priority to those covering integrated stages of operations.

Note: *Two further annexes will be issued in the future, Annex II entitled "Statute of the Enterprise," and Annex III, "Statute of the Tribunal."*

End Notes

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. IV, (United Nations Publications, Sales No. E.75.V.10), Summary Records of Meetings, 19th meeting of the First Committee, 26 March 1975, Third Session of UNCLOS III (Geneva, 17 March-9 May 1975), p. 51, para. 2.
[2] Ibid, 19th meeting of the First Committee, 26 March 1975, p. 54, para. 24.
[3] Ibid, 20th meeting of the First Committee, 25 April 1975, p. 57 para 24.
[4] Ibid, 21st meeting of the First Committee, 28 April 1975, p. 59, paras 1–2.
[5] Ibid, 21st meeting of the First Committee, 28 April 1975, p. 60, para. 5.
[6] Ibid, 21st meeting of the First Committee, 28 April 1975, p. 60, para. 7.
[7] Ibid, 21st meeting of the First Committee, 28 April 1975, p. 62, para. 29.
[8] Ibid, 21st meeting of the First Committee, 28 April 1975, pp. 62–63, paras 33 & 37.
[9] Ibid, 21st meeting of the First Committee, 28 April 1975, p. 63, para. 42.
[10] Ibid, 21st meeting of the First Committee, 28 April 1975, p. 63, para. 45.
[11] Ibid, 21st meeting of the First Committee, 28 April 1975, p. 64, para. 55.
[12] Ibid, 21st meeting of the First Committee, 28 April 1975, p. 64, para. 58.
[13] Ibid, 21st meeting of the First Committee, 28 April 1975, p. 65, para. 70.
[14] Ibid, 21st meeting of the First Committee, 28 April 1975, pp. 65-66, paras 74–75.
[15] Ibid, 21st meeting of the First Committee, 28 April 1975, p. 66, paras 83 & 85.
[16] Ibid, 22nd meeting of the First Committee, 28 April 1975, p. 67-68, para. 13.
[17] Ibid, 22nd meeting of the First Committee, 28 April 1975, p. 68, paras 18-19 & 23.
[18] Ibid, 22nd meeting of the First Committee, 28 April 1975, p. 68, paras 25–26.
[19] Ibid, 22nd meeting of the First Committee, 28 April 1975, p. 69, paras 35 & 39.
[20] Ibid, 19th meeting of the First Committee, 26 March 1975, pp. 52-53, paras 12-19; 20th meeting of the First Committee, 25 April 1975, pp. 54-56, paras 1-13.
[21] Ibid, pp. 70-71, paras 1-7.
[22] For the full text which included Parts I-III, *see* ibid, pp. 137-181.

III. FOURTH SESSION OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA (NEW YORK, 15 MARCH -7 MAY 1976)

At the first meeting of the Fourth Session, on 15 March 1976, the President of the Conference declared that, according to consultations previously held, there would be no further general statements except on one or two items and that there would be no general discussions on the Infomal Single Negotiating Texts (ISNT) (A/CONF.62/WP.8/Parts I, II and III). The President indicated that the next phase should be the preparation by the Chairmen of the three Committees of a Revised Single Negotiating Text (RSNT) in respect of each of their Committees and that this revised text would reflect as far as possible the result of the informal negotiations that had taken place.[1]

The Chairmen of the three Committees have accordingly prepared RSNTs. The results of the work conducted in the First Committee were reflected in Part I of the RSNT.[2]

In its introductory note to the document, the Chairman of the First Committee stated that three important special features deserved notice:

(1) The text had 63 articles, compared with the 75 contained in the Geneva Single Negotiating Text.

(2) There were three annexes, which completed the list indicated in the Geneva Single Negotiating Text. Annex I dealt with the Basic Conditions of the Prospecting, Exploration and Exploitation. Annex II dealt with the Statute of the Enterprise, and Annex III dealt with the Statute of the Seabed Dispute Settlement System. However, while Annex I was the subject of detailed consideration during the negotiations, Annexes II and III were products of preliminary exchange of views.

(3) A "Special Appendix" had been added to reflect the special situation brought to light in the discussion on the subject. Paragraph 9 of Annex I was left blank in the Geneva Single Negotiating Text. It was reserved for provisions dealing with financial arrangements. The subject was considered for the first time at this Session. Although the exchange of views on it was very useful, it appeared to have been confined to available experts from a limited number of countries. Even among these, opinions were not without their grave divergencies. The obvious conclusion was that it would need to be considered further at the next Session, with wider participation and expertise. However, two texts, A and B, had been included in the RSNT, both of which may offer useful ideas for those further discussions.[3]

As to the international regime and the Enterprise, he said that under the exploration and exploitation system adopted in article 22, activities in the Area would be conducted directly by the Enterprise and, in association with the Authority and under its control in accordance with that article, by States Parties, State enterprises, or natural or juridical persons possessing the necessary affiliation, or any group of the foregoing.[4]

The Enterprise was the organ of the Authority which directly conducted activities in the Area pursuant to article 22. Provisions relating to the Enter-

prise were made in both article 41 (originally article 35) and Annex II, which contained the Statute of the Enterprise.[5]

The Chairman said that the discussion on the draft Statute of the Enterprise revealed an expressed need for the United Nations Secretary-General to explore alternative means of financing the Enterprise. It was his view that any study in this area would be useful for future discussions and hoped that the Secretariat would respond to that request.[6]

Following are the draft articles concerning the Enterprise:

A/CONF.62/WP.8/Rev.1/Part 1 (6 May 1976)
Revised Single Negotiating Text[7]

...

FUNCTIONS OF THE AUTHORITY

Article 22

1. Activities in the Area shall be conducted directly by the Authority and, in association with the Authority and under its control in accordance with paragraph 3 of this article, by States Parties, or State enterprises, or 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 in accordance with provisions of Annex I, the rules, regulations and procedures of the Authority adopted under Article 28 (2) (xii) and the Statute of the Enterprise.

2. Activities in the Area shall be carried out in accordance with a formal written plan of work drawn in accordance with Annex I and approved by the Council after review by the Technical Commission. In the case of activities in the Area conducted in association with the Authority such a plan of work shall be in the form of a contract of exploration and exploitation.

3. The Authority shall exercise control over activities in the Area for the purpose of securing effective compliance with the relevant provisions of this Convention, Annex I and the rules, regulations and procedures of the Authority adopted under Article 28 (2) (xii) and the plan of work approved in accordance with paragraph 2. States Parties who sponsor persons natural or juridical shall assist the Authority by taking all necessary and appropriate measures to secure effective compliance by such persons.

...

ORGANS OF THE AUTHORITY

Article 24

1. There are hereby established as the principal governing, judicial and administrative organs of the Authority, an Assembly, a Council, a Tribunal and a Secretariat.

2. There is hereby established the Enterprise, the organ through which the Authority shall directly carry out activities in the Area.

3. Such subsidiary organs as may be found necessary may be established in accordance with this Part of the Convention.

4. The principal organs shall each be responsible for exercising those powers and functions which have been provided to them and shall, except as otherwise specified in this Part of the Convention, avoid taking any actions which may impede the exercise of specific powers and functions entrusted to another organ.

...

THE ENTERPRISE

Article 41

1. The Enterprise shall be the organ of the Authority which shall, subject to the general policy directives and control of the Council, conduct activities in the Area directly, pursuant to Article 22.

2. The Enterprise shall have international legal personality and such legal capacity as may be necessary for the performance of its functions and the fulfilment of its purposes. The Enterprise shall function in accordance with the Statute set forth in Annex II to this Part of the Convention, and shall in all respects be governed by the provisions of this Part of the Convention. Appointment of the members of the Governing Board shall be made in accordance with the provisions of the Statute set forth in Annex II.

3. The Enterprise shall have its principal place of business at the seat of the Authority.

...

ANNEX II
STATUTE OF THE ENTERPRISE

PURPOSE

1. (a) The Enterprise shall conduct activities of the Authority in the Area, in the performance of its functions in implementation of Article 41.

(b) In the performance of its functions and in carrying out its purposes, the Enterprise shall act in accordance with the provisions of this Part of the Convention, in particular of Articles 9 and 22 thereof, and the Annexes thereto.

RELATIONSHIP TO THE AUTHORITY

2. (a) The Enterprise shall at all times be subject to the policy directives and control of the Council in accordance with the provisions of Article 41.

(b) Nothing in this Annex shall make the Enterprise liable for the acts or obligations of the Authority, or the Authority liable for the acts or obligations of the Enterprise.

MEMBERSHIP

3. (a) The members of the Enterprise shall be the members of the Authority on the date of the entry into force of this Convention.

(b) Any State which subsequently becomes a member of the Authority shall ipso facto *become a member of the Enterprise from the date on which it becomes a party to this Convention.*

LIMITATION OF LIABILITY

4. No member shall be liable, by reason of its membership, for obligations of the Enterprise.

ORGANIZATION AND MANAGEMENT

STRUCTURE

5. (a) The Enterprise shall have a Governing Board, a Director-General and such other officers and staff to perform such duties as the Enterprise may determine.

GOVERNING BOARD

(b) (i) The Governing Board shall be responsible for the conduct of the operations of the Enterprise, and for this purpose shall exercise all the powers given to it by this Annex.

(ii) The Governing Board shall have 36 members elected by the Assembly on the same criteria as contained in Article 27 of this Part of the Convention for election of the members of the Council.

(iii) Members of the Board shall be elected every two years, and shall be eligible for re-election.

(iv) Each member of the Board shall have one vote. Except as otherwise expressly provided all matters before the Board shall be decided by a majority of the votes cast.

(v) Each member of the Board shall appoint an alternate from the same Member State with full power to act for him when he is not present. When the members of the Board appointing them are present, the alternates may participate in meetings, but shall not vote.

(vi) Members of the Board shall continue in office until their successors are appointed or elected. If the office of a member of the Board becomes vacant more than 90 days before the end

of his term, the Member State of the former member of the Board may appoint another member for the remainder of the term. While the office remains vacant, the alternate of the former member of the Board shall exercise his powers, except that of appointing an alternate.

(vii) The Governing Board shall function in continuous session at the principal office of the Enterprise and shall meet as often as the business of the Enterprise may require.

(viii) A quorum for any meeting of the Governing Board shall be a majority of two thirds of the members of the Board.

(ix) The Assembly shall adopt regulations under which a member not represented by a member of the Board may send a representative to attend any meeting of the Governing Board when a request made by, or a matter particularly affecting, that member is under consideration.

(x) The Governing Board may appoint such committees as they deem advisable.

THE DIRECTOR-GENERAL AND STAFF

(c) (i) The Governing Board shall elect a Director-General who shall not be a member of the Board or an alternate. The Director-General shall be the legal representative of the Enterprise. He shall be Chairman of the Governing Board, but shall have no vote except a deciding vote in case of an equal division. He may participate in meetings of the Assembly but shall not vote at such meetings. The Director-General shall hold office for a period of five years and may be reappointed for one further term.

(ii) The Director-General shall be chief of the operating staff of the Enterprise and shall conduct, under the direction of the Governing Board, the ordinary business of the Enterprise. Subject to the general control of the Governing Board, he shall be responsible of the organization, appointment and dismissal of the officers and staff.

(iii) The Director-General, officers and staff of the Enterprise, in the discharge of their offices, owe their duty entirely to the Enterprise and to no other authority. Each member of the Enterprise shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

(iv) In appointing the officers and staff the Director-General shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible:

LOCATION OF OFFICES

(d) The principal office of the Enterprise shall be at the seat of the Authority. The Enterprise may establish other offices in the territories of any member.

CHANNEL OF COMMUNICATION

(e) Each member shall designate an appropriate authority with which the Enterprise may communicate in connection with any matter arising under the Annex.

PUBLICATION OF REPORTS AND PROVISION OF INFORMATION

(f) (i) The Enterprise shall, not later than three months after the end of each financial year, submit to the Authority for its approval an annual report containing an audited statement of its accounts and shall transmit to the Council and circulate to members at appropriate intervals a summary statement of its financial position and a profit and loss statement showing the results of its operations.

(ii) The Enterprise may publish its annual report and such other reports as it deems desirable to carry out its purposes.

(iii) Copies of all reports, statements and publications made under this article shall be distributed to members.

ALLOCATION OF NET INCOME

(g) The Council, on the recommendation of the Governing Board, shall determine annually what part of the net income of the Enterprise after provision for reserves and surplus should be transferred to the Authority.

FINANCE

6. (a) The funds of the Enterprise shall comprise:

(i) Amounts determined from time to time by the Assembly out of the Special Fund referred to in Article 49.

(ii) Voluntary contributions made by States Parties to this Convention.

(iii) Amounts borrowed by the Enterprise, in accordance with subparagraph (c) below.

(iv) Other funds made available to the Enterprise, including charges, to enable it to commence operations as soon as possible for carrying out its functions.

(b) The Governing Board of the Enterprise shall determine when the Enterprise may commence operations.

(c) The Enterprise shall have the power to borrow funds, and in that connection to furnish such collateral or other security therefore as it shall determine; provided, however, that before making public sale of its obligations in the markets of a member, the Enterprise shall have obtained the approval of that member and of the member in whose currency the obligations are to be denominated. The total amount and sources of borrowings shall be approved by the Council on the recommendation of the Governing Board.

(d) The funds of the Enterprise shall be kept separate and apart from those of the Authority. The provisions of this paragraph shall not prevent the Enterprise from making arrangements with the Authority regarding facilities, personnel, and services and arrangements for reimbursement of administrative expenses paid in the first instance by either organization on behalf of the other.

OPERATIONS

7. (a) The Enterprise shall be the organ responsible for activities in the Area carried out directly by the Authority. The Enterprise shall carry out activities in the Area, including scientific research and the promotion thereof, all in accordance with Articles 9 and 22 and the other applicable provisions of this Part of the Convention and the Annexes thereto.

(b) The Enterprise shall propose to the Council projects for carrying out activities in the Area. Such proposals shall include a detailed description of the project, an analysis of the estimated costs and benefits, a draft formal written plan of work and all such other information and data as may be required from time to time for its appraisal by the Technical Commission and approval by the Council.

(c) Upon approval by the Council, the Enterprise shall execute the project on the basis of the formal written plan of work referred to in subparagraph (b) of this paragraph.

(d) Procurement of goods and services:

(i) To the extent that the Enterprise does not at any time possess the goods and services required for its operations, it may procure and employ them under its direction and management. Procurement of goods and services required by the Enterprise shall be effected by the award of contracts, based on response to invitations in member countries to tender, to bidders offering the best combination of quality, price and most favourable delivery time.

(ii) If there is more than one bid offering such a combination, the contract shall be awarded in accordance with the following principles:

(a) Non-discrimination on the basis of political or similar considerations not relevant to the carrying out of operations with due diligence and efficiency;

(b) Guidelines approved by the Council with regard to the preferences to be accorded to goods and services originating in the developing countries, particularly the landlocked or otherwise geographically disadvantaged among them;

(iii) The Governing Board may adopt rules determining the circumstances in which the requirement of invitations in member countries to bid may be dispensed with.

(e) The Enterprise shall have title to all minerals and processed substances produced by it. They shall be marketed in accordance with rules, regulations and procedures adopted by the Council in accordance with the following criteria:

(i) The products of the Enterprise shall be made available to States Parties;

(ii) The Enterprise shall offer its products for sale at not less than international market prices; it may, however, sell its products at lower prices to developing countries particularly the least developed among them.

(f) Other powers:

Without prejudice to any general or special power conferred on the Enterprise under any other provision of this Convention, the Enterprise shall exercise all such powers incidental to its business as shall be necessary or desirable in the furtherance of its purposes.

(g) Political activity prohibited:

The Enterprise and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially or in order to carry out the purposes specified in paragraph 1 of this Annex.

WITHDRAWAL, SUSPENSION OF MEMBERSHIP, SUSPENSION OF OPERATIONS

WITHDRAWAL BY MEMBERS

8. (a) Any member withdrawing from membership in the Authority shall cease to be a member of the Enterprise on the date on which such withdrawal becomes effective.

SUSPENSION OF MEMBERSHIP

(b) (i) Persistent violation by a member of any of its obligations to the Enterprise shall render such member liable to suspension pursuant to Article 62 of this Part of the Convention.

(ii) While under suspension, a member shall not be entitled to exercise any rights under this annex except the right of withdrawal, but shall remain subject to all obligations.

SUSPENSION OR CESSATION OF MEMBERSHIP IN THE AUTHORITY

(c) Any member which is suspended from membership in, or ceases to be a member of, the Authority shall automatically be suspended from membership in, or cease to be a member of, the Enterprise, as the case may be.

RIGHTS AND DUTIES OF GOVERNMENTS CEASING TO BE MEMBERS

(d) (i) When a Government ceases to be a member it shall remain liable for any amounts due from it to the Enterprise. The Enterprise and the Government may agree on a final settlement of account and a final settlement of all obligations of the Government to the Enterprise.

(ii) If such agreement shall not have been made within six months after the Government ceases to be a member or such other time as the Enterprise and such Government may agree, the settlement shall be made in accordance with the following conditions:

(a) Any payments due to the Government may be made in such instalments, at such times and in such available currency or currencies as the Enterprise reasonably determines, taking into account the financial position of the Enterprise;

(b) Any amount due to the Government shall be withheld so long as the Government or any of its agencies remains liable to the Enterprise for payment of any amount and such amount may, at the option of the Enterprise, be set off, as it becomes payable, against the amount due from the Enterprise;

(c) If the Enterprise sustains a net loss on the operations pursuant to paragraph 7 as of the date when the Government ceases to be a member, and the amount of such loss exceeds the amount of the reserves provided therefore on such date, such Government shall repay on demand the amount by which the amount due to the Government would have been reduced if such loss had been taken into account when the latter amount was determined.

(iii) In no event shall any amount due to a Government under this paragraph be paid until six months after the date upon which the Government ceases to be a member. If within six months of the date upon which any Government ceases to be a member

the Enterprise suspends operations under subparagraph (e) of this paragraph, all rights of such Government shall be determined by the provisions of such subparagraph (e) and such Government shall be considered still a member of the Enterprise for purposes of such subparagraph (e), except that it shall have no voting rights.

SUSPENSION OF OPERATIONS AND SETTLEMENT OF OBLIGATIONS

(e) *(i) The Enterprise may permanently suspend its operations if, on the recommendation of the Enterprise, the Assembly, by a vote of two thirds of its members so decides. After such suspension of operations the Enterprise shall forthwith cease all activities, except those incident to the orderly realization, conservation and preservation of its assets and settlement of its obligations. Until final settlement of such obligations and distribution of such assets, the Enterprise shall remain in existence and all mutual rights and obligations of the Enterprise and its members under this Annex shall continue unimpaired, except that no member shall be suspended or withdrawn and that no distributions shall be made to members except as in this subparagraph provided.*

(ii) *No distribution shall be made to members until all liabilities to creditors shall have been discharged or provided for and until the Assembly, by vote of a majority of its members shall have decided to make such distribution.*

(iii) *Subject to the foregoing, the Enterprise shall distribute the assets of the Enterprise to members in accordance with Article 49 of this Part of the Convention, subject, in the case of any member, to prior settlement of all outstanding claims by the Enterprise against such member. Such distribution shall be made at such times, in such currencies, and in cash or other assets as the Enterprise shall deem fair and equitable. Distribution to the several members need not necessarily be uniform in respect of the type of assets distributed or of the currencies in which they are expressed.*

(iv) *Any member receiving assets distributed by the Enterprise pursuant to this paragraph shall enjoy the same rights with respect to such assets as the Enterprise enjoyed prior to their distribution.*

STATUS, IMMUNITIES AND PRIVILEGES

9. *(a) To enable the Enterprise to fulfil the functions with which it is entrusted, the status, immunities and privileges set forth herein shall be accorded to the Enterprise in the territories of each member.*

STATUS OF THE ENTERPRISE

(b) The Enterprise shall possess full juridical personality, and in particular, the capacity:

(i) To contract;

(ii) To acquire and dispose of immovable and movable property;

(iii) To institute legal proceedings.

POSITION OF THE ENTERPRISE WITH REGARD TO JUDICIAL PROCESS

(c) Actions may be brought against the Enterprise only in a court of competent jurisdiction in the territories of a member in which the Enterprise has an office, has appointed an agent for the purpose of accepting service or notice or process, has entered into a contract for goods or service, or has issued securities. The property and assets of the Enterprise shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Enterprise.

IMMUNITY OF ASSETS FROM SEIZURE

(d) Property and assets of the Enterprise, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

IMMUNITY OF ARCHIVES

(e) The archives of the Enterprise shall be inviolable

FREEDOM OF ASSETS FROM RESTRICTIONS

(f) To the extent necessary to carry out the operations provided for in this Annex and subject to the provisions of this Annex, all property and assets of the Enterprise shall be free from restrictions, regulations, control and moratoria of any nature.

PRIVILEGES FOR COMMUNICATION

(g) The official communications of the Enterprise shall be accorded by each member the same treatment that it accords to the official communications of other members.

IMMUNITIES AND PRIVILEGES OF OFFICERS AND EMPLOYEES

(h) The members of the Governing Boards, alternates, officers and employees of the Enterprise:

(i) Shall be immune from legal process with respect to acts performed by them in their official capacity;

(ii) Not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members of the representatives, officials, and employees of comparable rank of other members;

(iii) Shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

IMMUNITIES FROM TAXATION

(i) (i) The Enterprise, its assets, property, income and its operations and transactions authorized by this Annex, shall be immune from all taxation and from all customs duties. The Enterprise shall also be immune from liability for the collection or payment of any tax or duty.

(ii) No tax shall be levied on or in respect of salaries and emoluments paid by the Enterprise to members of the Board, alternates, officials or employees of the Enterprise who are not local citizens, subjects, or other local nationals.

(iii) No taxation of any kind shall be levied on any obligation or security issued by the Enterprise (including any dividend or interest thereon) by whomsoever held:

(a) Which discriminates against such obligation or security solely because it is issued by the Enterprise; or

(b) If the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Enterprise.

APPLICATION OF ARTICLE

(j) Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law, the principles set forth in this Annex and shall inform the Enterprise of the detailed action which it has taken.

WAIVER

(k) The Enterprise in its discretion may waive any of the privileges and immunities conferred under this article to such extent and upon such conditions as it may determine.

End Notes

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. V, (United Nations Publications, Sales No. E.76.V.8), Summary Records of Meetings, 57th meeting of the Plenary, 15 March 1976, Fourth Session of UNCLOS III (New York, 15 March-7 May 1975), p. 4, para.17. *See* also *Revised Single Negotiating Text*, A/CONF.62/WP.8/Rev.1, *Note by the President of the Conference*, p.125.

[2] Ibid.

[3] *Revised Single Negotiating Text*, A/CONF. 62/WP.8/Rev.1/Part I, Text presented by the Chairman of the First Committee, *Introductory Note*, 6 May 1976, in ibid, p.126, para. 6.

[4] Ibid, p.127, para. 16.

[5] Ibid.

[6] Ibid, p.127, para. 18.

[7] Ibid, pp. 125-150.

IV. FIFTH SESSION OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA (NEW YORK, 2 AUGUST – 17 SEPTEMBER 1976)

At the first Plenary meeting of the UNCLOS III on 2 August 1976, the President said that the Conference should try to reach agreement on the key issues. In this regard he had felt that he should give his detached view on what those issues were and he had done so in document A/CONF.62/L.12/Rev.1.[1] In that document he had made it clear that this was not the final work on the subject and that it would be left to each Chairman and Committee to decide what the key issues were.[2] Concerning the First Committee those issues were, *inter alia*,

(a) the powers and functions of the Authority in regard to control or regulation of activities in the Area (articles 9 and 21 and Annex I)

(b) the organs of the Authority and their respective powers and functions (articles 26-28)

(c) Finance (articles 46-51).[3]

Furthermore he had indicated in the same document that there were certain questions which have been the subject only of a preliminary exchange of views. The provisions in regard to them require different treatment from questions which have been the subject of negotiation and in regard to which the revision of the original text was appropriate. They were:

(a) Basic conditions of prospecting, exploration and exploitation – Annex I

(b) The Statute of the Enterprise – Annex II

(c) The Statute of the seabed dispute settlement system – Annex III

(d) Special appendix on financial arrangements in regard to which two sets of proposals, described as "Approach A" and "Approach B" have been presented by the Chairman.[4]

At the first meeting of the First Committee on 4 August 1976, the Chairman said that Part I of the RSNT had been drawn up by him primarily to indicate his own views of what would be the best basis for a consensus. The ideas contained in that text were therefore his own and did not claim to reflect the conclusions of all participants.[5]

During this session the First Committee worked through formal and informal meetings, its workshops and the negotiating group of its workshop. The workshop discussed the system of exploitation particularly article 22 of the RSNT and the related provision in Annex I on the basic conditions of prospecting, exploration and exploitation. The workshop later decided to undertake negotiations on the system of exploitation in a negotiating group.[6]

Discussions in the Committee reflected the concern over the lack of concrete results. This slow progress was attributed in part to the difficulty in finding a system of exploitation that would be acceptable to all.[7]

During its 28th meeting the First Committee requested the Secretariat to make a study on alternative means of financing the Enterprise, on the basis of assumptions set out by the Special Representative of the Secretary-General

and the provisions of Part I of the RSNT, particularly the relevant section of Annex II.[8]

At the 32nd meeting on 7 September 1976, the Secretary-General presented to the Committee a study entitled "Alternative means of financing the Enterprise" (A/CONF.62/C.1/L.17). No discussion was held on the paper owing to the shortage of time.[9]

At the 26th meeting on 5 August 1976, the First Committee decided to establish a workshop in order to conduct its work in an informal setting.[10]

The workshop commenced its discussion with the system of exploitation of the international seabed area, particularly article 22 of Part II of the RSNT and the related paragraphs in Annex I on the basic conditions of prospecting, exploration and exploitation. At its meetings on 18 and 19 August, three papers on the system of exploitation were presented and distributed as Workshop Paper Nos. 1, 2 and 3.[11]

At the 34th meeting of the First Committee on the 9 September the Co-Chairmen presented their final report on the activities of the workshop.[12]

Here are certain relevant excerpts from this report:

Workshop Paper No. 1 … *asserted the pre-eminence of the Authority and its full and effective control over activities in the international seabed area as a means of ensuring compliance with the provisions of the Convention. According to this paper it would be necessary to make the Enterprise a concrete and financially viable entity. The proponents of this paper did not support a parallel system of exploitation as set forth in the RSNT.*[13]

According to this paper, activities in the Area should be conducted exclusively by the Authority directly, through the Enterprise in accordance with a formal written plan of work, or, as determined by the Authority, through a form of association between the Enterprise and the specified entities pursuant to a contract. The plan of work or the contract would be drawn up or entered into in accordance with Annex I and approved by the Council after review by the Technical Commission. For the purpose of securing compliance at all times with the relevant provisions and instruments, the Authority should exercise full and effective control over the activities in the Area. States Parties should assist the Authority by taking all measures necessary to secure such compliance. The paper further provided that the Authority should avoid discrimination in the exercise of its powers and functions and that all rights granted should be fully safeguarded. Special consideration for developing countries, including the conduct of activities by the Authority in certain parts of the Area solely in association with them, should not be deemed discriminatory.[14]

Flexibility was maintained in the provision as to when title to minerals and processed substances could be passed from the Authority. The Authority would be required to adopt appropriate administrative procedures, rules and regulations for making an application and for the qualifications of an applicant. Such qualifications included financial standing, technological capability and satisfactory performance under previous contracts with the

Authority, if any. In assessing the qualifications of a State Party, its character as a State should be taken into account. Every applicant should be treated on an equal footing and would be required to fulfil four specific requirements: the undertaking to comply with and to accept as enforceable all the obligations; acceptance of control by the Authority; satisfactory assurance of fulfilment of obligations in good faith; and the undertaking to promote the interests of developing countries by association or other means. In view of the two main methods of operation embodied in article 22 mentioned above, one new paragraph was added to provide that the procedures for the Enterprise should be governed by such provisions as the Authority might establish in its rules and regulations and by the Statute of the Enterprise. Furthermore, its activities should be conducted in accordance with the resource policy and the relevant decisions of the Authority in implementation thereof.[15]

The Authority should determine when to conduct activities in the Area in association with entities. With respect to selection of applicants, the Authority would be empowered, on its own initiative, or upon receiving an application, to initiate selection procedures for applicants and to publish and make known a time-limit for receiving other applications.[16]

Subject to the foregoing, the Authority should enter into negotiations with the applicant on the terms of a contract, provided that the applicant possessed the requisite qualifications and complied with the procedures established for applications, that the application did not relate to those parts of the Area retained solely for the conduct of activities by the Enterprise or by it in association with the developing countries; and that the contract complied with the resource policy and the relevant decisions of the Authority. The terms of a contract to be negotiated were clearly set out in the text. They included the respective contributions of the Authority and the contractor in association, including the contribution of funds, materials, equipment, skills and know-how as necessary for the conduct of operations covered by the contract and the extent of the participation of developing countries therein, as well as the proper financial arrangements. Provisions were also made to cover cases where more than one application is received, whereby selection would be on a competitive basis, and any preference and priority would be accorded at a subsequent stage to an applicant who had previously entered into a contract for a separate stage or stages of operations. The Authority could re-initiate the procedure for selection of applicants, if after a specified period and after negotiations had been entered into, a contract had not been concluded.[17]

The Authority was empowered to determine after exploration, that, in a certain part of the contract area, activities should only be conducted by it either through the Enterprise or in association with developing countries, the Enterprise have the first right of refusal. When considering applications of such an area, the Authority was required to ensure that the developing country or countries would obtain substantial benefits. Reference to the issue of a quota or antimonopoly provision was maintained in the text of Workshop Paper No. 1.[18]

The paper was further supported by other delegations both from developed and developing countries, some of whom stressed that the activities within the international seabed should naturally be conducted directly by the Authority since the Authority would be composed of all countries representing humanity as a whole. They therefore opposed the provisions of Workshop Papers Nos. 2 and 3 because they ignored the principle that the international seabed was the common heritage of mankind. Some other delegations were prepared to support the general approach taken in Workshop Paper No. 1 as the best basis for working out a more generally acceptable system of exploitation. A general agreement would need to recognize that the Convention must give some assurance of access to the Area for States Parties and other entities, and that its provisions must enable the Enterprise to establish itself as a viable concern.[19]

The report continues by stating that, according to Workshop Paper No. 2, … *the activities in the Area should be conducted both by States Parties and directly by the Authority. The Authority would determine the part or parts of the Area in which it would conduct its activities. The Authority's area would not exceed that in which activities would be carried out by States Parties. The activities of States Parties would be conducted on the basis of contracts with the Authority and they would come under its effective financial and administrative supervision. States Parties might carry out activities through State enterprises or juridical persons registered in and sponsored by States. States Parties sponsoring such entities would be responsible for taking all necessary measures to ensure that such entities complied with the provisions of Part I of the Convention, Annex I and the rules, regulations and procedures adopted by the Authority in accordance with article 28. All States Parties would have equal rights to participate in activities in the Area irrespective of their geographical location, social system and level of industrial development, and particular consideration would be given to the needs of developing countries, including those which are landlocked or geographically disadvantaged. It should be noted that while activities would be conducted in accordance with the basic conditions in Annex I, such conditions were not elaborated in this workshop paper. On this point, it was explained that the present provisions of Annex I of the Revised Single Negotiating Text could not be taken as being totally acceptable. It was stressed that the right of States to conduct exploration and exploitation activities in the Area followed naturally from the concept of the common heritage of mankind since States are juridical representatives of mankind under international law, and that these rights should therefore be guaranteed in the Convention itself and not left to the discretion of the Authority. Furthermore, the system of exploitation would need to take account of the legitimate rights and interests of the socialist system, which was one of the main systems in the world; no seabed regime and machinery would be viable without taking this into account. Although the paper did not contain any clause, it was stressed that such a clause should none the less be an integral part of the system of exploitation as presented in this paper.*[20]

According to the report, this *workshop paper was supported by a number of delegations since they considered that the system it proposed took into account the positions of all delegations and could therefore be regarded as a compromise.*[21]

According to Workshop Paper No. 3, … *there would be a parallel or dual access system. In introducing this paper, it was pointed out that a parallel system could be a method of accommodating the interests of all States and the international community in general, so as to best reflect the principle of the common heritage of mankind. States Parties or other entities and the Enterprise would carry out activities in the Area directly by entering into contracts with the Authority. All such activities would be in accordance with Annex I and the rules, regulations and procedures adopted by the Authority. The Authority would have effective fiscal and administrative supervision over all activities in the area to secure effective compliance with Part I of the Convention, Annex I and the rules and regulations and procedures adopted by the Authority. States Parties who sponsor other entities would assist the Authority by taking all appropriate measures to ensure such compliance. The Authority should promote and encourage activities in the Area and should avoid discrimination in granting access and in implementing its powers and functions. The Authority would be forbidden to impair any rights granted under Part I of the Convention and must fully safeguard such rights. Pursuant to specific articles in Part I of the Convention dealing with scientific research, technology transfer and the distribution of revenues, the Authority would be empowered to give special consideration to the interests and needs of developing countries, particularly the landlocked and geographically disadvantaged among them. Such special consideration would not be deemed to be discrimination.*[22]

Title to the resources would be vested in the contractor at the moment the resources were recovered from the Area pursuant to a contract. A contract would be entered into by the Authority if the applicant was qualified by virtue of his financial standing and technological capability. The Enterprise and States Parties would be presumed to be so qualified. An applicant would also be required to submit a work programme to the Authority which would fully take into account the Authority's rules and regulations. All contractors would be required to accept the supervision of the Authority. Subject only to these requirements, the Authority would award a contract; but if it had received simultaneously an application for a contract in the same area, the contract would be awarded on a competitive basis. If no such competing application were received, a properly qualified applicant would be granted a contract within 90 days and the Authority would not have the right to refuse to enter into such a contract if the financial arrangements criteria set forth in paragraph 9 (d) had been satisfied and the contract was in all other respects in strict conformity with the Convention and the Authority's rules and regulations. It would be the obligation of the contractor to provide the funds, materials, equipment, skills and know-how as necessary for the con-

duct of operations under the contract. The paper made clear that the procedural and substantive provisions of Annex I relating to contracts would apply mutatis mutandis to the Enterprise. It was emphasized that the parallel system could not serve as the basis for a compromise if the Enterprise were on an equal footing with other applicants for contracts.[23]

When this paper was introduced it was also indicated that certain matters in articles 28 and 31 would need to be taken up since they were connected with the system of exploitation. In that respect the Revised Single Negotiating Text was not acceptable but a system in which the Authority could disapprove contracts when an applicant failed to meet objective criteria specified in the Convention could be acceptable. Under this approach, the Authority would be deemed to have approved contracts within a stated period of time unless the Council took a decision to disapprove a contract submitted by the Technical Commission. In those cases, the Council would be required to state in what particular respects the applicant had failed to meet the specified objective criteria and the applicant, in turn, would be given the opportunity to remedy such defects. The contract would then be resubmitted to the Technical Commission, and consequently to the Council. Although Workshop Paper No. 3 was presented essentially as a counter proposal to Workshop Paper No. 1, it was felt that this move was desirable in order to lay the groundwork for an accommodation at the appropriate time.[24]

As stated in the report, *Workshop Paper No. 3 was supported by a number of delegations from developed countries. These delegations accepted the principle of direct operations by the Authority provided that the Convention guaranteed access for States Parties and other entities and acceptable economic terms and that the Convention specified the conditions for treating favourably the Enterprise and the developing countries.*[25]

In his report to the Conference on the work of the First Committee on 6 September 1976, the Chairman of the Committee indicated that *"during the session, some dramatic proposals were made public outside the forum of this Committee for a substantial input into our endeavours, provided the system of exploitation eventually agreed upon was acceptable to the Government concerned."*[26]

The Chairman referred to the United States Secretary of State, Dr. Henry Kissinger, who declared that *"his Government would be prepared to agree to a means of financing the Enterprise in such a manner that it could begin its mining operations either concurrently with the mining of State or private enterprise or within an agreed time span that was practically concurrent and, further, that the United States would be prepared to include in the Convention agreed provisions for the transfer of technology so that the existing advantage of certain industrial States would be equalized over a period of time."* [27]

The Chairman said that he did not think that "*… anyone could fail to agree that these indications on the part of the United States, an active member of one of the major interest groups involved in the negotiations (the industrialized powers), have been extremely helpful, although it could be*

more helpful still when greater details are known. It deserved the most serious consideration. It was noted, however, that the proposal comes with a clear condition that it would have relevance only in the event that the type of system which certain of the industrialized countries are prepared to accept, i.e. a system where it would be guaranteed that the Enterprise would operate in association or side by side with States and private firms on a permanent basis, were to gain general acceptance. Nevertheless it could be an important element in the choices that the Conference would have soon to make."[28]

In this context, according to the Chairman's report, Nigeria's Attorney-General and Commissioner for Justice, Mr. Justice Dan Ibekwe, similarly proposed what he considered to be *"the area of least resistance." "He suggested in effect a joint venture system applying to all activities of exploration and exploitation in the Area; this, he argued, would avoid the problem of the types of relationship proposed between the Authority on the one hand and States and private parties on the other."*[29]

The Chairman also talked about Mr. Kissinger's proposal to establish a periodic review conference at intervals of, say, twenty-five years. According to the Chairman, *"this thought was also helpful in its attempt to find a way of allaying the fears of a permanent imposition on the international community of a system of exploitation that might prove to be unsuitable in the earlier years of its existence. This was a politico-technical question which politicians must decide on with guidance from technologists or miners. There could be consequences deriving from the lifetime and availability of the valuable mine sites. One implication of this idea was that, should there be no agreement on a new system of exploitation at the end of the review period, the same "parallel" system would continue. However, it was important that a major force among the industrialized countries was prepared, in certain circumstances, to think in terms of an initial period, after which another system of exploitation might, if agreed, be brought into operation."*[30]

In the Chairman's opinion, *"very interesting possibilities for resolving our difficulties could lie in that direction provided that no serious consequences were involved. The developing countries, which had shown a willingness to examine new ideas would undoubtedly wish to ponder on this one, as well as its implications. At the same time, consideration should be given to measures which would also allow the Enterprise to play a significant role in the exploration and exploitation of the Area in those earlier years."*[31]

The Chairman went further by saying *"Intimately connected with any system of exploitation the Conference would choose was the matter of making the Enterprise a reality, of making it operational and competitive; for many, it was also a question of shaping it in such a way that it will be able to assume the function of sole exploiter of seabed resources. Mr. Kissinger's indications on this matter contemplated the Enterprise in a particular setting – a setting in which it would operate in parallel with State and private enterprises on a permanent basis. It was possible of course that the Confer-*

ence deliberations could end differently and that the Enterprise would emerge in a different and potentially dominant role."[32]

The Chairman held the view that "… the Conference should direct its thinking to methods of structuring, funding and generally equipping the Enterprise to build technological capabilities and managerial skills, independent of the particular system contemplated. The Enterprise, mankind's business arm, must be viable. It could not and must not depend purely on the benevolence of willing States alone. Financing should be on a proportionate and co-operative basis to the extent possible, and should aim at making it self-financing in the shortest possible time."[33] In this regard he complimented Document A/CONF.62/C.1/L.17 **(Alternative means of financing the Enterprise, Preliminary note by the Secretary-General)** prepared by the Secretariat which he believed would facilitate the decisions the Conference would have to take on this subject.[34]

End Notes

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. VI, (United Nations Publications, Sales No. E.77.V.2), Summary Records of Meetings, Fifth Session of UNCLOS III (New York, 2 August-17 September 1976), pp. 122-124.

[2] Ibid, 71st meeting of the Plenary, 2 August 1976, Fifth Session of UNCLOS III (New York, 2 August-17 September 1976), p.3, para.6.

[3] Ibid, Document A/CONF.62/L.12/Rev.1, Note by the President of the Conference, 2 August 1976, p.123, para. 6.

[4] Ibid, pp. 122-123, para. 5.

[5] Ibid, 25th meeting of the First Committee, 4 August 1976, p.53, para. 8.

[6] Ibid, p. 161, paragraphs 1 & 4.

[7] Ibid, Document A/CONF.62/C.1/L.18, Statement of Activities of the First Committee, 16 September 1976, p.161, para 7.

[8] Ibid, p. 161, paragraphs 8-9. In his statement at the 28th meeting of the First Committee, 17 August, 1976 (Ibid, p.59, paragraphs 1-6), the Special Representative of the Secretary-General suggested the following assumptions: "First, the study would be based on the provisions of Part I of the Revised Single Negotiating Text, particularly the relevant section of Annex II. Secondly, the study should take account of the interval between the establishment of the Enterprise and the actual start of its operations. Accordingly, purely administrative expenses would have to be distinguished from the cost of conducting Enterprise operations. Thirdly, the review of sources of financing for the Enterprise would be presented by reference to the four interrelated categories listed in paragraph 6 of Annex II, namely:

(i) Amounts determined from time to time by the Assembly out of the Special Fund referred to in article 49.

(ii) Voluntary contributions made by States Parties to this Convention.
(iii) Amounts borrowed by the Enterprise, in accordance with subparagraph (c).
(iv) Other funds made available to the Enterprise, including charges, to enable it to commence operations as soon as possible for carrying out its functions."

[9] Ibid, p.65, para.7; For the full text of the study, *see* Ibid, pp.156-161.
[10] Ibid, Document A/CONF.62/L.16, Report by Mr. P. B. Engo, Chairman of the First Committee on the work of the Committee, 6 September 1976, p.131, para.3 of "I. Organization of Work."
[11] Ibid, Document A/CONF. 62/C.1/WR.2*, Weekly report by the Co-Chairman on the activities of the workshop, 20 August 1976, p.163, para. 1.
[12] Ibid, 34th meeting of the First Committee, 9 September 1976, p. 68, para.1. For the text of the final report *see* Document A/CONF.62/C.1/WR.5 and Add.1, 9 September 1976, in Ibid, pp. 165-169.
[13] Ibid, p. 166, para. 7.
[14] Ibid, p. 166, para. 8.
[15] Ibid, p. 166, para. 9.
[16] Ibid, p. 166, para. 10.
[17] Ibid, p. 166, para. 11.
[18] Ibid, p. 166, para. 12.
[19] Ibid, p. 166, para. 13.
[20] Ibid, p. 167, para. 14.
[21] Ibid, p. 167, para. 15.
[22] Ibid, p. 167, para. 16.
[23] Ibid, p. 167, para. 17.
[24] Ibid, p. 167, para. 18.
[25] Ibid, p. 167, para. 19.
[26] Ibid, p. 132, Document A/CONF.62/L.16, Report by Mr. P. B. Engo, Chairman of the First Committee on the Work of the Committee, 6 September 1976, Part II. Negotiation of Issues, p. 132.
[27] Ibid.
[28] Ibid.
[29] Ibid.
[30] Ibid.
[31] Ibid.
[32] Ibid.
[33] Ibid.
[34] Ibid.

V. SIXTH SESSION OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA (NEW YORK, 24 MAY -15 JULY 1977)

At the 78th Plenary meeting of UNCLOS III 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 ICNT which would bring together in one document the draft articles relating to the entire range of subjects and issues covered by Parts I, II, III and IV of the RSNT. 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.[1]

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 and that Chairman's judgement as to the precise formulation to be incorporated in the text should prevail.[2]

It was also agreed that the Composite Negotiating Text would be informal in character and would have the same status as the ISNT and the RSNT and would only provide a basis for negotiation. In order to ensure the comprehensive character of the ICNT, it was thought fit to include a preamble and final clauses.[3]

At the 38th meeting on 25 May 1977, the Chairman of the First Committee proposed the following programme of work:

(a) the issues of exploitation, notably the modalities of the system of exploitation, basic conditions for exploration and exploitation, the viability of the Enterprise and the policies of the Authority;

(b) the institutional questions; and

(c) the dispute settlement system.[4]

A Working Group was established within the First Committee.

In his memorandum on Document A/CONF.62/WP.10 which contained the ICNT and constituted the work of the above mentioned team, the President of the Conference indicated that the structure of the ICNT did not retain the order of the four parts of the Revised Negotiating Text but had 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.[5]

Concerning Part I of the RSNT, the President stated that at the time of its preparation, the Chairman of the First Committee had 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 seabed 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 RSNT, particularly the Statute of the Enterprise and articles 33 to 40 on the settlement of disputes had since received closer attention, there was still much to be done.[6]

He added that it should also be recalled that following the preparation of the RSNT 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 had since been made in overcoming what threatened to be a complete deadlock.[7]

The issues and subjects falling within the First Committee's purview were now covered in Part XI of the ICNT.

As indicated in the memorandum, with regard to the substantive changes made in the provisions of Part I of the RSNT 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 RSNT, 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 (RSNT, article 9), the system of exploitation (RSNT, 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.[8]

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 RSNT, 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.[9]

Attention was 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 reproduced hereafter. The President indicated that most of the major changes were 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.[10]

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 added to paragraph 2 of article 151 the requirement that the contractual or other arrangements made by the Authority with States Parties and other entities would be such as to 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.[11]

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 qualification 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 co-ordination, 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.[12]

The President added that the Chairman of the First Committee felt the new text had made a considerable advance on the RSNT 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 was to provide for the rapid creation of a viable Enterprise. The text effectively gave 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 were intended essentially to facilitate its start-up.[13]

Furthermore, while in the view of the Chairman of the First Committee the new text represented a considerable advance on the stages of negotiation reflected by the RSNT formulations, much work remained to be done on the corresponding provisions of the composite text. Apart from those questions which had earlier been mentioned as requiring further attention, there was 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 would also be useful in further discussions on the question of joint arrangements.[14]

The excerpts relevant to the Enterprise in the ICNT are reproduced below:

A/CONF.62/WP.10
(15 July 1977)
Informal Composite Negotiating Text [15]

…

Article 156
Organs of the Authority

1. There are hereby established as the principal organs of the Authority, an Assembly, a Council and a Secretariat.

2. There is hereby established the Enterprise, the organ through which the Authority shall directly carry out activities in the Area.

3. Such subsidiary organs as may be found necessary may be established in accordance with this part of the present Convention.

4. The principal organs shall each be responsible for exercising those powers and functions which have been conferred on them. In exercising such powers and functions, each organ shall act in a manner compatible with the distribution of powers and functions among the various organs of the Authority, as provided for in this Part of the present Convention.

...

Article 169
The Enterprise

1. The Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly, pursuant to subparagraph (i) of the paragraph 2 of article 151 and in accordance with the general policies laid down by the Assembly. Activities conducted by the Enterprise shall be subject to the directives and control of the Council.

2. The Enterprise shall, within the framework of the international legal personality of the Authority, have such legal capacity and functions as provided for in the Statute set forth in Annex III to the present Convention, and shall in all respects be governed by the provisions of this Part of the present Convention. Appointment of the members of the Governing Board shall be made in accordance with the provisions of the Statute set forth in Annex III.

3. The Enterprise shall have its principal place of business in the seat of the Authority.

4. The Enterprise shall in accordance with paragraph 3 of article 173 and paragraph 10 of Annex III, be provided with such funds as it may require to carry out its functions, and shall receive technology as provided in article 144, and other relevant provisions of the present Convention.

...

ANNEX II
BASIC CONDITIONS OF PROSPECTING, EXPLORATION AND EXPLOITATION

TITLE TO MINERALS

1. Title to minerals shall normally be passed upon recovery of the minerals pursuant to a contract of exploration and exploitation. In the case of contracts pursuant to subparagraph (b) of paragraph 3 of this annex for stages of operations, title to the minerals or processed substances shall pass in accordance with the contract. This paragraph is without prejudice to the rights of the Authority under paragraph 7 of this annex.

PROSPECTING

2. (a) The Authority shall encourage the conduct of prospecting in the Area. Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector shall comply with the present Convention and the relevant rules and regulations of the Authority concerning protection of the marine environment, the transfer of data to the Authority, the training of personnel designated by the Authority and accepts verification of compliance by the Authority with all of its rules and regulations in so far as they relate to prospecting . The proposed prospector shall, together with the undertaking, notify the Authority of the broad area or areas in which prospecting is to take place. Prospecting may be carried out by more than one prospector in the same area or areas simultaneously. The Authority may close a particular area for prospecting when the available data indicate the risk of irreparable harm to a unique environment or unjustifiable interference with other uses of the Area.

(b) Prospecting shall not confer any preferential, proprietary, or exclusive rights on the prospector with respect to the resources or minerals..

EXPLORATION AND EXPLOITATION

3. (a) Exploration and exploitation shall only be carried out in areas specified in plans of work referred to in paragraph 3 of article 151 and approved by the Authority in accordance with the provisions of this annex and the relevant rules, regulations and procedures adopted pursuant to paragraph 11 of this annex.

(b) Contracts shall normally cover all stages of operations. If the applicant for a contract applies for a specific stage or stages, the contract may only comprise such stage or stages. Nothing in this paragraph shall in any way limit the discretion of the Enterprise.

(c) Every contract entered into by the Authority shall:

(i) Be in strict conformity with the present Convention and the rules and regulations prescribed by the Authority.

(ii) Ensure control by the Authority at all stages of operations in accordance with paragraph 4 of article 151;

(iii) Confer exclusive rights on the Contractor in the contract area in accordance with the rules and regulations of the Authority.

...

ACTIVITIES CONDUCTED BY THE ENTERPRISE

6. Activities in the Area conducted under subparagraph (i) of paragraph 2 of article 151 through the Enterprise shall be governed by the provisions of Part XI of the present Convention including the resource policy set forth in article 150 and the relevant decisions of the Authority in implementation thereof, as well as the Statutes of the Enterprise and by the rules, regulations and procedures adopted under subparagraph (xvi) of paragraph 2 of article 158 and subparagraph (xiv) of paragraph 2 of article 160.

...

TRANSFER OF DATA

8. The Contractor shall transfer in accordance with the rules and regulations and the terms and conditions of the contract to the Authority at time intervals determined by the Authority all data which are both necessary and relevant to the effective implementation of the powers and functions of the organs of the Authority in respect of the contract area. Transferred data in respect of the contract area, deemed to be proprietary, shall not be disclosed by the Authority, and may only be used for the purposes set forth above in this subparagraph. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment and safety shall not be deemed to be proprietary. Except as otherwise agreed between the Authority and the Contractor, the Contractor shall not be obliged to disclose proprietary equipment design data.

TRAINING PROGRAMMES

9. The Contractor shall draw up practical programmes for the training of personnel of the Authority and developing countries, including the participation of such personnel in all activities covered by the contract.

EXCLUSIVE RIGHT TO EXPLORE AND EXPLOIT IN THE CONTRACT AREA

10. The Authority shall, pursuant to Part XI of the present Convention and the rules and regulations prescribed by the Authority, accord the Contractor the exclusive right to explore and exploit the contract area with the

Authority in respect of a specified category of minerals and shall ensure that no other entity operates in the same contract area for a different category of minerals in a manner which might interfere with the operations of the Contractor. The Authority shall not, during the continuance of a contract, permit any other entity to carry out activities in the same area for the same category of minerals. The Contractor shall have security of tenure in accordance with paragraph 6 of article 151.

...

ANNEX III
STATUTE OF THE ENTERPRISE

PURPOSE

1. (a) The Enterprise shall carry out activities of the Authority in the Area in the performance of its functions in implementation of article 169.

(b) In the performance of its functions and in carrying out its purposes, the Enterprise shall act in accordance with the provisions of Part XI of the present Convention and its annexes, including article 151 and the resource policy set forth in article 150 and the relevant decisions of the Authority in implementation thereof.

RELATIONSHIP TO THE AUTHORITY

2. (a) Pursuant to article 169 the Enterprise shall be subject to the general policies laid down by the Assembly and the directives and control of the Council.

(b) Nothing in this Convention shall make the Enterprise liable for the acts or obligations of the Authority, or the Authority liable for the acts or obligations of the Enterprise.

LIMITATION OF LIABILITY

3. No member of the Authority shall be liable by reason only of its membership for the acts or obligations of the Enterprise.

STRUCTURE OF THE ENTERPRISE

4. The Enterprise shall have a Governing Board, a Director-General and such staff as may be necessary for the performance of its duties.

GOVERNING BOARD

5. (a) The Governing Board shall be responsible for the conduct of operations of the Enterprise, and for this purpose shall exercise all the powers given to it by this annex.

(b) The Governing Board shall be composed of 15 qualified, competent and experienced members elected by the Assembly. Election of these members shall be based on the principle of equitable geographical representation, taking special interests into account.

(c) Members of the Board shall be elected for a period of four years and shall be eligible for re-election. Due regard should be paid to the desirability of rotating seats.

(d) Each member of the Board shall have one vote. All matters before the Board shall be decided by a majority of the votes cast.

(e) Each member of the Board shall appoint an alternate with full powers to act for him when he is not present.

(f) Members of the Board shall continue in office until their successors are appointed or elected. If the office of a member of the Board becomes vacant more than 90 days before the end of his term, the Board may appoint another member for the remainder of the term. While the office remains vacant, the alternate of the former member of the Board shall exercise his powers, except that of appointing an alternate.

(g) The Governing Board shall function in continuous session at the principal office of the Enterprise, and shall meet as often as the business of the Enterprise may require.

(h) A quorum for any meeting of the Governing Board shall be two thirds of the members of the Board.

(i) Any member of the Authority may send a representative to attend any meeting of the Board when a request made by, or a matter particularly affecting, that member is under consideration.

(j) Subject to directives from the Council on the matter, the Governing Board may appoint such committees as they deem advisable.

DIRECTOR-GENERAL AND STAFF

6. *(a) The Assembly shall, upon the recommendation of the Council, elect a Director-General who shall not be a member of the Board or an alternate. The Director-General shall be the legal representative of the Enterprise. He shall participate in the meetings of the Board but shall have no vote. He may participate in meetings of the Assembly, and the Council, when these organs are dealing with matters concerning the Enterprise, but shall have no vote at such meetings. The Director-General shall hold office for a fixed term not exceeding five years and may be reappointed for one further term.*

(b) The Director-General shall be chief of the operating staff of the Enterprise and shall conduct, under the direction of the Governing Board, the ordinary business of the Enterprise. Subject to the general control of the Governing Board, he shall be responsible for the organization, appointment and dismissal of the staff.

(c) The Director-General and the staff of the Enterprise, in the discharge of their offices, owe their duty entirely to the Enterprise and to no other authority. Each member of the Enterprise shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

(d) In appointing the staff the Director-General shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible, and shall be guided by the principle that the staff should be kept to a minimum.

LOCATION OF OFFICES

7. The principal office of the Enterprise shall be at the seat of the Authority. The Enterprise may establish other offices in the territories of any member, with the consent of that member.

PUBLICATION OF REPORTS AND PROVISION OF INFORMATION

8. (a) The Enterprise shall, not later than three months after the end of each financial year, submit to the Council for its approval an annual report containing an audited statement of its accounts and shall transmit to the Council and circulate to members at appropriate intervals a summary statement of its financial position and a profit and loss statement showing the results of its operations.

(b) The Enterprise shall publish its annual report and such other reports as it deems desirable to carry out its purposes.

(c) Copies of all reports, statements and publications made under this article shall be distributed to members.

ALLOCATION OF NET INCOME

9. (a) Subject to (b) below, all net disposable income generated by the Enterprise, shall be transferred quarterly to the Authority which shall determine the apportionment and distribution of such proceeds to the Enterprise and to States Parties in accordance with subparagraphs (viii), (xii) and (xiv) of paragraph 2 of article 158 and subparagraphs (xiii), (xv) and xvi) of paragraph 2 of article 160.

(b) During an initial period, determined by the Council, required for the Enterprise to become self-supporting the Council, on the recommendation of the Governing Board, shall determine annually what part of the net income of the Enterprise, should be transferred to the Authority.

(c) In determining the amount of net disposable income generated by the Enterprise at any material time, the Council, on the recommendation of the Governing Board, shall make due provision for the reserves and surplus of the Enterprise.

FINANCE

10. (a) The funds and assets of the Enterprise shall comprise:

(i) Amounts determined from time to time by the Assembly out of the Special Fund referred to in article 173, including funds to cover its administrative expenses in accordance with subparagraph (vi) of paragraph 2 of article 158 and paragraph 2 of article 172 and including funds earmarked for the Enterprise in accordance with paragraph 3 of article 173.

(ii) Voluntary contributions made by States Parties to the present Convention specifically for the purpose of financing activities of the Enterprise.

(iii) Amounts borrowed by the Enterprise in accordance with subparagraph (c) below.

(iv) Amounts received through the participation in contractual relationships with other entities for the conduct of activities in the Area, including joint arrangements in accordance with paragraph 3 of article 151.

(v) Net income of the Enterprise after transfer of revenues to the Authority in accordance with paragraph 9.

(vi) Other funds made available to the Enterprise including charges to enable it to carry out its functions and to commence operations as soon as possible.

(b) The Governing Board of the Enterprise shall determine when the Enterprise may commence operation.

(c) (i) The Enterprise shall have the power to borrow funds, and in that connection to furnish such collateral or other security therefore as it shall determine; provided, however, that before making a public sale of its obligations in the markets of a member, the Enterprise shall have obtained the approval of that member and of the member in whose currency the obligations are to be denominated. The total amount and sources of borrowings shall be approved by the Council on the recommendation of the Governing Board.

(ii) States Parties shall make every effort to support applications by the Enterprise for loans in capital markets, including loans from international financial institutions, and to cause appropriate changes where necessary in the constitutive instruments of such institutions.

(iii) To the extent that the costs of exploration, development and exploitation of the Enterprise's first site cannot be covered by the funds referred to in subparagraph (a) above, States Parties shall guarantee debts incurred by the Enterprise for the financing of such costs. Under such guarantees States Parties shall be liable on a basis adopted by the Assembly which is proportionate to the United Nations scale of assessments. To the extent necessary for the security of such loans as referred to above, States Parties undertake to advance as refundable paid in capital up to…per cent of the liability which they have incurred in accordance with this subparagraph.

(d) The funds and assets of the Enterprise shall be kept separate and apart from those of the Authority. The provisions of this paragraph shall not prevent the Enterprise from making arrangements with the Authority regarding facilities, personnel, and services and arrangements for reimbursement of administrative expenses paid in the first instance by either organization on behalf of the other.

OPERATIONS

11. (a) The Enterprise shall propose to the Council projects for carrying out activities in the Area in accordance with article 151, paragraph 2 (i). Such proposals shall include a detailed description of the project, an analysis of the estimated costs and benefits, a draft formal written plan of work, and all such other information and data as may be required from time to time for its appraisal by the Technical Commission and approval by the Council.

(b) Upon approval by the Council, the Enterprise shall execute the project on the basis of the formal written plan of work referred to in subparagraph (a) of this paragraph.

(c) Procurement of goods and services:

(i) To the extent that the Enterprise does not at any time possess the goods and services required for its operations, it may procure and employ them under its direction and management. Procurement of goods and services required by the Enterprise shall be affected by the award of contracts, based on response to invitations in member countries to tender, to bidders offering the best combination of quality, price and most favourable delivery time.

(ii) If there is more than one bid offering such a combination, the contract shall be awarded in accordance with the following principles:

a. Non-discrimination on the basis of political or similar considerations not relevant to the carrying out of operations with due diligence and efficiency;

b. Guidelines approved by the Council with regard to the preferences to be accorded to goods and services originating in the developing countries, including the landlocked or otherwise geographically disadvantaged among them.

(iii) The Governing Board may adopt rules determining the special circumstances in which the requirement of invitations in member countries to bid may in the best interests of the Enterprise be dispensed with.

(d) The Enterprise shall have title to all minerals and processed substances produced by it. They shall be marketed in accordance with rules, regulations and procedures adopted by the Council in accordance with the following criteria:

(i) The products of the Enterprise shall be made available on a non-discriminatory basis to States Parties;

(ii) The Enterprise shall sell its products at not less than international market prices.

(e) Without prejudice to any general or special power conferred on the Enterprise under any other provision of this Convention, the Enterprise shall exercise all powers incidental to its business as shall be necessary or desirable in the furtherance of its purposes.

(f) The Enterprise and its staff shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to carry out the purposes specified in paragraph 1 of this annex.

LEGAL STATUS, IMMUNITIES AND PRIVILEGES

12. (a) To enable the Enterprise to fulfil the functions with which it is entrusted, the status, immunities and privileges set forth herein shall be accorded to the Enterprise in the territories of each member. To give effect to this principle the Enterprise may, where necessary, enter into special agreements for this purpose.

(b) The Enterprise shall have such legal capacity as is necessary for the performance of its functions and the fulfilment of its purposes and, in particular, the capacity:

(i) To enter into contracts, forms of association, or other arrangements, including agreements with States and international organizations;

(ii) To acquire, lease, hold and dispose of immovable and movable property;

(iii) To be a party to legal proceedings in its own name.

(c) Actions may be brought against the Enterprise only in a court of competent jurisdiction in the territories of a member in which the Enterprise has an office, has appointed an agent for the purpose of accepting service or notice of process, has entered into a contract for goods or services, has issued securities, or is otherwise engaged in commercial activity. The property and assets of the Enterprise shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment of execution before the delivery of final judgement against the Enterprise.

(d) (i) The property and assets of the Enterprise, wheresoever located and by whomsoever held shall be immune from confiscation, expropriation, requisition, and any other form of seizure by executive or legislative action.

(ii) All property and assets of the Enterprise shall be free from discriminatory restrictions, regulations, controls and moratoria of any nature.

(iii) The Enterprise and its employees shall respect local laws and regulations in any State or territory in which the Enterprise or its employees may do business or otherwise act.

(iv) States Parties shall assure that the Enterprise enjoys all rights, immunities and privileges afforded by States to entities conducting business within such States. These rights, immunities and privileges shall be afforded to the Enterprise on no less favourable a basis than afforded by States to similarly engaged commercial entities. Where special privileges are provided by States for developing countries or their commercial entities, the Enterprise shall enjoy such privileges on a similarly preferential basis.

(v) States may provide special incentives, rights, privileges and immunities to the Enterprise without the obligation to provide such incentives, rights, privileges, or immunities to other commercial entities.

(e) The Enterprise, its assets, property, and revenues derived from its operations and transactions authorized by this annex, shall be immune from taxation.

(f) Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this annex and shall inform the Enterprise of the detailed action which it has taken.

(g) The Enterprise in its discretion may waive any of the privileges and immunities conferred under this article or in the special agreements referred to in subparagraph (a) above to such extent and upon such conditions as it may determine.

End Notes

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. VIII, (United Nations Publications, Sales No. E.78.V4), Summary Records of Meetings, Sixth Session of UNCLOS III (New York, 23 May-15 July 1977), Document A/CONF.62/WP.10/Add.1, Memorandum by the President of the Conference on document A/CONF.62/WP.10, p. 65.

[2] Ibid.

[3] Ibid, pp. 65-66.

[4] Ibid, 38th meeting of the First Committee, 25 May 1977, p. 31, para. 1.

[5] Ibid, Document A/CONF.62/WP. 10/Add.1, Memorandum by the President of the Conference on document A/CONF.62/WP.10, p. 65.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] Ibid.

[12] Ibid, pp. 66-67.

[13] Ibid, p. 67.

[14] Ibid, p. 68.

[15] For the text of ICNT *in extenso, see Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. VIII, (United Nations Publications, Sales No. E.78.V4), Sixth Session of UNCLOS III (New York, 23 May-15 July 1977), Informal Composite Negotiating Text (Document A/CONF.62/WP.10/Add.1).

VI. SEVENTH SESSION AND RESUMED SEVENTH SESSION OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF SEA (GENEVA, 28 MARCH – 19 MAY 1978; NEW YORK, 21 AUGUST –15 SEPTEMBER 1978)

At its 90th Plenary meeting, on 12 April 1978, UNCLOS III adopted a series of decisions relating to its organization of work. It was decided that priority should be given to the identification and resolution of the outstanding core issues and that besides the core issues, the Conference should also discuss and resolve all other issues which remained outstanding. It was also the decision of the Conference that the Plenary should aim at the completion of all substantive discussions for the production of a draft Convention at the Seventh Session. Seven negotiating groups were established to deal with the hard-core issues.[1]

The questions relating to the Enterprise were discussed in Negotiating Groups 1, 2 and 3. Negotiating Group 1 was established to negotiate the system of exploration and exploitation, as well as the resource policy of the International Seabed Authority. Negotiating Group 2 was set up to deal with financial problems including the financial arrangements of the Enterprise. As to Negotiating Group 3, it was entrusted with the issues of composition, powers and functions of the organs of the Authority.[2]

The negotiations in Group 1 resulted in document NG1/10/Rev.1 of 16 May 1978. In the explanatory memorandum, the Chairman of the Group indicated that the text of these articles was essentially taken from the ICNT to which various amendments were made with the object of formulating solutions to the problem of the system of exploitation of the Area which would be more acceptable to the Conference. The changes made have been indicated by underlining the amended passages, except in the case of an entirely new provision which is expressly flagged.[3] Following are the excerpts from document NG1/10/Rev.1 which are of direct relevance to the Enterprise.

ANNEX A
REVISED SUGGESTED COMPROMISE FORMULA BY THE CHAIRMAN OF NEGOTIATING GROUP 1[4]

...

Article 151
System of exploration and exploitation

1. Activities in the Area shall be <u>organized</u>, carried out and <u>controlled</u> by the Authority on behalf of mankind as a whole in accordance with the provisions of this article as well as other relevant provisions of this Part of the present Convention and its annexes, and the rules, regulations and procedures of the Authority adopted under subparagraph (xvi) of paragraph 2

of article 158 and subparagraph (xiv) of article 160.

2. Activities in the Area shall be carried out ....as prescribed in paragraph 3 below:

(i) by the Enterprise, and

(ii) in association with the Authority by States Parties or States Entities, or 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 which meet the requirements provided in this part of the present Convention including Annex II.

3. Activities in the Area shall be carried out in accordance with a formal written plan or work drawn up in accordance with Annex II to the present Convention and approved by the Council after review by the Technical Commission. In the case of activities in the Area carried out as authorized by the Authority by the entities specified in subparagraph (ii) of the paragraph 2 of this article, such a plan of work shall in accordance with .....paragraph 3 of Annex II be in the form of a contract. Such contracts may provide for joint arrangements in accordance with .....paragraph 5 of Annex II.

4. The Authority shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of this Part of the present Convention, including its annexes, and the rules, regulations and procedures of the Authority adopted under subparagraph (xvi) of paragraph 2 of article 158 and subparagraph (xiv) of paragraph 2 of article 160 and the plans of work approved in accordance with paragraph 3 of this article. States Parties shall assist the Authority by taking all measures necessary to ensure such compliance, in accordance with article 139.

5. The Authority shall have the right to take at any time any measures provided for under this Part of the present Convention to ensure compliance with its terms, and the performance of the control and regulatory functions assigned to it thereunder or under any contract. The Authority shall have the right to inspect all facilities in the Area used in connection with ———— ———— activities in the Area.

6. A contract under paragraph 3 of this article shall provide for security of tenure. Accordingly, it shall not be ———— revised, suspended or terminated except in accordance with paragraph 12 and 13 of Annex II.[5]

The negotiations in Negotiating Group 2 brought about documents NG2/4[6], NG2/5 and Corr. 1[7] and NG2/7 and Corr. 1.[8]

The result of negotiations on the item on financial arrangements of the Enterprise was reflected in document NG2/5 and Corr. 1 hereafter reproduced:

ANNEX B
FINANCIAL ARRANGEMENTS OF THE ENTERPRISE THE CHAIRMAN'S SUGGESTED COMPROMISE PROPOSALS

...

Article 158 (2) (vii) (redraft)

Adoption, upon the recommendation of the Council, of the financial regulations of the Authority, including rules on borrowing and the transfer of funds from the Authority to the Enterprise, and, upon the recommendation of the Governing Board of the Enterprise, the rules, regulations and procedures for the transfer of funds from the Enterprise to the Authority.

...

Article 160 (2) (xv bis)

Recommend to the Assembly the financial regulations of the Authority including rules on borrowing and the transfer of funds from the Authority to the Enterprise.

...

ANNEX III

...

Paragraph 9 (redraft)

(a) The Assembly shall, on the recommendation of the Governing Board, determine what portion of the net income of the Enterprise shall be retained as its reserves. The remainder shall be transferred quarterly to the Authority.

(b) During an initial period, required for the Enterprise to become self supporting, the Assembly shall leave all of the net income of the Enterprise in its reserves.

Paragraph 10 (redraft)

The funds of the Enterprise shall include:

(a) amounts received from the Authority in accordance with subparagraph (b) of paragraph 2 of Article 172;

(b) voluntary contributions made by States Parties for the purpose of financing activities of the Enterprise;

(c) amounts borrowed by the Enterprise in accordance with the provisions of paragraph 10 (bis) below:

(d) amounts received through the participation in contractual relationships with other entities for the conduct of activities in the Area, including joint arrangements.

(e) reserves of the Enterprise in accordance with paragraph 9; and

(f) other funds made available to the Enterprise to enable it to carry out its functions and to commence operations as soon as possible.

Paragraph 10 (bis)

(a) The Enterprise shall have the power to borrow funds and to furnish such collateral or other security as it may determine. Before making a public sale of its obligations in the markets or currency of a State Party, the Enterprise shall first obtain the approval of that State Party. The total amount and sources of borrowings shall be approved by the Council on the recommendation of the Governing Board.

(b) States Parties shall make every reasonable effort to support applications by the Enterprise for loans in capital markets and from international financial institutions.

(c) The Enterprise shall be assured of the funds necessary to explore and exploit its first mine site on its own and to meet its initial administrative expenses, to the extent that such funds are not covered by the other funds referred to in paragraph 10 above. Debts incurred by the Enterprise to this end shall be guaranteed by all States Parties in accordance with the scale referred to in subparagraph (vi) of paragraph (2) of Article 158. To the extent necessary for securing such loans, States Parties undertake to advance as refundable paid-in capital, up to one-third of the liability which they will have incurred under this subparagraph. In lieu of debt guarantee, a State Party may make a voluntary contribution to the Enterprise, of an amount equivalent to that portion of the debts which it would otherwise be liable to guarantee.

Paragraph 10 (ter)

The funds, assets and expenses of the Enterprise shall be kept separate and apart from those of the Authority. The provisions of paragraphs 10, 10 (bis) and of this paragraph shall not prevent the Enterprise from making arrangements with the Authority regarding facilities, personnel and services and arrangements for reimbursement of administrative expenses paid in the first instance by either organization on behalf of the other.

The Seventh Session resumed in New York from 21 August to 15 September 1978. In his report to the Plenary at the resumed Seventh Session on September 15, 1978, the Chairman of the First Committee, Mr. Paul Bamela Engo of Cameroon, indicated that because of lack of time, the Committee was not able to comment on the reports of Negotiating Groups 1, 2 and 3 as a whole. As a result of subsequent consultations an understanding had been reached according to which the delegations concerned would be assured of an opportunity to express their views on the hard-core issues contained in the reports at the commencement of the next session. It had also been understood that, accordingly, all delegations would refrain from making comments at the resumed Seventh Session. The report of each Negotiating Group contained an annex and suggestions which were considered by each Group's respective Chairman to provide basis for further negotiations.[9]

In his memorandum on the work of Negotiating Group 1 during the resumed Seventh Session of the Conference, the Chairman of the Group 1, Mr. Frank X. Njenga of Kenya, indicated that in the first draft of a Suggested Compromise Formula which he had submitted to the Group and was contained in document NG1/13, he had introduced only those amendments which he believed would not raise serious problems. One of the proposals made during the debate which had commanded broad support had been that of the representative of India on the duty of the Authority to ensure that the Enterprise engage immediately in seabed mining.[10] The aforementioned Suggested Compromise Formula as contained in the document NG1/13 is reproduced hereafter.

Suggested compromise formula[11]
(first draft)

ANNEX II
BASIC CONDITIONS OF EXPLORATION AND EXPLOITATION

TITLE TO MINERALS .....

1. Title to the minerals shall ..... be passed to the Contractor upon recovery of the minerals pursuant to a contract of exploration and exploitation. In the case of contracts pursuant to subparagraph (b) of paragraph 3 of this annex for stages of operations, title to the minerals and refined minerals ..... shall pass in accordance with the contract. This paragraph is without prejudice to the rights of the Authority under paragraph 7 of this annex.

PROSPECTING

2. (a) The Authority shall encourage the conduct of prospecting in the Area. Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector shall comply with the present Convention and the relevant rules and regulation of the Authority concerning protection of the marine environment, the transfer of data to the Authority, the training of personnel designated by the Authority and accepts verification of compliance by the Authority with all of its rules and regulations in so far as they relate to prospecting. The proposed prospector shall, together with the undertaking, notify the Authority of the broad area or areas in which prospecting is to take place. Prospecting may be carried out by more than one prospector in the same area or areas simultaneously. The Authority may close a particular area for prospecting when the available data indicate the risk of irreparable harm to a unique environment or unjustifiable interference with other uses of the Area.

(b) Prospecting shall not confer any preferential, proprietary, ... exclusively or any other rights on the prospector with respect to the resources. ...

CONTRACTS FOR EXPLORATION AND EXPLOITATION

3. *(a) Exploration and exploitation shall be carried out only in areas specified in plans of work referred to in paragraph 3 of article 151 and approved by the Authority in accordance with the provisions of this annex and the relevant rules, regulations and procedures adopted pursuant to paragraph 11 of this annex.*

(b) Contracts shall normally cover all stages of operation. If the applicant for a contract applies for a specific stage or stages, the contract may only comprise such stage or stages. .....

(c) Every contract entered into by the Authority shall:

(i) Be in strict conformity with the present convention and the rules and regulations adopted by the Authority;

(ii) Ensure control by the Authority of activities in the Area in accordance with paragraph 4 of article 151;

(iii) Confer on the Contractor exclusive rights for the exploration and exploitation of the resources in the contract area in accordance with the rules and regulations of the Authority.

QUALIFICATIONS OF APPLICANTS FOR CONTRACTS

4. *(a) The Authority shall adopt, in accordance with paragraph 11 of this annex, appropriate administrative procedures and rules and regulations for making an application and for the qualifications of an applicant. Such qualifications shall include financial standing, technological capability and satisfactory performance under any previous contracts with the Authority.*

(b) The procedures for assessing the qualifications of States Parties which are applicants shall take into account their character as States.

(c) Every applicant without exception shall:

(i) Undertake to accept as enforceable and to comply with the obligations created by the provisions of Part XI of the present Convention, the rules and regulations adopted by the Authority, and the decisions of its organs and the terms of contracts; .....

New: (ii) Make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the non-reserved area, as well as other relevant information about the characteristics of such technology. That description shall be submitted with the application and thereafter whenever a substantial technological change or innovation is introduced;

New: *(ii bis) Undertake to use, in carrying out activities in the Area, technology other than that covered by (ii ter) only if he*

has obtain written assurance from the owner of the technology that he will, if and when the Authority so requests, make available to the Enterprise that technology under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions;

(ii ter) (former (ii bis) in the ICNT) Undertake to make available to the Enterprise, if he receives the contract and on fair and reasonable commercial terms and conditions, the technology which is to be used by him in carrying out activities in the Area and which he is legally entitled to transfer. This shall be done, upon the conclusion of the contract and if and when the Authority shall so request, by means of licence or other appropriate arrangements which the Contractor shall negotiate with the Enterprise and which shall be set forth in a special agreement supplementary to the contract:

New: (ii quater) Undertake to facilitate, upon the conclusion of the contract and if and when the Authority shall so request, the acquisition by the Enterprise under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, the technology which is to be used by the Contractor and which the Contractor is not legally entitled to transfer;

New: (ii quinquies) Undertake the same obligations as those prescribed in (ii bis), (ii ter) and (ii quarter) for the benefit of a developing country or a group of developing countries which has applied for a contract under paragraph 5 (j) (ii), provided that these obligations shall be limited to the exploitation of the reserved part of the Area proposed by the applicant, and provided that activities under the contract sought by the developing country or group of developing countries would not involve transfer of technology to a developed country or the nationals of a developed country;

(iii) Accept control by the Authority in accordance with subparagraph (c) (ii) of paragraph 3;

(iv) Provide the Authority with satisfactory assurances that its obligations covered by the contract entered into by it will be fulfilled in good faith.

SELECTION OF APPLICANTS FOR CONTRACTS

5. *(a) ..... Six months after the entry into force of ..... the present Convention, and thereafter each fourth month ..... the Authority shall take up for consideration applications received for contracts with respect to activities of exploration and exploitation.*

(b) When considering an application for a contract with respect to exploration and exploitation, the Authority shall first ascertain whether:

(i) the applicant has complied with the procedures established for applications in accordance with paragraph 4 of this annex and has given the Authority the commitments and assurances required by the paragraph. In cases of non-compliance with these procedures or of absence of any of the commitments and assurances referred to, the applicant shall be given 45 days to remedy such defects;

(ii) the applicant possesses the requisite qualifications pursuant to paragraph 4.

(c) Once it is established that the conditions referred to in subparagraph (b) above are met, the Authority shall determine whether more than one application has been received within the preceding time period as provided in subparagraph (a) above in respect of substantially the same area and category of minerals and whether the granting of a contract would be in conformity with the provisions of subparagraph (g) of paragraph 1 of article 150 and the relevant decisions of the Authority in implementation thereof. If no competing application has been received, and if the granting of a contract would be in conformity with subparagraph (g) of paragraph 1 of article 150, the Authority shall without delay enter into negotiations with the applicant with a view of concluding a contract.

(d) The negotiations referred to in subparagraph (c) above shall, within the framework of the provisions of Part XI of the present Convention and the rules, regulations and procedures of the Authority adopted under subparagraph (xvi) of paragraph 2 of article 158 and subparagraph (xiv) of paragraph 2 of article 160, deal with:

(i) operational requirements under regulations adopted pursuant to paragraph 11 of this annex such as duration of activities, size or area, performance requirement and protection of the marine environment;

(ii) the financial contribution to be made by the applicant under the financial arrangements established in paragraph 7 of this annex, and participation in the project by developing countries, on the basis of the incentives for such participation established in paragraph 7;

(iii) transfer of technology under programmes and measures pursuant to article 144, and subparagraph (c)(ii) of paragraph 4 of this annex.

(e) In the course of the negotiations referred to in subparagraph (d) above, and prior to the conclusion of a contract, the Authority shall ensure that such contract would be in full conformity with the provi-

sions of Part XI of the present Convention and the rules, regulations and procedures of the Authority adopted under subparagraph (xvi) of paragraph 2 of article 158 and subparagraph (xiv) of paragraph 2 of article 160, in particular the provisions, rules, regulations and procedures on the issues enumerated in subparagraph (d) above, and the provisions of subparagraph (g) of paragraph 1 of article 150, and the relevant decisions of the Authority in implementation thereof.

(f) The negotiations referred to in subparagraph (d) above shall be conducted as expeditiously as possible. As soon as the issues under negotiation in accordance with subparagraph (d) above have been settled, the Authority shall conclude the corresponding contract with the applicant. In cases of a refusal of contract the Authority shall state the reasons for such refusal.

(g) If the Authority receives within the applicable time period as provided in subparagraph (a) above more than one application in respect of substantially the same part of the Area and category of minerals, or if the applications received within that time period cannot all be accommodated within the production limits established in subparagraph (g) of paragraph 1 of article 150, selection from among the applicants shall be made on a comparative basis. Taking into consideration the requirements specified in paragraph (d) above, the Authority shall enter into negotiations with the applicants in order to make its selection on the basis of a comparative evaluation of their applications and qualifications. In conducting such negotiations, the Authority shall take into account the need to provide for all States Parties, irrespective of their social and economic systems or geographical locations, opportunities to participate in the development of the resources in the Area and the need to prevent monopolization of such activities. In so doing the Authority shall also take into account the need to give ..... priority to applicants who are ready to enter into such joint arrangements with the Enterprise as referred to in subparagraph (i) and (j) (iii) below. Once the selection is made, the Authority shall enter into negotiations with the selected applicant or applicants on the terms of a contract in accordance with subparagraphs (c) and (d) above.

(h) If the Contractor in accordance with subparagraph (b) of paragraph 3 of this annex has entered into a contract with the Authority for separate stages of operations, he shall have a preference and a priority among applicants for a contract for subsequent stages of operations with regard to the same areas and resources; provided, however, that where the Contractor's performance has not been satisfactory such preference or priority may be withdrawn.

(i) Contracts for the exploration and exploitation of the resources of the Area may provide for joint arrangements between the Contractor and the Authority through the Enterprise, in the form of joint

ventures, production sharing or service contracts, as well as any other form of joint arrangement for the exploration and exploitation of the resources in the Area.

(j) (i) The proposed contract area shall be sufficiently large and of sufficient value to allow the Authority to determine that one half of it shall be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing countries. Upon such determination by the Authority the Contractor shall indicate the co-ordinates dividing the area into two halves of equal estimated commercial value and the Authority shall designate the half which is to be reserved. The Contractor may, alternatively, submit two non-contiguous areas of equal estimated commercial value, of which the Authority shall designate one as the reserved area. The designation by the Authority of one half of the area, or of one of the two non-contiguous areas, as the case may be, in accordance with the provisions of this subparagraph, shall be made as soon as the Authority has been able to examine the relevant data as may be necessary to decide that both parts are equal in estimated commercial value.

(ii) Areas designated by the Authority as reserved areas in accordance with this subparagraph, may be exploited only through the Enterprise or in association with the developing countries.....

(iii) In conducting activities in areas reserved in accordance with this subparagraph, the Enterprise may enter into joint arrangements of the kind referred to in subparagraph (i) above with other entities referred to in subparagraph (ii) of paragraph 2 of article 151. In such joint arrangements appropriate provisions shall be made for participation by developing countries. The nature and extent of such participation shall be approved by the Authority.

(iv) If upon a request in accordance with paragraph 4 (c), the pertinent negotiations are not concluded within a reasonable time, either party may refer any matter arising in the negotiations to conciliation in accordance with Annex IV of this Convention. The conciliation commission shall within 60 days make recommendations to the parties which shall form the basis of further negotiations. Should the latter negotiations fail, either party may refer to binding arbitration, within 90 days, the question of the fulfilment of the undertakings made in accordance with paragraph 4 (c). In the event that the Contractor does not accept, or fails to implement the arbitral decision, the Contractor shall be liable to penalties in accordance with the provisions of paragraph 12 of this annex.

(v) Nothing in this subparagraph shall be interpreted as preventing the Enterprise from carrying out activities in accordance with this annex in any part of the Area not subject to contract or joint arrangement.

(k) Contractors entering into such joint arrangements with the Enterprise as referred to in subparagraphs (i) and (j) (iii) above may receive financial incentives as provided for in the financial arrangements established in paragraph 7 of this annex.

(l) While the inclusion of a quota or anti-monopoly provision appears to be acceptable in principle, its detailed formulation has yet to be fully negotiated.

...

TRANSFER OF DATA

8. The Contractor shall transfer in accordance with the rules and regulations and the terms and conditions of the contract to the Authority at time intervals determined by the Authority all data which are both necessary and relevant to the effective implementation of the powers and functions of the principal organs of the Authority in respect of the contract area. Transferred data in respect of the contract area, deemed to be proprietary, shall not be disclosed by the Authority, and may only be used for the purposes set forth above in this subparagraph. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment and safety shall not be deemed to be proprietary. Except as otherwise agreed between the Authority and the Contractor, the Contractor shall not be obliged to disclose proprietary equipment design data.

TRAINING PROGRAMMES

9. The Contractor shall draw up practical programmes for the training of personnel of the Authority and developing countries, including the participation of such personnel in all activities covered by the contract, in accordance with paragraph (b) of article 144.

EXCLUSIVE RIGHT TO EXPLORE AND EXPLOIT IN THE CONTRACT AREA

10. The Authority shall, pursuant to Part XI of the present Convention and the rules and regulations prescribed by the Authority, accord the Contractor the exclusive right to explore and exploit the contract area in respect of a specified category of minerals and shall ensure that no other entity operates in the same contract area for a different category of minerals in a manner which might interfere with the operations of the Contractor ..... The Contractor shall have security of tenure in accordance with paragraph 6 of article 151.

End Notes

[1] *Official Records of the Third United Nations Conference on the Law of the Sea,* Vol. X, (United Nations publication, Sales No. E.79.V.4), Reports of the Committees and Negotiating Groups, Seventh session: Geneva, 21 March-19 May 1978, Resumed Seventh session: New York, 21 August-15 September 1978, Document A/CONF.62/62, Organization of work: Decisions taken by the Conference at its 90th meeting on the report of the General Committee, 13 April 1978, p. 6.

[2] Ibid, Document A/CONF.62/RCNG/1, Reports of the Committees and Negotiating Groups on negotiations at the Seventh Session contained in a single document both for the purposes of record and for the convenience of delegations (19 May 1978), Report to the Plenary by the Chairman of the First Committee, pp. 14-18.

[3] Ibid, Explanatory memorandum by the Chairman concerning document NG1/10/Rev.1, p. 19, paras 1-2.

[4] Ibid, pp. 21-27.

[5] Ibid, p. 25.

[6] Ibid, pp. 54-55.

[7] Ibid, pp. 56-57.

[8] Ibid, pp. 58-62.

[9] Ibid, Document A/CONF.62/RCNG/2, Reports of the Committees and Negotiating Groups on negotiations at the Resumed Seventh Session contained in a single document both for the purposes of record and for the convenience of delegations. Report to the Plenary by the Chairman of the First Committee, p. 127, paras 3-6.

[10] Ibid, NG1/14, 14 September 1978, Memorandum by the Chairman of Negotiating Group 1 on the work of the Group during the Resumed Seventh Session, p.131. The proposal of India referred to by the Chairman of NG1 was reflected in the last paragraph on p. 136.

[11] Ibid, NG1/13 and Corr.1, pp. 137-143.

VII. EIGHTH SESSION AND RESUMED EIGHTH SESSION OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA (GENEVA, 19 MARCH-27 APRIL 1979; NEW YORK, 19 JULY-24 AUGUST 1979)

During the Eighth Session, the First Committee continued its informal work in the form of Negotiating Groups 1, 2 and 3. The First Committee met only once in formal session on the 25th April 1979 to examine the reports of the Chairmen of the Negotiating Groups.[1]

In his report to the Committee the Chairman of Negotiating Group 1 stated that document NG1/16/Rev.1 was the result of more than a year's work and contained provisions relating to almost every aspect of the system of exploration and exploitation. Some of those provisions remained very close to the formulations in negotiating text while others contained new ideas developed during negotiations in the Group. The objectives of the Negotiating Group had been two-fold: On the one hand to agree on a system of exploration and exploitation satisfactory to developed as well as developing countries, to producers as well as consumers, on the other, to ensure that the system of exploration and exploitation would operate in reality in the precise manner envisaged in the text – in other words, to ensure that the parallel system would indeed be parallel once the regime came into force. The Group had therefore devoted a large part of its work to defining the means whereby the Enterprise could become an effective operator in the exploitation of the resources of the Area; and in that respect, the provisions in paragraph 4 *bis* of Annex II on transfer of technology constituted a considerable expansion of the provisions of paragraph 4(c)(iv) of the Informal Composite Negotiating Text.[2]

Following are the excerpts from document NG1/16/Rev.1 and Rev.1/Corr.1 relevant to the Enterprise, as contained in Annex III to Document A/CONF.62/L.35 (also circulated as document A/CONF. 62/C.1/L.24, Report by the Chairman of Negotiating Group 1).

ANNEX III[3]

REVISED SUGGESTED COMPROMISE FORMULA BY THE CHAIRMAN OF NEGOTIATING GROUP 1

...

Article 144
Transfer of technology

New paragraph 1 (former article 151 paragraph 8)

1. The Authority shall take measures in accordance with the present Convention:

(a) To acquire technology and scientific knowledge relating to activities in the Area; and

(b) To promote and encourage the transfer to developing countries of such technology and scientific knowledge so that all States Parties benefit therefrom.

2. To this end the Authority and the States Parties shall cooperate in promoting the transfer of technology and scientific knowledge relating to activities in the Area so that the Enterprise and all States Parties may benefit therefrom. In particular they shall initiate and promote:

(a) Programmes for the transfer of technology to the Enterprise and to developing countries with regard to activities in the Area, including, *inter alia*, facilitating the access of the Enterprise and of developing countries to the relevant technology under fair and reasonable terms and conditions;

(b) Measures directed towards the advancement of the technology of the Enterprise and the domestic technology of developing countries, particularly through the opening of opportunities to personnel from the Enterprise and from developing countries for training in marine science and technology and their full participation in activities in the Area.

...

Article 151
System of exploration and exploitation

1. Activities in the Area shall be *organized*, carried out *and controlled* by the Authority on behalf of mankind as a whole in accordance with the provisions of this article as well as other relevant provisions of this Part of the present Convention and its annexes, and the rules, regulations and procedures of the Authority————

2. Activities in the Area shall be carried out … as described in paragraph 3 below:

(i) By the Enterprise; and

(ii) In association with the Authority by States Parties or State entities, or 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 which meet the requirements provided in this part of the present Convention including Annex II.

3. Activities in the Area shall be carried out in accordance with a formal written plan of work drawn up in accordance with annex II and approved by the Council after review by the Technical Commission. In the case of activities in the Area carried out *as authorized by* the Authority by the entities specified in paragraph 2, ii, such a plan of work shall, in accordance with … Annex II paragraph 3, be in the form of a contract. Such contracts may provide for joint arrangements in accordance with … Annex II, paragraph 5 *quinquies*.

4. The Authority shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant pro-

visions of this Part of the present Convention, including its annexes, and the rules, regulations and procedures of the Authority, _____ and the plans of work approved in accordance with paragraph 3. States Parties shall assist the Authority by taking all measures necessary to ensure such compliance, *in accordance with article 139.*

5. The Authority shall have the right to take at any time any measures provided for under this Part of the present Convention to ensure compliance with its terms, and the performance of the control and regulatory functions assigned to it thereunder or under any contract. The Authority shall have the right to inspect all facilities in the Area used in connection with … activities in the Area.

6. A contract under paragraph 3 shall provide for security of tenure. Accordingly, it shall not be … revised, suspended or terminated except in accordance with Annex II, paragraphs 12 and 13.

...

ANNEX II[4]
BASIC CONDITIONS OF **PROSPECTING**, EXPLORATION AND EXPLOITATION

TITLE TO MINERALS ….

1. Title to the minerals shall … be passed _____ upon recovery of the minerals pursuant to a contract of exploration and exploitation. _____

PROSPECTING

2. (a) **(i)** The Authority shall encourage the conduct of prospecting in the Area.

(ii) *Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector shall comply with the present Convention and the relevant rules and regulations of the Authority concerning protection of the marine environment, ———— the training of personnel* ***nominated*** *by the Authority and accepts verification* ***by the Authority of compliance.*** *The proposed prospector shall, together with the undertaking, notify the Authority of the broad area or areas in which prospecting is to take place.*

(iii) *Prospecting may be carried out by more than one prospector in the same area or areas simultaneously.*

(iv) *The Authority may close a particular area for prospecting when the available data indicates the risk of irreparable harm to a unique environment or unjustifiable interference with other uses of the Area.*

(b) Prospecting shall not confer any preferential, proprietary, … exclusive *or any other rights on the* prospector with respect to the resources. **…**

A prospector shall however, be entitled to recover a reasonable amount of resources of the Area to be used for sampling.

EXPLORATION AND EXPLOITATION

3. (a) Exploration and exploitation shall *be carried out only* in areas specified in plans of work referred to in article 151, paragraph 3, and approved by the Authority in accordance with the provisions of this annex and the relevant rules, regulations and procedures **of the Authority.**

(b) _____

(c) Every **plan of work approved** by the Authority shall:

(i) Be in strict conformity with the present Convention and the rules and regulations of the Authority.

(ii) Ensure control by the Authority of activities in the Area in accordance with article 151, paragraph 4;

(iii) Confer on the operator exclusive rights for the exploration and exploitation of the resources in the _____ area covered by the plan of work in accordance with the rules and regulations of the Authority. If the applicant presents a plan of work for one of the two stages only, the contract may confer exclusive rights with respect to such stage.

New)

(d) Except for plans of work proposed by the Enterprise, each plan of work shall take the form of a contract to be signed by the Authority and the operator or operators upon approval of the plan of work by the Authority.

QUALIFICATIONS OF APPLICANTS

4. (a) **Applicants, other than the Enterprise, shall be qualified if they have the nationality or control and sponsorship required by article 151, paragraph 2 (ii), and if they follow the procedures and meet the standards established by the Authority by means of rules, regulations and procedures.**

(b) Except as provided in subparagraph (d) below, the qualification standards prescribed by the Authority shall relate to the financial and technical capabilities of the applicant and his performance under previous contracts with the Authority.

(c) The procedures for assessing the qualifications of States Parties which are applicants shall take into account their character as States.

(d) **The qualification standards shall require that every applicant,** without exception, shall **as part of his application** undertake:

*(i) To accept as enforceable and comply with the **applicable** obligations created by the provisions of Part XI of the present Convention, rules and regulations adopted by the Authority, decisions of the organs of the Authority, and terms of his contracts **with the Authority;***

(ii) *To accept control by the Authority* ***of activities in the Area, as authorized by the present Convention.***

(iii) *To provide the Authority with* ***written*** *assurances that its obligations covered by the contract entered into by it will be fulfilled in good faith.*

(iv) ***To comply with the provisions of the transfer of technology set forth in paragraph 4 bis.***

TRANSFER OF TECHNOLOGY

4 . (bis) (a) In respect of transfer of technology, every applicant, other than the Enterprise, shall:

(New)

(i) Make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the Area, as well as other relevant information about the characteristics of such technology, and **information as to where such technology is available on the open market.** That description shall be submitted with the application and thereafter whenever a substantial technological change or innovation is introduced.

(New)

(ii) Undertake to use in carrying out activities in the Area, technology other than that covered by subparagraph iii **and which is not generally available on the open market** only if he has obtained written assurance from the owner of the technology that he will, if and when the Authority so requests, make available to the Enterprise **to the same extent as made available to the operator**, that technology under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions. **Should an owner of technology refuse to honour his assurance when requested by the Enterprise, subsequent assurances by him shall not be accepted; and if the owner who refuses to honour his assurance has a corporate or family relationship with the applicant, this refusal shall be considered relevant to the applicant's qualifications for any subsequent proposed plan of work.**

(iii) Undertake *to make available* <u>*to the Enterprise*</u>, *if he receives the contract* <u>*and on fair and reasonable commercial terms*</u> <u>and conditions,</u> the technology which is to be used by him in carrying out activities in the Area *and which he is legally entitled to transfer.* This shall be done upon the conclusion of the contract and if *and when* the Authority shall so request by means of licence *or other appropriate arrangements which the Contractor shall negotiate with the Enterprise and which shall be set forth in a special agreement supplementary to the contract.* **This commitment may be invoked only if the Enterprise finds that it is unable to obtain**

the same or equally efficient and useful technology on the open market and on fair and reasonable terms and conditions.

(New)

(iv) Undertake to facilitate, upon the conclusion of the contract and if and when the Authority shall so request, the acquisition by the Enterprise, under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, of the technology covered by subparagraph ii.

(New)

(v) Undertake the same obligations as those prescribed *in subparagraphs ii, iii and iv* for the benefit of a developing country or a group of developing countries which has applied for a contract under paragraph 5 ter provided that these obligations shall be limited to the exploitation of the reserved part of the Area proposed by the applicant, and provided that activities under the contract sought by the developing country or group of developing countries would not involve transfer of technology to a **third** country or the nationals of a **third** country.

(b) *If upon request in accordance with this paragraph the pertinent negotiations* **fail** *within a reasonable time* **to reach agreement on the terms and conditions of transfer to the Enterprise,** *either party may refer any matter arising in the negotiations to conciliation in accordance with Annex IV of the present Convention. The Conciliation Commission shall within 60 days make recommendations to the parties which shall form the basis of further negotiations. Should the latter negotiations fail* **to reach agreement on the terms and conditions of transfer either the Enterprise, acting on behalf of the Authority, or the Contractor** *may thereafter refer to binding commercial arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law,* **(or other arbitration rules if and when prescribed in the rules, regulations and procedures of the Authority)**, *within 90 days* **the question whether the offers made are within the range of fair and reasonable commercial terms and conditions.** *In cases where* **the arbitral tribunal determines that the Contractor's offer is not within that range** *and the* **Contractor** *fails to revise its offer within a further period of 90 days to bring it within that range, the tribunal shall make an award. Where the dispute in the pertinent negotiations refers to matters other than the terms and conditions of transfer and the parties fail to reach agreement in negotiations subsequent to the recommendations of the Conciliation Commission, either party may, within 60 days, refer the matter to* **the appropriate disputes settlement mechanism established in the present Convention for its award.** *In the event that the Contractor does not accept, or fails to implement the arbitral* **award, or the decision of the appropriate tribunal,** the Con-

tractor shall be liable *to penalties* in accordance with the provisions of paragraph 12 of this annex.

(c) **In the event that the Enterprise is unable to obtain appropriate technology on fair and reasonable commercial terms and conditions to commence in a timely manner the processing of the minerals it recovers from the Area, the States Parties which are engaged in activities in the Area or whose nationals are engaged in activities in the Area, and other States Parties having access to such technology shall consult together and shall take effective measures to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions.**

(d) **In the case of joint ventures with the Enterprise technology transfer will be in accordance with the terms of the joint venture agreement.**

(New)

(e) For the purposes of this paragraph, "technology" means the equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance necessary to assemble, maintain and operate a system for the exploration for and exploitation of the resources of the Area and the non-exclusive legal right to use these items for that purpose.

APPROVAL OF PLANS OF WORK
submitted by applicants

5. *(a)* …*Six months* after the entry into force of ... the present Convention, and thereafter each fourth month … the Authority shall take up for consideration *proposed plans of work.*

(b) When considering an application for a contract with respect to exploration and exploitation, the Authority shall first ascertain whether:

(i) The applicant has complied with the procedures established for applications in accordance with paragraph 4 above and has given the Authority the commitments and assurances required by that paragraph. In case of non-compliance with these procedures or of absence of any of the commitments and assurances referred to, the applicant shall be given 45 days to remedy such defects.

(ii) The applicant possesses the requisite qualifications pursuant to paragraph 4.

(New)

(c) All plans of work proposed by qualified applicants shall be dealt with in the order in which they were received, and the Authority shall conduct, as expeditiously as possible, an …inquiry in connection with operational requirements, financial contribution, and transfer of technology as provided in the relevant provisions of the present Convention and this annex. As soon as the issues under investigation have been settled, the Authority shall approve such plans of work, provided that they conform to the uniform and non-discrimina-

tory requirements established by the rules, regulations and procedures of the Authority, unless:

(i) Part or all of the proposed area is included in a previously approved plan of work or a previously submitted proposed plan of work which has not yet been finally acted on by the Authority; or

(ii) Part or all of the proposed area is disapproved by the Authority pursuant to article 163, paragraph 2, xii; or

(iii) Selection among applications received during that period of time is necessary because approval of all plans of work proposed during that period would be contrary to the production limitation set forth in article 150 bis, paragraph 2, or to the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided for in article 150 bis, paragraph 1; or

(iv) The proposed plan of work has been submitted or sponsored by a State Party which has already been approved:

___three plans of work for exploration and exploitation of sites not reserved pursuant to paragraph 5 ter below within a circular area of 400,000 square kilometres **which is centered upon a point selected by the applicant within the requested additional site,**

___plans of work for exploration of sites not reserved pursuant to paragraph 5 ter below, which in aggregate size constitute 3 per cent of the total seabed Area which is not reserved pursuant to that paragraph or otherwise withdrawn by the Authority from eligibility for exploitation pursuant to article 163, paragraph 2, xii.

(New)

(d) For the purpose of the standard set forth in subparagraph c, iv, a plan of work proposed by a consortium shall be counted on a pro rata basis among the States Parties whose nationals compose the consortium. The Authority may approve plans of work covered by subparagraph c, iv above if it determines that such approval would not permit a State Party or persons sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the *Area*.

SELECTION OF APPLICANTS

(New)

5 bis. (a) Where the selection must be made among applicants because of the production limitation set forth in article 150 bis, paragraph 2, or because of the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided for in article 150 bis, paragraph 1, the Authority shall make the selection on the basis of objective and non-discriminatory standards set forth in rules and negotiations drawn up in accordance with this paragraph.

(b) The Authority shall consider all qualified applications received within the preceding period of time, as prescribed in the rules, regulations, and procedures, and shall give priority to those which:
   (i) Give better assurance of performance, taking into account the financial and technical qualifications of the proposed operator and performance, if any, under previously approved plans of work; or
   (ii) Provide earlier _____ prospective financial benefits to the Authority, taking into account when production is scheduled to begin ….

(c) …. Selection shall be made **taking into account** the need to provide for all States Parties, irrespective of their social and economic systems or geographical locations, opportunities to participate in activities in the Area, the need to prevent monopolization of such activities, and the need to exploit reserved sites, and on the basis of a determination of equitable merit, taking into account the resources and effort already invested by prospective operators in prospecting and in exploration, if any.

(New)

(d) When, due to the same reasons set forth in subparagraph a, the selection must be made among the Enterprise and applicants for contracts, the Authority shall have priority to exploit the area reserved to it under paragraph 5 ter below within the production policies of article 150 bis, either solely through the Enterprise or through joint ventures with States or with private entities sponsored by the States.

(e) The Authority shall make its decisions pursuant to this paragraph as promptly as possible after the close of each period.

RESERVATION OF SITES

5 ter. (a) **Each application, other than those proposed by the Enterprise or by any others for reserved sites, shall cover a total area which need not be a single continuous area but shall be sufficiently large,** and of sufficient value to allow *two mining operations*. The proposed operator shall indicate the co-ordinates dividing the area into two parts of equal estimated commercial value. *Within 45 days of receiving the … data* **necessary to make the assessment of the value of the sites from the applicant** the Authority shall designate the part which is to be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with the developing countries. *The area designated shall become a reserved area as soon as the plan of work for the non-reserved area is approved and the contract is signed.*

(b) The Enterprise shall be given an opportunity to decide whether it wishes itself to conduct activities in *each area reserved pursuant to this paragraph.* _____

(c) In conducting activities in the areas reserved pursuant to this paragraph, the Enterprise may enter into joint arrangements with *any* entity *qualified to conduct activities in the Area*. In such joint arrange-

ments appropriate provision shall be made for participation by developing countries, the nature and extent of such participation to be approved by the Authority.

(d) Nothing in this paragraph shall be interpreted as preventing the Enterprise from carrying out activities in accordance with this annex in any part of the Area **not included in a previously approved plan of work or a previously submitted plan of work which has not yet been finally acted on by the Authority.**

SEPARATE STAGES OF OPERATIONS

5 quater. If **an operator** in accordance with paragraph 3 c, iii above has **an approved plan of work for exploration only,** he shall have a preference and a priority among applicants for a **plan of work for exploitation** with regard to the same areas and resources; provided, however, that where the **operator's** performance has not been satisfactory such preference or priority may be withdrawn.

JOINT ARRANGEMENTS

5 quinquies. (a) Contracts for the exploration and exploitation of the resources of the Area may provide for joint arrangements between the Contractor and the Authority through the Enterprise, in the form of joint ventures, production sharing or service contracts, as well as any other form of joint arrangement for the exploration or exploitation of the resources of the Area.

(b) Contractors entering into such joint arrangements with the Enterprise….may receive financial incentives as provided for in the financial arrangements established in paragraph 7 below.

ACTIVITIES CONDUCTED BY THE ENTERPRISE

6. (a) Activities in the Area conducted under article 151, paragraph 2, i through the Enterprise shall be governed by the provisions of Part XI of the present Convention, **the rules, regulations and procedures of the Authority** and its relevant decisions _____.

(New)

(b) Any plan of work proposed by the Enterprise shall be accompanied by evidence supporting its financial and technological capability.

FINANCIAL TERMS OF CONTRACTS

7…

TRANSFER OF DATA

8. (a) The **operator** shall transfer in accordance with the rules and regulations and the terms and conditions of the **plan of work** to the Authority at the time intervals determined by the Authority all data which are both necessary

and relevant to the effective implementation of the powers and functions of *the principal* organs of the Authority in respect of the area **covered by the plan of work.**

(b) Transferred data in respect of the _____ area **covered by the plan of work,** deemed to be proprietary _____ may only be used for the purposes set forth above in this paragraph. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment and safety shall not be deemed to be proprietary.

(c) **Data transferred to the Authority by prospectors, applicants for contracts for exploration and exploitation, and Contractors, deemed to be proprietary, shall not be disclosed by the Authority. The responsibilities set forth in article 167, paragraph 2 are equally applicable to the staff of the Enterprise.**

TRAINING PROGRAMMES

9. The Contractor shall draw up practical programmes for the training of personnel of the Authority and developing countries, including the participation of such personnel in all activities covered by the contract *in accordance with article 144, paragraph b.*

EXCLUSIVE RIGHT TO EXPLORE AND EXPLOIT

10. The Authority shall, pursuant to Part XI of the present Convention and its rules and regulations prescribed by the Authority, accord the **operator** the exclusive right to explore and exploit the _____ area **covered by the plan of work** in respect of a specified category of minerals and shall ensure that no other entity operates in the same _____ area for a different category of minerals in a manner which might interfere with the operations of the **operator. …. An operator** shall have security of tenure in accordance with article 151, paragraph b.

...

In his second report to the First Committee the Chairman of Negotiating Group 2 indicated that his proposal concerning the financial arrangements of the Enterprise appeared in document NG2/5.[5]

He told the Committee that, in the course of negotiations in the Working Group of 21, the Group of 77 sought to link this proposal with his proposal on the financial terms of contracts contained in document NG2/12 and Corr. 1 and 2. The rationale put forward by the Group of 77 for this linkage was as follows. It was not satisfied that the proposal in document NG2/5 provided adequately for the financing of the first project of the Enterprise. The Group argued that, to the extent that document NG23/5 failed to provide adequately for this objective, it had to be made good by the financial payments to the Authority from contractors under document NG2/12 and Corr. 1 and 2.[6]

He further informed the Committee that "…the Group of 77 made two criticisms of document NG2/5, paragraph 10 *bis* (c). The first criticism was that the capital structure of the first project of the Enterprise would consist of one-third cash and two-thirds debt. The one-third cash would be provided to the Enterprise by way of refundable loans by States Parties. The Group of 77 felt that it would be desirable for cash versus debt ratio to be raised from 1:2 to at least 1:1. The reason given by the Group for this preference was that the Enterprise would be a new organization with no assets and it should not be burdened by an undesirably large debt component in the capital structure of its first project. The second criticism was the cash payments to the Enterprise would be made by all States Parties in accordance with the schedule referred to in article 158, paragraph 2 (vi). In the view of the Group of 77, the States Parties, which would be exploiting the Area and those sponsoring entities for contracts, should make an extra contribution to the Enterprise. The delegations of China and Czechoslovakia supported the second point made by the Group of 77.[7]

He also referred to the suggestion by the delegation of Norway to create an establishment fund. According to the Norwegian proposal, "the fund would be equivalent to 20 per cent of the capital required by the Enterprise" and "the money would be raised by way of mandatory contributions by all States Parties."[8] The delegation of Australia suggested that if the term "refundable" in paragraph 10 *bis* (c) were more clearly defined, this could help to alleviate the concern of the Group of 77.[9]

As reported by the Chairman of Negotiating Group 2, "the response of the major industrialized countries to the two points made by the Group of 77 was as follows. Those countries could see no problem with the proposal contained in document NG2/5. In their view, the Enterprise was assured, under that proposal, of the capital required to undertake one fully integrated project; one-third of the capital required would be made available to the Enterprise by States Parties in the form of cash loans and the remainder would be raised by the Enterprise through borrowings. Those countries asserted that the Enterprise would have no trouble in borrowing such funds because they would be guaranteed by States Parties. They also pointed out that a capital structure of one part cash or equity to two parts debt was quite a normal ratio in commercial practice. Finally, they said that the Enterprise should not be treated as an object of charity but should be expected to manage its affairs efficiently and in accordance with normal commercial practice."[10]

The Chairman said that he had decided to redraft paragraph 10 *bis* (c). The new text is contained in document NG2/5/Rev.1. He made two substantive changes to the text. First, he raised the cash or equity-debt ratio from 1:2 to 1:1, for several reasons. He recognized the validity of the argument of the Group of 77 that the Enterprise is a new institution with no assets and that the capital structure of its first project should not have too burdensome a debt component. He had surveyed the literature on the capital structures of the mining projects undertaken by mining companies all over the world and found support therein for both an equity to debt ratio of 1:2 as well as an equity to debt

ratio of 1:1. "From the point of view of the industrialized countries, this change should not be viewed as being adverse to their interests. This is because, to the extent that the Group of 77 feels assured by the proposal in document NG2/5/Rev.1, the Group of 77 can be expected to take a more accommodating attitude on the demand of the industrialized countries to reduce the burden of front-end fixed charges in document NG2/12 and Corr.1 and 2."[11]

The second change he made was "to make clear in the text that half of the capital required by the Enterprise, which would be made available to it in cash by States Parties, would be in the form of the long-term and interest-free loans. He left the question of when such loans would be refunded by the Enterprise to the States Parties to be decided in the future by the Assembly."[12]

He said that in the course of his consultations with delegations he "tried to secure agreement on the idea that the cash payments to the Enterprise should be divided into two parts, one of which would be made by all States Parties and the other, either by the States Parties which are entitled to be elected to article 159, paragraph 1 (a); or the States Parties falling within both article 159, paragraphs 1 (a) and (b); or by States Parties exploiting the Area and States Parties sponsoring applicants for contracts. Unfortunately, he was unable to secure general agreement on such a proposal. He therefore decided not to incorporate this idea into his redraft of paragraph 10 *bis* (c) but to defer this question for further negotiation."[13]

Document NG2/5/Rev.1 as contained in Annex II and Annex III to the second report by the Chairman of Negotiating Group 2 is reproduced below.

A/CONF.62/C.1/L.22
Second report by the Chairman of Negotiating Group 2

...

ANNEX II[14]

FINANCIAL ARRANGEMENTS OF THE ENTERPRISE THE CHAIRMAN'S SUGGESTED COMPROMISE PROPOSALS

...

Article 158 (2) (vii)

Adoption, upon the recommendation of the Council, of the financial regulations of the Authority, including rules on borrowing and the transfer of funds from the Authority to the Enterprise, and, upon the recommendation of the Governing Board of the Enterprise, the rules, regulations and procedures for the transfer of funds from the Enterprise to the Authority.

...

Article 160 (2) (xv bis)

Recommend to the Assembly the financial regulations of the Authority including rules on borrowing and the transfer of funds from the Authority to the Enterprise.

ANNEX III[15]

Paragraph 9

(a) The Assembly shall, on the recommendation of the Governing Board, determine what portion of the net income of the Enterprise shall be retained as its reserves. The remainder shall be transferred quarterly to the Authority.

(b) During an initial period, required for the Enterprise to become self-supporting, the Assembly shall leave all of the net income of the Enterprise in its reserves.

Paragraph 10

The funds of the Enterprise shall include:

(a) Amounts received from the Authority in accordance with article 172, paragraph 2 (b);

(b) Voluntary contributions made by States Parties for the purpose of financing activities of the Enterprise;

(c) Amounts borrowed by the Enterprise in accordance with the provisions of paragraph 10 bis below;

(d) Amounts received through the participation in contractual relationships with other entities for the conduct of activities in the Area, including joint arrangements;

(e) Reserves of the Enterprise in accordance with paragraph 9; and

(f) Other funds made available to the Enterprise to enable it to carry out its functions and to commence operations as soon as possible.

Paragraph 10 bis

(a) The Enterprise shall have the power to borrow funds and to furnish such collateral or other security as it may determine. Before making a public sale of its obligations in the markets or currency of a State Party, the Enterprise shall first obtain the approval of that State Party. The total amount and sources of borrowings shall be approved by the Council on the recommendations of the Governing Board.

(b) States Parties shall make every reasonable effort to support applications by the Enterprise for loans in capital markets and from international financial institutions.

(c) The Enterprise shall be assured of the funds necessary to explore and exploit its first mine site and to transport, process and market the minerals recovered therefrom and to meet its initial administrative expenses to the extent that such funds are not covered by the other funds referred to in paragraph 10 above. States Parties shall make available to the Enterprise one half of the funds required by way of long-term, interest-free refundable loans. Debts incurred by the Enterprise in raising the balance of the funds shall be guaranteed by all States Parties in accordance with the scale referred to in

article 158, paragraph 2 (vi). In lieu of debt guarantee, a State Party may make a voluntary contribution to the Enterprise of an amount equivalent to that portion of the debts which it would otherwise be liable to guarantee.

Paragraph 10 ter

The funds, assets and expenses of the Enterprise shall be kept separate and apart from those of the Authority. The provisions of paragraphs 10, 10 bis and of this paragraph shall not prevent the Enterprise from making arrangements with the Authority regarding facilities, personnel and services and arrangements for reimbursement of administrative expenses paid in the first instance by either organization on behalf of the other.

...

In his report on the work of Negotiating Group 3 to the First Committee, the Chairman of the First Committee stated that "… with regard to the Enterprise, it was agreed that the activities it may conduct shall cover those of transportation, processing and marketing of minerals recovered from the Area," and "the Negotiating Group also considered in full the provisions of Annex III, excluding only those relating to finance which were already being considered by Negotiating Group 2." He also indicated that document NG3/6 was the product of negotiations in Negotiating Group 3. He further indicated that there were "… two sets of amendments. The single underlining in substantive provisions denotes changes made during the Seventh Session. The double underlining, the proposed changes and the broken lines deletions during the present Session."[16]

The relevant part of document NG3/6 is reproduced below: (as contained in Renate Platzöder, *Third United Nations Conference on the Law of the Sea: Documents*, Vol. IX, 1986, Oceana Publications, Inc. p. 306).

Revised Suggested Compromise Formula by the Chairman of Negotiating Group 3

...

ANNEX III
STATUTE OF THE ENTERPRISE

PURPOSE

1. *(a) The Enterprise shall carry out activities of the Authority .....in the performance of its functions in implementation of article 169.*

(b) In the performance of its functions and in carrying out its purposes, the Enterprise shall act in accordance with the provisions ..... of the present Convention, including its annexes, ... and the rules, regulations and procedures of the Authority.

RELATIONSHIP TO THE AUTHORITY

2. (a) Pursuant to article 169 the Enterprise shall be subject to the general policies laid down by the Assembly and the directives and control of the Council.

(b) Nothing in this Convention shall make the Enterprise liable for the acts or obligations of the Authority, or the Authority liable for the acts or obligations of the Enterprise.

LIMITATION OF LIABILITY

3. No member of the Authority shall be liable by reason only of its membership for the acts or obligations of the Enterprise.

STRUCTURE OF THE ENTERPRISE

4. The Enterprise shall have a Governing Board, a Director-General and such staff ..... necessary for the performance of its duties.

GOVERNING BOARD

5. (a) The Governing Board shall be responsible for the conduct of operations of the Enterprise, and for this purpose shall exercise all the powers given to it by this annex.

(b) The Governing Board shall be composed of 15 qualified ....members elected by the Assembly. Election of these members shall be based on the principle of equitable geographical representation..... .

(c) Members of the Board shall be elected for a period of four years and shall be eligible for re-election.

.....

In the election and re-election of the members of the Governing Board the principle of rotation shall be duly applied.

(d) Each member of the Board shall have one vote. All matters before the Board shall be decided by a majority of the votes cast.

(e) Each member of the Board shall appoint an alternate with ..... powers to act for him when he is not present.

(f) Members of the Board shall continue in office until their successors are appointed or elected. If the office of a member of the Board becomes vacant more than 90 days before the end of his term, the Board may appoint another member for the remainder of the term. While the office remains vacant, the alternate of the former member of the Board shall exercise his powers, except that of appointing an alternate.

(g) The Governing Board shall function in continuous session at the principal office of the Enterprise, and shall meet as often as the business of the Enterprise may require.

(h) A quorum for any meeting of the Governing Board shall be two thirds of the members of the Board.

(i) Any member of the Authority may send a representative to attend any meeting of the Board when a request made by, or a matter particularly affecting, that member is under consideration.

(j) Subject to directives from the Council on the matter, the Governing Board may appoint such committees as they deem advisable.

DIRECTOR-GENERAL AND STAFF

6. (a) The Assembly shall, upon the recommendation of the Council, elect a Director-General who shall not be a member of the Board or an alternate. The Director-General shall be the legal representative of the Enterprise. He shall participate in the meetings of the Board but shall have no vote. He may participate in meetings of the Assembly, and the Council, when these organs are dealing with matters concerning the Enterprise, but shall have no vote at such meetings. The Director-General shall hold office for a fixed term not exceeding five years and may be re-elected for one further term.

(b) The Director-General shall be chief of the ..... staff of the Enterprise and shall conduct, under the direction and supervision of the Governing Board, the ordinary business of the Enterprise. Subject to the general control of the Governing Board, he shall be responsible for the organization, appointment and dismissal of the staff.

(c) The Director-General and the staff of the Enterprise, in the discharge of their offices, owe their duty entirely to the Enterprise and to no other authority. Each member of the Enterprise shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

(d) In appointing the staff the Director-General shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on an equitable geographical basis ....

LOCATION OF OFFICES

7. The principal office of the Enterprise shall be at the seat of the Authority. The Enterprise may establish other offices in the territories of any member, with the consent of that member.

PUBLICATION OF REPORTS AND PROVISION OF INFORMATION

8. (a) The Enterprise shall, not later than three months after the end of each financial year, submit to the Council for its approval an annual report containing an audited statement of its accounts and shall transmit to the Council and circulate to members at appropri-

ate intervals a summary statement of its financial position and a profit and loss statement showing the results of its operations.

(b) The Enterprise shall publish its annual report and such other reports as it deems desirable to carry out its purposes.

(c) Copies of all reports, statements and publications made under this article shall be distributed to members.

ALLOCATION OF NET INCOME

9. (a) The Assembly shall, on the recommendation of the Governing Board, determine what portion of the net income of the Enterprise shall be retained as its reserves. The remainder shall be transferred quarterly to the Authority.

*(b) During an initial period, required for the Enterprise to become self-supporting, the Assembly shall leave all of the net income of the Enterprise in its reserves.**

FINANCE

10. The funds of the Enterprise shall include:

(a) amounts received from the Authority in accordance with subparagraph (b) of paragraph 2 of Article 172;

(b) voluntary contributions made by States Parties for the purpose of financing activities of the Enterprise;

(c) amounts borrowed by the Enterprise in accordance with the provisions of paragraph 10 (bis) below;

(d) amounts received through the participation in contractual relationships with other entities for the conduct of activities in the Area, including joint arrangements;

(e) reserves of the Enterprise in accordance with paragraph 9; and

(f) other funds made available to the Enterprise to enable it to carry out its functions and to commence operations as soon as possible.

Paragraph 10 (bis)

(a) The Enterprise shall have the power to borrow funds and to furnish such collateral or other security as it may determine. Before making a public sale of its obligations in the markets or currency of a State Party, the Enterprise shall first obtain the approval of that State Party. The total amount and sources of borrowings shall be approved by the Council on the recommendation of the Governing Board.

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* Redrafted in Negotiating Group 2. See NG2/5, *Official Records.* Vol. X, P.56 *[Official Records of the Third United Nations Conference on the Law of the Sea,* Vol. X, (United Nations Publication Sales No. E.79.V.4), Reports of the Committees and Negotiating Groups, Seventh session and resumed seventh session, Financial Arrangements of the Enterprise, the Chairman's suggested compromise proposals, p. 56]

(b) States Parties shall make every reasonable effort to support applications by the Enterprise for loans in capital market and from international financial institutions.

(c) The Enterprise shall be assured of the funds necessary to explore and exploit its first mine site on its own and to meet its initial administrative expenses, to the extent that such funds are not covered by the other funds referred to in paragraph 10 above. Debts incurred by the Enterprise to this end shall be guaranteed by all States Parties in accordance with the scale referred to in subparagraph (vi) of paragraph (2) of Article 158. To the extent necessary for securing such loans, States Parties undertake to advance as refundable paid-in capital, up to one-third of the liability which they will have incurred under this subparagraph. In lieu of debt guarantee, a State Party may make a voluntary contribution to the Enterprise, or an amount equivalent to that portion of the debts which it would otherwise be liable to guarantee.

Paragraph 10 (ter)

*The funds, assets and expenses of the Enterprise shall be kept separate and apart from those of the Authority. The provisions of paragraphs 10, 10 (bis) and of this paragraph shall not prevent the Enterprise from making arrangements with the Authority regarding facilities, personnel and services and arrangements for reimbursement of administrative expenses paid in the first instance by either organization on behalf of the other.***

OPERATIONS

11. (a) The Enterprise shall propose to the Council projects for carrying out activities ..... in accordance with Article 169. Such proposals shall include a detailed description of the project, an analysis of the estimated costs and benefits, a ——— formal written plan of work for activities in the Area in accordance with Article 151 (3), and all such other information and data as may be required from time to time for its appraisal by the Technical Commission and approval by the Council.

(b) Upon approval by the Council, the Enterprise shall execute the project on the basis of the formal written plan of work referred to in subparagraph (a) of this paragraph.

(c) Procurement of goods and services:

(i) To the extent that the Enterprise does not at any time possess the goods and services required for its operations, it may procure and employ them under its direction and management. Procurement of goods and services required by the Enterprise shall be effected by the award of contracts, based on response

** Redrafted in Negotiating Group 2. *See* NG2/5, *Official Records, Vol. X, p. 57.*

to invitations in member countries to tender, to bidders offering the best combination of quality, price and most favourable delivery time.

(ii) If there is more than one bid offering such a combination, the contract shall be awarded in accordance with the following principles:

a. Non-discrimination on the basis of political or similar considerations not relevant to the carrying out of operations with due diligence and efficiency;

b. Guidelines approved by the Council with regard to the preferences to be accorded to goods and services originating in the developing countries, including the landlocked or otherwise geographically disadvantaged among them.

(iii) The Governing Board may adopt rules determining the special circumstances in which the requirement of invitations in member countries to bid may in the best interest of the Enterprise be dispensed with.

(d) The Enterprise shall have title to all minerals and processed substances produced by it .....

It shall sell its products on a non-discriminatory basis to States Parties provided that such products will not be sold at less than international market prices.

(e) Without prejudice to any general or special power conferred on the Enterprise under any other provision of this Convention, the Enterprise shall exercise ..... such powers incidental to its business as shall be necessary .....

(f) The Enterprise and its staff shall not interfere in political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to carry out the purposes specified in paragraph 1 of this annex.

LEGAL STATUS, IMMUNITIES AND PRIVILEGES

12. (a) To enable the Enterprise to fulfil the functions with which it is entrusted, the status, immunities and privileges set forth herein shall be accorded to the Enterprise in the territories of States Parties. To give effect to this principle the Enterprise and States Parties may, where necessary, enter into special agreements for this purpose.

(b) The Enterprise shall have such legal capacity as is necessary for the performance of its functions and the fulfilment of its purposes and, in particular, the capacity:

(i) To enter into contracts, forms of association, or other arrangements, including agreements with States and international organizations;

(ii) To acquire, lease, hold and dispose of immovable and movable property;

(iii) To be a party to legal proceedings in its own name.

(c) Actions may be brought against the Enterprise only in a court of competent jurisdiction in the territories of a member in which the Enterprise has an office, has appointed an agent for the purpose of accepting services or notice of process, has entered into a contract for goods or services, has issued securities, or is otherwise engaged in commercial activity. The property and assets of the Enterprise shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment of execution before the delivery of final judgement against the Enterprise.

(d) (i) The property and assets of the Enterprise, wheresoever located and by whomsoever held, shall be immune from confiscation, expropriation, requisition, and any other form of seizure by executive or legislative action.

(ii) All property and assets of the Enterprise shall be free from discriminatory restrictions, regulations, controls and moratoria of any nature.

(iii) The Enterprise and its employees shall respect local laws and regulations in any State or territory in which the Enterprise or its employees may do business or otherwise act.

(iv) States Parties shall assure that the Enterprise enjoys all rights, immunities and privileges afforded by States to entities conducting business within such States. These rights, immunities and privileges shall be afforded the Enterprise on no less favourable a basis than afforded by States to similarly engaged commercial entities. Where special privileges are provided by States for developing countries or their commercial entities, the Enterprise shall enjoy such privileges on a similarly preferential basis.

(v) States may provide special incentives, rights, privileges and immunities to the Enterprise without the obligation to provide such incentives, rights, privileges, or immunities to other commercial entities.

(e) The Enterprise, its assets, property, and revenues derived from its operations and transactions authorized by this annex, shall be immune from taxation.

(f) Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this annex and shall inform the Enterprise of the detailed action which it has taken.

(g) The Enterprise in its discretion may waive any of the privileges and immunities conferred under this article or in the special agreements referred to in subparagraph (a) above to such extent and upon such conditions as it may determine.

Following are the views expressed by delegations at the 45th meeting of the First Committee, on 25 April 1979, on the Enterprise:

(a) The representative of the **Netherlands** said that one of the key elements on which the discussions in the Working Group of 21 had focused had been the question of how to ensure that the Enterprise would effectively be engaged in seabed mining operations at the same time as other entities. This delegation had submitted to the Group a proposal under which the Enterprise would have the option of entering into a joint venture arrangement with a contractor. If it exercised that option, its participation could be up to 20 per cent and the same option, up to the same percentage participation, would be offered to the contractor with regard to the corresponding reserved area. In either case, the contractual arrangements would conform to the commercial terms and conditions customarily applied to joint ventures freely entered into by two independent parties.

…In conclusion his delegation shared the views expressed in the Plenary by the Chairman of the Committee concurring the need to provide effective training facilities for the future staff of the Authority and the Enterprise. The Netherlands authorities would give sympathetic consideration to any concrete proposals to establish an effective training programme. Not only university institutions but also industry should take part in that programme; and their combined efforts would help to consolidate the future viability of the Enterprise.[17]

(b) The representative of **Austria** gave a lengthy and systematic analysis on the Netherlands proposal by saying that the proposal could open the way to a solution, a way out of deadlock. The idea of a unified joint venture system was, of course, not new for the Conference. The delegations of Nigeria, Sri Lanka and other countries had introduced it into the discussions on various occasions, as had his own delegation in 1977.

The Netherlands proposal provided for a unified joint venture system only to the extent the Enterprise exercised its option for a joint venture with the contractor in the non-reserved area, and the contractor exercised his option for a joint venture with the Enterprise in the reserved area. To the extent that those options were not exercised, the parallel system was retained. That meant that the changes required in the negotiating text were relatively minimal. They could be contained in an additional single article 151 *bis* and in Annexes II and III. If the Conference agreed on financial terms, conditions of transfer of technology etc., all those paragraphs and articles could be included in the text and remain the basis for the parallel system. However, should the Conference fail to reach an agreement on those detailed provisions, there was no need to despair. Presumably the Enterprise and the contractors would then choose to exercise the option for joint ventures. The availability of the option reduced the importance of the provisions for financial arrangements and transfer of technology.

It should also be stressed that the Netherlands proposal did not detract from the rights and aspirations of the Enterprise as conceived by the develop-

ing countries. It merely added to those rights. The Enterprise retained its full rights to operate by itself and, in addition, acquired the right to share in all seabed production operations. Theoretically, it also had that option under the negotiating text; in practice, however, there was no guarantee that there would be State or private partners for the Enterprise in joint ventures. The Netherlands proposal ensured that the option could be exercised.

What advantages did the system offer? First of all, it was the only one to ensure that the Enterprise could initiate its operations at the same time as the private sector. Secondly, the problem of the financial terms of contracts became far simpler. Standard commercial practices might be applied: the share of the produce, the share of profits, and the share of decision-making powers were proportionate to the Enterprise's investment share, which could amount to 20 per cent in the non-reserved areas and at least 80 per cent in the reserved areas, i.e., an average of 50 per cent if all options were exercised. Thirdly, the system thus maximized the financial benefits of the Enterprise and the Authority (in the optimum case, 50 per cent of total seabed production). It was also financially advantageous to States and companies because it reduced their investment to an average of 50 per cent while providing a flexible profit-sharing and risk-sharing system, as advocated by the industrialized countries. Fourthly, the system solved the problems of transfer of technology, which was automatically ensured in a joint venture. Fifthly, joint ventures might cover one or more or all stages of an integrated operation, from research and development through prospecting, exploration, exploitation, processing and marketing; thus, the problem of calculating the available net proceeds was avoided. Sixthly, the banking system was greatly simplified. Under the negotiating text it was indeed difficult to decide at what point the two mine sites could be deemed to be of equal commercial value, and what that value was to be. The question of who was to be responsible for the costs of exploration up to the point of that decision had not been solved to the satisfaction of all parties. The Netherlands proposal eliminated that difficulty. Seventhly, the problem of discrimination between the Enterprise and States and companies with regard to taxation was avoided. All partners were treated in the same way. Eighthly, the most important advantage of the system was that the established industry was built into it on the basis of co-operation rather than competition. The Netherlands proposal introduced that principle in a most flexible way without undermining the basis of the parallel system. It opened up options. Ninthly, the problems of the Review Conference would become much more tractable because, if the system of exploration and exploitation were designed in such a way that the most efficient form of co-operation was allowed to emerge during the first twenty or twenty-five years, the task of the Review Conference would be greatly facilitated. It would consolidate the system and make some minor improvements in it but would not change it basically.[18]

(c) The representative of **Sierra Leone** said that his delegation welcomed the revised proposal of the Chairman of Negotiating Group 2 concerning the

operation of the Enterprise, because it felt that any proposal to ensure the efficient operation of the Enterprise deserved consideration. The idea of a unified system of joint ventures proposed by the Netherlands and supported by Australia was not new, but offered an alternative solution to the problem of the establishment of a system for seabed exploitation in cases where the parallel exploitation system would not be viable.[19]

(d) The representative of **Sri Lanka** said that the proposal by the Netherlands Delegation constituted an elaboration on the system of exploitation envisaged in the basic text and deserved a thorough discussion, since it was based on a more precise definition of the concept of the joint venture which was frequently mentioned in the text but had not been adequately studied. The delegation of Sri Lanka regarded the Netherlands Proposal as a preliminary one and as being open to negotiation.[20]

(e) The representative of **Argentina** also welcomed the first signs of a harmonization of positions on the financing of the Enterprise and supported the proposal of the Chairman of Negotiating Group 2 concerning the cash-versus-debt ratio for projects of the Enterprise. His delegation did not feel that the capital for the Enterprise should be constituted on the basis of the United Nations scale of assessments. It had two reasons for holding that view: first, the United Nations scale was based on criteria which had followed the evolution of the world economy and secondly, Part XI of the Convention dealt with an essentially economic activity, namely the exploitation of the resources of the seabed which were the common heritage of mankind. The parameters must therefore be different and new criteria applied. Countries which would benefit most directly from the exploitation of the mineral resources of the seabed – i.e., the industrialized countries – should contribute most of the capital for the Enterprise.[21]

(f) The representative of **Romania** said that his delegation fully endorsed the Chairman's opinion that it was necessary to create an efficient and valid Enterprise. In that connection, the question of the transfer of technology should be regulated in the revised text in very clear terms. Transfer of technology to the Enterprise and to developing countries should be an obligation of the applicants; otherwise neither of them would have guarantees that transfer of technology would be effective.

…It was necessary to make clear, both in the report of the Chairman of Negotiating Group 1 and in the revised text that the Enterprise should be governed by the democratic principle of equitable geographical distribution and rotation of seats.[22]

(g) The representative of the **Libyan Arab Jamahiriya** said that his delegation had always favoured the use of the single system for seabed exploration but it had no objection to the use of a new system during an interim period so that countries and companies could explore the seabed in parallel with the Enterprise to which developed countries had undertaken to supply the necessary financial and technical resources. However, documents NG3/6, NG2/12 and NG2/5 did not provide any idea of the new system; all one could find in

them was an attempt to prolong the interim period indefinitely and certain provision on the transfer of technology. With regard to the financing of the Enterprise, an attempt was being made to impose certain ideas on States on the basis of a precise timetable. In such conditions, ten countries would be in a position to monopolize seabed activities for twenty years, and they should bear the financial burden involved.

Under joint ventures, the reserved area would go to the industrialized countries, since they would have the resources required to exploit it.[23]

(h) The representative of **China** said that one of the most important issues touched upon recently by the Group of 21 in the context of the parallel system of exploration during the interim period was the question of guarantees to ensure that the Enterprise would have equal possibilities of exploring the seabed. New amendments had been made to documents NG2/5 and NG2/12 and, although the texts themselves were still to be discussed, the general trend seemed to be satisfactory.[24]

(i) The representative of **Mauritius** said his delegation was pleased to note that the financing of the Enterprise was placed on a firmer basis, but he regretted the gradual erosion of the income of the Authority which would be reduced from $17 to $13 million. The objective of attracting investment in the area should not take priority over the need to ensure the satisfactory financing and viability of the Enterprise. The Enterprise should not be dependent totally upon developed countries but should receive from all countries the resources it needed for efficient operation.[25]

Following are the views expressed by delegations on the Enterprise at the Plenary of the Conference on 26 April 1979.

(a) The representative of the **Federal Republic of Germany** said that with regard to the Enterprise, his delegation, like those of other industrialized countries, had gone a long way to meet the concerns of the Group of 77. It was, however, obvious that a transfer of technology to third countries was not directly related to the viability of the Enterprise. It was to be hoped that the countries of the Group of 77 would, in their turn, give due weight to the concerns of the developed countries in the various sectors when negotiations were resumed at the next session.[26]

(b) The representative of the **Union of Soviet Socialist Republics** said that the problems raised by developing countries concerning the Enterprise seemed to have been settled satisfactorily, since the Enterprise would be able to commence exploitation of resources as soon as the Convention came into force. However, a further request had been made to the effect that technology should be transferred not only to the Enterprise but also to developing countries which would be exploiting the reserved sites. His delegation supported that position.

With regard to the financing of the activities of the Enterprise, further negotiations would be necessary on the various solutions proposed for the first project. Later, the financing of the Enterprise's activities would be guaranteed by the financial clauses in the contracts concluded. The proposal for the establishment of joint ventures did not seem entirely satisfactory; but if the

sponsoring countries insisted that it should be considered, his delegation would be ready to take part in the discussions on it.[27]

(c) The representative of **Japan**, on the subject of the legal status, immunities and privileges of the Enterprise, considered that the various matters dealt with in article 12 of Annex III should be left to the discretion of the individual States Parties concerned.[28]

(d) The representative of **Poland** considered that States Parties which exploited the Area, or which sponsored activities in the Area, should contribute more than other States to the financing of the Enterprise. It seemed to his delegation to be just and reasonable that countries which took the main share of benefits from activities in the Area should also undertake the financing needed to ensure the viability of the Enterprise.[29]

(e) The representative of **China** observed that the First Committee had elaborated a series of compromise texts on the complex issue of the system of exploring the Area and exploiting its resources. With a view to reaching a consensus, it had been decided to apply provisionally a parallel system of exploitation on the understanding that, during the provisional period, the necessary conditions would be created to enable the legal entity to participate in the exploitation; and it had also been decided to provide sufficient guarantees that the Authority and the Enterprise would have the necessary technology. With regard to the transfer of technology, it was not clear how the Enterprise was to be guaranteed the necessary technology to exploit, process, refine, etc., products recovered from the deep seabed. With regard to the financing of the Enterprise, there was the problem of the charges to be paid to the Authority by the contractors. Lastly, provision had to be made to ensure that the Enterprise would have priority in the exploitation of those resources (article 150 *bis*). On that point, his delegation shared the views expressed by the developing countries and was favourably inclined to the position of the Group of 77.[30]

(f) The representative of **France** said that on many points, documents WG21/1 contained formulations which were not acceptable. Much work had still to be done, for example, on the financial terms of contracts, the financing of the Enterprise, article 159 and the settlement of disputes. On some other points – for example, the rules of procedure for the Review Conference, the extension of the Enterprise's activities and its method of financing – the document presented a step backward as compared with the negotiating text.[31]

(g) The representative of **India** said that some significant progress had been made on important aspects of the work, such as the elaboration of the concept of a parallel system of resource exploitation, of arrangements to ensure that the system would operate effectively from the outset of an acceptable system for the settlement of disputes and of machinery to regulate seabed mining in the interests of mankind as a whole. Other questions which had been usefully discussed included financial arrangements, the technological and financial viability of the Enterprise, the transfer of technology, the priority to be given to the Enterprise in seabed mining, the review of the parallel system after twenty years.[32]

At the 115th meeting of the Plenary of the Conference on 27 April 1979,

The representative of the **United States** said that in the view of his delegation, good progress had been made in a number of areas, including the difficult matter of the working of the parallel system in Annex II, and the means of making technology available to the Enterprise and ensuring the viability of the Enterprise as a commercial operator within the framework of Annex II. He was compelled, however, to draw attention to a number of areas in which his delegation continued to have serious difficulties with the texts in document WG21/1 (A/CONF.62/WP.10/Rev.1). His delegation was also concerned with a number of provisions in Annex II, including certain remaining problems connected with the transfer of technology. In addition, it believed that further work was needed on paragraph 5 *bis* concerning the question of the relationship of the Enterprise with other applicants. An absolute priority for the Enterprise over such applicants was a matter which required much more careful consideration when the issue of the availability of mine sites under the production ceiling was considered.

There had been considerable progress in Negotiating Group 2 towards reaching an understanding of the complex financial requirements of the deep seabed mining industry.

His delegation was particularly disappointed, however, in one regard. Adequate, even generous, provision had been made in Annex III of the negotiating text for the financing of the Enterprise. In document WG21/1, it was proposed that the paid-in refundable capital be one half of the capital requirements of the Enterprise and to eliminate the provision that it should be drawn only as needed. The new provisions changed the entire character of the paid-in refundable, government contributions to the Enterprise. That burden on Member States was not justified by the objective of financing the Enterprise and there was no indication that the States represented in the Conference would be willing to accept it.

His delegation considered that it would be a mistake to underestimate the difficulties still ahead, but it was committed to negotiations on a viable system of deep-sea mining both for the Enterprise and for States Parties.[33]

At the close of the 116th Plenary meeting, on 27 April 1979, the President and the Chairmen of the main Committees, together with the Chairman of the Drafting Committee and the Rapporteur-General, met to consider revision of the Informal Composite Negotiating Text. Hereafter are the excerpts of ICNT/Rev.1 relevant to the Enterprise:

A/CONF.62/WP.10/Rev.1
Informal Composite Negotiating Text / Revision 1[34]

...

Article 170
The Enterprise

1. The Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly, pursuant to article 153, paragraph 2 (a),

as well as transportation, processing and marketing of minerals recovered from the Area.

2. The Enterprise shall, within the framework of the international legal personality of the Authority, have such legal capacity as is provided for in the Statute set forth in Annex III. The Enterprise shall act in accordance with the provisions of this Convention and the rules, regulations and procedures of the Authority, as well as the general policies established by the Assembly, and shall be subject to the directives and control of the Council.

3. The Enterprise shall have its principal place of business at the seat of the Authority.

4. The Enterprise shall in accordance with article 173, paragraph 2, and article 10 of Annex III, be provided with such funds as it may require to carry out its functions, and shall receive technology as provided in article 144, and other relevant provisions of this Convention.

...

ANNEX II
BASIC CONDITIONS OF PROSPECTING, EXPLORATION AND EXPLOITATION

Article 1
Title to minerals

Title to minerals shall be passed upon recovery of the minerals pursuant to a contract of exploration and exploitation.

Article 2
Prospecting

1. (a) The Authority shall encourage the conduct of prospecting in the Area.

(b) Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector shall comply with this Convention and the relevant rules and regulations of the Authority concerning protection of the marine environment, the training of personnel nominated by the Authority and accepts verification by the Authority of compliance. The proposed prospector shall, together with the undertaking, notify the Authority of the broad area or areas in which prospecting is to take place.

(c) Prospecting may be carried out by more than one prospector in the same area or areas simultaneously.

(d) The Authority may close a particular area for prospecting when the available data indicate the risk of irreparable harm to a unique environment or unjustifiable interference with other uses of the Area.

2. Prospecting shall not confer any preferential, proprietary, exclusive or any other rights on the prospector with respect to the resources. A

prospector shall however, be entitled to recover a reasonable amount of resources of the Area to be used for sampling.

Article 3
Exploration and exploitation

1. Exploration and exploitation shall be carried out only in areas specified in plans of work referred to in article 153, paragraph 3, of Part XI of this Convention and approved by the Authority in accordance with the provisions of this annex and the relevant rules, regulations and procedures of the Authority.

2. Every plan of work approved by the Authority shall:

(a) Be in strict conformity with this Convention and the rules and regulations of the Authority;

(b) Ensure control by the Authority of activities in the Area in accordance with article 153, paragraph 4, of Part XI of this Convention;

(c) Confer on the operator exclusive rights for the exploration and exploitation of the resources in the area covered by the plan of work in accordance with the rules and regulations of the Authority. If the applicant presents a plan of work for one of the two stages only, the contract may confer exclusive rights with respect to such a stage.

3. Except for plans of work proposed by the Enterprise, each plan of work shall take the form of a contract to be signed by the Authority and the operator or operators upon approval of the plan of work by the Authority.

...

Article 5
Transfer of technology

1. In respect of transfer of technology, every applicant other than the Enterprise shall:

(a) Make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the Area, as well as other relevant information about the characteristics of such technology, and information as to where such technology is available on the open market. That description shall be submitted with the application and thereafter whenever a substantial technological change or innovation is introduced;

(b) Undertake to use, in carrying out activities, in the Area, technology other than that covered by subparagraph (c) and which is not generally available on the open market only if he has obtained written assurance from the owner of the technology that he will, if and when the Authority so requests, make available to the Enterprise to the same extent as made available to the operator, that technology under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions. Should an owner of technology refuse to honour his assurance when requested by the

Enterprise, subsequent assurances by him shall not be accepted, and if the owner who refuses to honour his assurance has a corporate or family relationship with the applicant, this refusal shall be considered relevant to the applicant's qualifications for any subsequent proposed plan of work;

(c) Undertake to make available to the Enterprise, if he receives the contract, and on fair and reasonable commercial terms and conditions, the technology which is to be used in carrying out activities in the Area and which he is legally entitled to transfer. This shall be done upon the conclusion of a contract and if and when the Authority shall so request by means of licence or other appropriate arrangements which the Contractor shall negotiate with the Enterprise and which shall be set forth in a special agreement supplementary to the contract. This commitment may be invoked only if the Enterprise finds that it is unable to obtain the same or equally efficient and useful technology on the open market and on fair and reasonable terms and conditions;

(d) Undertake to facilitate, upon the conclusion of the contract and if the Authority shall so request, the acquisition by the Enterprise under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions of the technology covered by subparagraph (b);

(e) Undertake the same obligations as those prescribed in subparagraphs (b), (c) and (d) for the benefit of a developing country or a group of developing countries which has applied for a contract under article 8, provided that these obligations shall be limited to the exploitation of the reserved part of the Area proposed by the applicant, and provided that activities under the contract sought by the developing country or group of developing countries would not involve transfer of technology to a third country or the nationals of a third country.

2. If upon request in accordance with this article the pertinent negotiations fail within a reasonable time to reach agreement on the terms and conditions of transfer to the Enterprise, either party may refer any matter arising in the negotiations to conciliation in accordance with Annex IV. The Conciliation Commission shall within 60 days make recommendations to the parties which shall form the basis of further negotiations. Should the latter negotiations fail to reach agreement on the terms and conditions of transfer either the Enterprise, acting on behalf of the Authority, or the Contractor may thereafter refer to binding commercial arbitration in accordance with the UNCITRAL Arbitration Rules (or other arbitration rules if and when prescribed in the rules, regulations and procedures of the Authority), within 90 days, the question whether the efforts made are within the range of fair and reasonable commercial terms and conditions. In cases where the arbitral tribunal determines that the Contractor's offer is not within that range

and the Contractor fails to revise its offer within a further period of 90 days to bring it within that range, the tribunal shall make an award. Where the dispute in the pertinent negotiations refers to matters other than the terms and conditions of transfer and the parties fail to reach agreement in negotiations within sixty days refer the matter to the appropriate disputes settlement mechanism established in the Convention for its decision. In the event that the Contractor does not accept or fails to implement the arbitral award or the decision of the appropriate tribunal, the Contractor shall be liable to penalties in accordance with the provisions of article 17.

3. In the event that the Enterprise is unable to obtain appropriate technology on fair and reasonable commercial terms and conditions to commence in a timely manner the processing of the minerals it recovers from the Area, the States Parties which are engaged in activities in the Area or whose nationals are engaged in activities in the Area, and other States Parties having access to such technology shall consult together and shall take effective measures to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions.

4. In the case of joint ventures with the Enterprise, technology transfer will be in accordance with the terms of the joint venture agreement.

5. For the purposes of this article, "technology" means the equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to assemble, maintain and operate a system for the exploration for and exploitation of the resources of the Area and the non-exclusive legal right to use these items for that purpose.

...

Article 8
Reservation of sites

1. Each application, other than those proposed by the Enterprise or by any others for reserved sites, shall cover a total area which need not be a single continuous area but shall be sufficiently large and of sufficient value to allow two mining operations. The proposed operator shall indicate the co-ordinates dividing the area into two parts of equal estimated commercial value. Within forty-five days of receiving the data necessary to make the assessment of the value of the sites from the applicant, the Authority shall designate the part which is to be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing countries. The area designated shall become a reserved area as soon as the plan of work for the non-reserved area is approved and the contract is signed.

2. The Enterprise shall be given an opportunity to decide whether it wishes itself to conduct activities in each area reserved pursuant to this article.

3. In conducting activities in the areas reserved pursuant to this article the Enterprise may enter into joint arrangements with any entity qualified to conduct activities in the Area. In such joint arrangements appropriate

provision shall be made for participation by developing countries, the nature and extent of such participation to be approved by the Authority.

4. Nothing in this article shall be interpreted as preventing the Enterprise from carrying out activities in accordance with this annex in any part of the Area not included in a previously approved plan of work or a previously submitted plan of work which has not yet been finally acted on by the Authority.

Article 9
Separate stages of operations

If an operator in accordance with article 3, paragraph 2 (c), has an approved plan of work for exploration only, he shall have a preference and a priority among applicants for a plan of work for exploitation with regard to the same areas and resources; provided, however, that where the operator's performance has not been satisfactory such preference or priority may be withdrawn.

Article 10
Joint arrangements

1. Contracts for the exploration and exploitation of the resources of the Area may provide for joint arrangements between the Contractor and the Authority through the Enterprise, in the form of joint ventures, production sharing or service contracts, as well as any other form of joint arrangement for the exploration or exploitation of the resources of the Area.

2. Contractors entering into such joint arrangements with the Enterprise may receive financial incentives as provided for in the financial arrangements established in article 12.

Article 11
Activities conducted by the Enterprise

1. Activities in the Area conducted under article 153, paragraph 2 (a), of Part XI of this Convention through the Enterprise shall be governed by the provisions of Part XI, the rules, regulations and procedures of the Authority and its relevant decisions.

2. Any plan of work proposed by the Enterprise shall be accompanied by evidence supporting its financial and technological capability.

...

Article 13
Transfer of data

1. The operator shall transfer in accordance with the rules and regulations and the terms and conditions of the plan of work to the Authority at time intervals determined by the Authority all data which are both necessary and relevant to the effective implementation of the powers and functions of the principal organs of the Authority in respect of the area covered by the plan of work.

2. Transferred data in respect of the area covered by the plan of work, deemed to be proprietary may only be used for the purposes set forth in this article. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment and safety shall not be deemed to be proprietary.

3. Data transferred to the Authority by prospectors, applicants for contracts for exploration and exploitation, and Contractors, deemed to be proprietary, shall not be disclosed by the Authority. The responsibilities set forth in article 168, paragraph 2, of Part XI of this Convention are equally applicable to the staff of the Enterprise.

Article 14
Training programmes

The Contractor shall draw up practical programmes for the training of personnel of the Authority and developing countries, including the participation of such personnel in all activities covered by the contract, in accordance with article 144, paragraph 2, of Part XI of this Convention.

...

ANNEX III
STATUTE OF THE ENTERPRISE

Article 1
Purpose

1. The Enterprise shall carry out activities of the Authority in the performance of its functions in implementation of article 170 of Part XI of this Convention.

2. In the performance of its functions and in carrying out its purposes, the Enterprise shall act in accordance with the provisions of this Convention, including its annexes, and the rules, regulations and procedures of the Authority.

Article 2
Relationship to the Authority

1. Pursuant to article 170 of Part XI of this Convention the Enterprise shall be subject to the general policies laid down by the Assembly and the directives and control of the Council.

3. Nothing in this Convention shall make the Enterprise liable for the acts or obligations of the Authority, or the Authority liable for the acts or obligations of the Enterprise.

Article 3
Limitation of liability

No member of the Authority shall be liable by reason only of its membership for the acts or obligations of the Enterprise.

Article 4
Structure of the Enterprise

The Enterprise shall have a Governing Board, a Director-General and such staff necessary for the performance of its duties.

Article 5
Governing Board

1. The Governing Board shall be responsible for the conduct of operations of the Enterprise, and for this purpose shall exercise all the powers given to it by this annex.

2. The Governing Board shall be composed of 15 qualified members elected by the Assembly. Election of these members shall be based on the principle of equitable geographical representation.

3. Members of the Board shall be elected for a period of four years and shall be eligible for re-election.

In the election and re-election of the members of the Governing Board, the principle of rotation shall be duly applied.

4. Each member of the Board shall have one vote. All matters before the Board shall be decided by a majority of the votes cast.

5. Each member of the Board shall appoint an alternate with powers to act for him when he is not present.

6. Members of the Board shall continue in office until their successors are elected. If the office of a member of the Board becomes vacant more than 90 days before the end of his term, the Board may appoint another member for the remainder of the term. While the office remains vacant, the alternate of the former member of the Board shall exercise his powers, except that of appointing an alternate.

7. The Governing Board shall function in continuous session at the principal office of the Enterprise, and shall meet as often as the business of the Enterprise may require.

8. A quorum for any meeting of the Governing Board shall be two thirds of the members of the Board.

9. Any member of the Authority may send a representative to attend any meeting of the Board when a request made by, or a matter particularly affecting, that member is under consideration.

10. Subject to directives from the Council on the matter, the Governing Board may appoint such committees as they deem advisable.

Article 6
Director-General and staff

1. The Assembly shall, upon the recommendation of the Council, elect the Director-General who shall not be a member of the Board or an alternate. The Director-General shall be the legal representative of the Enterprise. He shall participate in the meetings of the Board but shall have no vote. He may

participate in meetings of the Assembly, and the Council, when these organs are dealing with matters concerning the Enterprise, but shall have no vote at such meetings. The Director-General shall hold office for a fixed term not exceeding five years and may be re-elected for one further term.

2. The Director-General shall be the chief of staff of the Enterprise and shall conduct, under the direction and supervision of the Governing Board, the ordinary business of the Enterprise. Subject to the general control of the Governing Board, he shall be responsible for the organization, appointment and dismissal of the staff.

3. The Director-General and the staff of the Enterprise, in the discharge of their offices, owe their duty entirely to the Enterprise and to no other authority. Each member of the Enterprise shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

4. In appointing the staff, the Director-General shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on an equitable geographical basis.

Article 7
Location of offices

The principal office of the Enterprise shall be at the seat of the Authority. The Enterprise may establish other offices in the territories of any member, with the consent of that member.

Article 8
Publication of reports and provision of information

1. The Enterprise shall, not later than three months after the end of each financial year, submit to the Council for its approval an annual report containing an audited statement of its accounts and shall transmit to the Council and circulate to members at appropriate intervals a summary statement of its financial position and a profit and loss statement showing the results of its operations.

2. The Enterprise shall publish its annual report and such other reports as it deems desirable to carry out its purposes.

3. Copies of all reports, statements and publications made under this article shall be distributed to members.

Article 9
Allocation of net income

1. The Assembly shall, on the recommendation of the Governing Board, determine what portion of the net income of the Enterprise shall be retained as its reserves. The remainder shall be transferred quarterly to the Authority.

2. During an initial period, required for the Enterprise to become self-supporting, the Assembly shall leave all of the net income of the Enterprise in its reserves.

Article 10
Finance

1. The funds of the Enterprise shall include:

(a) amounts received from the Authority in accordance with article 173, paragraph 2 (b);

(b) voluntary contributions made by States Parties for the purpose of financing activities of the Enterprise;

(c) amounts borrowed by the Enterprise in accordance with the provisions of paragraph 2;

(d) amounts received through the participation in contractual relationships with other entities for the conduct of activities in the Area, including joint arrangements;

(e) reserves of the Enterprise in accordance with article 9; and

(f) other funds made available to the Enterprise to enable it to carry out its functions and to commence operations as soon possible.

2. (a) The Enterprise shall have the power to borrow funds and to furnish such collateral or other security as it may determine. Before making a public sale of its obligations in the markets or currency of a State Party, the Enterprise shall first obtain the approval of that State Party. The total amount of sources of borrowings shall be approved by the Council on the recommendation of the Governing Board.

(b) States Parties shall make every reasonable effort to support applications by the Enterprise for loans in capital markets and from international financial institutions.

(c) The Enterprise shall be assured of the funds necessary to explore and exploit its first mine site and to transport, process and market the minerals recovered therefrom and to meet its initial administrative expenses to the extent that such funds are not covered by the other funds referred to in paragraph 1.

States Parties shall make available to the Enterprise one half of the funds required by way of long-term, interest-free refundable loans. Debts incurred by the Enterprise in raising the balance of the funds shall be guaranteed by all States Parties in accordance with the scale referred to in article 160, paragraph 2 (e). In lieu of debt guarantee, a State Party may make a voluntary contribution to the Enterprise of an amount equivalent to that portion of the debts which it would otherwise be liable to guarantee;

3. The funds, assets and expenses of the Enterprise shall be kept separate and apart from those of the Authority. The provisions of this article shall not prevent the Enterprise from making arrangements with the Authority regarding facilities, personnel and services and arrangements for reimburse-

ment of administrative expenses paid in the first instance by either organization on behalf of the other.

Article 11
Operations

1. The Enterprise shall propose to the Council projects for carrying out activities in accordance with article 170 of Part XI of this Convention. Such proposals shall include a detailed description of the project, an analysis of the estimated costs and benefits, a formal written plan of work for activities in the Area in accordance with article 153, paragraph 3, and all such other information and data as may be required from time to time for its appraisal by the Legal and Technical Commission and approval by the Council.

2. Upon approval by the Council, the Enterprise shall execute the project on the basis of the formal written plan of work referred to in paragraph 1.

3. Procurement of goods and services:

(a) To the extent that the Enterprise does not at any time possess the goods and services required for its operations, it may procure and employ them under its direction and management. Procurement of goods and services required by the Enterprise shall be effected by the award of contracts, based on response to invitations in member countries to tender, to bidders offering the best combination of quality, price and most favourable delivery time.

(b) If there is more than one bid offering such a combination, the contract shall be awarded in accordance with the following principles:

(i) Non-discrimination on the basis of political or similar considerations not relevant to the carrying out of operations with due diligence and efficiency;

(ii) Guidelines approved by the Council with regard to the preferences to be accorded to goods and services originating in the developing States, including the landlocked or otherwise geographically disadvantaged among them.

(c) The Governing Board may adopt rules determining the special circumstances in which the requirement of invitations in member countries to bid may in the best interests of the Enterprise be dispensed with.

4. The Enterprise shall have title to all minerals and processed substances produced by it.

It shall sell its products on a non-discriminatory basis to States Parties provided that such products will not be sold at less than international market prices.

5. Without prejudice to any general or special power conferred on the Enterprise under any other provision of this Convention, the Enterprise shall exercise such powers incidental to its business as shall be necessary.

6. The Enterprise and its staff shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to carry out the purposes specified in article 1.

Article 12
Legal status, immunities and privileges

1. To enable the Enterprise to fulfil the functions with which it is entrusted, the status, immunities and privileges set forth herein shall be accorded to the Enterprise in the territories of States Parties. To give effect to this principle the Enterprise and States Parties may, where necessary, enter into special agreements for this purpose.

2. The Enterprise shall have such legal capacity as is necessary for the performance of its functions and the fulfilment of its purposes and, in particular, the capacity:

(a) To enter into contracts, forms of association, or other arrangements, including agreements with States and international organizations;

(b) To acquire, lease, hold and dispose of immovable and movable property;

(c) To be a party to legal proceedings in its own name.

3. Actions may be brought against the Enterprise only in a court of competent jurisdiction in the territories of a member in which the Enterprise has an office, has appointed an agent for the purpose of accepting service or notice of process, has entered into a contract for goods or services, has issued securities or is otherwise engaged in commercial activity. The property and assets of the Enterprise shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment of execution before the delivery of final judgment against the Enterprise.

4. (a) The property and assets of the Enterprise, wheresoever located and by whomsoever held, shall be immune from confiscation, expropriation, requisition, and any other form of seizure by executive or legislative action.

(b) All property and assets of the Enterprise shall be free from discriminatory restrictions, regulations, controls and moratoria of any nature.

(c) The Enterprise and its employees shall respect local laws and regulations in any State or territory in which the Enterprise or its employees may do business or otherwise act.

(d) States Parties shall assure that the Enterprise enjoys all rights, immunities and privileges afforded by States to entities conducting business within such States. These rights, immunities and privileges shall be afforded the Enterprise on no less favourable a basis than afforded by States to similarly engaged commercial entities. Where special privileges are provided by States for developing countries

or their commercial entities, the Enterprise shall enjoy such privileges on a similarly preferential basis.

(e) States may provide special incentives, rights, privileges and immunities to the Enterprise without the obligation to provide such incentives, rights, privileges, or immunities to other commercial entities.

5. The Enterprise, its assets, property, and revenues derived from its operations and transactions authorized by this annex, shall be immune from taxation.

6. Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this annex and shall inform the Enterprise of the detailed action which it has taken.

7. The Enterprise in its discretion may waive any of the privileges and immunities conferred under this article or in the special agreements referred to in paragraph 1 to such extent and upon such conditions as it may determine.

...

During the Resumed Eighth Session, the Working Group of 21, established to organize direct negotiations between interest groups on the basis of the reports of Negotiating Groups 1, 2 and 3 and the Group of Legal Experts, continued its work. It considered the hard-core issues, including the financial arrangements and the system of exploration and exploitation.[35] The suggestions resulting from consultations held by the Chairman and the Co-ordinators of the Working Group of 21 are given in document WG21/2 (Appendix A).[36]

With regard to the financing of the Enterprise (Annex III), the Chairman of Negotiating Group 2 indicated that the new paragraph 3 of article 10 contains the following salient points:

"First, the Enterprise was assured of the funds necessary to carry out one fully-integrated mining project. An integrated mining project would enable the Enterprise to process up to four metals, namely, cobalt, copper, manganese and nickel. The Enterprise had the discretion to decide whether to utilize these funds by investing them in one project of its own, or to invest them in joint ventures. During the consultation, the Chairman raised the question whether the amount of the funds should be specified. He asked this question because many Governments would like to know the extent of their obligations. Members of the Group of 77 were, however, against specifying an amount. They pointed out that the estimates of the capital required to carry out one fully integrated project varied greatly. The original estimates by the Massachusetts Institute of Technology, based upon a three-metal case, and upon 1976 prices, were $560 million. The new estimates, based upon 1979 prices, suggested an amount of $750 million. Other estimates, however, based upon a four-metal case, were much higher and suggested a total amount exceeding $1 billion. The Chairman suggested specifying the amount of $1

billion, together with an escalating factor to take care of inflation. Members of the Group of 77 could not accept his proposal because they feared cost overruns would not be taken care of by the escalating factor. For these reasons, therefore, he left the amount unspecified. The amount would be determined by the Assembly, upon the recommendation of the Council, on the advice of the Governing Board of the Enterprise."[37]

The next salient point, he reported, was *"the ratio between the interest-free loans from States Parties and the guaranteed interest-bearing loans. In dealing with this question, an analogy was often made with the debt-equity ratio of a company. The interest-free loans are compared with the equity capital of a company. The interest-bearing loans are compared with the debt capital of a company. Some delegates objected to this analogy on the ground that the shareholders of a company expect to earn dividends on their equity, whereas the lenders of the interest-free loans to the Enterprise would not receive any dividends. One answer to this criticism is that lenders of the interest-free loans to the Enterprise also expect to earn dividends by way of sharing the profits made by the Enterprise which will be distributed to States Parties by the Authority. In his consideration of the question, the Chairman found the analogy with the debt-equity ratio a helpful one."*[38]

"The members of the Group of 77 contended that the ratio of the interest-free loans to the guaranteed interest-bearing loans should be 1:1. Industrialized market-economy countries contended that the ratio should be 1:2. The Chairman had asked the United Nations Centre on Transnational Corporations to undertake a survey of the debt equity ratios of mining companies in the industrialized market economy countries. The results of the survey were contained in a document which was attached to this report as Annex A. The table shows support for both a debt-equity ratio of 1:1 and a debt-equity ratio of 2:1. In view of this and in view of the fact that the Enterprise will be a new institution with no assets and no track record, he thought a ratio of interest-free loans to guaranteed interest-bearing loans of 1:1 would be justifiable."[39]

"The third salient point is the scale which will determine the contributions by States Parties of interest-free loans as well as their guarantees of the debts of the Enterprise in raising the remaining half of the capital required. The Chairman of Negotiating Group 2 considered various possibilities, but came to the conclusion that the best scale to use is the scale referred to in article 160, paragraph 2 (e), which was based upon the United Nations scale. Several representatives of the Group of 77 pointed out, during consultations, that since the Enterprise belongs to all, no State Party should be exempted from making a contribution to the Enterprise. They also said that the contribution by States Parties should reflect their varying capacities to help and that the most widely acceptable scale for doing this is the United Nations scale."[40]

"The fourth salient point concerned the repayment of the interest free loans to States Parties. The Chairman proposed that the repayment of interest-bearing loans shall have the priority over the repayment of interest-free

loans. He also proposed that, upon the recommendation of the Council, on the advice of the Governing Board of the Enterprise, the Assembly shall adopt a schedule for the repayment of the interest-free loans to the States Parties."[41]

With regard to the system of exploration and exploitation, the Chairman of Negotiating Group 1 indicated that changes were introduced in articles 1 to 4, 6, 8, 10 and 13 of Annex II. The new draft of article 1 on title to minerals was a drafting change and seemed to be more general without affecting its substance. It also made it clear that title would also pass to the Enterprise as well as to the prospector with respect to the samples collected, in accordance with the relevant provision.[42]

He indicated that, *"in article 3, two new paragraphs were added, namely paragraphs 1 and 2. These new paragraphs dealt with the presentation of plan of work by the Enterprise or other entities. The addition of these provisions was necessary as a general introduction to the other provisions of the same article since they referred to the first steps in a sequence developed in the other paragraphs of article 3 and in the following articles. Paragraph 2 stated clearly and categorically that the Enterprise may apply for a plan of work in respect of any part of the Area, either reserved or non-reserved. In light of this change, the saving clause in article 8, paragraph 4, of the annex was no longer necessary…"*[43]

He continued by indicating *"the existing and new provisions dealing with the conditions under which activities in reserved sites will be carried out are grouped in a new article (art. 8 bis). Paragraphs 1 and 4 of this new article are to clarify the process according to which the Enterprise shall decide whether it will carry out activities in the reserved site and the extent to which developing countries may have access to the reserved sites if the Enterprise decided not to exploit the sites itself or in joint ventures with such countries. The new paragraph 2 deals with conclusion of contracts by the Enterprise for the execution of parts of its activities, as well as entry into joint ventures with other entities on a voluntary basis. The matters dealt with in the new paragraphs 2, 3 and 4 are quite complex and in many respects delicate, and consequently further discussions on these matters may be required."*[44]

He said that, *"In article 10, the introduction of the words 'when the parties so agree' in paragraph 1 has been made in order to stress the voluntary character of joint arrangements between the Contractor and the Authority. Paragraph 3 is a new one and establishes the obligation of the partners of the Enterprise in joint ventures in reserved sites to pay the financial incentives as provided for in article 12."*[45]

With regard to the new wording of article 13, paragraph 3, which appeared in document WG21/2, Appendix A,[46] he said *"the amendments introduced in this provision meant to make more precise the responsibilities of the Authority and the Enterprise concerning the disclosure of proprietary data."*[47]

Following are the excerpts of document WG21/2 relevant to the Enterprise:

...

APPENDIX A
Suggestions resulting from consultations held by the Chairman and co-ordinators of the Working Group of 21

...

ANNEX II

Article 1
Title to minerals

1. Title to minerals shall pass upon recovery in accordance with the present Convention.

Article 2
Prospecting

1. (a) The Authority shall encourage the conduct of prospecting in the Area.

(b) Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector shall comply with the present Convention and the relevant rules and regulations of the Authority concerning protection of the marine environment, co-operation in training programmes according to articles 143 and 144 and accepts verification by the Authority of compliance. The proposed prospector shall, together with the undertaking, notify the Authority of the broad area or areas in which prospecting is to take place.

(c) Prospecting may be carried out by more than one prospector in the same area or areas simultaneously.

(d) (Deleted)

2. Prospecting shall not confer any preferential, proprietary, exclusive or any other rights on the prospector with respect to the resources. A prospector shall, however, be entitled to recover a reasonable amount of resources of the Area to be used for sampling.

Article 3
Exploration and exploitation

1. The Enterprise, States Parties and the other entities referred to in article 153, paragraph 2 (b), may apply to the Authority for approval of plans of work covering exploration and exploitation of resources of the Area.

2. The Enterprise may apply with respect to any part of the Area, but applications by others with respect to reserved areas are subject to the additional requirements of article 8.

(Formerly paragraph 1)

3. Exploration and exploitation shall be carried out only in areas specified in plans of work referred to in article 153, paragraph 3, and approved by

the Authority in accordance with the provisions of this annex and the relevant rules, regulations and procedures of the Authority.

(Formerly paragraph 2)

4. Every plan of work approved by the Authority shall:

(a) Be in strict conformity with the present Convention and the rules and regulations of the Authority;

(b) Ensure control by the Authority of activities in the Area in accordance with article 153, paragraph 4;

(c) Confer on the operator exclusive rights for the exploration and exploitation of the specified categories of resources in the area covered by the plan of work in accordance with the rules and regulations of the Authority. If the applicant presents a plan of work for one of the two stages only, the plan of work may confer exclusive rights with respect to such a stage.

(Formerly paragraph 3)

5. Except for plans of work proposed by the Enterprise, each plan of work shall take the form of a contract to be signed by the Authority and the operator or operators upon approval of the plan of work by the Authority.

Article 4
Qualifications of applicants

1. Applicants, other than the Enterprise, shall be qualified if they have the nationality or control and sponsorship required by article 153, paragraph 2 (b), and if they follow the procedures and meet the qualification standards established by the Authority by means of rules, regulations and procedures.

2. Sponsorship by the State Party of which the applicant is a national shall be sufficient unless the applicant has more than one nationality, as in the case of a partnership or consortium of entities from several States, in which event all States Parties involved shall sponsor the application, or unless the applicant is effectively controlled by another State Party or its nationals, in which event both States Parties shall sponsor the application.

3. The sponsoring State or States shall, pursuant to article 139, have the responsibility to ensure, within their legal systems, that a Contractor so sponsored shall carry out activities in the Area in conformity with its obligations under the present Convention and the terms of its contract. A sponsoring State shall not, however, be liable for damage caused by any failure of a Contractor sponsored by it to comply with its obligations if that State Party has enacted legislation and provided for administrative procedures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction.

(Formerly paragraph 2)

4. Except as provided in paragraph 6, such qualification standards shall relate to the financial and technical capabilities of the applicant and his performance under previous contracts with the Authority.

(Formerly paragraph 3)

5. The procedures for assessing the qualifications of States Parties which are applicants shall take into account their character as States.

(Formerly paragraph 4)

6. The qualification standards shall require that every applicant, without exception, shall, as part of his application, undertake:

(a) To accept as enforceable and comply with the applicable obligations created by the provisions of Part XI, rules and regulations of the Authority, decisions of the organs of the Authority, and terms of his contracts with the Authority;

(b) To accept control by the Authority of activities in the Area, as authorized by the present Convention;

(c) To provide the Authority with a written assurance that his obligations under the contract will be fulfilled in good faith;

(d) To comply with the provisions on the transfer of technology set forth in article 5 of the present annex.

Article 6

Approval of plans of work submitted by applicants

1. Six months after the entry into force of the present Convention, and thereafter each fourth month, the Authority shall take up for consideration proposed plans of work.

2. When considering an application for a contract with respect to exploration and exploitation, the Authority shall first ascertain whether:

(a) The applicant has complied with the procedures established for applications in accordance with article 4 of the present annex and has given the Authority the commitments and assurances required by that article. In cases on non-compliance with these procedures or of absence of any of the commitments and assurances referred to, the applicant shall be given 45 days to remedy such defects;

(b) The applicant possesses the requisite qualifications pursuant to article 4.

3. All proposed plans of work shall be dealt with in the order in which they were received, and the Authority shall conduct, as necessary and as expeditiously as possible, an inquiry into compliance with the terms of the present Convention and the rules, regulations and procedures of the Authority, including the operational requirements, the financial contributions and the undertakings concerning the transfer of technology. As soon as the issues under investigation have been settled, the Authority shall approve such plans of work, provided that they conform to the uniform and non-discriminatory requirements established by the rules, regulations and procedures of the Authority, unless:

(a) Part or all of the proposed area is included in a previously approved plan of work or a previously submitted proposed plan of work which has not yet been finally acted on by the Authority;

(b) Part or all of the proposed area is disapproved by the Authority pursuant to article 162, paragraph 2 (w);

(c) Selection among applications received during that period of time is necessary because approval of all plans of work proposed during that period would be contrary to the production limitation set forth in article 151, paragraph 2, or to the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided for in article 151, paragraph 1;

(d) The proposed plan of work has been submitted or sponsored by a State Party which has already been approved;

(i) Three plans of work for exploration and exploitation of sites not reserved pursuant to article 8 of the present annex within a circular area of 400,000 square kilometres which is centred upon a point selected by the applicant within the requested additional site;

(ii) Plans of work for exploration and exploitation of sites not reserved pursuant to article 8 which in aggregate size constitute 3 per cent of the total seabed Area which is not reserved pursuant to that article or otherwise withdrawn by the Authority from eligibility for exploitation pursuant to article 162, paragraph 2 (w).

4. For the purpose of the standard act set forth in paragraph 3 (d) above, a plan of work proposed by a consortium shall be counted on a pro rata *basis among the States Parties whose nationals compose the consortium. The Authority may approve plans of work covered by paragraph 3 (d) if it determines that such approval would not permit a State Party or persons sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the Area.*

Article 8
Reservation of sites

Each application, other than those proposed by the Enterprise or by any others for reserved sites, shall cover a total area, which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations. The proposed operator shall indicate the co-ordinates dividing the area into two parts of equal estimated commercial value and submit all the data obtained by him with respect to both parts of the area. Within 45 days of receiving such data the Authority shall designate the part which is to be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing countries. This designation may be deferred for a further period of 45 days if the Authority requests an independent expert to assess whether all data required by this article has been submitted to the Authority. The area designated shall become a reserved area as soon as the plan of work for the non-reserved area is approved and contract is signed.

Article 8 bis
Activities in reserved sites

1. The Enterprise shall be given an opportunity to decide whether it intends to carry out activities in each reserved site. This decision may be taken at any time, unless a notification pursuant to paragraph 4 is received by the Authority, in which event the Enterprise shall take its decision within a reasonable time. The Enterprise may decide to exploit such sites in joint ventures with the interested State or entity.

2. The Enterprise may conclude contracts for the execution of part of its activities in accordance with article 11 of Annex III. It may also enter into joint ventures for the conduct of such activities with any willing entities which are eligible to carry out activities in the Area pursuant to article 153, paragraph 2 (b). When considering such joint ventures, the Enterprise shall offer to States Parties which are developing countries and their nationals the opportunity of effective participation.

3. The Authority may prescribe, in the rules, regulations and procedures of the Authority, procedural and substantive requirements with respect to such contracts and joint ventures.

4. Any State Party which is a developing country or any national entity sponsored by it which is a qualified applicant or any group of the foregoing, may notify the Authority that it wishes to apply for a plan of work pursuant to article 6 of the present annex with respect to a reserved site. The plan of work shall be considered if the Enterprise decides, pursuant to paragraph 1 above, that it does intend to carry out activities in that site.

Article 10
Joint arrangements

1. Contracts for the exploration and exploitation of the resources of the Area may provide for joint arrangements, when the parties so agree, between the Contractor and the Authority through the Enterprise, in the form of joint ventures, production sharing service contracts, as well as any other form of joint arrangement for the exploration or exploitation of the resources of the Area.

2. Contractors entering into such joint arrangements with the Enterprise may receive financial incentives as provided for in the financial arrangements established in article 12 of the present annex;

3. Joint venture partners of the Enterprise in the reserved sites shall be liable for the payments required by article 12 of the present annex to the extent of their joint venture share, subject to financial incentives as provided for in article 12.

Article 13
Transfer of data

1. The operator shall transfer in accordance with the rules and regulations and the terms and conditions of the plan of work to the Authority, at

time intervals determined by the Authority, all data which are both necessary and relevant to the effective implementation of the powers and functions of the principal organs of the Authority in respect of the area covered by the plan of work.

2. Transferred data in respect of the area covered by the plan of work, deemed to be proprietary, may only be used for the purposes set forth in this article. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment and safety shall not be deemed to be proprietary.

3. Data transferred to the Authority by prospectors, applicants for contracts for exploration and exploitation, and contractors deemed to be proprietary shall not be disclosed by the Authority to the Enterprise or outside of the Authority. Such data transferred by such persons to the Enterprise shall not be disclosed by the Enterprise to the Authority or outside of the Authority. The responsibilities set forth in article 168, paragraph 2, are equally applicable to the staff of the Enterprise.

FINANCIAL ARRANGEMENTS
FINANCIAL TERMS OF CONTRACT

ANNEX II

Article 12

1. In adopting rules, regulations and procedures concerning the financial terms of a contract between the Authority and the entities referred to in article 153, paragraph 2 (b), in accordance with the provisions of Part XI of the present Convention, and in negotiating the financial terms of a contract in accordance with the provision of Part XI and those rules, regulations and procedures, the Authority shall be guided by the following objectives:

...

(e) To enable the Enterprise to engage in seabed mining effectively at the same time as the entities referred to in article 153, paragraph 2 (b);

...

2. FINANCING OF THE ENTERPRISE

ANNEX III

Article 3

Subject to article 10, paragraph 3 below, no member of the Authority shall be liable by reason only of its membership for the acts or obligations of the Enterprise.

Article 10

Delete paragraph 2 (c) and insert a new paragraph 3:

3. (a) The Enterprise shall be assured of the funds necessary to explore and exploit one mine site and to transport, process and market the metal recovered therefrom, namely, nickel, copper, cobalt and manganese, and to meet its initial administrative expenses, or the equivalent amount thereof. The said amount shall be determined by the Assembly upon the recommendation of the Council, on the advice of the Governing Board of the Enterprise.

(b) States Parties shall make available to the Enterprise an amount equivalent to one half of the funds referred to in paragraph 3 (a) above by way of long-term, interest-free loans in accordance with the scale referred to in article 160, paragraph 2 (e). Debts incurred by the Enterprise in raising the balance of the funds shall be guaranteed by all States Parties in accordance with the said scale. Upon request by the Enterprise, a State Party may provide a guarantee covering debts additional to the amount it has guaranteed in accordance with the said scale. In lieu of debts guarantee, a State Party may make a voluntary contribution to the Enterprise of an amount equivalent to that portion of the debts which it would otherwise be liable to guarantee.

(c) The repayment of the interest-bearing loans shall have priority over the repayment of the interest-free loans. The repayment of interest-free loans shall be in accordance with a schedule adopted by the Assembly, upon the recommendation of the Governing Board of the Enterprise.

...

Following are the views expressed by the delegations at the 46th meeting of the First Committee on 22 August 1979 which are of relevance to the Enterprise.

(a) The representative of **Japan** said that with respect to the financing of the Enterprise, the desire of many delegations that it should be assured of the funds necessary to carry out one fully integrated mining project was understandable; his delegation would give careful study to the revised formula proposed by the Chairman of Negotiating Group 2.[48]

(b) The representative of **Poland** said that many of the proposed new formulae were an improvement on the revised negotiating text. However, the provisions relating to the financing of the Enterprise and the decision-making process in the Council were in his delegation's opinion, a step backwards.

His delegation had consistently maintained that the financing of the Enterprise should be in proportion to the benefits received from exploiting the resources. The main burden should be on those who began the exploitation as the first contractors to the Authority, since they would derive the major direct benefits. However, such ideas were not reflected in the new text of Annex III, article 10, paragraph 3. On the contrary, that wording relied even more closely on the United Nations scale of contributions.[49]

(c) The representative of **China**, referring to the system of exploration and exploitation, noted a trend in the new text to limit the activities of the Enterprise. It was his delegation's understanding that the major purpose of Annex II was to provide the basic conditions for concluding and executing contracts, and the Enterprise, as the operational organ, could not be bound by those provisions. In his delegation's view, the Enterprise should be free to conduct its work in such a manner as it deemed appropriate. He also pointed out that certain issues had not been fully examined in the new text. It was to be hoped that in future more attention would be paid to the needs of the Enterprise and the Authority, particularly in respect of the transfer of technology.

The complex question of financing arrangements was mainly a political one. On the one hand, contractors should be able to receive a reasonable return, while, on the other hand, the needs of the Enterprise and the Authority must be properly safeguarded. Consequently, the method of calculation was of major importance. In the recent negotiations, attention had been focused mainly on how to satisfy the needs of the contractors, while the needs of the Enterprise and the Authority had not received sufficient attention. In the long run, the Enterprise and the Authority could not depend for their financial resources on payments made by States Parties and contractors. They should become financially self-sufficient as early as possible. At the initial stage, payments made to the Authority by contractors were of the utmost importance, since they would enable the Authority and the Enterprise to receive sufficient funds, so that the "parallel" system could be properly implemented. However, he noted a significant difference between the financial figures set forth in the revised negotiating text and those in the new text. In the latter, the method of calculation adopted was more flexible and accorded with the wishes of the contractors. The base rate for the second stage, however, seemed low. While it was necessary to give reasonable consideration to the needs of the contractors, it was even more necessary to guarantee sufficient income for the Authority and the Enterprise.

Turning to Annex III, article 10, concerning the financing of the Enterprise, he observed that under the revised negotiating text the Enterprise would not receive the necessary guarantee of funds for exploiting the first mine site. The text provided for one half of the funds to be shared by all States Parties. That was unreasonable; his delegation insisted that the funds be shared by all States Parties according to their degree of participation in the exploitation, or alternatively by the two categories of States referred to in article 161, paragraphs 1(a) and (b).[50]

(d) The representative of the **United States** said that the text on financial arrangements contained in article 12 of Annex II provided a much better basis for a final agreement, both for mining countries and for countries that would play a role in mining through the Enterprise. However, it would be necessary in the future to decide whether that text could constitute a final compromise or whether additional changes were needed.

The provisions concerning the financing of the Enterprise in Annex III should seek to avoid the implications of grant assistance and should focus on the different types of loans.[51]

(e) The representative of the **German Democratic Republic** said his delegation did not think that the new proposal regarding article 10, paragraph 3 (b) of Annex III offered a basis for compromise. It had always believed that the financing of the Enterprise should be borne by all States, with a major part borne by those that reaped the initial benefits from seabed mining. The current proposal imposed an additional burden on many States which did not participate in such mining at the outset and thus would have to pay large sums without receiving any benefits. His delegation had also been unable to accept the original paragraph on that subject contained in the revised negotiating text.[52]

(f) The representative of **France**, referring to article 10 of Annex II, said the new paragraph 3 implied that the Enterprise would be exempt from the payment of taxes to the Authority under article 12. In his delegation's opinion, however, the Enterprise should have the same financial obligations as other exploiting parties.[53]

(g) The representative of the **Netherlands** believed, with regard to the financing of the Enterprise, that the new text of article 10 of Annex III was an improvement over its previous version in so far as it recognized that all States Parties should contribute in accordance with an agreed general assessment scale based upon the scale used for the regular budget of the United Nations. Other elements of the new text, however, represented an increased burden for States Parties to the Convention which might discourage some States from ratifying it.

His delegation generally supported the revisions of the provisions in Annex II on the system of exploration and exploitation, and generally accepted article 10 on joint arrangements, without prejudice to further consideration of its own proposals on that subject. The current stage of negotiations had confirmed that those proposals might still prove useful; they must, however, be considered as part of the parallel system of exploitation and must not replace it with another system.[54]

(h) The representative of the **United Kingdom** said that more attention needed to be devoted to the question of the Enterprise's position as compared to that of other operators, in particular its priority under article 7 of Annex II, its payments under article 12 of Annex II and its liability to national taxation.[55]

(i) The representative of **New Zealand** said that with regard to the proposed revision of article 10 of Annex III, on the way in which the Enterprise's first mine site was to be financed, his delegation had long agreed that adequate initial financing of the Enterprise was an essential part of the package being discussed in the Committee. It therefore endorsed the principle that the appropriate funds should be made available for that purpose, but it had doubts concerning the method of assessing States' contributions as described in the new proposal. In addition to the very heavy financial burden which it would impose on countries which did not expect to benefit from seabed mining, such

as New Zealand, such a method of assessment raised a number of potentially difficult practical problems. For instance, he wondered what the financial situation of the Enterprise would be if many countries were to delay their ratification of the Convention, or not to ratify the Convention at all, because of the heavy financial obligation which it thus imposed on them. As he saw it, either those countries which had ratified the Convention would have to make a greater contribution or there would be a serious shortfall which would hamper the Enterprise's initial operations. Again since the proposal did not indicate a fixed sum for the funds to be allocated to the Enterprise, States could not know what their eventual contribution would be. If it turned out to be higher than the amount currently estimated, he wondered whether each party would have to provide more financing. Such questions should be given careful considerations by all delegations before a final decision was taken.[56]

(j) The representative of **Senegal** said that he hoped that the Chairman of the Negotiating Group on the system of exploration and exploitation would pursue the necessary consultations on the transfer of technology (article 5 of Annex II) and on the Review Conference (article 155) as both those articles were of great concern to the African countries and involved two vital conditions which the group of African States had established as prerequisites for their acceptance of the parallel system.

With regard to financial matters, and more specifically to article 12 of Annex II and article 10, paragraph 2 (c), of Annex III, the group of African States had considered the issues involved and believed that, in accordance with the decision taken by the Organization of African Unity, the financing of the Enterprise must be the responsibility of the developed counties. That was one of the pre-conditions for the acceptance by the group of African States of the parallel system.[57]

End Notes

1 *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. XI, (United Nations Publication, Sales No. E.80. V.6), Summary Records of meetings, Eighth Session: Geneva, 19 March-27 April 1979, Document A/CONF.62/L.36, Report of the Chairman of the First Committee, 26 April 1979, p. 96.

2 Ibid, Document A/CONF.62/L.35, Report by the Chairman of Negotiating Group 1, 25 April 1979, p. 86.

3 Ibid, pp. 90-92. Documents NG1/16/Rev.1 and Rev.1/Corr.1, dated 24 and 26 April 1979 respectively. Italics denote changes from the Informal Composite Negotiating Text, and bold type changes from previous NG1 documents. Dots indicate deletions from the Informal Composite Negotiating Text, and dashes deletions from NG1 documents.

4 Ibid, pp. 92-96.

[5] Ibid, Documents of the First Committee, Document A/CONF.62/C.1/L.22, second report by the Chairman of Negotiating Group 2, p. 103.
[6] Ibid.
[7] Ibid.
[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Ibid, p. 104.
[14] Ibid, p. 105.
[15] Ibid, pp. 106-107.
[16] Ibid, Document A/CONF.62/C.1/L.23, Report by the Chairman of the First Committee on the work of the Working Group of 21 and of Negotiating Group 3, 25 April 1979, p. 108.
[17] Ibid, p. 52.
[18] Ibid, p. 53.
[19] Ibid, p. 55.
[20] Ibid, p. 56.
[21] Ibid.
[22] Ibid.
[23] Ibid.
[24] Ibid.
[25] Ibid.
[26] Ibid, 114th meeting of the Plenary, 26 April 1979, pp. 19-20, para. 26.
[27] Ibid, p. 20, para. 27.
[28] Ibid, para. 39.
[29] Ibid, p. 21, para. 45.
[30] Ibid, p. 22, paras 60-61.
[31] Ibid, p. 22, paras 64-65.
[32] Ibid, pp. 22-23, paras 69-71.
[33] Ibid, 115th meeting of the Plenary, 27 April 1979, pp. 24-25, paras 8-11 & 13.
[34] For the full text *see* Third United Nations Conference on the Law of the Sea: Documents, Vol. 1. Compiled and edited by Renate Platzoder, 1982 Oceana Publications, Inc. Dobbs Ferry, New York, pp. 375-537.
[35] *Official Records of the Third United Nations Conference on the Law of the Sea,* Vol. XII, (United Nations Publication, Sales No. E.80. V.12), Summary Records of Meetings, Resumed Eighth Session: New York, 19 July-24 August 1979, Document A/CONF.62/C.1/L.26, Report on negotiations held by the Chairman and co-ordinators of the Working Group of 21, 21 August 1979, p. 77.
[36] Ibid, Appendix A, suggestions resulting from consultations held by the Chairman and co-ordinators of the Working Group of 21, Document WG21/2, p. 84.
[37] Ibid, Document A/CONF. 62/C.1/L.26, Report on negotiations held by the Chairman and co-ordinators of the Working Group of 21, 21 August 1979, Part II, Financial Arrangements, p. 78.
[38] Ibid.
[39] Ibid.
[40] Ibid.
[41] Ibid.
[42] Ibid, Part III, System of exploration and exploitation, p. 83.
[43] Ibid. p. 84
[44] Ibid.
[45] Ibid.

[46] Ibid, pp. 84-90.
[47] Ibid, p. 84.
[48] Ibid, 46th meeting of the First Committee, 22 August 1979, p. 27.
[49] Ibid, p. 29.
[50] Ibid, pp. 29-30.
[51] Ibid, p. 30.
[52] Ibid.
[53] Ibid, p. 31.
[54] Ibid, p. 32.
[55] Ibid, p. 33.
[56] Ibid.
[57] Ibid, pp. 33-34.

VIII. NINTH SESSION AND RESUMED NINTH SESSION OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA (NEW YORK, 3 MARCH - 4 APRIL 1980, GENEVA, 28 JULY - 29 AUGUST 1980)

During the first part of the Ninth Session of the Conference, the Working Group of 21 conducted a series of meetings to deal with the outstanding issues before the First Committee. The results of the negotiations were reflected in the report of the Co-ordinators of the Working Group of 21 to the First Committee.[1]

The Co-ordinator for questions relevant to Negotiating Group 1, Mr. Njenga of Kenya, expressed the following views concerning the Enterprise:

"When entrusted with the task of conducting the negotiations on the system of exploration and exploitation and the resource policy, I was perfectly aware of the magnitude of the undertaking and the enormous responsibility the Conference had put in my hands. Although the basic structure of the parallel system had been accepted in the previous stages of negotiations, some essential aspects related to its functioning, particularly the ways to ensure the effective operation of the two parallel sides of the system, were still subject to scrutiny and controversy. On some concrete points, the opposing views seemed to be irreconcilable as on the question of transfer of data and technology to the Authority or the production policy, to put only the most striking examples of divergent positions.[2]

...The goals of the amendments introduced in the new article 5 of Annex II, on the transfer of technology are twofold: on one hand, they aim at making the undertakings of the operator binding and more precise, thus strengthening the position of the Enterprise when dealing with the operator or the owner of the technology. On the other hand, the amendments aim at establishing some realistic limitation to these obligations with respect to their duration and the kind of technology to be transferred.[3]

...Important amendments have been introduced in the case where the operator uses a technology owned by a third party. In this case, the operator has to obtain from the third party a written assurance that he will make that technology available to the Enterprise to the same extent as it is made available to the operator, and on fair and reasonable commercial terms and conditions. An important amendment consists of the obligation of the operator to obtain from the owner of the technology a legally binding and enforceable assurance whenever it is possible to do so without additional cost to the operator. It is my understanding that if the Enterprise considers that a legally enforceable undertaking is necessary, it will be ready to meet such financial consequences as may be entailed.[4]

...Subparagraphs (c) and (d) of new paragraph 3 in the new text describe two possible ways open to the Enterprise to obtain the technology when its owner is not the operator, and once an assurance has been obtained from him, the Enterprise may decide to deal with either the operator who has

obtained the assurance from the owner of the technology, or directly with the owner of the technology. In both cases, the operator has specific obligations. In the first case, the operator shall take all feasible measures to acquire the legal right to transfer the technology to the Enterprise. Once the operator has obtained such legal right, the technology may be transferred to the Enterprise in accordance with paragraph 3 (a).[5]

…In the second case, that is, when the Enterprise decides to negotiate directly with the owner of the technology, the operator shall facilitate its acquisition for the Enterprise. This has been set forth in paragraph 3 (d).[6]

In addition to all these obligations, the new formula has incorporated, in paragraph 5, a procedure similar to that contained in paragraph 3 of article 5 of the Revised Negotiating Text. According to this procedure, when the Enterprise is unable to obtain technology to commence in a timely manner, the recovery and processing of minerals, either the Council or the Assembly may convene a group of States Parties, composed of those which are engaged in activities in the Area, of those which have sponsored entities engaged in such activities, and of others having access to such technology, to deal with the crises. The group shall consult and take whatever effective measures are necessary to ensure the availability of the technology to the Enterprise."[7]

The excerpts of Negotiating Group 1 document relevant to the Enterprise are reproduced below:

A/CONF.62/C.1/L.27 and Add.1
Report of the Co-ordinators of the Working Group of 21 to the First Committee[8]

...

ANNEX II
BASIC CONDITIONS OF PROSPECTING, EXPLORATION AND EXPLOITATION[9]

Article 1
Title to minerals

Title to minerals shall pass upon recovery in accordance with the provisions of the present Convention.

Article 3
Exploration and exploitation

1. The Enterprise, States Parties and the other entities referred to in paragraph 2 (b) of article 153, may apply to the Authority for approval of plans of work covering exploration and exploitation of resources of the Area.

2. The Enterprise may apply with respect to any part of the Area, but applications by others with respect to reserved areas are subject to the additional requirements of article 8 bis of this annex.

3. Exploration and exploitation shall be carried out only in areas specified in plans of work referred to in paragraph 3 of article 153, and approved by the Authority in accordance with the provisions of this annex and the relevant rules, regulations and procedures of the Authority.

4. Every plan of work approved by the Authority shall:

(a) Be in strict conformity with the present Convention and the rules and regulations of the Authority;

(b) Ensure control by the Authority of activities in the Area in accordance with paragraph 4 of article 153;

(c) Confer on the operator exclusive rights for the exploration and exploitation of the specified categories of resources in the area covered by the plan of work in accordance with the rules and regulations of the Authority. If the applicant presents a plan of work for one of the two stages only, the plan of work may confer exclusive rights with respect to such a stage.

5. Except for plans of work proposed by the Enterprise, each plan of work shall take the form of a contract to be signed by the Authority and the operator or operators upon approval of the plan of work by the Authority.

Article 4
Qualifications of applicants

1. Applicants, other than the Enterprise, shall be qualified if they have the nationality or control and sponsorship required by paragraph 2 (b) of article 153, and if they follow the procedures and meet the qualification standards established by the Authority by means of rules, regulations and procedures.

2. Sponsorship by the State Party of which the applicant is a national shall be sufficient unless the applicant has more than one nationality, as in the case of a partnership or consortium of entities from several States, in which event all States Parties involved shall sponsor the application, or unless the applicant is effectively controlled by another State Party or its nationals, in which event both States Parties shall sponsor the application.

3. The sponsoring State or States shall, pursuant to article 139, have the responsibility to ensure, within their legal systems, that a contractor so sponsored shall carry out activities in the Area in conformity with its obligations under the present Convention and the terms of its contract. A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has enacted legislation and provided for administrative procedures which are, within the framework of its legal system reasonably appropriate for securing compliance by persons under it jurisdiction.

4. Except as provided in paragraph 6, such qualification standard shall relate to the financial and technical capabilities of the applicant and his performance under previous contracts with the Authority.

5. The procedures for assessing the qualifications of States Parties which are applicants shall take into account their character as States.

6. The qualification standards shall require that every applicant, without exception, shall as part of his application undertake to:

(a) Accept as enforceable and comply with the applicable obligations created by the provisions of Part XI, rules and regulations of the Authority, decisions of the organs of the Authority, and terms of his contracts with the Authority;

(b) Accept control by the Authority or activities in the Area, as authorized by the present Convention;

(c) Provide the Authority with a written assurance that his obligations under the contract will be fulfilled in good faith.

(d) Comply with the provisions on the transfer of technology set forth in article 5 of this annex.

Article 5
Transfer of technology

1. When submitting a proposed plan of work, every applicant shall make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the Area, as well as other relevant non-proprietary information about the characteristics of such technology, and information as to where such technology is available.

2. Every operator under an approved plan of work shall inform the Authority of revisions in the description and information required by paragraph 1 above whenever a substantial technological change or innovation is introduced.

3. Every contract for the conduct of activities in the Area entered into by the Authority shall contain the following undertakings by the operator:

(a) To make available to the Enterprise, if and when the Authority shall so request and on fair and reasonable commercial terms and conditions, the technology which is to be used by him in carrying out activities in the Area and which he is legally entitled to transfer. This shall be done by means of licence or other appropriate arrangements which the operator shall negotiate with the Enterprise and which shall be set forth in a special agreement supplementary to the contract. This commitment may be invoked only if the Enterprise finds that it is unable to obtain the same or equally efficient and useful technology on the open market and on fair and reasonable commercial terms and conditions;

(b) To obtain a written assurance from the owner of any technology that the operator intends to use in carrying out activities in the Area which is not covered under subparagraph (a) and is not generally available on the open market that the owner will, if and when the Authority so requests, make available to the Enterprise to the same extent as made available to the operator, that technology under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions. This assurance shall be made

legally binding and enforceable whenever it is possible to do so without additional cost to the contractor;

(c) To take all feasible measures, if and when requested to do so by the Enterprise, to acquire the legal right to transfer to the Enterprise in accordance with subparagraph (a) any technology he uses in carrying out activities in the Area which he is not legally entitled to transfer and which is not generally available on the open market. In cases where there is a substantial corporate relationship between the operator and the owner of the technology, the closeness of this relationship and the degree of control or influence shall be relevant to the determination whether all feasible measures have been taken. In cases where the operator exercises effective control over the owner, failure to acquire the legal rights from the owner would create a presumption that such measures have not been taken;

(d) To facilitate the acquisition by the Enterprise under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions of any technology covered by subparagraph (b) above should the Enterprise decide to negotiate directly with the owner of the technology and request such facilitation;

(e) To take the same measures as those prescribed in subparagraphs (a), (b), (c) and (d) for the benefit of a developing country or group of developing countries which has applied for a contract under article 8 bis of this annex, provided that these measures shall be limited to the exploitation of the reserved part of the Area proposed by the applicant, and provided that activities under the contract sought by the developing country or group of developing countries would not involve transfer of technology to a third country or the nationals of a third country. Obligations under this provision shall not apply with respect to any given contractor where technology has not been requested or transferred by him to the Enterprise.

4. Disputes concerning the undertakings required by paragraph 3 like other provisions of contracts shall be subject to compulsory dispute settlement in accordance with Part X1, and monetary penalties, suspension, or termination of contract as provided in article 17 of this annex. Disputes as to whether offers made are within the range of fair and reasonable commercial terms and conditions may be submitted by either party to binding commercial arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law or other arbitration rules if and when prescribed in the rules, regulations and procedures of the Authority.

5. In the event of the Enterprise being unable to obtain appropriate technology on fair and reasonable commercial terms and conditions to commence in a timely manner the recovery and processing of minerals from the Area, either the Council or the Assembly may convene a group of States Parties composed of those which are engaged in activities in the Area, those which have sponsored entities which are engaged in activities in the Area

and other States Parties having access to such technology. This group shall consult together and shall take effective measures to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions. Each such State Party shall take all feasible measures to this end within its own legal system.

6. In the case of joint ventures with the Enterprise, technology transfer will be in accordance with the terms of the joint venture agreement.

7. The undertakings required by paragraph 3 shall be included in each contract for the conduct of activities in the Area until the Enterprise has begun commercial production of minerals from the resources of the Area, and these undertakings may be invoked until ten years after the Enterprise has begun such commercial production.

8. For the purposes of this article, "technology" means the specialized equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to assemble, maintain and operate a viable system and the legal right to use these items for that purpose on a non-exclusive basis.

Article 6
Approval of plans of work submitted by applicants

1. Six months after the entry into force of the present Convention, and thereafter each fourth month, the Authority shall take up for consideration proposed plans of work.

2. When considering an application for a contract with respect to exploration and exploitation, the Authority shall first ascertain whether:

(a) The applicant has complied with the procedures established for applications in accordance with article 4 of this annex and had given the Authority the commitments and assurances required by that article. In cases of non-compliance with these procedures or of absence of any of the commitments and assurances referred to, the applicant shall be given 45 days to remedy such defects;

(b) The applicant possesses the requisite qualifications pursuant to article 4.

3. All proposed plans of work shall be dealt with in the order in which they were received, and the Authority shall conduct, as expeditiously as possible, an inquiry into their compliance with the terms of the present Convention and the rules, regulations and procedures of the Authority, including the operational requirements, the financial contributions and the undertakings concerning the transfer of technology. As soon as the issues under investigation have been settled, the Authority shall approve such plans of work, provided that they conform to the uniform and non-discriminatory requirements established by the rules, regulations and procedures of the Authority, unless:

(a) Part or all of the proposed area is included in a previously approved plan of work or a previously submitted proposed plan of work which has not yet been finally acted on by the Authority,

(b) Part or all of the proposed area is disapproved by the Authority pursuant to paragraph 2 (w) of article 162;

(c) The production limitation set forth in paragraph 2 of article 151 or the obligations of the Authority under a commodity agreement or arrangement to which it has become a party as provided for in paragraph 1 of article 151 prevents the approval of any applications or requires a selection among applications received during the period of time specified above;

(d) The proposed plan of work has been submitted or sponsored by a State Party which already holds:

(i) Plans of work for exploration and exploitation of polymetallic nodules in non-reserved sites that, together with either part of the proposed site, would exceed in size 30 per cent of a circular area of 400,000 square kilometres surrounding the centre of either part of the area covered by the proposed plan of work.

(ii) Plans of work for the exploration and exploitation of polymetallic nodules in non-reserved sites in application of article 8 of the present annex, which in aggregate size constitute 2 per cent of the total seabed area which is not reserved or otherwise withdrawn by the Authority from eligibility for exploitation pursuant to paragraph 2 (w) of article 162.

4. For the purpose of the standard set forth in paragraph 3 (d), a plan of work proposed by a partnership or consortium shall be counted on a pro rata *basis among the sponsoring States Parties involved according to paragraph 2 of article 4 of this annex. The Authority may approve plans of work covered by paragraph 3 (d) if it determines that such approval would not permit a State Party or persons sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the Area.*

Article 7
Selection of applicants

1. Where the selection must be made among applicants because of the production limitation set forth in paragraph 2 of article 151, or because of the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided for in paragraph 1 of article 151, the Authority shall make the selection on the basis of objective and non-discriminatory standards set forth in rules and regulations drawn up in accordance with this article.

2. The Authority shall consider all qualified applications received within the preceding period of time referred to in paragraph 1 of article 6, and shall give priority to those which:

(a) Give better assurance of performance, taking into account the financial and technical qualifications of the proposed operator and performance, if any, under previously approved plans of work;

(b) Provide earlier prospective financial benefits to the Authority, taking into account when production is scheduled to begin;

(c) Have already invested most resources and effort in prospecting or exploration.

3. Applicants who are not selected in any period shall have priority in subsequent periods until they receive a contract.

4. Selection shall be made taking into account the need to enhance opportunities for all States Parties, irrespective of their social and economic systems or geographical locations, to participate in activities in the Area and to prevent monopolization of such activities.

5. The Authority shall have priority to exploit the reserved areas either solely through the Enterprise or through joint ventures with States Parties or with private entities sponsored by them whenever fewer reserved sites than non-reserved sites are under exploitation.

6. The Authority shall make its decisions pursuant to this article as promptly as possible after the close of each period.

Article 8
Reservation of sites

Each application, other than those proposed by the Enterprise or by any others for reserved sites, shall cover a total area, which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations. The proposed operator shall indicate the co-ordinates dividing the area into two parts of equal estimated commercial value and submit all the data obtained by him with respect to both parts of the area. Without prejudice to the powers of the Authority pursuant to article 16 of this annex, the data to be submitted concerning polymetallic nodules will relate to mapping, sampling, the density of nodules, and the composition of metals in them. Within forty-five days of receiving such data the Authority shall designate the part which is to be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing countries. This designation may be deferred for a further period of forty-five days if the Authority requests an independent expert to assess whether all data required by this article have been submitted to the Authority. The area designated shall become a reserved area as soon as the plan of work for the non-reserved area is approved and the contract is signed.

Article 8 bis
Activities in reserved sites

1. The Enterprise shall be given an opportunity to decide whether it intends to carry out activities in each reserved site. This decision may be taken at any time, unless a notification pursuant to paragraph 4 is received by the Authority, in which event the Enterprise shall take its decision within a reasonable time. The Enterprise may decide to exploit such sites in joint ventures with the interested State or entity.

2. The Enterprise may conclude contracts for the execution of part of its activities in accordance with article 11 of Annex III. It may also enter into joint ventures for the conduct of such activities with any willing entities which are eligible to carry out activities in the Area pursuant to paragraph 2 (b) of article 153. When considering such joint ventures, the Enterprise shall offer to States Parties which are developing countries and their nationals the opportunity of effective participation.

3. The Authority may prescribe in the rules, regulations and procedures of the Authority procedural and substantive requirements and conditions with respect to such contracts and joint ventures.

4. Any State Party which is a developing country or any natural or juridical person sponsored by it and effectively controlled by it or by other developing country which is a qualified applicant or any group of the foregoing, may notify the Authority that it wishes to submit a plan of work pursuant to article 6 with respect to a reserved site. The plan of work shall be considered if the Enterprise decides, pursuant to paragraph 1, that it does not intend to carry out activities in that site.

Article 9
Separate stages of operations

If an operator, in accordance with paragraph 2 (c) of article 3 of this annex, has an approved plan of work for exploration only, he shall have a preference and a priority among applicants for a plan of work for exploitation with regard to the same areas and resources; provided however that where the operator's performance has not been satisfactory such preference or priority may be withdrawn.

Article 10
Joint arrangements

1. Contracts may provide for joint arrangements, when the parties so agree, between the contractor and the Authority through the Enterprise, in the form of joint ventures or production sharing, as well as any other form of joint arrangement which shall have the same protection against termination, suspension or revision as contracts with the Authority.

2. Contractors entering into such joint arrangements with the Enterprise may receive financial incentives as provided for in the financial arrangements established in article 12 of this annex.

3. Joint venture partners of the Enterprise shall be liable for the payments required by article 12 to the extent of their joint venture share, subject to financial incentives as provided in article 12.

Article 11
Activities conducted by the Enterprise

Activities in the Area conducted under paragraph 2 (a) of article 153 through the Enterprise shall be governed by the provisions of Part XI, and

the relevant annexes, the rules, regulations and procedures of the Authority and its relevant decisions.

2. Any plan of work proposed by the Enterprise shall be accompanied by evidence supporting its financial and technological capability.

Article 13
Transfer of data

1. The operator shall transfer, in accordance with the rules and regulations and the terms and conditions of the plan of work, to the Authority at time intervals determined by the Authority, all data which are both necessary and relevant to the effective implementation of the powers and functions of the principal organs of the Authority in respect of the area covered by the plan of work.

2. Transferred data in respect of the area covered by the plan of work deemed to be proprietary may only be used for the purposes set forth in this article. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment and safety other than equipment design data shall not be deemed to be proprietary.

3. Data transferred to the Authority by prospectors, applicants for contracts for exploration and exploitation, and contractors deemed to be proprietary shall not be disclosed by the Authority to the Enterprise or outside the Authority, but the data on the reserved sites may be disclosed to the Enterprise. Such data transferred by such persons to the Enterprise shall not be disclosed by the Enterprise to the Authority or outside of the Authority. The responsibilities set forth in paragraph 2 of article 168 are equally applicable to the staff of the Enterprise.

Article 14
Training programmes

The contractor shall draw up practical programmes for the training of personnel of the Authority and developing countries, including the participation of such personnel in all activities covered by the contract, in accordance with paragraph 2 of article 144.

...

The co-ordinator for questions relevant to Negotiating Group 2, Mr. Tommy Koh of Singapore, made the following comments regarding the Enterprise:[10]

"The work which I did at this Session comprises three parts: the financing of the Enterprise, the financial terms of contracts and the Statute of the Enterprise.

Because of the importance of the question of financing the Enterprise and its linkage to the financial terms of contracts, I will discuss the former question separately from the Statute of the Enterprise, even though the provisions relating to the financing of the Enterprise are to be found in article 10 of the Statute of the Enterprise.[11]

... To facilitate the discussion of the question of the financing of the Enterprise, I issued a paper WG21/Informal Paper 7, and the co-ordinators of the Working Group of 21 issued a paper WG21/ Informal Paper 6 on the question of the Statute of the Enterprise.[12]

Although the financial terms of contracts and the financing of the Enterprise are logically distinct and separate issues, it has always been understood in Negotiating Group 2 that there is an inseparable linkage between the two issues and that they form a negotiating package. It was always understood by delegations that for the proposal on one issue to be acceptable, the proposal on the other issue must also be acceptable and that there could be trade-offs between the proposals on the two issues.[13]

At the end of the resumed Eighth Session, I proposed a new paragraph 3 to article 10 of Annex III. The paragraph contains the following four salient points. First, the Enterprise is assured of the funds necessary to carry out one fully integrated project. The amount of the funds to be given to the Enterprise is to be fixed in relation to an integrated mining project which would enable the Enterprise to process up to four metals, namely: cobalt, copper, manganese and nickel. The reason why the four metals are mentioned is not in order to compel the Enterprise to process the four metals even if it is uneconomic to do so but in order to establish a criterion for computing the amount of the funds to be given to the Enterprise. In my proposal, the amount of the funds would be determined by the Assembly, upon recommendation of the Council, on the advice of the Governing Board of the Enterprise. The second salient point is that 50 per cent of the funds to be given to the Enterprise would be in the form of long-term interest-free loans from States Parties. The remaining 50 per cent of the funds would be raised by the Enterprise as interest-bearing loans which would be guaranteed by States Parties. The third salient point is that the scale for determining the contributions of States Parties for loans and debt guarantees would be determined in accordance with the schedule referred to in paragraph 2 (e) of article 160, which is based upon the United Nations scale. The fourth salient point concerns the repayment of the interest-free loans to States Parties. Under my proposal, the repayment of interest-bearing loans would have priority over the repayment of interest-free loans. I have also proposed that the Assembly, upon the recommendation of the Governing Board of the Enterprise, would adopt a schedule for the repayment of the interest-free loans to the States Parties.[14]

In the discussions held at this Session, several issues were raised concerning the financing of the Enterprise. A few delegations of industrialized countries wanted to reopen the discussion of the ratio between interest-free loans and interest-bearing loans. They demanded the alteration of the ratio of one to one to a ratio of one-part interest free loans to two parts interest bearing loans. I have refused to change the one to one ratio for several reasons. First, I considered a debt-equity ratio of one to one as not being abnormal in the light of the survey of debt equity ratios of mining companies

contained in the annex to this report of the last Session. Secondly, whilst it is true that some mining companies have a capital structure made up of two-parts debt to one-part equity, it is also true that the Enterprise would be a new institution with no assets and with no track record. According to some experts, the Enterprise may find it more difficult to borrow funds than well-established mining companies. Thirdly, I considered the ratio of one-part interest free loans to one-part interest bearing loans as being an inseparable part of the financial package.[15]

One delegation from an industrialized country has again put forward the proposal that the Enterprise should, after an initial period, pay interest on the loans from States Parties. I have also rejected this demand because I regard the proposal I put forward at the last Session that the loans should be long-term and interest-free as another essential element in the financial package. The danger is that if we start tampering with parts of the financial package, the whole package may fall apart.[16]

Several delegations have raised the point that Governments would like to know the extent of their financial obligations towards financing the Enterprise, preferably before they sign the Convention and, in any case, before they ratify it. They have therefore suggested that the amount of the funds to be made available to the Enterprise should be specified in the Convention and that the amount be qualified by an escalating factor to take account of inflation. I have come to the conclusion that it would be unwise to adopt this approach. The reason is that the current estimates concerning the capital requirement to undertake an integrated mining project may turn out to be very different from the capital which will actually be required. The difference between the amount specified and the amount actually required could not be taken care of by an escalating factor which would only take account of inflation. One delegation has suggested that in addition to the provision for the escalation of costs, the amount specified could be reviewed either by the Council or by the Assembly. This approach would, however, rob the amount specified of the certainty which some delegations demand. Another suggestion was made during the discussions. The suggestion is to let the Preparatory Commission look into this question. The merit of this approach is that the Preparatory Commission would be working at a time closer to the actual commencement of seabed mining and would, therefore, have access to much more reliable data than we now do. Whatever the amount fixed by the Preparatory Commission may be, it could be subject to an escalating factor in order to take account of inflation. Having considered the three options, i.e. the option of letting the Assembly fix the amount in the future, the option of specifying the amount in the Convention and the option of asking the Preparatory Commission to determine the amount, I have come to the conclusion that the third option is the best. It would not satisfy those who wanted to know the amount before they sign the Convention but it would at least enable them to know before they ratify it. I have therefore added one sentence to the end of paragraph 3 (a) of article 10 to reflect this option.[17]

Another issue raised in the discussions concerns the repayment of the interest-free loans to States Parties. Two demands were made by some industrialized countries. The first is that the Council should have some role in the process of deciding the repayment schedule. Members of the Group of 77 were able to accept this proposal. I have therefore reflected this in my redraft of paragraph 3 (f) of article 10. The second proposal is that the repayment schedule should be determined by the rules and regulations of the Authority. This proposal was not found acceptable by the Group of 77.[18]

In order to ensure that the interest-free loans and the debt guarantees will be freely usable by the Enterprise, I have proposed a paragraph stating that the funds made available to the Enterprise shall be in freely-usable currencies or in currencies which are convertible in the major foreign exchange markets into freely-usable currencies. My proposal was accepted by all delegations and is now incorporated in paragraph 3 (g) of article 10. A final issue raised by several delegations concerns the manner in which paragraphs 3 (a) and (b) will be implemented in practice. Under article 301, the Convention will come into force if 70 States ratify the Convention. The scale referred to in paragraph 2 (e) of article 160, which will be used for determining the contributions of States under paragraphs 3 (a) and (b), is based upon the assumption that all Member States of the United Nations will become parties to the Convention. We must also bear in mind that it is our common desire to provide the Enterprise with the funds referred to in paragraph 3 (a) as soon as possible. Three problems, therefore, arise. First, if the States initially ratifying the Convention pay according to the United Nations scale and there is a shortfall, how will this shortfall be covered? Secondly, will States acceding to the Convention at a later stage also be required to contribute to the funds of the Enterprise? Thirdly, will the States which ratified the Convention initially and which contributed more than their share, according to the United Nations scale, towards the funds of the Enterprise be reimbursed for their supplementary contributions? I have tried to provide answers to these three questions in paragraphs 3 (c) and 3 (d) of article 10.[19]

In the event of a shortfall, States initially ratifying the Convention will share among themselves, according to the same scale, the shortfall by way of both interest-free loans and debt guarantees, subject to a limit that the shortfall shall not be greater than 25 per cent of the funds necessary to carry out one fully integrated project, in accordance with article 3 (a). States acceding to the Convention at a later stage will contribute to the funds of the Enterprise on the basis of this scale. And, in answer to the third question, these contributions and guarantees from States acceding to the Convention at a later stage will be used exclusively by the Enterprise to reimburse States Parties for their supplementary contributions by way of interest-free loans and to substitute their debt guarantees on interest-bearing loans by the debt guarantees of the States ratifying the Convention at the later stage.[20]

...With agreement of the Chairmen, Mr. Engo and Mr. Njenga, I conducted consultations with delegations on Annex III, the Statute of the

Enterprise. To assist delegations in the discussion, a paper (WG.21/Informal Paper No. 6) was prepared and issued. I would like to explain the framework within which that paper was prepared and the considerations which have led me to propose a number of changes to the Statute of the Enterprise. First, I have respected the powers which the Assembly, on the one hand and the Council, on the other hand, enjoy over the Enterprise. I have therefore made no attempt to amend either article 160 or article 162. Secondly, I have respected the structural relationship between the Authority and the Enterprise. Thirdly, I have attempted to give the Enterprise a commercial orientation in order to ensure that it will conduct its business operations in an efficient manner. Fourthly, I have attempted to reflect the idea that the Enterprise should enjoy autonomy in running its business operation subject, of course, to the Convention and its annexes. Fifthly, I have tried to take account of the pioneering nature of the Enterprise as the first international commercial organization the world proposes to establish."[21]

Mr. Koh subsequently explained briefly the changes he proposed to the Statute of the Enterprise in the following manner:

Article 1

Paragraph 1 has been redrafted to bring it in line with paragraph 7 of article 170 of the Convention. A new paragraph 3 reflects the proposition that subject to the provisions of the Convention, the Enterprise shall operate on sound commercial principles.[22]

Article 2

Paragraph 2 is new. It proposes that, subject to the provisions of the Convention and its annexes, as well as the general policies of the Assembly and the directives of the Council, the Enterprise shall enjoy autonomy in the conduct of its operations.[23]

Article 5

In this article, I have proposed both substantive and drafting changes. I shall confine my comments to the substantive changes.[24]

In my proposal, the Assembly elects the members of the Governing Board, paying due regard to the principle of equitable geographical representation.

France proposed that the representation of the Governing Board should take account of the financial contributions to the Enterprise of States Parties. In their view, "as long as the Enterprise has not repaid the whole of the loans furnished or guaranteed by the States Parties, the members of the Governing Board shall be nominated by States Parties which together have furnished or guaranteed at least 70 per cent of those loans." They also added that the Governing Board should include at least two representatives of each geographical region.[25]

Members of the Group of 77 rejected the French proposal for several reasons. First, they pointed out that a board composed according to the French proposal would look like a board of creditors. This was never the understanding in the negotiations on this point. Secondly, they criticized the French proposal because it was inconsistent with the notion that the Enterprise belonged to all States Parties, irrespective of the amount of their financial contributions. Thirdly, they argued that the French proposal could create conflicts of interest and could also hamper the growth and viability of the Enterprise.[26]

In paragraph 1, I have added a new sentence stating that, in submitting nominations of candidates for election to the Governing Board, members of the Authority shall bear in mind the need to submit candidates of the highest standard of competence, with qualifications in relevant fields so as to ensure the viability and success of the Enterprise. The formulation is based upon suggestions made by several African delegations and the USSR and it found wide support.[27]

In paragraph 3, I have raised the majority required for decisions from a majority of the votes cast to a majority of the Board. I feel that this change is desirable because of the importance of the decisions of the Governing Board. In the sub-paragraph 1 have also included the idea that if a member of the Board has a direct conflict of interest on a matter before the Board he shall refrain from voting on the matter.[28]

In paragraph 4, I have proposed that each member of the Board shall be remunerated. The amount of remuneration shall be fixed by the Assembly upon the recommendation of the Council. In fixing the amount, the Assembly and the Council will, of course, take into account whether the Board will function in continuous session or meet only periodically.[29]

In paragraph 5, I have suggested that members of the Governing Board should act in their personal capacity. In consequence, they shall not seek or receive instructions from any Government or from any other source in discharging their duties.[30]

In paragraph 6, I have included a proposal made by several delegations from Africa that if a vacancy occurs on the Board, the vacancy should be filled by the Assembly and not by the Governing Board.[31]

In paragraph 9, I have adopted a French proposal that any member of the Authority may ask the Governing Board for information in respect of its operations which particularly affect that country. The Board shall endeavour to provide such information.[32]

Article 5 bis

Although this paragraph is new, the powers and functions which I propose to confer on the Governing Board are mostly not new but are to be found scattered in various provisions of the Convention and the annexes. It is normal in the constitution or statute of an institution to specify its powers and

functions. This is the reason why I have drafted this new article. The formulation of the 14 subparagraphs has been exhaustively discussed in the group of financial experts and should therefore not be controversial.[33]

Article 6

In this article I have proposed only a few minor amendments. In paragraph 2, I have clarified the fact that the Director-General of the Enterprise shall be directly responsible to the Governing Board for the conduct of the business of the Enterprise.[34]

Article 9

Under this article the issue whether the Enterprise shall be liable to or exempted from, making payments to the Authority in accordance with article 12 of Annex II was raised. The developing countries and the developed countries held opposing views. The developing countries argued that the Enterprise should be exempted from such payments for the following reasons.[35]

First, they argued that the Enterprise was part of the Authority and that it was illogical for the Authority to tax its own operating arm. They drew an analogy between the Enterprise with a department of a national government. Secondly, they argued that the financial relationship between the Authority and the Enterprise made it unnecessary to require the Enterprise to make payments to the Authority under article 12 of Annex II. The argument was that the funds of the Enterprise were subject to being transferred to the Authority by decision of the Assembly. Since the Assembly could transfer any portion of the net income of the Enterprise to the Authority there was, therefore, no need for the Enterprise to make payments under article 12 of Annex II. Thirdly, they argued that the Enterprise was, in many important financial and operational respects, different from States Parties and private corporations. The argument that equals should be treated equally therefore did not apply. Consequently, the fact that contractors would have to make these payments did not mean that the Enterprise must also make such payments. Fourthly, they argued that there was no fear of the Enterprise selling its nodules or metals below market prices if it was exempted from payments to the Authority because there was another provision in Annex III which required the Enterprise not to give non-commercial discounts.[36]

The developed countries argued that the Enterprise should make similar payments to those by contractors, under article 12 of Annex II, for the following reasons. First, they argued that the Enterprise was a commercial organization. It was analogous to a state corporation or public enterprise operating in the market and not analogous to a department of a national government. They argued that in most countries, state corporations and public enterprises of a commercial nature were subject to tax. Secondly, they argued that entities operating on the two sides of the parallel system should be treated equally and that this principle would be infringed if the Enterprise

were exempted from such payments. Thirdly, they argued that an obligation on the part of the Enterprise to make similar payments would strengthen the commercial orientation of the Enterprise and subject it to the normal financial discipline of commercial institutions. Fourthly, they argued that to require the Enterprise to make such payments would give more income to the Authority for distribution to mankind. Finally, it was argued that it would help States Parties to determine whether the Enterprise was viable and successful.[37]

Having weighed the opposing arguments carefully, I suggest the following compromise.[38]

For an initial period, not to exceed 10 years from the commencement of commercial production, the Enterprise should be treated like an infant industry or a pioneer industry. In many developing countries and in some developed countries such industries are granted exemption from taxation for a limited period. According to two experts I have consulted in the United Nations Centre for Transnational Corporations, a tax holiday of 10 years would be more than adequate to enable the Enterprise to stand on its own feet and to be able to make financial payments to the Authority.[39]

Members of the Group of 77 should not feel undue concern about this compromise proposal because whatever funds the Authority takes from the Enterprise can be given back to the Enterprise in accordance with paragraph 2 (b) of article 173.[40]

Article 12

Paragraph 5 of article 12 raises another difficult issue. This paragraph states that the Enterprise, its assets, property and revenues shall be immune from the national taxation. The developed countries complained that this paragraph was an infringement upon their national sovereignty in that it was the sovereign prerogative of a Government to decide whether or not it wished to tax the Enterprise if the offices or facilities of the Enterprise were located in their territories. The developed countries, however, would have no objection if the Enterprise were to negotiate with the Governments of the host countries in which its offices and facilities were located for immunity from taxation.[41]

Upon careful analysis, this problem did not look as difficult as it did at first. It was clear that, under article 7, the Enterprise could not decide to locate these offices or facilities in the territory of a Member State without its consent. Therefore, I have redrafted paragraph 5 to state that the Enterprise "shall negotiate with the host countries in which its offices and facilities are located for immunity from direct and indirect taxation." I have no doubt that this provision is adequate because there are many developing countries which have stated publicly that they would like to host the offices or facilities of the Enterprise and would be prepared to exempt the Enterprise from taxation.[42]

The proposal of the Chairman on the Statute of the Enterprise, including the financing of the Enterprise[43] is reproduced below:

A/CONF.62/C.1/L.27 and Add.1
Report of the Co-ordinators of the Working Group of 21 to the First Committee

...

ANNEX B

ANNEX III
STATUTE OF THE ENTERPRISE[44]

Article 1
Purpose

1. The Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly pursuant to paragraph 2 (a) of article 153 as well as transportation processing and marketing of minerals recovered from the Area.

2. In carrying out its purposes and in the performance of its functions, the Enterprise shall act in accordance with the provisions of the present Convention, including its annexes, and the rules, regulations and procedures of the Authority.

3. In developing the resources of the Area pursuant to paragraph 1, the Enterprise shall, subject to the provisions of the Convention, operate on sound commercial principles.

Article 2
Relationship to the Authority

1. Pursuant to article 170, the Enterprise shall act in conformity with the general policies of the Assembly and the directives of the Council.

2. Subject to the above, the Enterprise shall enjoy autonomy in the conduct of its operations.

3. Nothing in this Convention shall make the Enterprise liable for the acts or obligations of the Authority or the Authority liable for the acts or obligations of the Enterprise.

Article 3
Limitation of liability

Subject to paragraph 3 of article 10 of this annex, no member of the Authority shall be liable by reason only of its membership for the acts or obligations of the Enterprise.

Article 4
Structure of the Enterprise

The Enterprise shall have a Governing Board, a Director-General and the staff necessary for the performance of its duties.

Article 5
Governing Board

1. The Governing Board shall be composed of 15 members elected by the Assembly in accordance with paragraph 2 (c) of article 160. In the election of the members of the Board due regard shall be paid to the principle of equitable geographical distribution. In submitting nominations of candidates for election to the Board, members of the Authority shall bear in mind the need to submit candidates of the highest standard of competence, with qualifications in relevant fields so as to ensure the viability and success of the Enterprise.

2. Members of the Board shall be elected for a period of four years and shall be eligible for re-election. In the election and re-election of the members of the Board, due regard shall be paid to the principle of rotation.

3. Each member of the Board shall have one vote. All matters before the Board shall be decided by a majority of the members of the Board. If a member has a direct conflict of interest on a matter before the Board he shall refrain from voting on the matter.

4. Each member of the Board shall receive remuneration to be paid out of the funds of the Enterprise. The amount of remuneration shall be fixed by the Assembly, upon the recommendation of the Council.

5. Members of the Board shall act in their personal capacity. In discharging their duties they shall not seek or receive instructions from any Government or from any other source. The members of the Authority shall refrain from all attempts to influence any of them in the discharge of their duties.

6. Members of the Board shall continue in office until their successors are appointed or elected. If the office of a member of the Board becomes vacant the Assembly shall appoint another member for the remainder of the unexpired term.

7. The Board shall function normally at the principal office of the Enterprise and shall meet as often as the business of the Enterprise may require.

8. A quorum for any meeting of the Board shall be two thirds of the members of the Board.

9. Any member of the Authority may ask the Governing Board for information in respect of its operations which particularly affect that member. The Board shall endeavour to provide such information.

Article 5 bis
Powers and functions

The Governing Board shall direct the business operations of the Enterprise. Subject to the provisions of the present Convention and its annexes, the Governing Board shall exercise all the powers necessary to fulfil the purposes of the Enterprise, including powers:

(i) To develop plans of work and programmes in carrying out its activities as provided for in article 170;

(ii) To prepare and submit plans of work to the Council in accordance with paragraph 3 of article 153 and paragraph 2 (j) of article 162;

(iii) To authorize negotiations on the acquisition of technology, including that provided for in paragraphs 1 (b), 1 (c) and 3 of article 5 of Annex II and to approve the results of such negotiations;

(iv) To establish terms and conditions and to authorize negotiations for entering into joint ventures and other forms of joint arrangements as provided for in article 8 bis and article 10 of Annex II and to approve the results of such negotiations;

(v) To recommend that portion of its net income that should be retained as its reserves in accordance with paragraph 2 (f) of article 160;

(vi) To approve the annual budget of the Enterprise;

(vii) To authorize the procurement of goods and services in accordance with paragraph 3 of article 11 of this annex;

(viii) To submit an annual report to the Council as provided for in article 8 of this annex;

(ix) To submit to the Council for the approval of the Assembly rules in respect of the organization, management, appointment and dismissal of the staff of the Enterprise and to adopt regulations and to give effect to such rules;

(x) To elect a Chairman from among its members;

(xi) To adopt its own rules of procedure;

(xii) To borrow funds and to furnish such collateral or other security as it may determine;

(xiii) To enter into any legal proceedings, agreements and transactions and to take any other actions in accordance with article 12 of this annex;

(xiv) To delegate, subject to the approval of the Council, any of its powers to the Director-General and to its committees.

Article 6
Director-General and staff

1. The Assembly shall, upon the recommendation of the Council, and the nomination of the Governing Board, elect the Director-General who shall not be a member of the Board. The Director-General shall be the legal representative of the Enterprise. He shall participate in the meetings of the Board but shall have no vote. He may participate in meetings of the Assembly, and the Council, when these organs are dealing with matters concerning the Enterprise, but shall have no vote at such meetings. The Director-General shall hold office for a fixed term not exceeding five years and may be re-elected for further terms.

2. The Director-General shall be the chief executive of the Enterprise and shall be directly responsible to the Governing Board for the conduct of the business of the Enterprise. Subject to the rules and regulations referred to in article 5 bis (ix), he shall be responsible for the organization, management, appointment and dismissal of staff.

3. The Director-General and the staff of the Enterprise, in the discharge of their duties, shall not seek or receive instructions from any Government or from any other source. They shall refrain from any action which might reflect on their position as international officials of the Enterprise responsible only to the Enterprise. The members of the Authority shall respect the international character of the Director-General and the staff of the Enterprise and shall refrain from all attempts to influence any of them in the discharge of their duties.

4. In appointing the staff, the Director-General shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on an equitable geographical basis.

Article 7
Location

The Enterprise shall have its principal office of business at the seat of the Authority. The Enterprise may establish other offices and facilities in the territories of any member of the Authority with the consent of that member.

Article 8
Provision of reports and information

1. The Enterprise shall, not later than three months after the end of each financial year, submit to the Council for its consideration an annual report containing an audited statement of its accounts and shall transmit to the Council at appropriate intervals a summary statement of its financial position and a profit and loss statement showing the results of its operations.

2. The records, books and accounts of the Enterprise, including its annual financial statements, shall be audited annually by an independent auditor to be appointed by the Council.

3. The Enterprise shall publish its annual report and such other reports as it deems desirable to carry out its purpose.

4. Copies of all reports and statements referred to in this article shall be distributed to the members of the Authority.

Article 9
Allocation of net income

1. Subject to paragraph 3 below, the Enterprise shall make payments to the Authority under article 12 of Annex II, or their equivalent.

2. The Assembly shall on the recommendation of the Governing Board, determine what portion of the net income of the Enterprise shall be retained as its reserves. The remainder shall be transferred to the Authority.

3. During the initial period required for the Enterprise to become self-supporting, which shall not exceed 10 years from the commencement of its commercial production, the Assembly shall exempt the Enterprise from its payments as referred to in paragraph 1 above and shall leave all the net income of the Enterprise in its reserves.

Article 10
Finance

1. The sources of the funds of the Enterprise shall include:

(a) Amounts received from the Authority in accordance with paragraph 2 (b) of article 173;

(b) Voluntary contributions made by States Parties for the purpose of financing activities of the Enterprise;

(c) Amounts borrowed by the Enterprise in accordance with the provisions of paragraph 2;

(d) Income of the Enterprise through its operations;

(e) Other funds made available to the Enterprise to enable it to carry out its functions and to commence operations as soon as possible.

2. (a) The Enterprise shall have the power to borrow funds and to furnish such collateral or other security as it may determine. Before making a public sale of its obligations in the markets or currency of a State Party, the Enterprise shall first obtain the approval of that State Party. The total amount of borrowings shall be approved by the Council upon the recommendation of the Governing Board.

(b) States Parties shall make every reasonable effort to support application by the Enterprise for loans in capital markets and from international financial institutions.

3. (a) The Enterprise shall be assured of the funds necessary to explore and exploit one mine site and to transport, process and market the metals recovered therefrom, namely, nickel, copper, cobalt and manganese, and to meet its initial administrative expenses. The said amount shall be recommended by the Preparatory Commission.

(b) States Parties shall make available to the Enterprise an amount equivalent to one half of the funds referred to in paragraph 3 (a) above by way of long-term interest-free loans in accordance with the scale referred to in paragraph 2 (e) of article 160. Debts incurred by the Enterprise in raising the balance of the funds shall be guaranteed by all States Parties in accordance with the said scale.

(c) In the event of the financial contribution of States Parties ratifying the Convention being less than the funds assured to the Enterprise under paragraph 3 (a), States Parties shall, upon request of the Authority, provide a supplementary contribution by way of a long-

term interest-free loan of not more than 15 per cent of the sum referred to in paragraph 3 (a) on the basis of the said scale and by way of a debt guarantee of a sum not more than 10 per cent of the sum referred to in paragraph 3 (a) on the basis of the said scale.

(d) The supplementary contribution referred to in paragraph 3 (c) shall be refunded and the debt guarantees referred to in paragraph 3 (c) shall be cancelled as and when contributions in accordance with paragraph 3 (b) are received from States Parties ratifying the Convention at a later stage.

(e) Upon request by the Enterprise, a State Party may provide a guarantee covering debts additional to the amount it has guaranteed in accordance with or on the basis of the said scale. In lieu of debt guarantee, a State Party may make a voluntary contribution to the Enterprise in an amount equivalent to that portion of the debts which it would otherwise be liable to guarantee.

(f) The repayment of the interest-bearing loans shall have priority over the repayment of the interest-free loans. The repayment of interest-free loans shall be in accordance with a schedule adopted by the Assembly, upon the recommendation of the Council and the advice of the Governing Board of the Enterprise.

(g) Funds made available to the Enterprise by States Parties in accordance with paragraphs 3 (b) and 3 (c) above, shall be in freely usable currencies or currencies which are convertible in the major foreign exchange markets into freely usable currencies, and shall be exempt from foreign exchange restrictions. Freely usable currencies shall be defined in accordance with the rules and regulations of the Authority.

(h) A "debt guarantee" is a promise of each State Party to creditors of the Enterprise to pay, pro rata *in accordance with the appropriate scale, the financial obligations of the Enterprise covered by the guarantee following notice by the creditors to the State Party of a default by the Enterprise in payment of those obligations.*

4. The funds, assets and expenses of the Enterprise shall be kept separate from those of the Authority. The provisions of this article shall not prevent the Enterprise from making arrangements with the Authority regarding facilities, personnel and services and arrangements for reimbursement of administrative expenses paid in the first instance by either organization on behalf of the other.

Article 11
Operations

1. The Enterprise shall propose to the Council projects for carrying out activities in accordance with article 170 of Part XI of this Convention. Such proposals shall include a formal written plan of work for activities in the Area in accordance with paragraph 3 of article 153 and all such other

information and data as may be required from time to time for its appraisal by the Legal and Technical Commission and approval by the Council.

2. Upon approval by the Council, the Enterprise shall execute the project on the basis of the formal written plan of work referred to in paragraph 1.

3. (a) To the extent that the Enterprise does not at any time possess the goods and services required for its operations, it may procure and employ them. Procurement of goods and services required by the Enterprise shall be effected by the award of contracts based on response to invitations to tender, to bidders offering the best combination of quality, price and most favourable delivery time.

(b) If there is more than one bid offering such a combination, the contract shall be awarded in accordance with the following principles:

(i) The principle of non-discrimination on the basis of political or similar considerations not relevant to the carrying out of operations with due diligence and efficiency;

(ii) Guidelines approved by the Council with regard to the preferences to be accorded to goods and services originating in the developing countries, including the landlocked or otherwise geographically disadvantaged among them.

(c) The Governing Board may adopt rules determining the special circumstances in which the requirement of invitations to bid may in the best interests of the Enterprise be dispensed with.

4. The Enterprise shall have title to all minerals and processed substances produced by it.

5. The Enterprise shall sell its products on a non-discriminatory basis. It shall not give non-commercial discounts.

6. Without prejudice to any general or special power conferred on the Enterprise under any other provision of this Convention, the Enterprise shall exercise such powers incidental to its business as shall be necessary.

7. The Enterprise and its staff shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions and these considerations shall be weighed impartially in order to carry out the purposes specified in article 1.

Article 12
Legal status, immunities and privileges

1. To enable the Enterprise to fulfil the functions with which it is entrusted, the status, immunities and privileges set forth herein shall be accorded to the Enterprise in the territories of States Parties. To give effect to this principle the Enterprise and States Parties may, where necessary, enter into special agreements for this purpose.

2. The Enterprise shall have such legal capacity as is necessary for the performance of its functions and the fulfilment of its purposes and, in particular, the capacity:

(a) To enter into contracts, forms of association, or other arrangements, including agreements with States and international organizations;

(b) To acquire, lease, hold and dispose of immovable and movable property;

(c) To be a party to legal proceedings in its own name.

3. Actions may be brought against the Enterprise only in a court of competent jurisdiction in the territories of a member in which the Enterprise has an office, has appointed an agent for the purpose of accepting service or notice of process, has entered into a contract for goods or services, has issued securities, or is otherwise engaged in commercial activity. The property and assets of the Enterprise shall, wheresoever located and by whomsoever held be immune from all forms of seizure, attachment of execution before the delivery of final judgement against the Enterprise.

4. (a) The property and assets of the Enterprise, wheresoever located and by whomsoever held, shall be immune from confiscation, expropriation, requisition, and any other form of seizure by executive or legislative action.

(b) All property and assets of the Enterprise shall be free from discriminatory restrictions, regulations, controls and moratoria of any nature.

(c) The Enterprise and its employees shall respect local laws and regulations in any State or territory in which the Enterprise or its employees may do business or otherwise act.

(d) States Parties shall assure that the Enterprise enjoys all rights, immunities and privileges afforded by States to entities conducting business within such States. These rights, immunities and privileges shall be afforded the Enterprise on no less favourable a basis than afforded by States to similarly engaged commercial entities. Where special privileges are provided by States for developing countries or their commercial entities, the Enterprise shall enjoy such privileges on a similarly preferential basis.

(e) States may provide special incentives, rights, privileges and immunities to the Enterprise without the obligation to provide such incentives, rights, privileges, or immunities to other commercial entities.

5. The Enterprise shall negotiate with the host countries in which its offices and facilities are located for immunity from direct and indirect taxation.

6. Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this annex and shall inform the Enterprise of the detailed action which it has taken.

7. The Enterprise in its discretion may waive any of the privileges and immunities conferred under this article or in the special agreements referred to in paragraph 1 to such extent and upon such conditions as it may determine.

...

Following are the views expressed during the discussions at the 47th and 48th meetings of the First Committee on the 1st and 2nd April 1980, on the Enterprise:

(a) The representative of **Peru**, speaking as the co-ordinator of the Group of 77 said that the Group of 77 considered that some changes had to be made in the proposals submitted by the co-ordinators of the Working Group of 21.

Turning to Annex II, article 5, on the transfer of technology, which contained provisions that in the Group's view were crucial in order to ensure the viability of the parallel system, he said that they would favour restoring to the text the provision concerning the prohibition of use of technology on which the contractor had not obtained security of transfer. It would also like to see included in the new text the penalties against the contractor and supplier of technology that existed in article 5, paragraph 1 (b) of the Paragraph 8 of the same article should be worded more specifically, and consideration should be given to including mineral processing in that paragraph.

With regard to the Enterprise, although very substantial progress had been made regarding the financial agreements, the Group of 77 had been somewhat disappointed with the provisions concerning fiscal status, particularly with article 9 concerning payments by the Enterprise to the Authority and the provisions relating to national taxation in article 12, paragraph 5.[45]

(b) The representative of **China** said that concerning the transfer of technology, the text before the Committee specifically article 5, paragraphs 3 (b), (c) and (d), was an improvement on the Revised Informal Negotiating Text and his delegation welcomed it. However, the text did not resolve two important questions. The first was how the Authority could obtain effective assurance that the necessary technology would be made available to it. The text should contain an explicit provision calling for the applicant in acquiring the technology from the owner, to request the latter to provide legally binding written assurance that, if and when the Enterprise requested, he would transfer the technology to the Enterprise on the same terms as those on which it had been made available to the operator. The second unresolved question was how to ensure that the Enterprise could obtain the necessary technology for integrated operations; as had been stressed for many times, the Enterprise required technology for processing and refining as well as exploration and exploitation. Under article 5, paragraph 5, the applicant was not required to commit himself to the transfer of processing technology, nor were the States Parties to the Convention bound by the provision. The text therefore needed to be improved.

With regard to the financial arrangements, he observed that the question of guaranteeing funds for the first mining site of the Enterprise was very complicated since in the early period after the entry into force of the Convention, it was likely that only a few countries would have ratified the latter and that the Enterprise would therefore not have sufficient funds available. Further study was needed to determine how to secure additional funds. Perhaps the mining countries should provide the necessary funds. With regard to article 12 of Annex III concerning legal status, immunities and privileges, his delegation

believed that the original negotiating text was satisfactory. The Enterprise should not be treated like any other contractor. Moreover, since the Enterprise would have to buy its equipment and machinery from the industrialized countries, it would have a very heavy financial burden to bear if it was not given tax-exempt status. The proposed text merely said that the Enterprise would negotiate with the host countries for immunity from taxation. It did not guarantee that such exemption would be granted. The original text was therefore preferable.[46]

(c) The representative of the **Union of Soviet Socialist Republics** said it was regrettable that the Soviet proposals on application of the anti-monopoly provision on Enterprise priority to joint ventures with private entities had not been incorporated into the new proposals in Annex II. Their inclusion would make it possible to prevent a small number of private companies and multinational corporations from monopolizing the exploitation of the sites reserved for the Authority.[47]

The disagreement over the financing of the Enterprise's first project had been largely overcome, although several governments would clearly have problems in defining clearly the limits of their obligations in that respect. As far as the Statute of the Enterprise was concerned, his delegation favoured giving limited autonomy to the Enterprise in its day to day affairs but did not share some delegations' desire to diminish the role of the Council in the running of the Enterprise.[48]

(d) The representative of the **United States** said that with regard to the financing of the Enterprise, his delegation believed that further work was needed to place a more effective limitation on the potential liability of States Parties for contributions to the capital of the Enterprise. The new limitations laid down in Part III of the report were a step in the right direction but did not go far enough. If they were allowed to remain, his delegation would be agreeing to the possibility of assuming a total percentage far in excess of anything his Government was prepared to contribute to international organizations. His delegation felt it was very important that the schedule for the repayment of interest-free loans should be set out in the rules and regulations to be prepared by the Preparatory Commission.[49]

(e) The representative of **France** said her delegation did not accept that the Enterprise should be financed by 50 per cent interest-free loans.

With regard to financial matters, her delegation had always opposed the linking of negotiations on the financing of the Enterprise with the financial clauses of contracts, and did not accept that the Enterprise should be financed by 50 per cent interest-free loans. The sum should not be fixed by the Preparatory Commission, nor should it be subject to an indexing clause. Under the new proposal, States Parties might well find their contributions to the loans increased by 40 per cent. Since no major change had been made in the financial terms of contracts, her delegation maintained strong reservations on that issue. The specific points requiring revision were the heavy production tax and the profit-sharing system, which would prevent sound management during

periods of recession. The rates proposed by the French delegation would enable the necessary adjustments to be made without adversely affecting the Authority. If the operator was allowed to increase his cash flow in bad years, progress to the second commercial production stage would be more rapid, and higher returns would result for the Authority.[50]

There were also ambiguities in the text dealing with the Statute of the Enterprise, especially the relationship between the Director-General, the Governing Board and the Council of the Authority. The composition of the Governing Board should reflect the financial contributions made to it, as well as the principle of geographical representation.[51]

(f) The representative of **Canada** said that the concept of parallel access must be the basis for all work in that connection and all progress must be measured against it. It was gratifying that agreement had at least been reached that one mine site should be set aside for the Enterprise each time a site was set aside for a private company. That provision alone would not suffice, however, as the Convention everywhere mentioned the ratio of five private companies ventures for each venture by the Enterprise.[52]

With regard to the financing of the Enterprise, his delegation could support the provision that no financing should be provided beyond the first generation of projects. He was curious to know, however, which countries had made concessions on that point. Considerable progress had been made regarding both the financial arrangements for contractors and the financing of the Enterprise. While contractors must obviously be allowed some profit margin if they were to have an incentive to exploit the seabed, the common heritage of mankind concept should not be sacrificed.[53]

It was not sufficient to give the Enterprise mine sites in compliance with the principle of parallel access, or to finance its first site. Under the present arrangement, it was doubtful whether the Enterprise would have access to any markets at all if the five producers already working (on) the seabed secured all potential markets.[54]

(g) The representative of the **United Kingdom** said that with regard to the Statute of the Enterprise, the changes proposed by Negotiating Group 2 would help to make the Enterprise more effective and warranted careful consideration.[55]

(h) The representative of **Poland** said that with regard to the financial package, his delegation had some difficulties with the provisions on the financing of the Enterprise. The scale of contributions to the financing of the first mine site was inequitable: contributions should to some extent be proportionate to the benefits which States would derive from the exploitation of the Area. The Authority's first contractors and sponsoring States bore a special responsibility for helping the Enterprise to commence operations. Article 10, paragraph 3, of Annex III, as proposed by Negotiating Group 2 could also be improved in order to insure against excessive spending by the Enterprise and to limit payments in accordance with subparagraph (b). The Enterprise should be able to obtain interest-free loans, as and when required, and not necessarily all at once.[56]

(i) The representative of **Japan** said that the statutory obligation to transfer technology should be limited to the Enterprise. His delegation felt improvements could be made in provisions regarding the financing of the Enterprise.[57]

(j) The representative of **Australia** said that his delegation welcomed the conclusion that the Preparatory Commission should determine the total funds necessary for the Enterprise to conduct an integrated mining operation.

His delegation also welcomed the provision for a schedule of repayments. It did have difficulties with several elements of the financial package and had not yet had an opportunity to consider fully the new so-called shortfall provisions in article 10, paragraphs 3 (c) and (d), of Annex III, and therefore reserved its position on that matter. His delegation would not object to the inclusion of the package made up of article 12 of Annex II and article 10 of Annex III in the revision of the ICNT. Article 12, paragraph 5, of Annex III had been substantially improved, but his delegation wondered whether that paragraph was necessary at all. It should at least provide for greater flexibility in negotiations on taxation, which might lead to tax immunity, a tax holiday or preferred taxation treatment.[58]

(k) The representative of **Italy** said that further changes were still required in article 10 of Annex III, concerning financing of the Enterprise, particularly with regard to the amount of contributions to be made by States and the schedule for payment of such contributions.[59]

Article 12 of Annex III, on privileges and immunities, should be re-examined in order to ensure that the Enterprise would be placed on the same footing, with respect to its operations, as States corporations.[60]

(l) The representative of **Belgium** said that the negotiations on the transfer of technology had proceeded on the assumption that the Enterprise should possess the necessary technology for its activities. The present formula would be a satisfactory basis for future negotiations if it did not contain a provision extending the transfer of technology to developing countries under the same terms as those accorded to the Enterprise. It had already been stated several times that the Enterprise could not be placed on an equal footing with its operators from individual States. Whatever was ultimately conceded to the operational organ of the Authority must not be granted to third parties as operators would not be willing to transfer their technology to likely competitors. The issue raised in paragraph 3 (e) of article 5 in Annex II must therefore be fundamentally rethought.[61]

(m) The representative of **Mauritius** said that the relationship of the Enterprise to the Authority should be clearly established. Countries belonging to the Group of 77 felt that it was essential to have an effective and viable Enterprise, which must be managed according to sound commercial principles, unfettered by the special considerations of any region. The Council, as planned, would be highly politicised and would make it impossible for the Enterprise to operate for the common benefit of mankind. His delegation reserved its position on article 2, paragraph 1, of Annex III, until the composition of the Council and the decision-making process had been determined. There must be a link between the autonomy of the Enterprise and the Council's decision-making process.

His delegation did not agree that the Enterprise should be subject to the financial provisions of article 12 of Annex II. It did not agree with the idea of providing for a ten-year tax holiday because that period coincided with the period when the Enterprise would no longer have access to the transfer of the technology provisions.[62]

(n) The representative of **Tunisia** said that although there were sufficient elements for a second revision of the negotiating text, there was still a need for the improvements mentioned by the spokesman for the Group of 77. In particular, changes must be made in article 155, paragraph 5, on the Review Conference, article 5 of Annex II, on the transfer of technology, and article 9 of Annex III, on the tax holiday for the Enterprise. His delegation hoped that special attention would be given to those issues. The interests of all States must be taken into account, particularly those of the developing countries.[63]

(o) The representative of **Senegal** said that his delegation still had misgivings regarding the determination of the amount of funds required to enable the Enterprise to undertake an integrated project. Careful study should be given to the question whether the Assembly or the Council or the Preparatory Commission should determine the amount.

With regard to the question of tax immunity for the Enterprise, he felt a solution might be found by combining article 7 and article 12, paragraph 5, of Annex III. However, paragraphs 4 (d) and (e) of article 12 nullified the combination of articles 7 and 12. The wording of article 12, paragraph 4 (e), should be revised to ensure that the Enterprise was made as strong as possible. The tax holiday should be given in an explicit way.[64]

(p) The representative of the **Libyan Arab Jamahiriya** said that the new proposals did not satisfy the requirements of all parties. In agreeing to the parallel system, the Group of 77 had accepted a number of basic concepts. The most crucial was that the sites reserved for the Enterprise and for the developing countries should be well-defined areas in which they could conduct their activities. It should also be recognized that the Enterprise could only be financed by contributions from all States, whereas only a small number of countries would reap the benefit of its operation.

The question of access for developed countries to reserved sites through joint ventures under article 8 *bis* should be investigated. His delegation had proposed that articles 8 and 8 *bis* should be amended in such a way as to reserve the sites in question for the Enterprise and to permit the Enterprise to enter into joint ventures only with developing countries. It was as though the parallel system no longer exists and the unified industrial system has replaced it. If that new system gained momentum in the course of the next Session, it would be to the detriment of article 140, and the principle of the common heritage of mankind would be forfeited.[65]

(q) The representative of the **Netherlands** said that, in general, his delegation welcomed the new proposals for the Statute of the Enterprise, particularly in so far as they related to the character of its operation and its structure. His delegation has always placed emphasis on equality of opportu-

nity for private and State enterprises and the Enterprise. Social, economic and financial policies were a prerequisite for the operation of the Enterprise.[66]

In the Plenary meeting of the Conference, on 2 and 3 April 1980, the following several delegations expressed their opinions on the Enterprise:

(a) The representative of **Trinidad and Tobago** said that the changes proposed with regard to the financing of the Enterprise, financial terms of contracts for the exploration and exploitation of deep-sea minerals and the orientation of the Enterprise's operations, did represent an improvement on the RSNT and would form a better basis for consensus. However, on the issue of a shortfall in the capital necessary to enable the Enterprise to carry out its activities, his delegation felt that the approach suggested, although constructive, might inflict hardship on most developing countries. He therefore suggested that further thought should be given to the possibility of having the Conference adopt, as one of its final acts, a resolution which would serve as the legal basis for ensuring financial contribution to the capital of the Enterprise by all the participants in the Conference. All States, whether or not participants, had a duty to contribute to the financing of the Enterprise because, in accordance with the common heritage concept, they were all entitled to participate in the benefits.[67]

(b) The representative of the **Netherlands** said that in view of the unique character of the Enterprise, the Netherlands would accept the inclusion in the Convention of a requirement that the operator undertakes to make technology available to the Enterprise on fair and reasonable commercial terms and conditions, but such undertakings could be effectively implemented only if flexibility was left for national legislative constraints to be accommodated.

In general his delegation welcomed the new proposals for the Statute of the Enterprise. It attached great importance to solving the question of financing the Enterprise; it was of the utmost importance that, before ratifying the Convention, States Parties should have a precise picture of their financial obligations.[68]

(c) The representative of the **German Democratic Republic** said that his delegation could accept the joint venture system envisaged in article 10 of Annex II on condition that the contributions to be paid by States Parties would really be used for the first mine site to be exploited by the Enterprise; it had no misgivings, however, about forming joint ventures once the Enterprise was self-supporting. On the other hand, the proposals regarding the financing of the first mine site to be exploited by the Enterprise did give rise to difficulties since States could not estimate what their financial obligations would be if they signed the Convention.[69]

(d) The representative of **Finland** said that the new texts on seabed mining (see A/CONF.62/C.1/L.27 and Add.1) considerably improved the chances of a consensus, ensuring a viable international Enterprise while at the same time providing assured access to resources and security of investments under reasonable terms and conditions. That was particularly true of the proposal contained in article 5 of Annex II and article 155, paragraph 6. His delegation also supported the proposals by the Chairman of Negotiating Group 2 relating to the compromise package consisting of the financing of the Enterprise and the financial terms of contracts.[70]

(e) The representative of **Sweden** said that with regard to financial matters, including the Statute of the Enterprise, his delegation believed that the Working Group of 21 had achieved very constructive results. It should be pointed out, however, in connection with the financing of the Enterprise, that article 10 of Annex III did not indicate clearly what financial undertakings a State would make by becoming a party to the Convention. It was important for each State to be able to assess the financial consequences of its accession to the Convention, and his delegation therefore suggested that the matter be further clarified at the Geneva Session.[71]

(f) The representative of **Uganda** speaking of behalf of the of Group 77 said that members of the Group had been dismayed at the previous meeting by the tone of certain statements indicating that particular passages of the RSNT were totally unacceptable. Such expressions were at variance with the spirit of conciliation and compromise which had hitherto prevailed at the Conference and which, he hoped would be restored so that a consensus might be reached. The RSNT had been submitted for revision at the present stage, but the Group of 77 insisted that the second revision itself should not be final but should have the same status as the first revision of the text.

The Group had expressed dissatisfaction with the fiscal status of the Enterprise, and hoped that clarification could be achieved with regard to article 9 and paragraph 5 of article 12.[72]

(g) The representative of **Spain** reiterated his delegation's concerns with the provisions relating to the financing of the Enterprise. If the Enterprise was financed on the basis of the scale of assessments to finance the regular budget of the UN, that would place an undue burden on the medium-sized industrialized States, which would not receive any direct and immediate benefit from the activities in the Area. If the highly industrialized States were going to receive greater benefits from the exploitation of the resources of the Area and if in order to have access to those resources they undertook to make the Enterprise viable, it was only fair that the bulk of the financing should be derived from the Authority's tax revenues from contracts for activities in the Area.[73]

(h) The representative of **Argentina** said that if the Enterprise was to be competitive, its Governing Board must enjoy broad powers and independence of action and the Enterprise must be granted tax exemption so that it could increase its cash flow. That would place it in a stronger position vis-à-vis other seabed mining companies.[74]

(i) The representative of the **Union of Soviet Socialist Republics** said that the anti-monopoly clause should also apply to the reserved zones, whereas the provision concerning the priority of the Enterprise should not extend to joint ventures with private companies.

His delegation would be prepared to support the formula for the financing of the Enterprise in the event of an acceptable solution to all outstanding issues. However, there should be a chosen definition of the obligations of States with regard to the financing of the first stage of the Enterprise. The compromise wordings drafted in the First Committee should be included in the second revision of the negotiating text.[75]

(j) The representative of **Iran** said that in general the Enterprise should enjoy greater tax facilities than those provided in the proposed text; it should be exempt both from a tax on operations undertaken in the territory of States Parties to the Convention and from the payment of duties to the Authority. As a business organization, the Enterprise should, as far as possible, be subject to the financial discipline prevailing in similar private or State enterprises. However, as an integral part of the Authority responsible for the management of the resources of the international zone, the Enterprise should be accorded special treatment under common law.[76]

(k) The representative of **Venezuela** reiterated the view that the prerequisite for acceptance of a parallel system of exploration and exploitation was that the regime should be adopted on a temporary basis and that it should be subject to review after a period of twenty to twenty-five years.

The second prerequisite for acceptance of the parallel system was that the financial resources and technology required by the Enterprise should be guaranteed in order to enable it to commence operations in the international zone simultaneously with the State and private enterprises of the industrialized countries.

With regard to financial arrangements, and the provisions relating to the financing of the Enterprise, his delegation enforced the proposed texts as an appropriate basis for consensus pending agreements on outstanding issues.[77]

(l) The representative of **Pakistan** said that the Group of 77 had accepted the parallel system on the understanding that the common heritage of mankind would be exploited for the benefit of mankind as a whole. The concept of the parallel system had been accepted as part of a package that included, *inter alia*, an understanding concerning effective operation of the Enterprise.[78]

(m) The representative of **Czechoslovakia** said that he understood that under the parallel system, the Enterprise should be assured of the means necessary to operate its first mine site. Since the Enterprise would not need all such means immediately, a schedule of payments should be worked out and adopted, while an overall limit of amounts required from individual States Parties should be specified. His delegation had difficulty with the proposed text of article 10, paragraph 3 (g) of Annex III.[79]

(n) The representative of **Nigeria** said his delegation could accept the recommendations made on financial matters, provided that there was an improvement in the tax status of the Enterprise and the financing of the Authority. The provisions as they stood gave no assurance that the Enterprise would even have sufficient funds to mine the first mine site.[80]

(o) The representative of **Bangladesh** said that as a member of the Group of 77 his delegation had agreed to the parallel system on the understanding that the common heritage of mankind would be exploited for the greater benefit of mankind as a whole. The Enterprise should be made economically viable so that it could effectively engage in deep-sea mining activities with contractors, and the developing countries must be made to

feel secure with the arrangement. Accordingly, the provision blacklisting owners of technology (Annex II, article 5, paragraph 1 (b)) should be maintained as should that granting the Enterprise tax exemption privileges (Annex III, article 12, paragraph 5).[81]

(p) The representative of **Poland** said that as to the financial arrangements and the Statute of the Enterprise, his delegation could accept the financial terms proposed for contracts and the new formulation for the Statute of the Enterprise with the exception of article 10, paragraph 3. The provisions concerning the financing of the first integrated project of the Enterprise raised serious difficulties for his delegation and should be reconsidered.[82]

(q) The representative of the **Libyan Arab Jamahiriya** said that in the view of his delegation, the question of reserved sites and joint arrangements therein, dealt with in articles 8 and 8 *bis* of Annex II, was more important than the transfer of technology, for there could be no effective transfer of technology to the Enterprise or to the developing countries while the industrialized countries were attempting to force the Enterprise or the developing countries to enter into joint arrangements with them instead of giving them technology directly. Moreover, if the industrialized countries were permitted to undertake activities in the reserved site through joint arrangements, they would be in full control of the seabed, thus establishing a new form of colonialism. It should also be noted that, if the process of authorizing joint arrangements was not organized by the Assembly itself, the industrialized countries exercising hegemony over the Enterprise would be the ones to profit from seabed activities. Article 8 and 8 *bis* must be redrafted so that the Assembly, rather than the Enterprise, could stipulate the requirements and conditions with respect to joint arrangements. Accordingly, a new paragraph should be inserted in article 160, and article 5 *bis*, paragraph 4, of Annex III would have to be amended.

With regard to the financial arrangements, it was essential to ensure that the Enterprise was able to change the percentage of production taxes or net revenue if it felt that it was not commensurate with the immense profits to the contractor.[83]

(r) The representative of **Angola** said with regard to the transfer of technology to the Enterprise and to developing countries, he was not satisfied with the text proposed in documents A/CONF.62/C.1/L.27 and Add.1. His delegation still had some difficulty regarding the question of financing the Enterprise and the possibility of financing the first site. Articles 8 and 8 *bis* of Annex II contained in Part II of document A/CONF.62/C.1/L.27 favoured the monopoly of certain States and consortia and ran counter to the parallel system.[84]

(s) The representative of **Egypt** observed that the financing of the Enterprise also required more careful study, as did the establishment of a common heritage fund. The necessary funds should be guaranteed to enable the Enterprise to begin its work at the same time as States and other entities, taking into account the initial problems it would face.[85]

(t) The representative of the **Democratic Yemen** said that more attention should be devoted to the question of the transfer of technology, particularly in order to ensure that the Enterprise had access to the technology of the contractor in order to ensure that sanctions were developed and used against those who did not transfer technology.[86]

(u) The representative of **Senegal** said that the text on financial matters submitted in the report of the co-ordinators of the Working Group of 21 should deal with the question of the body responsible for determining the financing needed by the Enterprise in order to implement an integrated project. Moreover, article 12, paragraphs 4 (d) and (e) and paragraph 5, should be more explicit with regard to the question of the tax immunity of the Enterprise.[87]

(v) The representative of **Kenya** said that with regard to the financing of the Enterprise, the financial terms of contracts and the Statute of the Enterprise, his delegation believed that much progress had been made in the right direction although there were still several issues which needed to be negotiated further. Among those issues was the question of whether the Enterprise should be exempted from making payments to the Authority in accordance with article 12 of Annex II of the RSNT. On the issue of whether the offices and facilities of the Enterprise should be granted immunity from direct and indirect taxation by the host countries, his delegation felt that it could accept the provision as it had now been amended by the Chairman of Negotiating Group 2.[88]

(w) The representative of the **Ivory Coast** considered that it was of primary importance that the Enterprise should be able to function in the same conditions of profitability and viability as did the entities operating in the non-reserved area. A procedure for reviewing the entire system must be established. One pre-condition for the survival of the Enterprise was that the system of financing continued until the Enterprise reached maturity, and was not confined to the first site unless it was certain that the Enterprise was capable of standing on its own feet and of being competitive.[89]

(x) The representative of **Mauritius** said that he continued to believe that the parallel system was palatable to the Group of 77 only on the understanding that there would be an access to the technology needed to exploit the seabed and to carry out related activities, and that system would be reviewed after a period of twenty years. Those elements remained central to any package on the system of exploration and exploitation.

As for the Enterprise itself, all were agreed that it must be run on sound commercial principles, and his delegation believed that all means must be provided to ensure that the central goal was achieved. It also believed that the Enterprise should be free to dispose of its funds in the manner best suited to give concrete form to the common heritage. It was unacceptable that funds made available to the Enterprise by all States Parties should be devoted to a single project. The Enterprise should have wide discretion in the way it made use of its funds, and it should have sufficient latitude to organize its activities on the lines of any other business concern. His delegation did not see the Enterprise as a forum where political issues were permitted to interfere with its programme of development. For that reason the

Council should not have power to issue directives to the Enterprise, which would in any case naturally be subject to the budgetary control of the Assembly and the rules, regulations and procedures of the Authority.

Regarding the composition of the Governing Board of the Enterprise, he found it difficult to accept the suggestion made in some quarters that these should be the equivalent of permanent seats for a certain category of States on the Board. That proposal had rightly been rejected by the Chairman of Negotiating Group 2 since it could not in any way be considered as substantially improving the prospects for a consensus. A Governing Board controlled by a group of creditors could not be considered sound commercial practice. The aim remained one of establishing an effective and viable Enterprise unfettered by unnecessary political considerations. To achieve that aim the States Parties should suppress their preferences for any particular social or economic system.[90]

(y) The representative of **Algeria** said that the developing countries had been induced to accept the parallel system in part because of the transfer of technology, which was a necessary condition for the viability of the Enterprise. However, the Conference was now undermining the very concept of the transfer of technology notably in the proposed reference to recourse to the open market and the proposed restrictions in the definition of technology. His delegation hoped that renewed negotiations would enable the Enterprise to acquire all the necessary technology to play its proper role. The changes introduced regarding the tax immunity of the Enterprise were somewhat unclear, and his delegation preferred the wording of the RSNT.

The provision of article 8 *bis* emphasized the burden placed upon the Enterprise. The industrialized countries were already in a monopoly position in the non-reserved area, and were now being given the opportunity of gaining access to reserved sites through joint ventures. There must be an anti-monopoly clause to cover activities in the reserved area. The problem could be solved by guaranteeing the Enterprise a majority share should it decide to engage in joint ventures.[91]

(z) The representative of **Sierra Leone** stated that with regard to the exploration and exploitation of seabed resources, the Enterprise must be provided with all the necessary technology in respect of mining, processing and marketing. However, that goal would be frustrated if contractors, while agreeing to transfer their own technology to the Enterprise failed to undertake that third-party technology used in their operations would also be transferred. His delegation therefore welcomed the proposed provision to the effect that failing an assurance to transfer the technology in question, it could not be used by the operator in carrying out activities in the Area.

With regard to the financial arrangements, his delegation looked forward to the proposed changes relieving the Enterprise of the requirement to pay charges to the Authority and exempting its assets and facilities from taxation.[92]

aa) The representative of **Jamaica** said that with regard to the transfer of technology, there were a number of outstanding problems. In order for the parallel system to work, the Enterprise must have the necessary technology to

operate in parallel with State and private enterprises. There must be adequate assurances regarding access by the Enterprise to processing technology. There was a need for further clarification in article 5, paragraph 7, of Annex II, which as currently drafted might prohibit the Enterprise from obtaining technology from the contractor after ten years had elapsed from the beginning of production by the Enterprise. The ten-year limit should apply to production under individual contracts so that the Enterprise was certain of obtaining the technology used.[93]

After the debate in the Plenary, the Collegium undertook a second revision of the ICNT. The excerpts of document A/CONF.62/WP.10/Rev.2[94] relevant to the Enterprise are reproduced below:

Informal Composite Negotiating Text / Revision 2
(A/CONF.62/WP.10/Rev.2)
11 April 1980

...

Article 170
The Enterprise

1. The Enterprise shall be the organ of the Authority which shall carry out activities in the Area, directly, pursuant to article 153, paragraph 2 (a), as well as transportation, processing and marketing of minerals recovered from the Area.

2. The Enterprise shall, within the framework of the international legal personality of the Authority, have such legal capacity as is provided for in the Statute set forth in Annex IV. The Enterprise shall act in accordance with the provisions of this Convention and the rules, regulations and procedures of the Authority, as well as the general policies established by the Assembly, and shall be subject to the directives and control of the Council.

3. The Enterprise shall have its principal place of business at the seat of the Authority.

4. The Enterprise shall in accordance with article 173, paragraph 2, and article 11 of Annex IV, be provided with such funds as it may require to carry out its functions, and shall receive technology as provided in article 144 and other relevant provisions of this Convention.

...

ANNEX III
BASIC CONDITIONS OF PROSPECTING, EXPLORATION AND EXPLOITATION

Article 1
Title to minerals

Title to minerals shall pass upon recovery in accordance with this Convention.

Article 2
Prospecting

1. (a) The Authority shall encourage the conduct of prospecting in the Area.

(b) Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector shall comply with this Convention and the relevant rules and regulations of the Authority concerning protection of the marine environment, co-operation in training programmes according to articles 143 and 144 of Part XI of this Convention and accepts verification by the Authority of compliance. The proposed prospector shall, together with the undertaking, notify the Authority of the broad area or areas in which prospecting is to take place.

(c) Prospecting may be carried out by more than one prospector in the same area or areas simultaneously.

2. Prospecting shall not confer any preferential, proprietary, exclusive or any other rights on the prospector with respect to the resources. A prospector shall however, be entitled to recover a reasonable amount of resources of the Area to be used for sampling.

Article 3
Exploration and exploitation

1. The Enterprise, States Parties, and the other entities referred to in article 153, paragraph 2 (b), of Part XI of this Convention, may apply to the Authority for approval of plans of work covering activities in the Area.

2. The Enterprise may apply with respect to any part of the Area, but applications by others with respect to reserved areas are subject to the additional requirements of article 9.

3. Exploration and exploitation shall be carried out only in areas specified in plans of work referred to in article 153, paragraph 3, of Part XI of this Convention and approved by the Authority in accordance with the provisions of this annex and the relevant rules, regulations and procedures of the Authority.

4. Every plan of work approved by the Authority shall:

(a) Be in strict conformity with this Convention and the rules and regulations of the Authority;

(b) Ensure control by the Authority of activities in the Area in accordance with article 153, paragraph 4, of Part XI of this Convention;

(c) Confer on the operator exclusive rights for the exploration and exploitation of the specified categories of resources in the Area covered by the plan of work in accordance with the rules and regulations of the Authority. If the applicant presents a plan of work for one of the two stages only, the plan of work may confer exclusive rights with respect to such a stage.

5. Except for plans of work proposed by the Enterprise, each plan of work shall take the form of a contract to be signed by the Authority and the operator or operators upon approval of the plan of work by the Authority.

...

Article 5
Transfer of technology

1. When submitting a proposed plan of work, every applicant shall make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the Area, as well as other relevant non-proprietary information about the characteristics of such technology, and information as to where such technology is available.

2. Every operator under an approved plan of work shall inform the Authority of revisions in the description and information required by paragraph 1 whenever a substantial technological change or innovation is introduced.

3. Every contract for the conduct of activities in the Area entered into by the Authority shall contain the following undertakings by the operator:

(a) To make available to the Enterprise, if and when the Authority shall so request and on fair and reasonable commercial terms and conditions, the technology which is to be used by him in carrying out activities in the Area and which he is legally entitled to transfer. This shall be done by means of licence or other appropriate arrangements which the operator shall negotiate with the Enterprise and which shall be set forth in a special agreement supplementary to the contract. This commitment may be invoked only if the Enterprise finds that it is unable to obtain the same or equally efficient and useful technology on the open market and on fair and reasonable commercial terms and conditions;

*(b) To obtain a written assurance from the owner of any technology not covered under subparagraph (a) that the operator uses in carrying out activities in the Area and which is not generally available on the open market that the owner will, if and when the Authority so requests, make available to the Enterprise to the same extent as made available to the operator, that technology under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions. If such assurance is not obtained, the technology in question shall not be used by the operator in carrying out activities in the Area. This assurance shall be made legally binding and enforceable whenever it is possible to do so without additional cost to the contractor;**

(c) To take all feasible measures, if and when requested to do so by the Enterprise, to acquire the legal right to transfer to the Enterprise in accordance with subparagraph (a) any technology he uses in car-

*rying out activities in the Area which he is not legally entitled to transfer and which is not generally available on the open market. In cases where there is a substantial corporate relationship between the operator and the owner of the technology, the closeness of this relationship and the degree of control or influence shall be relevant to the determination whether all feasible measures have been taken. In cases where the operator exercises effective control over the owner, failure to acquire the legal rights from the owner shall be considered relevant to the applicant's qualifications for any subsequent proposed plan of work;**

(d) To facilitate the acquisition by the Enterprise under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions any technology covered by subparagraph (b) should the Enterprise decide to negotiate directly with the owner of the technology and request such facilitation;

(e) To take the same measures as those prescribed in subparagraphs (a), (b), (c) and (d) for the benefit of a developing State or group of developing States which has applied for a contract under article 9, provided that these measures shall be limited to the exploitation of the reserved part of the Area proposed by the applicant and provided that activities under the contract sought by the developing State or group of developing States would not involve transfer of technology to a third State or the nationals of a third State. Obligations under this provision shall only apply with respect to any given contractor where technology has not been requested or transferred by him to the Enterprise.

4. Disputes concerning the undertakings required by paragraph 3, like other provisions of the contracts, shall be subject to compulsory dispute settlement in accordance with Part XI, and monetary penalties, suspension, or termination of contract as provided in article 18. Disputes as to whether offers made are within the range of fair and reasonable commercial terms and conditions may be submitted by either party to binding commercial arbitration in accordance with the UNCITRAL Arbitration Rules or other arbitration rules if and when prescribed in the rules, regulations and procedures of the Authority.

5. In the event that the Enterprise is unable to obtain appropriate technology on fair and reasonable commercial terms and conditions to commence in a timely manner the recovery and processing of minerals from the Area, either the Council or the Assembly may convene a group of States Parties composed of those which are engaged in activities in the Area, those which have sponsored entities which are engaged in activities in the Area and other States Parties having access to such technology. This group shall

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* The question re-introducing sanctions referred to in paragraph 19, page 5, of the report on the system of exploration and exploitation should be further considered.

consult together and shall take effective measures to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions. Each such State Party shall take all feasible measures to this end within its own legal system.

6. In the case of joint ventures with the Enterprise, technology transfer will be in accordance with the terms of the joint venture agreement.

7. The undertakings required by paragraph 3 shall be included in each contract for the conduct of activities in the Area until the Enterprise has begun commercial production of minerals from the resources of the Area, and these undertakings may be invoked until 10 years after the Enterprise has begun such commercial production.

8. For the purposes of this article, "technology" means the specialized equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to assemble, maintain and operate a viable system and the legal right to use these items for that purpose on a non-exclusive basis.

Article 6
Approval of plans of work submitted by applicants

1. Six months after the entry into force of this Convention, and thereafter each fourth month, the Authority shall take up for consideration proposed plans of work.

2. When considering an application for a contract with respect to activities in the Area, the Authority shall first ascertain whether:

(a) the applicant has complied with the procedures established for applications in accordance with article 4 and had given the Authority the commitments and assurances required by that article. In cases of non-compliance with these procedures or of absence of any of the commitments and assurances referred to, the applicant shall be given 45 days to remedy such defects;

(b) the applicant possesses the requisite qualifications pursuant to article 4.

3. All proposed plans of work shall be dealt with in the order in which they were received, and the Authority shall conduct, as expeditiously as possible, an inquiry into their compliance with the terms of this Convention and the rules, regulations and procedures of the Authority, including the operational requirements, the financial contributions and the undertakings concerning the transfer of technology. As soon as the issues under investigation have been settled, the Authority shall approve such plans of work, provided that they conform to the uniform and non-discriminatory requirements established by the rules, regulations and procedures of the Authority, unless:

(a) Part or all of the proposed area is included in a previously approved plan of work or a previously submitted proposed plan of work which has not yet been finally acted on by the Authority; or

(b) Part or all of the proposed area is disapproved by the Authority pursuant to article 162, paragraph 2 (w), or Part XI of this Convention;

(c) The production limitation set forth in article 151, paragraph 2, of this Convention or the obligations of the Authority under a commodity agreement or arrangement to which it has become a party as provided for in article 151, paragraph 1, of Part XI of this Convention prevents the approval of any applications or requires a selection among applications received during the period of time specified above; or

(d) The proposed plan of work has been submitted or sponsored by a State Party which already holds:

(i) plans of work for exploration and exploitation of polymetallic nodules in non-reserved sites that, together with either part of the proposed site, would exceed in size 30 per cent of a circular area of 400,000 square kilometres surrounding the centre of either part of the area covered by the proposed plan of work,

(ii) plans of work for the exploration and exploitation of polymetallic nodules in non-reserved sites which in aggregate size constitute 2 per cent of the total seabed area which is not reserved or otherwise withdrawn by the Authority from eligibility for exploitation pursuant to article 162, paragraph 2 (w), of Part XI of this Convention.

4. For the purpose of the standard set forth in paragraph 3 (d), a plan of work proposed by a partnership or consortium shall be counted on a pro rata *basis among the sponsoring States Parties involved according to article 4, paragraph 2. The Authority may approve plans of work covered by paragraph 3 (d) if it determines that such approval would not permit a State Party or persons sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the Area.*

Article 7
Selection of applicants

1. Where the selection must be made among applicants because of the production limitation set forth in article 151, paragraph 2, of Part XI of this Convention, or because of the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided for in article 151, paragraph 1, of Part XI of this Convention, the Authority shall make the selection on the basis of objective and non-discriminatory standards set forth in rules and regulations drawn up in accordance with this article.

2. The Authority shall consider all qualified applications received within the preceding period of time referred to in article 6, paragraph 1, and shall give priority to those which:

(a) Give better assurance of performance, taking into account the financial and technical qualifications of the proposed operator and performance, if any, under previously approved plans of work;

(b) Provide earlier prospective financial benefits to the Authority, taking into account when production is scheduled to begin;

(c) Have already invested most resources and effort in prospecting or exploration.

3. Applicants who are not selected in any period shall have priority in subsequent periods until they receive a contract.

4. Selection shall be made taking into account the need to enhance opportunities for all States Parties, irrespective of their social and economic systems or geographical locations, to participate in activities in the Area and to prevent monopolization of such activities.

5. The Authority shall have priority to exploit the reserved areas either solely through the Enterprise or through joint ventures with States Parties or with private entities sponsored by them whenever fewer reserved sites than non-reserved sites are under exploitation.

6. The Authority shall make its decisions pursuant to this article as promptly as possible after the close of each period.

Article 8
Reservation of sites

Each application, other than those proposed by the Enterprise or by any others for reserved sites, shall cover a total area, which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations. The applicant shall indicate the co-ordinates dividing the area into two parts of equal estimated commercial value and submit all the data obtained by him with respect to both parts of the area. Without prejudice to the powers of the Authority pursuant to article 17 the data to be submitted concerning polymetallic nodules will relate to mapping, sampling, the density of nodules, and the composition of metals in them. Within forty-five days of receiving such data the Authority shall designate the part which is to be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing States. This designation may be deferred for a further period of forty-five days if the Authority requests an independent expert to assess whether all data required by this article has been submitted to the Authority. The area designated shall become a reserved area as soon as the plan of work for the non-reserved area is approved and the contract is signed.

Article 9
Activities in reserved sites

1. The Enterprise shall be given an opportunity to decide whether it intends to carry out activities in each reserved site. This decision may be taken at any time, unless a notification pursuant to paragraph 4 is received by the Authority, in which event the Enterprise shall take its decision within a reasonable time. The Enterprise may decide to exploit such sites in joint ventures with the interested State or entity.

2. The Enterprise may conclude contracts for the execution of part of its activities in accordance with article 12 of Annex IV. It may also enter into joint ventures for the conduct of such activities with any willing entities which are eligible to carry out activities in the Area pursuant to article 153, paragraph 2 (b), of Part XI of this Convention. When considering such joint ventures, the Enterprise shall offer to States Parties which are developing States and their nationals the opportunity of effective participation.

3. The Authority may prescribe, in the rules, regulations, and procedures of the Authority procedural substantive requirements and conditions with respect to such contracts and joint ventures.

4. Any State Party which is a developing State or any natural or juridical person sponsored by it and effectively controlled by it or by other developing State which is a qualified applicant, or any group of the foregoing, may notify the Authority that it wishes to submit a plan of work pursuant to article 6 with respect to a reserved site. The plan of work shall be considered if the Enterprise decides, pursuant to paragraph 1, that it does not intend to carry out activities in that site.

Article 10
Separate stages of operations

If an operator in accordance with article 3, paragraph 4 (c), has an approved plan of work for exploration only, he shall have a preference and a priority among applicants for a plan of work for exploration with regard to the same areas and resources; provided, however, that where the operator's performance has not been satisfactory such preference or priority may be withdrawn.

Article 11
Joint arrangements

1. Contracts may provide for joint arrangements, when the parties so agree, between the contractor and the Authority through the Enterprise, in the form of joint ventures or production sharing, as well as any other form of joint arrangement which shall have the same protection against termination, suspension or revision as contracts with the Authority.

2. Contractors entering into such joint arrangements with the Enterprise may receive financial incentives as provided for in the financial arrangements established in article 13.

3. Joint venture partners of the Enterprise shall be liable for the payments required by article 13 to the extent of their joint venture share, subject to financial incentives as provided in article 13.

Article 12
Activities conducted by the Enterprise

1. Activities in the Area conducted under article 153, paragraph 2 (a), of Part XI of this Convention through the Enterprise shall be governed by the

provisions of Part XI, and the relevant annexes, the rules, regulations and procedures of the Authority and its relevant decisions.

2. Any plan of work proposed by the Enterprise shall be accompanied by evidence supporting its financial and technological capability.

...

Article 14
Transfer of data

1. The operator shall transfer in accordance with the rules and regulations and the terms and conditions of the plan of work to the Authority at time intervals determined by the Authority all data which are both necessary and relevant to the effective implementation of the powers and functions of the principal organs of the Authority in respect of the area covered by the plan of work.

2. Transferred data in respect of the area covered by the plan of work, deemed to be proprietary may only be used for the purposes set forth in this article. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment and safety other than equipment design data shall not be deemed to be proprietary.

3. Data transferred to the Authority by prospectors, applicants for contracts for exploration and exploitation, and contractors deemed to be proprietary shall not be disclosed by the Authority to the Enterprise or outside the Authority, but the data on the reserved sites may be disclosed to the Enterprise. Such data transferred by such persons to the Enterprise shall not be disclosed by the Enterprise to the Authority or outside of the Authority. The responsibilities set forth in article 168, paragraph 2, of Part XI of this Convention are equally applicable to the staff of the Enterprise.

Article 15
Training programmes

The contractor shall draw up practical programmes for the training of personnel of the Authority and developing States, including the participation of such personnel in all activities covered by the contract, in accordance with article 144, paragraph 2, of Part XI of this Convention.

...

ANNEX IV
STATUTE OF THE ENTERPRISE

Article 1
Purpose

1. The Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly, pursuant to article 153, paragraph 2 (a) of Part XI of this Convention, as well as transportation, processing and marketing of minerals recovered from the Area.

2. In carrying out its purposes and in the performance of its functions, the Enterprise shall act in accordance with the provisions of this Convention, including its annexes, and the rules, regulations and procedures of the Authority.

3. In developing the resources of the Area pursuant to paragraph 1, the Enterprise shall, subject to the provisions of this Convention, operate on sound commercial principles.

Article 2
Relationship to the Authority

1. Pursuant to article 170 of Part XI of this Convention, the Enterprise shall act in conformity with the general policies of the Assembly and the directives of the Council.

2. Subject to the above, the Enterprise shall enjoy autonomy in the conduct of its operations.

3. Nothing in this Convention shall make the Enterprise liable for the acts or obligations of the Authority, or the Authority liable for the acts or obligations of the Enterprise.

Article 3
Limitation of liability

Subject to article 11, paragraph 3, no member of the Authority shall be liable by reason only of its membership for the acts or obligations of the Enterprise.

Article 4
Structure of the Enterprise

The Enterprise shall have a Governing Board, a Director-General and the staff necessary for the performance of its duties.

Article 5
Governing Board

1. The Governing Board shall be composed of 15 members elected by the Assembly in accordance with article 160, paragraph 2 (c), of Part XI of this Convention. In the election of the members of the Board due regard shall be paid to the principle of equitable geographical distribution. In submitting nominations of candidates for election to the Board, members of the Authority shall bear in mind the need to submit candidates of the highest standard of competence, with qualifications in relevant fields so as to ensure the viability and success of the Enterprise.

2. Members of the Board shall be elected for a period of four years and shall be eligible for re-election. In the election and re-election of the members of the Board, due regard shall be paid to the principle of rotation.

3. Each member of the Board shall have one vote. All matters before the Board shall be decided by a majority of the members of the Board. If a member has a direct conflict of interest on a matter before the Board he shall refrain from voting on the matter.

4. Each member of the Board shall receive remuneration to be paid out of the funds of the Enterprise. The amount of remuneration shall be fixed by the Assembly, upon the recommendation of the Council.

5. Members of the Board shall act in their personal capacity. In discharging their duties they shall not seek or receive instructions from any Government or from any other source. The members of the Authority shall refrain from all attempts to influence any of them in the discharge of their duties.

6. Members of the Board shall continue in office until their successors are appointed or elected. If the office of a member of the Board becomes vacant, the Assembly shall appoint another member for the remainder of the unexpired term.

7. The Board shall function normally at the principal office of the Enterprise and shall meet as often as the business of the Enterprise may require.

8. A quorum for any meeting of the Board shall be two thirds of the members of the Board.

9. Any member of the Authority may ask the Governing Board for information in respect of its operations which particularly affect that member. The Board shall endeavour to provide such information.

Article 6
Powers and functions

The Governing Board shall direct the business operations of the Enterprise. Subject to the provisions of this Convention and its annexes, the Governing Board shall exercise all the powers necessary to fulfil the purposes of the Enterprise, including powers:

(a) to develop plans of work and programmes in carrying out its activities as provided for in article 170 of Part XI of this Convention;

(b) to prepare and submit plans of work to the Council in accordance with article 153, paragraph 3 and article 162, paragraph 2 (j) of Part XI of this Convention;

(c) to authorize negotiations on the acquisition of technology, including that provided for in article 5, paragraphs 3 (a), 3 (c) and 3 (d) of Annex III and to approve the results of such negotiations.

(d) to establish terms and conditions and to authorize negotiations for entering into joint ventures and other forms of joint arrangements as provided for in article 9 and article 11 of Annex III and to approve the results of such negotiations;

(e) to recommend that portion of its net income that should be retained as its reserves in accordance with article 160, paragraph 2 (f) of Part XI of this Convention;

(f) to approve the annual budget of the Enterprise;

(g) to authorize the procurement of goods and services in accordance with article 10, paragraph 3;

(h) to submit an annual report to the Council as provided for in article 9;

(i) to submit to the Council for the approval of the Assembly, rules in respect of the organization, management, appointment and dismissal of the staff of the Enterprise, and to adopt regulations to give effect to such rules;

(j) to elect a Chairman from among its members;

(k) to adopt its own rules of procedure;

(l) to borrow funds and to furnish such collateral or other security as it may determine;

(m) to enter into any legal proceedings, agreements and transactions and to take any other actions in accordance with article 13;

(n) to delegate, subject to the approval of the Council, any of its powers to the Director-General and to its committees.

Article 7
Director-General and staff

1. The Assembly shall, upon the recommendation of the Council, and the nomination of the Governing Board, elect the Director-General who shall not be a member of the Board. The Director-General shall be the legal representative of the Enterprise. He shall participate in the meetings of the Board but shall have no vote. He may participate in the meetings of the Assembly, and the Council when these organs are dealing with matters concerning the Enterprise, but shall have no vote at such meetings. The Director-General shall hold office for a fixed-term not exceeding five years and may be re-elected for further terms.

2. The Director-General shall be the chief executive of the Enterprise and shall be directly responsible to the Governing Board for the conduct of the business of the Enterprise. Subject to the rules and regulations referred to in article 6, subparagraph (i), he shall be responsible for the organization, management, appointment and dismissal of the staff.

3. The Director-General and the staff of the Enterprise, in the discharge of their duties, shall not seek or receive instructions from any Government or from any other source. They shall refrain from any action which might reflect on their position as international officials of the Enterprise responsible only to the Enterprise. The members of the Authority shall respect the international character of the Director-General and the staff of the Enterprise and shall refrain from all attempts to influence any of them in the discharge of their duties.

4. In appointing the staff, the Director-General shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on an equitable geographical basis.

Article 8
Location

The Enterprise shall have its principal office of business at the seat of the Authority. The Enterprise may establish other offices and facilities in the territories of any member of the Authority with the consent of that member.

Article 9
Provision of reports and information

1. The Enterprise shall, not later than three months after the end of each financial year, submit to the Council for its consideration an annual report containing an audited statement of its accounts and shall transmit to the Council at appropriate intervals a summary statement of its financial position and a profit and loss statement showing the results of its operations.

2. The records, books and accounts of the Enterprise, including its annual financial statements, shall be audited annually by an independent auditor to be appointed by the Council.

3. The Enterprise shall publish its annual report and such other reports as it deems desirable to carry out its purpose.

4. Copies of all reports and statements referred to in this article shall be distributed to the members of the Authority.

Article 10
Allocation of net income

1. Subject to paragraph 3, the Enterprise shall make payments to the Authority under article 13 of Annex III, or their equivalent.

2. The Assembly shall, on the recommendation of the Governing Board, determine what portion of the net income of the Enterprise shall be retained as its reserves. The remainder shall be transferred to the Authority.

3. During an initial period, required for the Enterprise to become self-supporting, which shall not exceed 10 years from the commencement of its commercial production, the Assembly shall exempt the Enterprise from its payments as referred to in paragraph 1, and shall leave all of the net income of the Enterprise in its reserves.

Article 11
Finance

1. The sources of the funds of the Enterprise shall include:

(a) amounts received from the Authority in accordance with article 173, paragraph 2 (b), of Part XI of this Convention;

(b) voluntary contributions made by States Parties for the purpose of financing activities of the Enterprise;

(c) amounts borrowed by the Enterprise in accordance with the provisions of paragraph 2;

(d) income of the Enterprise through its operations;

(e) other funds made available to the Enterprise to enable it to carry out its functions and to commence operations as soon as possible.

2. (a) The Enterprise shall have the power to borrow funds and to furnish such collateral or other security as it may determine. Before making a public sale of its obligations in the markets or currency of a State Party, the Enterprise shall first obtain the approval of that State Party. The total amount of borrowings shall be approved by the Council upon the recommendation of the Governing Board.

(b) States Parties shall make every reasonable effort to support application by the Enterprise for loans in capital markets and from international financial institutions.

3. (a) The Enterprise shall be assured of the funds necessary to explore and exploit one mine site and to transport, process and market the metals recovered therefrom namely nickel, copper, cobalt and manganese and to meet its initial administrative expense. The said amount shall be recommended by the Preparatory Commission.

(b) States Parties shall make available to the Enterprise an amount equivalent to one half of the funds referred to in subparagraph (a) above by way of long-term interest-free loans in accordance with the scale referred to in article 160, paragraph 2 (e), of Part XI of this Convention. Debts incurred by the Enterprise in raising the balance of the funds shall be guaranteed by all States Parties in accordance with the said scale.

(c) In the event that the financial contribution of States Parties ratifying the Convention is less than the funds assured to the Enterprise under subparagraph (a), States Parties shall, upon request of the Authority, provide a supplementary contribution by way of a long-term interest-free loan of not more than 15 per cent of the sum referred to in subparagraph (a) on the basis of the said scale and by way of a debt guarantee of a sum not more than 10 per cent of the sum referred to in subparagraph (a) on the basis of the said scale.

(d) The supplementary contribution referred to in paragraph 3 (c) shall be refunded and the debt guarantees referred to in subparagraph (c) shall be cancelled as and when contributions in accordance with subparagraph (b) are received from States Parties ratifying the Convention at a later stage.

(e) Upon request by the Enterprise, a State Party may provide a guarantee covering debts additional to the amount it has guaranteed in accordance with or on the basis of the said scale. In lieu of debt guarantee, a State Party may make a voluntary contribution to the Enterprise in an amount equivalent to that portion of the debts which it would otherwise be liable to guarantee.

(f) The repayment of the interest-bearing loans shall have priority over the repayment of the interest-free loans. The repayment of interest-free loans shall be in accordance with a schedule adopted by the

Assembly, upon the recommendation of the Council and the advice of the Governing Board of the Enterprise.

(g) Funds made available to the Enterprise by States Parties in accordance with subparagraphs (b) and (c), shall be in freely usable currencies or currencies which are convertible in the major foreign exchange markets into freely usable currencies, and shall be exempt from foreign exchange restrictions. Freely usable currencies shall be defined in accordance with the rules and regulations of the Authority.

(h) A "debt guarantee" shall mean a promise of each State Party to creditors of the Enterprise to pay, pro rata *in accordance with the appropriate scale, the financial obligations of the Enterprise covered by the guarantee following notice by the creditors to the State Party of a default by the Enterprise in payment of those obligations.*

4. The funds, assets and expenses of the Enterprise shall be kept separate from those of the Authority. The provisions of this article shall not prevent the Enterprise from +making arrangements with the Authority regarding facilities, personnel and services and arrangements for reimbursement of administrative expenses paid in the first instance by either organization on behalf of the other.

Article 12
Operations

1. The Enterprise shall propose to the Council projects for carrying out activities in accordance with article 170 of Part XI of this Convention. Such proposals shall include a formal written plan of work for activities in the Area in accordance with article 153, paragraph 3, of Part XI of this Convention, and all such other information and data as may be required from time to time for its appraisal by the Technical Commission and approval by the Council.

2. Upon approval by the Council the Enterprise shall execute the project on the basis of the formal written plan of work referred to in paragraph 1.

3. (a) To the extent that the Enterprise does not at any time possess the goods and services required for its operations, it may procure and employ them. Procurement of goods and services required by the Enterprise shall be effected by the award of contracts, based on response to invitations to tender, to bidders offering the best combination of quality, price and most favourable delivery time.

(b) If there is more than one bid offering such a combination, the contract shall be awarded in accordance with the following principles:

(i) The principle of non-discrimination on the basis of political or similar considerations not relevant to the carrying out of operations with due diligence and efficiency;

(ii) Guidelines approved by the Council with regards to the preferences to be accorded to goods and services originating in the

developing States, including the landlocked or otherwise geographically disadvantaged among them.

(c) The Governing Board may adopt rules determining the special circumstances in which the requirement of invitations to bid may in the best interests of the Enterprise be dispensed with.

4. The Enterprise shall have title to all minerals and processed substances produced by it.

5. The Enterprise shall sell its products on a non-discriminatory basis. It shall not give non-commercial discounts.

6. Without prejudice to any general or special power conferred on the Enterprise under any other provision of this Convention, the Enterprise shall exercise such powers incidental to its business as shall be necessary.

7. The Enterprise and its staff shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to carry out the purposes specified in article 1.

Article 13
Legal status, immunities and privileges

1. To enable the Enterprise to fulfil the functions with which it is entrusted, the status, immunities and privileges set forth herein shall be accorded to the Enterprise in the territories of States Parties. To give effect to this principle the Enterprise and States Parties may, where necessary, enter into special agreements for this purpose.

2. The Enterprise shall have such legal capacity as is necessary for the performance of its functions and the fulfilment of its purposes and, in particular, the capacity:

(a) To enter into contracts, forms of association, or other arrangements, including agreements with States and international organizations;

(b) To acquire, lease, hold and dispose of immovable and movable property;

(c) To be a party to legal proceedings in its own name.

3. Actions may be brought against the Enterprise only in a court of competent jurisdiction in the territories of a member in which the Enterprise has an office, has appointed an agent for the purpose of accepting service or notice of process, has entered into a contract for goods or services, has issued securities, or is otherwise engaged in commercial activity. The property and assets of the Enterprise shall, wheresoever located and by whomsoever held be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Enterprise.

4. (a) The property and assets of the Enterprise, wheresoever located and by whomsoever held, shall be immune from confiscation, expropriation, requisition, and any other form of seizure by executive or legislative action.

(b) All property and assets of the Enterprise shall be free from discriminatory restrictions, regulations, controls and moratoria of any nature.

(c) The Enterprise and its employees shall respect local laws and regulations in any State or territory in which the Enterprise or its employees may do business or otherwise act.

(d) States Parties shall assure that the Enterprise enjoys all rights, immunities and privileges afforded by States to entities conducting business within such States. These rights, immunities and privileges shall be afforded the Enterprise on no less favourable a basis than afforded by States to similarly engaged commercial entities. Where special privileges are provided by States for developing States or their commercial entities, the Enterprise shall enjoy such privileges on a similarly preferential basis.

(e) States may provide special incentives, rights, privileges and immunities to the Enterprise without the obligation to provide such incentives, rights, privileges, or immunities to other commercial entities.

5. The Enterprise shall negotiate with the host countries in which its offices and facilities are located for immunity from direct and indirect taxation.

6. Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this annex and shall inform the Enterprise of the detailed action which it has taken.

7. The Enterprise in its discretion may waive any of the privileges and immunities conferred under this article or in the special agreements referred to in paragraph 1 to such extent and upon such conditions as it may determine.

...

During the resumed Ninth Session, the Working Group of 21 continued its consideration of the hard-core issues still outstanding as of the end of the first part of the Session. The results of the negotiations were summarized in the report of the co-ordinators of the Working Group of 21 to the First Committee (A/CONF.62/C.1/L.28 and Add.1*).[95]

On the issue of the system of exploration and exploitation, the co-ordinator indicated that regarding the transfer of technology, there was agreement to the effect that the last sentence of paragraph 3 (a) would imply that the Enterprise has to make good faith efforts in order to obtain the technology on the open market.

In paragraph 3 (b), the last sentence was deleted. It was felt that while the first part of paragraph 3 (b) refers to the general obligation of the contractor to do whatever is necessary to make available to the Enterprise any technology not covered under paragraph 3 (a), the last sentence refers to a different obligation consisting in the specific duty to obtain a legally binding and enforceable

assurance for the transfer of technology that he is not entitled to transfer. It was felt that it served no useful purpose to change the general assurance of doing business with the Enterprise contemplated in paragraph 3 (b) into a more specific, legally enforceable assurance containing terms of sale, since the Enterprise would not at that stage have even made a request for the technology. Paragraphs 3 (c) and 3 (d) take care of this more concrete obligation and that is why the last sentence of subparagraph (b) was deleted and its wording transferred to the first part of subparagraph (c). This sentence reads as follows: *"To acquire, if and when required to do so by the Enterprise and whenever it is possible to do so without substantial cost to the contractor, a legally binding and enforceable right"* etc., etc. During the discussions it was made clear that where the acquisition of a legal right to transfer technology entails substantial cost to the contractor, the Enterprise still has the option of paying for these additional costs.[96]

Regarding the Statute of the Enterprise, the co-ordinator on this issue, Mr. Wuensche, indicated that France wanted to amend paragraph 1 of article 1 of the Statute to make it clear that the Enterprise can only transport, process and market minerals which it recovers from the Area and not minerals recovered by other entities. The Group of 77 was unable to accept this amendment. They argued that if the Enterprise were, one day, to develop the capacity to process not only the nodules it recovers from the Area but also to process for others, there was no reason why the Convention should prohibit the Enterprise from doing so. Since there was no agreement on this amendment, he was therefore unable to include it.

France also suggested an amendment to paragraph 1 of article 5 (Governing Board) under the Statute to the effect that in the election of the members of the Governing Board due regard shall be paid to the principle of equitable geographical distribution and to the importance of the financial contributions of States Parties to the initial financing of the Enterprise. The French amendment is a weaker version of an amendment which it had proposed in New York. The Group of 77 objected to the French proposal on the ground that it would give undue importance to the major contributors to the finances of the Enterprise.

The delegation of the Soviet Union pointed out that the French amendment was unnecessary because under the present formulation due regard may also be paid to principles and factors other than the principle of equitable geographical distribution. Since there was also no agreement on this amendment, he had not included it in his proposed changes. He had also not included a proposal by the Netherlands that until the loans of States Parties have been repaid, the Governing Board shall be assisted by a committee of governmental experts on matters of financing and investment policy related to the first operation of the Enterprise. The said committee, according to the Dutch proposal, should be constituted with due regard to the financial contributions to the first operation of the Enterprise. The Group of 77 could not accept this proposal.[97]

With regards to the Governing Board of the Enterprise, the delegate of Belgium proposed that in submitting nominations of candidates for election to

the Board, members of the Authority should bear in mind the need to avoid nominating candidates with conflicting interests. Most of the members of the group of financial experts thought it was unnecessary to include this although there was an agreement to strengthen the rule in paragraph 3 of article 5. He has therefore deleted the word "direct" from paragraph 3. The other change he has made in article 5 is in paragraph 6 which he has redrafted in order to ensure that the procedure for filling a vacancy is the same as the procedure for electing members to the Board.

Apart from minor drafting changes, he made two substantive changes to article 6 (Powers and functions). The first was to add a new paragraph (c) giving the Governing Board the power to prepare and submit applications of production authorization to the Council. According to him, this new paragraph was required in the light of the changes which had been proposed to article 151 (Production policies), paragraph 2, and article 7 (Selection of applicants) of Annex III. The other change which he had made was to add the word "non-discretionary" to subparagraph (o) which dealt with the question of the delegation of powers. The consequence of the amendment was that the Governing Board might delegate non-discretionary powers to the Director-General and to committees constituted by the Governing Board. The Governing Board might not, however, delegate discretionary powers. This was in accordance with the generally accepted principles of corporate and administrative law.[98]

The Netherlands Delegate suggested that in article 7 (Director-General and Staff) of the Statute, the Governing Board should be given the power to dismiss the Director-General. He did not feel able to accept this proposal because a body with the power to dismiss an appointee was usually the body which had the power to appoint him in the first instance. In this case it was the Assembly, acting upon the recommendation of the Council and the nomination of the Governing Board, which elected the Director-General. For this reason he did not think it would be appropriate to give the Governing Board the power of dismissal.

As for financial arrangements for the Enterprise, the co-ordinator reported that Article 11, paragraph 3(a) had been slightly amended. He indicated that, *"in the negotiating text the last sentence of this paragraph states that the amount of the funds to be provided to the Enterprise shall be recommended by the Preparatory Commission."* He had redrafted this sentence to say, *"the Preparatory Commission shall include in the draft rules, regulations and procedures of the Authority the amount of the funds to be provided to the Enterprise together with the criteria and factors for its adjustment."* According to him, *"the redraft contains two elements missing in the old text. First, the Preparatory Commission shall not only fix the amount of the funds to be provided to the Enterprise but also the criteria and factors by which the said amount may be adjusted. It may be necessary to adjust the amount because of inflation and because of cost over-runs. The second feature which is new is that the recommendations of the Preparatory Commission shall be embodied*

in the form of draft rules, regulations and procedures of the Authority. Under this formula one does not prejudge the answer to the question of the status of the rules, regulations and procedures drawn up by the Preparatory Commission. This formulation of the last sentence was negotiated with various delegations and appears to satisfy the three criteria contained in document A/CONF.62/62."[99]

He proposed a modification to paragraph 3 (b) or article 11. He noted, while *"the text of this paragraph in the negotiating text refers to the scale in article 160, paragraph 2 (e)…, that scale is intended to raise assessed contributions from the States Parties to meet the administrative expenses of the Authority. The assumption underlying that scale is that the whole of the administrative expenses shall be borne by the States Parties, whatever their number may be. It may not be appropriate to use that scale for the purpose of providing the Enterprise with the funds referred to in paragraph 3 (a) because the administrative expenses of the Authority would be relatively small compared with the amount of the funds required to carry out one fully integrated, four-metal project."* Instead of the scale referred to in article 160, he proposed using the scale of assessment for the United Nations regular budget, adjusted to take account of the States which are not members of the United Nations. After the necessary adjustments, the percentage by which each State Party should contribute towards the financing of the Enterprise would be very slightly less than its percentage on the scale of assessment for the United Nations regular budget. He had asked the United Nations Secretariat to compile such a scale which would then be annexed to the Convention. However, he reported that, *"owing to the shortness of time and for other reasons, the United Nations Secretariat has replied that it is unable to comply with the request."*[100]

Concerning paragraph 3 (c) of article 11, he said: *"it is unlikely that all the States participating in this Conference will become parties to the Convention at the same time. In consequence, if those States which become parties to the Convention contribute their shares toward the financing of the Enterprise in accordance with the reference scale, there would be a shortfall. The question is how should the shortfall be covered. In the negotiating text, he proposed that the shortfall should be covered by way of supplementary interest-free loans and supplementary debt-guarantees by the States Parties up to a ceiling of 25 per cent of the amount of the funds to be provided to the Enterprise. His proposal was objected to by both the Group of 77 and the industrialized countries of the West and of the East. The Group of 77 pointed out that if a ceiling of 25 per cent is imposed and if the shortfall is greater than 25 per cent, then, in spite of the supplementary contributions, the Enterprise would still face the problem of a shortfall. On the other hand, the developed countries did not like the manner in which paragraphs 3(c) and 3(d) had tried to deal with the problem. On the basis of consultations he held with representatives of the various interest groups, he was able to offer a compromise proposal acceptable to them. The proposal is that, if the sum of the financial contributions of States Parties ratifying or acceding to the*

Convention is less than the funds to be provided to the Enterprise, the Assembly shall, at its first meeting, examine the extent of the shortfall and, taking into account the obligation of the States Parties under paragraphs 3 (a) and 3 (b) and the recommendations of the Preparatory Commission, adopt measures for dealing with the shortfall. It was agreed that the Assembly shall decide this question by consensus."[101]

In dealing with paragraph 3 (d), he further explained that *"the next problem concerned the modality for implementing the obligation of the States Parties under paragraphs 3 (a) and 3 (b). The first question is when should the States Parties be required to make their payments. The second question is, in what form should the payments be made. The third question is should the payments be made in one lump sum or in stages. The answer to the first question is that the obligation of the States Parties shall be met within 60 days after the entry into force of the Convention or within 30 days after the date of deposit of their instruments of ratification, acceptance or approval, whichever is later. The answer to the second question is that the States Parties shall deposit with the Enterprise irrevocable, non-negotiable, non-interest-bearing promissory notes in the amounts of the shares of such States Parties of interest-free loans under paragraph 3(b). The answer to the third question is that the promissory notes can be cashed by the Enterprise in accordance with the following procedure. First, as soon as possible after the entry into force of the Convention and thereafter, at annual or other appropriate intervals, the Governing Board of the Enterprise shall prepare a schedule of the magnitude and timing of its requirements for the funding of its administrative expenses and for carrying out its operations. Secondly, the States Parties shall be notified by the Enterprise, through the Authority, of the magnitude and timing of the Enterprise's financial requirements. After notifying the States Parties, the Enterprise shall cash such amounts of the promissory notes as are required to meet its expenses in accordance with the schedule."*[102]

Some members of the Group of 77 have asked whether under this proposal the Enterprise would encounter difficulties in obtaining the funds which it would need in order to establish itself. The co-ordinator said that his answer was no. He also said: *"This is because the commitment in paragraph 3 (a) is not only to provide the Enterprise with an amount of funds equivalent to the capital required in undertaking one fully integrated, four-metal project but also to meet its initial administrative expenses. The seed money that the Enterprise will need in order to organize itself, to employ its staff, to lease its premises, etc., comes under the umbrella of the term 'initial administrative expenses.' Therefore, the Enterprise would be able to cash a portion of the promissory notes deposited by the States Parties in order to meet those initial expenses."*[103]

Asked by some delegates from industrialized countries as to whether this proposal derogated from article 162, paragraph 2 (i) and article 170, paragraph 2, the co-ordinator said his answer would be in the negative as well. He also

said: *"As is made clear in article 1, paragraphs 1 and 2 and in the introduction to article 6 of Annex IV, no attempt has been made in this annex to alter the distribution of powers and functions among the organs of the Authority or to upset the hierarchical relationship between them."*[104]

The co-ordinator reminded the First Committee that during the negotiations of article 11, paragraph 3 (f) the industrialized countries of the East and West pressed the Group of 77 very hard for agreement on their proposal that a schedule or programme of repayment of the interest-free loans should be included in the draft rules, regulations and procedures of the Authority. The Group of 77 was unable to make this concession. It argued that it was not reasonable to demand that a repayment schedule or programme should be included in the draft rules, regulations and procedures which would be formulated even before the Enterprise is established and is functioning. The Group of 77 argued that it was only possible to establish such a schedule after the Enterprise was a reality, operating in the Area and had become economically viable and successful. As a result of consultations he had undertaken on this question, it had been agreed to add two new sentences to paragraph 3 (f). The first sentence would say that *"when the Governing Board of the Enterprise gives its advice on the question of a repayment schedule, it shall be guided by the relevant provision of the rules, regulations and procedures of the Authority."* The second sentence proposed that *"the rules, regulations and procedures dealing with this question shall take into account the paramount importance of ensuring the successful performance of the Enterprise and, in particular, ensuring its financial independence."* He further indicated: *"The guidelines contained in the rules, regulations and procedures may, for example, ensure that the Enterprise will be provided with an adequate working capital, fix the date of commencement of repayments not earlier than after the tenth year of the commencement of commercial production by the Enterprise and graduate such payments so that the annual payments in the first five years of the schedule are less than in subsequent years."*[105]

As to paragraph 3 (g) of article 11 which specified the currencies in which the States Parties should make their payments, he said his attention was drawn to the fact that in the recently concluded Common Fund Agreement a formula was negotiated which had met with general acceptance. He had asked the various interest groups whether he could adopt the language from the Common Fund and was informed that he could do so. Paragraph 3 (g) had therefore been redrafted along the lines of the equivalent provision in the Common Fund Agreement.[106]

Concerning paragraph 3 (h) of article 11 which defines the term "debt guarantee," he said it was pointed out that it would be desirable to expand the definition by including a new sentence stating that the procedures for the payment of debts guaranteed by States Parties in the event of default by the Enterprise *"shall be in conformity with the rules, regulations and procedures of the Authority."* As the suggestion met with no objection from any quarter, he had included such a sentence.[107]

Finally, on the issue of transfer of technology, the co-ordinator on this issue, Mr. Engo of Cameroon, indicated that it was one of the most vexatious questions in the First Committee. It was therefore a great relief to him that it was possible to agree on a new formulation of paragraph 7 of article 5 of Annex III. The new formulation was based upon a proposal made by the Group of 77 and accepted with very great reluctance by the industrialized countries. The difference between the new formulation and the old one was that under the old formulation contracts entered into after the commencement of commercial production by the Enterprise would not carry an undertaking to transfer technology. Under the new formulation contracts entered into during the first ten years following the commencement of commercial production by the Enterprise would carry such undertakings. This was therefore a major gain for the Enterprise. The negotiators of the Group of 77 said during the meetings that with this amendment the Group might refrain from pressing their other amendments to article 5 and thus consider negotiations on transfer of technology closed. It was mentioned here that during the consultations the industrialized countries continued to press for the deletion of subparagraph 3 (e), but the proposal continued to meet with strong opposition from the developing countries.[108]

Hereafter are excerpts of the modifications to the *negotiating text* proposed by the Working Group of 21 relevant to the Enterprise:

A/CONF.62/C.1/L.28 and Add.1
ANNEX
Modifications to the negotiation text proposed by the Working Group of 21[109]

...

ANNEX III

Article 4
Qualifications of applicants

1. Applicants, other than the Enterprise, shall be qualified if they have the nationality or control and sponsorship required by article 153, paragraph 2 (b), of this Convention and if they follow the procedures and meet the qualification standards established by the Authority by means of rules, regulations and procedures.

2. Sponsorship by the State Party of which the applicant is a national shall be sufficient unless the applicant has more than one nationality, as in the case of a partnership or consortium of entities from several States, in which event all States Parties involved shall sponsor the application, or unless the applicant is effectively controlled by another State Party or its nationals, in which event both States Parties shall sponsor the application. The criteria and procedures for implementation of the sponsorship requirements shall be set forth in the rules, regulations and procedures of the Authority.

3. The sponsoring State or States shall, pursuant to article 139, have the responsibility to ensure, within their legal systems, that a contract so sponsored shall carry out activities in the Area in conformity with its obligations under this Convention and the terms of its contract. A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has adopted laws and regulations and taken administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction.

4. Except as provided in paragraph 6 below, such qualification standards shall relate to the financial and technical capabilities of the applicant and his performance under previous contracts with the Authority.

5. The procedures for assessing the qualifications of States Parties which are applicants shall take into account their character as States.

6. The qualification standards shall require that every applicant, without exception, shall as part of his application undertake:

(a) to accept as enforceable and comply with the applicable obliga tions created by the provisions of Part X1, rules and regulations of the Authority, decisions of the organs of the Authority, and terms of his contracts with the Authority;

(b) to accept control by the Authority of activities in the Area, as authorized by this Convention;

(c) to provide the Authority with a written assurance that his obligations under the contract will be fulfilled in good faith;

(d) to comply with the provisions on the transfer of technology set forth in article 5 of this annex.

Article 5
Transfer of technology

1. When submitting a proposed plan of work, every applicant shall make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the Area, as well as other relevant non-proprietary information about the characteristics of such technology, and information as to where such technology is available.

2. Every operator under an approved plan of work shall inform the Authority of revisions in the description and information required by paragraph 1 whenever a substantial technological change or innovation is introduced.

3. Every contract for the conduct of activities in the Area entered into by the Authority shall contain the following undertakings by the operator:

(a) To make available to the Enterprise, if and when the Authority shall so request and on fair and reasonable commercial terms and conditions, the technology which he uses in carrying out activities in the Area under the contract and which he is legally entitled to transfer.

This shall be done by means of licence or other appropriate arrangements which the operator shall negotiate with the Enterprise and which shall be set forth in a special agreement supplementary to the contract. This commitment may be invoked only if the Enterprise finds that it is unable to obtain the same or equally efficient and useful technology on the open market and on fair and reasonable commercial terms and conditions;

(b) To obtain a written assurance from the owner of any technology not covered under subparagraph (a) that the operator uses in carrying out activities in the Area under the contract and which is not generally available on the open market that the owner will, if and when the Authority so requests, make available to the Enterprise to the same extent as made available to the operator, that technology under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions. If such assurance is not obtained, the technology in question shall not be used by the operator in carrying out activities in the Area;

(c) To acquire, if and when requested to do so by the Enterprise whenever it is possible to do so without substantial cost to the contractor, a legally binding and enforceable right to transfer to the Enterprise in accordance with subparagraph (a) any technology he uses in carrying out activities in the Area under the contract which he is not legally entitled to transfer and which is not generally available on the open market. In cases where there is a substantial corporate relationship between the operator and the owner of the technology, the closeness of this relationship and degree of control or influence shall be relevant to the determination whether all feasible measures have been taken. In cases where the operator exercises effective control over the owner, failure to acquire the legal rights from the owner shall be considered relevant to the applicant's qualifications for any subsequent proposed plan of work;

(d) To facilitate the acquisition by the Enterprise under licence other appropriate arrangements and on fair and reasonable commercial terms and conditions, any technology covered by subparagraph (b) should the Enterprise decide to negotiate directly with the owner of the technology and request such facilitation;

(e) To take the same measures as those prescribed in subparagraphs, (a), (b), (c) and (d) for the benefit of a developing State or group of developing States which has applied for a contract under article 9 of this annex, provided that these measures shall be limited to the exploitation of the part of the area proposed by the contractor which has been reserved pursuant to article 8 and provided that activities under the contract sought by the developing State or group of developing States would not involve transfer of technology to a third

State or the nationals of a third State. Obligations under this provision shall only apply with respect to any given contractor where technology has not been requested or transferred by him to the Enterprise.

4. Disputes concerning the undertakings required by paragraph 3, like other provisions of the contract, shall be subject to compulsory settlement in accordance with Part XI, and monetary penalties, pension, or termination of contract as provided in article 18. Dispute to whether offers made by the contractor are within the range of fair reasonable commercial terms and conditions may be submitted by either party to binding commercial arbitration in accordance with the United Nations Commission on International Trade Law arbitration rules or other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority. In any case in which the finding is negative, the contractor shall be given 45 days to revise his offer to bring it within that range before the Authority makes any determinations with respect to violation of the contract and the imposition of penalties, as provided in article 18 of this annex.

5. In the event that the Enterprise is unable to obtain appropriate technology on fair and reasonable commercial terms and conditions to commence in a timely manner the recovery and processing of minerals from the Area, either the Council or the Assembly may convene a group of States Parties composed of those which are engaged in activities in the Area, those which have sponsored entities which are engaged in activities in the Area and other States Parties having access to such technology. This group shall consult together and shall take effective measures to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions. Each such State Party shall take all feasible measures to this end within its own legal system.

6. In the case of joint ventures with the Enterprise, technology transfer will be in accordance with the terms of the joint venture agreement.

7. The undertakings required by paragraph 3 shall be included in each contract for the conduct of activities in the Area until 10 years after the Enterprise has begun commercial production of minerals from the resources of the Area and may be invoked during that period.

8. For the purposes of this article, "technology" means the specialized equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to assemble, maintain and operate a viable system and the legal right to use these items for that purpose on a non-exclusive basis.

...

Article 11

Joint venture partners of the Enterprise shall be liable for the payments required by article 13 to the extent of their joint ventures share, subject to financial incentives as provided in article 13.

ANNEX IV
STATUTE OF THE ENTERPRISE

Article 1
Purpose

1. The Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly, pursuant to article 153, paragraph 2 (a), as well as transportation, processing and marketing of minerals recovered from the Area.

2. In carrying out its purposes and in the performance of its functions, the Enterprise shall act in accordance with the provisions of this Convention, including its annexes, and the rules, regulations and procedures of the Authority.

3. In developing the resources of the Area pursuant to paragraph 1, the Enterprise shall, subject to the provisions of this Convention, operate on sound commercial principles.

Article 2
Relationship to the Authority

1. Pursuant to article 170, the Enterprise shall act in accordance with the general policies of the Assembly and the directives of the Council.

2. Subject to paragraph 1, the Enterprise shall enjoy autonomy in the conduct of its operation.

3. Nothing in this Convention shall make the Enterprise liable for the acts or obligations of the Authority or the Authority liable for the acts or obligations of the Enterprise.

Article 3
Limitation of liability

Without prejudice to article 11, paragraph 3, of this annex, no member of the Authority shall be liable by reason only of its membership for the acts or obligations of the Enterprise.

Article 4
Structure of the Enterprise

The Enterprise shall have a Governing Board, a Director-General and the staff necessary for the performance of its functions.

Article 5
Governing Board

1. The Governing Board shall be composed of 15 members elected by the Assembly in accordance with article 160, paragraph 2 (c). In the election of the members of the Board, due regard shall be paid to the principle of

equitable geographical distribution. In submitting nominations of candidates for election to the Board, members of the Authority shall bear in mind the need to nominate candidates of the highest standard of competence, with qualifications in relevant fields, so as to ensure the viability and success of the Enterprise.

2. Members of the Board shall be elected for a term of four years and shall be eligible for re-election. In the election and re-election of the members of the Board, due regard shall be paid to the principle of rotation.

3. Each member of the Board shall have one vote. All matters before the Board shall be decided by a majority of the members of the Board. If a member has a conflict of interest on a matter before the Board he shall refrain from voting on the matter.

4. Each member of the Board shall receive remuneration to be paid out of the funds of the Enterprise. The amount of remuneration shall be fixed by the Assembly, upon the recommendation of the Council.

5. Members of the Board shall act in their personal capacity. In the performance of their duties they shall not seek or receive instructions from any Government or from any other source. The members of the Authority shall respect the independent character of the members of the Board and refrain from all attempts to influence any of them in the discharge of their duties.

6. Members of the Board shall continue in office until their successors are elected. If the office of a member of the Board becomes vacant, the Assembly shall, upon the recommendation of the Council, elect another member for the remainder of the unexpired term.

7. The Board shall normally function at the principal office of the Enterprise and shall meet as often as the business of the Enterprise may require.

8. A quorum for any meeting of the Board shall be two thirds of the members of the Board.

9. Any member of the Authority may ask the Board for information in respect of its operations which particularly affect that member. The Board shall endeavour to provide such information.

Article 6
Powers and functions

The Governing Board shall direct the business operations of the Enterprise. Subject to the provisions of this Convention and its annexes, the Governing Board shall exercise all the powers necessary to fulfil the purposes of the Enterprise, including powers:

(a) to develop plans of work and programmes in carrying out its activities as provided for in article 170;

(b) to draw up and submit formal written plans of work to the Council in accordance with article 153, paragraph 3, and article 162, paragraph 2 (j);

(c) to prepare and submit applications for production authorization to the Council in accordance with article 151, paragraph 2;

(d) to authorize negotiations on the acquisition of technology, including those provided for in article 5, paragraphs 3 (a), 3 (c) and 3 (d) of Annex III, and to approve the results of such negotiations;

(e) to establish terms and conditions and to authorize negotiations for entering into joint ventures and other forms of joint arrangements as provided for in article 9 and article 11 of Annex III and to approve the results of such negotiations;

(f) to recommend what portion of its net income should be retained as its reserves in accordance with article 160, paragraph 2 (f);

(g) to approve the annual budget of the Enterprise;

(h) to authorize the procurement of goods and services in accordance with article 12, paragraph 3, of this annex;

(i) to submit an annual report to the Council as provided for in article 9 of this annex;

(j) to submit to the Council, for the approval of the Assembly, rules in respect of the organization, management, appointment and dismissal of the staff of the Enterprise, and to adopt regulations to give effect to such rules;

(k) to elect a Chairman from among its members;

(l) to adopt its own rules of procedure;

(m) to borrow funds and to furnish such collateral or other security as it may determine in accordance with article 11, paragraph 2, of this annex;

(n) to enter into any legal proceedings, agreements and transactions and to take any other actions in accordance with article 13 of this annex;

(o) to delegate, subject to the approval of the Council, any non-discretionary powers to the Director-General and to its committees.

Article 7
Director-General and staff

1. The Assembly shall, upon the recommendation of the Council, and the nomination of the Governing Board, elect the Director-General who shall not be a member of the Board. The Director-General shall be the legal representative of the Enterprise. He shall participate in the meetings of the Board but shall have no vote. He may participate in meetings of the Assembly and the Council when these organs are dealing with matters concerning the Enterprise, but shall have no vote at such meetings. The Director-General shall hold office for a fixed term not exceeding five years and may be re-elected for further terms.

2. The Director-General shall be the chief executive of the Enterprise and shall be directly responsible to the Governing Board for the conduct of the business of the Enterprise. He shall be responsible for the organization, management, appointment and dismissal of the staff in accordance with the

rules and regulations referred to in article 6, subparagraph (j) this annex.

3. The Director-General and the staff of the Enterprise, in the discharge of their duties, shall not seek or receive instructions from any Government or from any other source. They shall refrain from any action which might reflect on their position as international officials of the Enterprise responsible only to the Enterprise. The members of the Authority shall respect the international character of the Director-General and the staff of the Enterprise and shall refrain from all attempts to influence any of them in the discharge of their duties.

4. In appointing the staff, the Director-General shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on an equitable geographical basis.

Article 8
Location

The Enterprise shall have its principal office at the seat of the Authority. The Enterprise may establish other offices and facilities in the territory of any member of the Authority with the consent of the member.

Article 9
Provision of reports

1. The Enterprise shall, not later than three months after the end of each financial year, submit to the Council for its consideration an annual report containing an audited statement of its accounts and shall transmit to the Council at appropriate intervals a summary statement of its financial position and a profit and loss statement showing the results of its operations.

2. The Enterprise shall publish its annual report and such other reports as it deems appropriate.

3. Copies of all reports and financial statements referred to in this article shall be distributed to the members of the Authority.

Article 10
Allocation of net income

1. Subject to paragraph 3, the Enterprise shall make payments to the Authority under article 13 of Annex III or their equivalent.

2. The Assembly shall, upon the recommendation of the Governing Board, determine what portion of the net income of the Enterprise shall be retained as its reserves. The remainder shall be transferred to the Authority.

3. During an initial period required for the Enterprise to become self-supporting, which shall not exceed 10 years from the commencement of its commercial production, the Assembly shall exempt the Enterprise from the payments referred to in paragraph 1, and shall leave all of the net income of the Enterprise in its reserves.

Article 11
Finance

1. The funds of the Enterprise shall include:

(a) amounts received from the Authority in accordance with article 173, paragraph 2 (b);

(b) voluntary contributions made by States Parties for the purpose of financing activities of the Enterprise;

(c) amounts borrowed by the Enterprise in accordance with the provisions of paragraphs 2 and 3;

(d) income of the Enterprise through its operations;

(e) other funds made available to the Enterprise to enable it to carry out its functions and to commence operations as soon as possible.

2. (a) The Enterprise shall have the power to borrow funds and to furnish such collateral or other security as it may determine. Before making a public sale of its obligations in the markets or currency of a State Party, the Enterprise shall first obtain the approval of that State Party. The total amount of borrowings shall be approved by the Council upon the recommendation of the Governing Board.

(b) States Parties shall make every reasonable effort to support application by the Enterprise for loans in capital markets and from international financial institutions.

3. (a) The Enterprise shall be provided with the funds necessary to explore and exploit one mine site, to transport, process and market the metals recovered therefrom, namely, nickel, copper, cobalt and manganese, and to meet its initial administrative expenses. The amount of the said funds, and the criteria and factors for its adjustment, shall be included by the Preparatory Commission in the draft rules, regulations and procedures of the Authority.

(b) All States Parties shall make available to the Enterprise an amount equivalent to one half of the funds referred to in subparagraph (a) above by way of long-term interest-free loans in accordance with the scale of assessments for the United Nations regular budget in force at the time when the contributions are made, adjusted to take into account the States which are not members of the United Nations. Debts incurred by the Enterprise in raising the other half of the funds shall be guaranteed by all States Parties in accordance with the same scale.

(c) In the event that the sum of the financial contributions of States Parties ratifying or acceding to the Convention is less than the funds to be provided to the Enterprise under subparagraph (a), the Assembly shall, at its first meeting, examine the extent of the shortfall and, taking into account the obligation of States Parties under subparagraphs (a) and (b) and the recommendations of the Preparatory Commission, adopt, by consensus, measures for dealing with the shortfall.

(d) Each State Party shall, within sixty days after the entry into force of this Convention, or within thirty days after the date of deposit of its instrument of ratification, acceptance or approval, whichever is later, deposit with the Enterprise irrevocable non-negotiable non-interest-bearing promissory notes in the amount of the share of such State Party of interest-free loans under paragraph 3 (b).

At the earliest practicable date after this Convention enters into force and thereafter, at annual or other appropriate intervals, the Governing Board of the Enterprise shall prepare a schedule of the magnitude and timing of its requirements for the funding of its administrative expenses and for carrying out activities under article 170 of the Convention and article 12 of this annex.

The States Parties shall, thereupon, be notified by the Enterprise, through the Authority, of their respective shares of the funds in accordance with paragraph 3 (b), required for such expenses. The Enterprise shall encash such amounts of the promissory notes as may be required to meet the expenditure referred to in the schedule with respect to interest-free loans.

States Parties shall, upon receipt of such notification, make available their respective shares of guarantees of debt of the Enterprise in accordance with paragraph 3 (b).

(e) Upon request by the Enterprise, a State Party may provide a guarantee covering debts additional to the amount it has guaranteed in accordance with or on the basis of the said scale. In lieu of debt guarantee, a State Party may make a voluntary contribution to the Enterprise in an amount equivalent to that portion of the debts which it would otherwise be liable to guarantee.

(f) The repayment of the interest-bearing loans shall have priority over the repayment of the interest-free loans. The repayment of interest-free loans shall be in accordance with a schedule adopted by the Assembly, upon the recommendation of the Council and the advice of the Governing Board of the Enterprise. In the performance of this function the Governing Board of the Enterprise shall be guided by the relevant provisions of the rules, regulations and procedures. Such rules, regulations and procedures shall take into account the paramount importance of ensuring the performance of the Enterprise and, in particular, ensuring its financial independence.

(g) Funds made available to the Enterprise shall be in freely usable currencies or currencies which are freely available and effectively usable in the major foreign exchange markets. These currencies shall be defined in the rules, regulations and procedures of the Authority in accordance with prevailing international monetary practice. Except as provided in article 6 (m) of this annex, no State Party shall maintain or impose restrictions on the holding, use or exchange by the Enterprise of these funds.

(h) A "debt guarantee" shall mean a promise of each State Party to creditors of the Enterprise to pay, pro rata *in accordance with the appropriate scale, the financial obligations of the Enterprise covered by the guarantee following notice by the creditors to the State Party of a default by the Enterprise. Procedures for the payment of those obligations shall be in conformity with the rules, regulations and procedures of the Authority.*

4. The funds, assets and expenses of the Enterprise shall be kept separate from those of the Authority. The provisions of this article shall not prevent the Enterprise from making arrangements with the Authority regarding facilities, personnel and services and arrangements for reimbursement of administrative expenses paid in the first instance by either organization on behalf of the other.

5. The records, books and accounts of the Enterprise, including its annual financial statements, shall be audited annually by an independent auditor to be appointed by the Council.

Article 12
Operations

1. The Enterprise shall propose to the Council projects for carrying out activities in accordance with article 170. Such proposals shall include a formal written plan of work for activities in the Area in accordance with article 153, paragraph 3, and all such other information and data as may be required from time to time for its appraisal by the Technical Commission and approval by the Council.

2. Upon approval by the Council, the Enterprise shall execute the project on the basis of the formal written plan of work referred to in paragraph 1.

3. (a) To the extent that the Enterprise does not at any time possess the goods and services required for its operations, it may procure and employ them. Procurement of goods and services required by the Enterprise shall be effected by the award of contracts, based on response to invitations to tender, to bidders offering the best combination of quality, price and most favourable delivery time.

(b) If there is more than one bid offering such a combination, the contract shall be awarded in accordance with the following:

(i) The principle of non-discrimination on the basis of political or other considerations not relevant to the carrying out of operations with due diligence and efficiency;

(ii) Guidelines approved by the Council with regard to the preferences to be accorded to goods and services originating in the developing States, including the landlocked or otherwise geographically disadvantaged among them.

(c) The Governing Board may adopt rules determining the special circumstances in which the requirement of invitations to bid may in the best interests of the Enterprise be dispensed with.

4. The Enterprise shall have title to all minerals and processed substances produced by it.

5. The Enterprise shall sell its products on a non-discriminatory basis. It shall not give non-commercial discounts.

6. Without prejudice to any general or special power conferred on the Enterprise under any other provision of this Convention, the Enterprise shall exercise such powers incidental to its business as shall be necessary.

7. The Enterprise shall not interfere in the political affairs of any member; nor shall it be influenced in its decisions by the political character of the member or members concerned. Only commercial considerations shall be relevant to its decisions, and these considerations shall be weighed impartially in order to carry out the purposes specified in article 1.

Article 13
Legal status, immunities and privileges

1. To enable the Enterprise to perform its functions, the status, immunities and privileges set forth herein shall be accorded to the Enterprise in the territories of States Parties. To give effect to this principle the Enterprise and States Parties may, where necessary, enter into special agreements.

2. The Enterprise shall have such legal capacity as is necessary for the performance of its functions and the fulfilment of its purposes and, in particular, the capacity:

(a) To enter into contracts, joint arrangements, or other arrangements, including agreements with States and international organizations;

(b) To acquire, lease, hold and dispose of immovable and movable property;

(c) To be a party to legal proceedings in its own name.

3. Actions may be brought against the Enterprise only in a court of competent jurisdiction in the territories of a member in which the Enterprise has an office, has appointed an agent for the purpose of accepting service or notice of process, has entered into a contract for goods or services, has issued securities or is otherwise engaged in commercial activity. The property and assets of the Enterprise, wheresoever located and by whomsoever held, shall be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Enterprise.

4. (a) The property and assets of the Enterprise, wheresoever located and by whomsoever held, shall be immune from confiscation, expropriation, requisition, and any other form of seizure by executive or legislative action.

(b) The property and assets of the Enterprise, wheresoever located and by whomsoever held, shall be free from discriminatory restrictions, regulations, controls and moratoria of any nature.

(c) The Enterprise and its employees shall respect local laws and regulations in any State or territory in which the Enterprise or its employees may do business or otherwise act.

(d) States Parties shall assure that the Enterprise enjoys all rights, immunities and privileges afforded by States to entities conducting business within such States. These rights, immunities and privileges shall be afforded the Enterprise on no less favourable a basis than afforded by States to similarly engaged commercial entities. Where special privileges are provided by States for developing States or their commercial entities, the Enterprise shall enjoy such privileges on a similarly preferential basis.

(e) States may provide special incentives, rights, privileges and immunities to the Enterprise without the obligation to provide such incentives, rights, privileges or immunities to other commercial entities.

5. The Enterprise shall negotiate with the host countries in which its offices and facilities are located for exemption from direct and indirect taxation.

6. Each member shall take such action as is necessary for the purpose of making effective in terms of its own law the principles set forth herein in this annex and shall inform the Enterprise to the detailed action which it has taken.

7. The Enterprise in its discretion may waive any of the privileges and immunities conferred under this article or in the special agreements referred to in paragraph 1 to such extent and upon such conditions as it may determine.

During the discussion at the First Committee on the report of the co-ordinators of the Working Group of 21, a number of delegations expressed views which are of relevance to the Enterprise:

(a) The representative of **China** said that the provisions in Annex III, article 13, paragraph 1 (e) were absolutely necessary in order to ensure that the Enterprise could engage in mining effectively at the same time as States Parties and/or public or private enterprises seeking to embark on international seabed exploration and exploitation. Consequently, the fee levied by the Authority on contractors exploiting the Area must be sufficient to enable the Enterprise to engage in exploration on its own behalf.

Concerning the capital needed by the Enterprise to exploit the first mines, he noted that the new text did not seem to provide for financial resources, which could compensate for any shortfalls in financial contributions.

The text concerning the transfer of technology needed by the Enterprise to carry out exploration activities was an improvement. However, two important questions remained unresolved. First, the transfer of processing technology should have been dealt with in Annex III, article 5, paragraph 3 instead of being related to paragraph 5 of that article, which removes any guarantee that the Enterprise would be able to obtain such technology. Secondly, the time-limit for the transfer of technology, as defined in article 5, paragraph 7, was unnecessary.[110]

(b) The representative of **Finland** considered the new proposal concerning the system for the financing of the Enterprise to be a marked improvement

over the previous text, since it would not be disadvantageous to States which ratified the future Convention at an early stage.[111]

(c) The representative of **Zambia** said that the text of Annex III, article 5, concerning the transfer of technology, could be improved to ensure that developing countries received the technology which would help them in their activities, particularly in the Area. The Enterprise should also be provided with such technology.[112]

The Chairman of the First Committee, in his report to the Plenary of the Conference on 26 August 1980 (A/CONF.62/L.62) introduced the changes concerning the Enterprise as follows:

The Statute of the Enterprise (Annex IV) had been refined and several changes had been made to clarify difficulties faced by some States. An important addition to article 6 empowered the Governing Board to prepare and submit applications for production authorization to the Council. That provision was required in the light of the proposed changes to article 151, paragraph 2, and Annex III, article 7.[113]

The new text of article 11, paragraph 3 (a), in Annex IV, suggested that the Preparatory Commission should fix not only the amount of funds to be provided to the Enterprise but also the criteria and factors by which the amount might be adjusted, and that the recommendation of the Preparatory Commission should be embodied in the form of the draft rules, regulations and procedures of the Authority. That had avoided prejudging the question of the status of the rules, regulations and procedures drawn up by the Preparatory Commission, and had filled the gap in the second revision of the *negotiating text.*[114]

The scale of assessments for providing funds for the Enterprise under article 11 had been replaced by the scale of assessment for the United Nations regular budget, adjusted to take account of States not members of the United Nations. After adjustment, the percentage of each State Party's contribution to the Enterprise would be slightly less than its percentage under the United Nations scale of assessment for the regular budget.[115]

In view of objections by both the Group of 77 and the industrialized countries to the proposals in *negotiating text* for dealing with the question of a shortfall of funds to the Enterprise, it was now proposed that, if the sum of the financial contributions of States Parties ratifying or acceding to the Convention was less than the funds to be provided to the Enterprise, the Assembly should, at its first meeting, examine the extent of the shortfall and take into account the obligation of States Parties under article 11, paragraphs 3 (a) and 3 (b), and the recommendations of the Preparatory Commission, and adopt measures for dealing with the shortfall, deciding the question by consensus.[116]

Further refinements had also been introduced regarding the timing and form of payments by States Parties to the Enterprise and provisions had been added concerning the repayment schedule, which had been a matter of concern to the industrialized countries. Improved provisions had been introduced concerning the term of "debt guarantees."[117]

During the general debate at the Plenary of the Conference, a number of delegations expressed their views on the Enterprise as follows:

(a) The representative of **India** said that priority for the Enterprise in seabed mining had also been clearly recognized, as had the obligation on all States and contractors to transfer technology in order to enable the Enterprise to develop the reserved area concurrently with developments in the non-reserved area. The obligation would exist up to ten years after commencement of commercial production by the Enterprise. The parallel system of exploitation would be reviewed after fifteen years of effective operation. His delegation agreed with those aspects of the package.[118]

(b) The representative of **Liberia** said that encouraging progress had been made with regard to the compromise on the Enterprise, including the fact that, under Annex IV, article 11, States would know the approximate amount which they would be obliged to pay to the Enterprise when their parliaments ratified the Convention. That fact would thus speed up ratification.

The question of how to deal with a shortfall in the funds made available to the Enterprise had not yet been solved, but any solution adopted should penalize neither States which has already ratified the Convention, nor States which were considering ratification. The existing text, as his delegation understood it, was unacceptable in that it did not provide the inclusion of processing technology in the transfer of technology and insufficiently forceful language was used to express their obligation of the contractor to transfer to the Enterprise technology belonging to a third party.[119]

(c) The representative of **Yugoslavia** said that, on the transfer of technology, his delegation found the proposed text unsatisfactory. The definition of the transfer of technology to the Enterprise should include all stages of activity, and at least that of processing.

It was particularly important to find a satisfactory solution for the problem of the financing of the Enterprise. In his view, the text in the second revision offered a far better solution than the one proposed in the new document. Since the Enterprise was an organ of the Authority, the shares of the States members should be paid to the Enterprise in order to enable it to start exploitation.[120]

(d) The representative of **Ecuador** said that the principle that the Area and its resources were the common heritage of mankind must be translated into reality, and, to that end, it was necessary to strengthen the powers of the Authority and the Enterprise through the transfer of technology to those bodies and the developing States, and through the provision of the financial resources that they needed in order to operate for the benefit of mankind and to compete on an equal footing with other States or private enterprises.[121]

(e) The representative of **Honduras** said that Honduras supported the system of financing for the Enterprise, together with the recommendations concerning the transfer of technology, including the system provided for in Annex III, article 5 (in particular in paragraph 3 (e) and the new paragraph 7 of that article).[122]

(f) The representative of **Mauritius**, turning to the problem of the relationship between the Enterprise and the Authority, thought that the Enterprise

should be endowed with sufficient autonomy to enable it to plan its operations, with the necessary degree of flexibility, failing which its viability and the very existence of the parallel system might be jeopardized. As the amendments and additions made to article 5, paragraph 5, and article 7, paragraph 3, of Annex IV were not desirable in that they were likely to hamper the operations of the Enterprise, he felt that they should be rejected.[123]

(g) The representative of **São Tomé and Principe** said that in his opinion, the report of the co-ordinators of the Working Group of 21 did not go far towards meeting the developing countries' aspirations. The moratorium clause had not been inserted in article 155, as the group of African States had wished; in its present form, the transfer of technology offered the Enterprise no guarantee of effectiveness; the financing system of the Enterprise would be mainly of benefit to the industrialized countries, since the text did not guarantee its operational nature.[124]

(h) The representative of **Nigeria** said that with regard to the exploitation of the Area, his Government had favoured the joint venture system of exploration and exploitation. In the end that system had not been accepted since the Conference had preferred the "parallel system." His delegation thought that with good will on the part of all concerned, the system adopted would work. With respect to the details of operation, it was his delegation's understanding that States Parties to the Convention would provide one half of the funds which the Enterprise would need for its first mining venture and would guarantee the loans contracted by it in order to obtain the other half. The Conference still had to decide whether that arrangement would suffice to make the Enterprise operational and how the initial shortfall would be financed if potential contributors were slow in ratifying the Convention.

In addition to financial support, the Enterprise would need technology. Simply ensuring that a third party contract transferred technology to the Enterprise without imposing any obligation on the developed countries was unsatisfactory. The provisions on those two issues would have to be improved before they were acceptable to his delegation.[125]

(i) The representative of **Indonesia** said that on the question of the transfer of technology, his delegation believed that certain improvements had been made and hoped that others could still be made in order to strike a balance between the interest of the Enterprise and the developing countries, on the one hand and the possessors of the technology and scientific knowledge, on the other.[126]

(j) The representative of **Nepal** said that he considered that in view of their insignificant benefits from the exploitation of the exclusive economic zone and the continental shelf, developing countries, and particularly the least developed and landlocked countries, should be exempted from payment of any contributions for the funding of the Enterprise.

He reminded the Conference of the proposal for the establishment of a common heritage fund. Its basic purpose was to ensure that a substantial portion of ocean mineral revenues was used to promote human welfare, princi-

pally by assisting developing nations to promote world peace, to protect the marine environment, to foster the transfer of marine technology, to assist the relevant work of the United Nations and to help finance the Enterprise.[127]

(k) The representative of **Morocco** said that Annex IV should guarantee the administrative and financial autonomy of the Enterprise more clearly.[128]

(l) The representative of the **United States** said that with regard to the transfer of technology, Annex III, article 5, paragraph 3 (e) did not in any way contribute to getting the Enterprise into operation or making it a sturdier body. That paragraph, however, raised a very sensitive issue for his Government since it had a bearing on the United States position in other negotiations. His Government would study that paragraph and its implications critically when considering signature of the convention. His delegation consequently remained committed to its deletion.[129]

(m) The representative of **Kenya**, turning to the question of the transfer of technology to the Enterprise, stressed that it was important for the Enterprise to be provided with the necessary technology, which for a long time to come would remain in the hands of the developed countries. For that reason, his delegation proposed that the period within which an operator undertook to transfer technology should be increased from ten to twenty-five years.[130]

(n) The representative of **Tanzania** said that his delegation continued to maintain that the best way to guarantee equitable participation in the activities of Area and in the distribution of its resources was through the Enterprise system. It had accepted the parallel system as a compromise but had serious reservations as to its success. Under that system, both the Enterprise and States would participate in the exploitation of the resources of the Area for at least twenty years. However, whereas access to the Area by States and their entities was assured, the viability of the Enterprise was not. The provisions on the financing of the Enterprise and those on the transfer of technology were also inadequate. The "open market" requirement made it more difficult for the Enterprise to acquire adequate technology.

The parallel system had been presented as an interim one, to last for twenty years; if it did not work, a new system might come into operation. His delegation had insisted that, at the end of that period, the Enterprise system should automatically be introduced, but it had been prevailed upon not to prejudge what system should be favoured at that stage. On that basis, his delegation had urged that neither the parallel system nor the Enterprise system should prevail, but that the Review Conference should decide on the adoption of one system or the other.

During the negotiations, the assurance had repeatedly been given that the parallel system would work and that the Enterprise would obtain the capital it needed, at least for one project in order to establish its viability and attract capital from the open market; also, that the Enterprise would receive technology and that seabed mining would not affect land-based production. It was on those understandings that his delegation was prepared to consider that text as a basis for the final round of negotiations.[131]

(o) The representative of **Australia** said that on the financing of the Enterprise, whose viability must be ensured, his delegation considered that States Parties needed to know the maximum amount of their contributions before ratifying the Convention. There was also a need to avoid a shortfall provision which would act as a disincentive to early ratification. In that connection, the solutions proposed by the Chairman of the First Committee in his report constituted an improvement on the provisions in the present text.[132]

(p) The representative of **Sri Lanka** said that his delegation deeply regretted that the negotiators had been unable to agree on complete tax exemption for the Enterprise in recognition of its unique character and objectives. However, it welcomed the changes made in the Statute of the Enterprise which tended to enhance its financial independence, in particular through the new provision of Annex IV, article 11, paragraph 3 (f) on the repayment of interest-free loans.[133]

(q) The representative of **Austria** said that the provisions for the financing of the Enterprise were such as to discourage ratification of the Convention. However, the new text of Annex IV, article 11, paragraph 3 (d) reflected Austria's views better than the former text.[134]

(r) The representative of **Chile** said that the negotiations on the transfer of technology and the means of financing the Enterprise had been completed through compromise resolutions which also seemed realistic, although his delegation would again have preferred different solutions.[135]

(s) The representative of **Algeria** said that Annex IV, article 11, paragraph 3 should be amended to enable the Enterprise to avail itself of financial means which would allow it to act at least as quickly as private or State entities.[136]

(t) The representative of the **United Kingdom** welcomed the new text proposed for Annex IV, article 11, on the financing of the Enterprise but in view of the very high contribution to that project, his Government reserved its position pending a full evaluation.[137]

(u) The representative of **Zambia** said that the provisions relating to the transfer of technology should enable the Enterprise and all countries to begin exploitation of the Area at the same time.[138]

(v) The representative of **Poland** said that like the majority of delegations, his delegation believed that the Enterprise should be viable and that it should start activities in the Area as soon as possible. However, while accepting the necessity of providing the Enterprise with the necessary funds and technology, his delegation believed that the financial burden placed on States should be proportionate to the benefits which they would derive from the exploitation of the resources of the Area. In that connection, he noted with satisfaction that the system of payment of interest-free loans by States Parties had been made more flexible and was now more in keeping with real requirements for the funding of the Enterprise. His delegation had no objection to the inclusion of the new provisions in the revised text.[139]

(w) The representative of **Spain** expressed concern regarding the provisions for the financing of the Enterprise.[140]

(x) The representative of **Sierra Leone** said that the provision dealing with the transfer of technology in article 5 of Annex III was hedged about with conditions and the entire burden of acquiring technology had been placed on the Enterprise. The Group of 77 felt that the obligation to transfer processing technology in order to make the system viable should be expressly stated in the Convention.

On the financial arrangements, the Group of 77 had concluded that the funds for the Enterprise's first mining site had not been guaranteed and that the Enterprise must be exempted from paying tax.

His delegation could not fail to note that the commitment of industrialized countries on the transfer of technology to the Enterprise had been severely restricted. The industrialized countries had refused to state expressly that processing technology would be made available to the Enterprise and thus there was no guarantee that it would be able to operate a viable system. With regard to financial arrangements, no formula had been devised to ensure that all the funds committed would be available if some States decided not to become party to the Convention in which case the funds required for the first integrated operation might not be forthcoming and the Authority might be compelled to undertake something less than a fully integrated operation.[141]

(y) The representative of **Somalia** said that with regard to the transfer of technology the Enterprise should be enabled to obtain the technology necessary not only for recovering mineral resources from the seabed, but also for the processing of such minerals. The definition of technology contained in Annex III, article 5, paragraph 8, should therefore be amended to include processing technology.[142]

(z) The representative of the **Netherlands** stated that although a number of improvements had been made to Annex IV, his delegation wished to make the following observations. It assumed that the Enterprise was responsible, only for the transportation, processing and marketing of minerals which it itself recovered from the Area. In article 11, it should be made clear that the financial obligations vis-á-vis the Enterprise could be invoked only if and when activities by operators and the Enterprise could be undertaken. Furthermore, those obligations should be invoked in the light of the operational needs of the Enterprise. In that respect, it was essential that the amount required by the Enterprise to explore and exploit its first mine site should be established as soon as possible.[143]

(aa) The representative of **Swaziland**, on the question of the transfer of technology, welcomed the improvements made to Annex III, article 5, paragraph 7, which would ensure that all contracts between seabed miners and the Authority approved from the start of the new system until ten years after the Enterprise had begun commercial production contained provisions committing the contractor to transfer to the Enterprise any technology he might use in carrying out activities in the Area. Thus even a contractor who started operations in the ninth year would be obliged to transfer technology in accordance with article 5.

With regard to Annex III, article 5, paragraph 3 (c), he did not believe that the legally binding and enforceable right of the contractor to transfer third party technology to the Enterprise without substantial costs, would negate such a transfer. If substantial costs were entailed, the Enterprise would have and should exercise, the option of paying the additional costs. In addition, his delegation would favour a more explicit definition of technology, covering technology for processing minerals extracted from the Area. It seemed illogical that provision was made in Annex IV, article 11, paragraph 3, for funds to enable the Enterprise to process metals while there was no explicit provision in Annex III, article 5, paragraph 8, for the transfer of technology to achieve that end.

The Enterprise appeared to be structured as a viable commercial body enjoying autonomy in respect of its business. Such autonomy was a critical element in ensuring the success of a commercial undertaking.[144]

(bb) The representative of **Denmark** found the financial arrangements generally acceptable. He was committed to the creation of a viable Enterprise and endorsed, in particular, the new wording of Annex IV, article 11.[145]

(cc) The representative of **Japan** reiterated his position that with regard to the financing of the Enterprise, the amount of contributions should be specified in some manner at the time of signing the Convention.[146]

(dd) The representative of **Jamaica** said that with regard to the First Committee package, and in particular the proposals in the report of the co-ordinators of the Working Group of 21, debits should be balanced against credits. On the credit side, there had been considerable improvements in the provisions regarding transfer of technology, particularly in Annex III, article 5, paragraph 3 (c), which related to the undertaking by the operator to acquire a legally binding and enforceable right to transfer third-party technology to the Enterprise, and Annex III, article 5, paragraph 7, regarding the period during which the obligation to transfer technology might be invoked. It was still necessary to ensure that the guarantees in respect of the transfer of technology would be adequate to serve the basic purpose of promoting a viable Enterprise on a continuing basis as an essential element of the parallel system.[147]

(ee) The representative of **Belgium** said that his delegation had already stated on numerous occasions that it supported the transfer of technology to the Enterprise under fair marketing conditions, but the articles in Annex III on the subject were not entirely satisfactory.

The funding of the Enterprise would be considered as the price to be paid in order to benefit from the advantages offered by the Convention. His delegation did not wish to commit itself at the present stage, but it could not agree to the idea that States should be requested to provide a blank cheque for the financing of the Enterprise; that was precisely what Annex IV, article 11 proposed, since it did not stipulate the amount of contributions which States might be called upon to pay to the Enterprise. That again might cause the national bodies responsible for ratifying the Convention to hesitate.[148]

(ff) The representative of the **Libyan Arab Jamahiriya** said that the provision in Annex IV, article 5, on the transfer of technology did not meet the

aspirations of the developing countries in supporting the role of the Enterprise. The text should be considerably improved and technology must be understood to cover processing technology as well.

Annex IV, article 11, on the financing of the Enterprise was very inequitable. The industrialized countries, particularly those most advanced in the exploration and exploitation of the seabed beyond the 200-mile limit, should contribute a larger share to the financing of the Enterprise.[149]

(gg) The representative of **Tonga** said that the questions of the financing of the Enterprise and the administrative costs of the Authority were matters of no less concern. Many small countries like Tonga would find it extremely burdensome to make a contribution on which there was little likelihood of a quick return. Some way must be found to alleviate the financial burden on such countries, or they might otherwise hesitate to ratify the Convention.[150]

(hh) The representative of **Viet Nam** said that although the work of the First Committee had on the whole been positive, his delegation nevertheless had reservations on certain issues. It would have preferred the financing of the first mine site worked by the Enterprise to be underwritten mainly by the contractors who would profit most from the exploitations of the international seabed. In a spirit of compromise, however, it would agree to the incorporation of the text of document A/CONF.62/C.1/L.28/Add.1 in the third revision.[151]

(ii) The representative of **Malaysia** welcomed, with regard to the financial arrangements and the Statute of the Enterprise, the proposed amendments to Annex IV, article 11, paragraphs 3 (a), (b), (c), (d), (f), (g) and (h) relating to the financing of the Enterprise.[152]

End Notes

1 *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. XIII, (United Nations Publication, Sales No. E.81.V.5), Summary Records of meetings, Ninth Session: New York, 3 March-4 April 1980, Document of the First Committee, Documents A/CONF.62/C.1/L.27 and Add.1, Report of the co-ordinators of the Working Group of 21, pp. 113-137.
2 Ibid, Part II, system of exploration and exploitation, p. 113, para. 1.
3 Ibid, 114, para. 12.
4 Ibid, 115 para. 17.
5 Ibid, para. 20.
6 Ibid.
7 Ibid, para. 21.
8 Ibid, pp. 116-120.
9 Ibid, pp. 116-120.
10 Ibid, Part III, Financial arrangements, pp. 124-132.

[11] Ibid, p. 124, paras 1 and 2.
[12] Ibid, para.4.
[13] Ibid, para. 6.
[14] Ibid, para. 6.
[15] Ibid, para. 7.
[16] Ibid, para. 8.
[17] Ibid, para. 9.
[18] Ibid, para. 10.
[19] Ibid, para. 11.
[20] Ibid, para. 12.
[21] Ibid, p. 126, para. 34.
[22] Ibid, para. 35.
[23] Ibid, para. 36.
[24] Ibid, para. 37.
[25] Ibid, p. 127, para. 39.
[26] Ibid, para. 40.
[27] Ibid, para. 41.
[28] Ibid, para. 42.
[29] Ibid, para. 43.
[30] Ibid, para. 44.
[31] Ibid, para. 45.
[32] Ibid, para. 46.
[33] Ibid, para. 47.
[34] Ibid, para. 48.
[35] Ibid, para. 49.
[36] Ibid, para. 50.
[37] Ibid, para. 51.
[38] Ibid, para. 52.
[39] Ibid, para. 53.
[40] Ibid, para. 54.
[41] Ibid, p. 55.
[42] Ibid, para. 56.
[43] Ibid, pp.130-132.
[44] Ibid.
[45] Ibid, 47th meeting of the First Committee, p. 57, paras 2, 5, 7.
[46] Ibid, pp. 57-58, paras 9, 12.
[47] Ibid, p. 58, para. 19.
[48] Ibid, p. 59, para. 23.
[49] Ibid, para. 31.
[50] Ibid, 48th meeting of the First Committee, p. 61, para. 6.
[51] Ibid, p. 61, para. 8.
[52] Ibid, p. 61, para. 15.
[53] Ibid, para. 16.
[54] Ibid, p. 62, para. 22.
[55] Ibid, para. 28.
[56] Ibid, para. 32.
[57] Ibid, p. 63, para. 36.
[58] Ibid, para. 43.
[59] Ibid, para. 50.
[60] Ibid, para. 51.
[61] Ibid, pp. 63-64, para. 53.
[62] Ibid, p. 64, paras 65-66.

[63] Ibid, p. 64, para. 69.
[64] Ibid, p. 65, paras 72-73.
[65] Ibid, pp. 65-66, paras 83-84.
[66] Ibid, p. 66, para. 91.
[67] Ibid, 125th meeting of the Plenary, 2 April 1980, p. 7, para. 14.
[68] Ibid, pp. 9-10, paras 40, 42.
[69] Ibid, p. 10, para. 48.
[70] Ibid, p. 10, para. 53.
[71] Ibid, 126th meeting of the Plenary, p. 12, para. 12.
[72] Ibid, p. 12, paras 19, 22.
[73] Ibid, p. 13, para. 27.
[74] Ibid, p. 17, para. 84.
[75] Ibid, p. 18, pp. 104-105.
[76] Ibid, p. 19, para. 121.
[77] Ibid, p. 20, paras 133, 135.
[78] Ibid, p. 21, para. 139.
[79] Ibid, 127th meeting of the Plenary, 3 April 1980, p. 26, para. 33.
[80] Ibid, p. 28, para. 47.
[81] Ibid, p. 29, para. 55.
[82] Ibid, p. 29, para. 66.
[83] Ibid, p. 31, paras 89, 91.
[84] Ibid, 128th meeting of the Plenary, 3 April 1980, p. 33, para. 11.
[85] Ibid, p. 36, para. 63.
[86] Ibid, p. 39, para. 97.
[87] Ibid, p. 40, para. 110.
[88] Ibid, p. 44, para. 165.
[89] Ibid, p. 45, para. 184.
[90] Ibid, p. 46, paras 191, 194 & 195.
[91] Ibid, p. 48, paras 223, 225.
[92] Ibid, p. 49, paras 239, 240.
[93] Ibid, pp. 49-50, para. 251.
[94] For the full text, *see* United Nations Third Conference on the Law of the Sea, Ninth Session, New York, 3 March - 4 April 1980, Document A/CONF.62/WP. 10/Rev.2, 11 April 1980, in Renate Platzöder, *Third United Nations Conference on the Law of the Sea*, Vol. II, Oceana Publications, Inc, 1982, pp. 3-175
[95] *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. XIV, (United Nations Publication, Sales No. E.82.V.2), Summary Records of meetings, resumed Ninth Session: Geneva, 28 July ~ 29 August 1980, Documents of the First Committee, Documents A/CONF. 62/C.1/L. 28 and Add.1, Report of the co-ordinators of Working Group of 21 to the First Committee (23 August 1980), pp. 161-184.
[96] Ibid, pp. 161-162.
[97] Ibid, p. 167.
[98] Ibid, pp. 167-168.
[99] Ibid, p. 168.
[100] Ibid.
[101] Ibid.
[102] Ibid.
[103] Ibid, pp. 168-169.
[104] Ibid, p. 169.
[105] Ibid.
[106] Ibid.
[107] Ibid.

[108] Ibid, p. 172.
[109] Ibid, for the full text *see* pp. 172-184. For the current excerpts, *see* pp. 177-178 & pp. 181-184.
[110] Ibid, 49th meeting of the First Committee, 22 August 1980, p. 97, paras 4-5.
[111] Ibid, p. 98, para. 25.
[112] Ibid, p. 100, para. 58.
[113] Ibid, Document A/CONF.62/L.62, Report of the Chairman of the First Committee, 26 August 1980, p. 138, para. 25.
[114] Ibid, p. 138, para. 26.
[115] Ibid, p. 138, para. 27.
[116] Ibid, p. 138, para. 28.
[117] Ibid, p. 138, paras 29-30.
[118] Ibid, 134th meeting of the Plenary, 25 August 1980, pp. 15-16, para. 49.
[119] Ibid, p. 16, para. 55.
[120] Ibid, pp. 17-18, paras 75-76.
[121] Ibid, p. 19, para.6.
[122] Ibid, 135th meeting of the Plenary, 25 August 1980, p. 20, para. 12.
[123] Ibid, p. 25, para. 73.
[124] Ibid, p. 25, para. 81.
[125] Ibid, p. 27, paras 100-101.
[126] Ibid, p. 29, para. 129.
[127] Ibid, 136th meeting of the Plenary, 26 August 1980, p. 31, paras 1-2.
[128] Ibid, p. 36, para. 79.
[129] Ibid, p. 39, para. 121.
[130] Ibid, p. 40, para. 133.
[131] Ibid, pp. 40-41, paras 142, 146, and 149.
[132] Ibid, 137th meeting of the Plenary, 26 August 1980, p. 42, para. 12.
[133] Ibid, p. 43, para. 20.
[134] Ibid, p. 45, para. 42.
[135] Ibid, p. 47, para. 65.
[136] Ibid, p. 48, para. 74.
[137] Ibid, p. 48, para. 85.
[138] Ibid, p. 49, para. 91.
[139] Ibid, 138th meeting of the Plenary, 26 August 1980, p. 52, para. 12.
[140] Ibid, p. 53, para. 37.
[141] Ibid, p. 54, paras 55 and 58.
[142] Ibid, p. 56, para. 76.
[143] Ibid, p. 58, para. 105.
[144] Ibid, p. 60, paras 127, 129.
[145] Ibid, p. 61, para. 145.
[146] Ibid, 139th meeting of the Plenary, 27 August 1980, p. 63, para. 8.
[147] Ibid, p. 70, para. 136.
[148] Ibid, p. 73, paras 181-182.
[149] Ibid, pp. 73-74, paras 189-190.
[150] Ibid, 140th meeting of the Plenary, 27 August 1980, p. 76, para. 13.
[151] Ibid, p. 78, para. 34.
[152] Ibid, p. 78, para. 45.

IX. TENTH SESSION AND RESUMED TENTH SESSION OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA (NEW YORK, 9 MARCH-16 APRIL 1981, GENEVA, 3-28 AUGUST 1981)

During the first part of the Tenth Session, the First Committee held four meetings. The first two were devoted to the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea. The other two meetings were devoted to the reports of the Secretary-General on potential financial implications for States Parties to the future Convention on the Law of the Sea[1] and the effects of the production limitation formula under certain specified assumptions.[2] In addition, the First Committee took up for the first time the issue of the seat of the Authority.[3]

On the report of the Secretary-General on potential financial implications for States Parties to the future Convention, the representative of Jamaica said that the study had separated the costs of the Enterprise from those of the Authority, in accordance with the provisions of the draft Convention. The Enterprise was an integral part of the Authority and would be required to operate in accordance with commercial principles and to meet certain standards of efficiency. Estimates of the non-recurring costs of the Enterprise ranged from $31 million to almost $70 million, while estimates for the recurring costs ranged from $5.1 million to $7.9 million. The separation of costs meant that costs were higher than they would be if shared facilities were provided. For example, some $30 million would be saved in the construction of conference halls if the Enterprise and the Authority used common facilities. If the Enterprise were to be regarded as part of the Authority and shared various facilities with it, the order of magnitude envisaged and the consequent burden on the international community could be substantially lower.[4]

No comments were made on the Enterprise during the discussions at the Plenary meetings of the Conference.

The First Committee held one meeting during the resumed Tenth Session. The meeting was devoted to the report of the Chairman on negotiations in that Committee during the resumed Session.[5]

At the 66th meeting of the Plenary during the resumed Tenth Session on 24 August 1981, the Conference adopted the recommendation made by the Collegium of the General Committee that the draft Convention contained in document A/CONF.62/WP.10/Rev.3 and Corr. 1 and 3 be revised at the end of the Session. The Collegium of the General Committee recognized that the revised draft Convention should have a higher status as the official draft Convention on the Law of the Sea, other than an "informal text," subject, however, to three conditions:

Firstly, the door would be kept open for the continuation of consultations and negotiations on certain outstanding issues. The results of these consultations and negotiations, if they were to satisfy the criteria in document A/

CONF.62/62, would be incorporated in the draft Convention by the Collegia without the need for formal amendments. Secondly, the Drafting Committee would complete its work and its further recommendations, approved by the informal Plenary Conference, would be incorporated in the text. Thirdly, in view of the fact that the process of consultations and negotiations on certain outstanding issues would continue, the time had, therefore, not arrived for the application of rule 33 of the rules of procedure of the Conference. At this stage, delegations would not be permitted to submit amendments. Formal amendments could only be submitted after the termination of all negotiations.[6]

The results of the work undertaken by the Collegia pursuant to the above decision were incorporated in the draft Convention on the Law of the Sea. In the draft Convention the articles relevant to the Enterprise read as follows:

Draft Convention on the Law of the Sea[7]
(A/CONF.62/L.78)

...

Article 170
The Enterprise

1. The Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly, pursuant to article 153, paragraph 2 (a), as well as transportation, processing and marketing of minerals recovered from the Area.

2. The Enterprise shall, within the framework of the international legal personality of the Authority, have such legal capacity as is provided for in the Statute set forth in Annex IV. The Enterprise shall act in accordance with the provisions of this Convention and the rules, regulations and procedures of the Authority, as well as the general policies established by the Assembly, and shall be subject to the directives and control of the Council.

3. The Enterprise shall have its principal place of business at the seat of the Authority.

4. The Enterprise shall, in accordance with article 173, paragraph 2, and Annex IV, article 11, be provided with such funds as it may require to carry out its functions, and shall receive technology as provided in article 144 and other relevant provisions of this Convention.

...

ANNEX III
BASIC CONDITIONS OF PROSPECTING, EXPLORATION AND EXPLOITATION

Article 1
Title to minerals

Title to minerals shall pass upon recovery in accordance with this Convention.

Article 2
Prospecting

1. (a) The Authority shall encourage the conduct of prospecting in the Area.

(b) Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector shall comply with this Convention and the relevant rules and regulations of the Authority concerning protection of the marine environment, co-operation in training programmes according to articles 143 and 144 of Part XI of this Convention and accepts verification by the Authority of compliance. The proposed prospector shall, together with the undertaking, notify the Authority of the broad area or areas in which prospecting is to take place.

(c) Prospecting may be carried out by more than one prospector in the same area or areas simultaneously.

2. Prospecting shall not confer any preferential, proprietary, exclusive or any other rights on the prospector with respect to the resources. A prospector shall, however, be entitled to recover a reasonable amount of resources of the Area to be used for sampling.

Article 3
Exploration and exploitation

1. The Enterprise, States Parties, and the other entities referred to in article 153, paragraph 2 (b), of Part XI of this Convention, may apply to the Authority for approval of plans of work covering activities of the Area.

2. The Enterprise may apply with respect to any part of the Area, but applications by others with respect to reserved areas are subject to the additional requirements of article 9.

3. Exploration and exploitation shall be carried out only in areas specified in plans of work referred to in article 153, paragraph 3, of Part XI of this Convention and approved by the Authority in accordance with the provisions of this annex and the relevant rules, regulations and procedures of the Authority.

4. Every plan of work approved by the Authority shall:

(a) be in strict conformity with this Convention and the rules and regulations of the Authority;

(b) ensure control by the Authority of activities in the Area in accordance with article 153, paragraph 4, of Part XI of this Convention;

(c) confer on the operator exclusive rights for the exploration and exploitation of the specified categories of resources in the area covered by the plan of work in accordance with the rules and regulations of the Authority. If the applicant presents a plan of work for one of the two stages only, the plan of work may confer exclusive rights with respect to such a stage.

5. Except for plans of work proposed by the Enterprise, each plan of work shall take the form of a contract to be signed by the Authority and the operator or operators upon approval of the plan of work by the Authority.

...

Article 5
Transfer of technology

1. When submitting a proposed plan of work, every applicant shall make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the Area, as well as other relevant non-proprietary information about the characteristics of such technology, and information as to where such technology is available.

2. Every operator under an approved plan of work shall inform the Authority of revisions in the description and information required by paragraph 1 whenever a substantial technological change or innovation is introduced.

3. Every contract for the conduct of activities in the Area entered into by the Authority shall contain the following undertakings by the operator:

(a) To make available to the Enterprise, if and when the Authority shall so request and on fair and reasonable commercial terms and conditions, the technology which he uses in carrying out activities in the Area under the contract and which he is legally entitled to transfer. This shall be done by means of licence or other appropriate arrangements which the operator shall negotiate with the Enterprise and which shall be set forth in a special agreement supplementary to the contract. This commitment may be invoked only if the Enterprise finds that it is unable to obtain the same or equally efficient and useful technology on the open market and on fair and reasonable commercial terms and conditions;

(b) To obtain a written assurance from the owner of any technology not covered under subparagraph (a) that the operator uses in carrying out activities in the Area under the contract and which is not generally available on the open market that the owner will, if and when the Authority so requests, make available to the Enterprise to the same extent as made available to the operator, that technology under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions. If such assurance is not obtained, the technology in question shall not be used by the operator in carrying out activities in the Area;

(c) To acquire, if and when requested to do so by the Enterprise and whenever it is possible to do so without substantial cost to the contractor, a legally binding and enforceable right to transfer to the Enterprise in accordance with subparagraph (a) any technology he uses in carrying out activities in the Area under the contract which he is not legally entitled to transfer and which is not gener-

ally available on the open market. In cases where there is a substantial corporate relationship between the operator and the owner of the technology, the closeness of this relationship and the degree of control or influence shall be relevant to the determination whether all feasible measures have been taken. In cases where the operator exercises effective control over the owner, failure to acquire the legal rights from the owner shall be considered relevant to the applicant's qualifications for any subsequent proposed plan of work;

(d) To facilitate the acquisition by the Enterprise under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions of any technology covered by subparagraph (b) should the Enterprise decide to negotiate directly with the owner of the technology and request such facilitation;

(e) To take the same measures as those prescribed in subparagraphs (a), (b), (c) and (d) for the benefit of a developing State or group of developing States which has applied for a contract under article 9, provided that these measures shall be limited to the exploitation of the part of the Area proposed by the contractor which has been reserved pursuant to article 8 and provided that activities under the contract sought by the developing State or group of developing States would not involve transfer of technology to a third State or the nationals of a third State. Obligations under this provision shall only apply with respect to any given contractor where technology has not been requested or transferred by him to the Enterprise.

4. Disputes concerning the undertakings required by paragraph 3, like other provisions of the contracts, shall be subject to compulsory dispute settlement in accordance with Part XI of this Convention, and monetary penalties, suspension, or termination of contract as provided in article 18. Disputes as to whether offers made by the contractor are within the range of fair and reasonable commercial terms and conditions may be submitted by either party to binding commercial arbitration in accordance with the United Nations Commission on International Trade Law arbitration rules or other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority. In any case in which the finding is negative, the contractor shall be given 45 days to revise his offer to bring it within that range before the Authority makes any determinations with respect to violation of the contract and the imposition of penalties, as provided in article 18.

5. In the event that the Enterprise is unable to obtain appropriate technology on fair and reasonable commercial terms and conditions to commence in a timely manner the recovery and processing of minerals from the Area, either the Council or the Assembly may convene a group of States Parties composed of those which are engaged in activities in the Area, those which have sponsored entities which are engaged in activities in the Area and other States Parties having access to such technology. This group shall consult together and shall take effective measures to ensure that such tech-

nology is made available to the Enterprise on fair and reasonable commercial terms and conditions. Each such State Party shall take all feasible measures to this end within its own legal system.

6. In the case of joint ventures with the Enterprise, technology transfer will be in accordance with the terms of the joint venture agreement.

7. The undertakings required by paragraph 3 shall be included in each contract for the conduct of activities in the Area until the Enterprise has begun commercial production of minerals from the resources of the Area, and these undertakings may be invoked until 10 years after the Enterprise has begun commercial production of minerals from the resources of the Area and may be invoked during that period.

8. For the purposes of this article, "technology" means the specialized equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to assemble, maintain and operate a viable system and the legal right to use these items for that purpose on a non-exclusive basis.

Article 6
Approval of plans of work submitted by applicants

1. Six months after the entry into force of this Convention, and thereafter each fourth month, the Authority shall take up for consideration proposed plans of work.

2. When considering an application for a contract with respect to activities in the Area, the Authority shall first ascertain whether:

(a) the applicant has complied with the procedures established for applications in accordance with article 4 and had given the Authority the commitments and assurances required by that article. In cases of non-compliance with these procedures or of absence of any of the commitments and assurances referred to, the applicant shall be given 45 days to remedy such defects;

(b) the applicant possesses the requisite qualifications pursuant to article 4.

3. All proposed plans of work shall be dealt with in the order in which they were received, and the Authority shall conduct, as expeditiously as possible, an inquiry into their compliance with the terms of this Convention and the rules, regulations and procedures of the Authority, including the operational requirements, the financial contributions and the undertakings concerning the transfer of technology. As soon as the issues under investigation have been settled, the Authority shall approve such plans of work, provided that they conform to the uniform and non-discriminatory requirements established by the rules, regulations, and procedures of the Authority, unless:

(a) Part or all of the proposed area is included in a previously approved plan of work or a previously submitted proposed plan of work which has not yet been finally acted on by the Authority; or

(b) Part or all of the proposed area is disapproved by the Authority pursuant to article 162, paragraph 2 (w), or Part XI of this Convention;

(c) The proposed plan of work has been submitted or sponsored by a State Party which already holds:

(i) plans of work for exploration and exploitation of polymetallic nodules in non-reserved sites that, together with either part of the proposed site, would exceed in size 30 per cent of a circular area of 400,000 square kilometres surrounding the centre of either part of the area covered by the proposed plan of work,

(ii) plans of work for the exploration and exploitation of polymetallic nodules in non-reserved sites which in aggregate size constitute 2 per cent of the total seabed area which is not reserved or otherwise withdrawn by the Authority from eligibility for exploitation pursuant to article 162, paragraph 2 (w), of Part XI of this Convention.

4. For the purpose of the standard set forth in paragraph 3 (c), a plan of work proposed by a partnership or consortium shall be counted on a pro rata *basis among the sponsoring States Parties involved according to article 4, paragraph 2. The Authority may approve plans of work covered by paragraph 3 (c) if it determines that such approval would not permit a State Party or persons sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the Area.*

5. Notwithstanding the provisions of paragraph 3 (a), after the end of the interim period as defined in article 151 of Part XI of this Convention, the Authority may adopt by means of rules, regulations and procedures other procedures and criteria consistent with this Convention for deciding which applicants shall have plans of work approved in cases of selection among applicants for a proposed area. These procedures and criteria shall ensure approval of plans of work on an equitable and non-discriminatory basis.

...

Article 8
Reservation of sites

Each application, other than those proposed by the Enterprise or by any others for reserved sites, shall cover a total area, which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations. The applicant shall indicate the coordinates dividing the area into two parts of equal estimated commercial value and submit all the data obtained by him with respect to both parts of the area. Without prejudice to the powers of the Authority pursuant to article 17 the data to be submitted concerning polymetallic nodules will relate to mapping, sampling, the density of nodules, and the composition of metals in them. Within 45 days of receiving such data the Authority shall designate the part which is to be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing States. This

designation may be deferred for a further period of 45 days if the Authority requests an independent expert to assess whether all data required by this article has been submitted to the Authority. The area designated shall become a reserved area as soon as the plan of work for the non-reserved area is approved and the contract is signed.

Article 9
Activities in reserved sites

1. The Enterprise shall be given an opportunity to decide whether it intends to carry out activities in each reserved site. This decision may be taken at any time, unless a notification pursuant to paragraph 4 is received by the Authority, in which event the Enterprise shall take its decision within a reasonable time. The Enterprise may decide to exploit such sites in joint ventures with the interested State or entity.

2. The Enterprise may conclude contracts for the execution of part of its activities in accordance with Annex IV, article 12. It may also enter into joint ventures for the conduct of such activities with any willing entities which are eligible to carry out activities in the Area pursuant to article 153, paragraph 2 (b), of Part XI of this Convention. When considering such joint ventures, the Enterprise shall offer to States Parties which are developing States and their nationals the opportunity of effective participation.

3. The Authority may prescribe, in the rules, regulations, and procedures of the Authority procedural and substantive requirements and conditions with respect to such contracts and joint ventures.

4. Any State Party which is a developing State or any natural or juridical person sponsored by it and effectively controlled by it or by other developing State which is a qualified applicant, or any group of the foregoing, may notify the Authority that it wishes to submit a plan of work pursuant to article 6 with respect to a reserved site. The plan of work shall be considered if the Enterprise decides, pursuant to paragraph 1, that it does not intend to carry out activities in that site.

Article 10
Separate stages of operations

If an operator in accordance with article 3, paragraph 4 (c), has an approved plan of work for exploration only, he shall have a preference and a priority among applicants for a plan of work for exploitation with regard to the same areas and resources; provided, however, that where the operator's performance has not been satisfactory such preference or priority may be withdrawn.

Article 11
Joint arrangements

1. Contracts may provide for joint arrangements, when the parties so agree, between the contractor and the Authority through the Enterprise, in

the form of joint ventures or production sharing, as well as any other form of joint arrangement which shall have the same protection against termination, suspension or revision as contracts with the Authority.

2. Contractors entering into such joint arrangements with the Enterprise may receive financial incentives as provided for in the financial arrangements established in article 13.

3. Joint venture partners of the Enterprise shall be liable for the payments required by article 13 to the extent of their joint venture share, subject to financial incentives as provided in article 13.

Article 12
Activities conducted by the Enterprise

1. Activities in the Area conducted under article 153, paragraph 2 (a), of Part XI of this Convention through the Enterprise shall be governed by the provisions of Part XI, and the relevant annexes, the rules, regulations and procedures of the Authority and its relevant decisions.

2. Any plan of work proposed by the Enterprise shall be accompanied by evidence supporting its financial and technological capability.

...

Article 14
Transfer of data

1. The operator shall transfer in accordance with the rules and regulations and the terms and conditions of the plan of work to the Authority at time intervals determined by the Authority all data which are both necessary and relevant to the effective implementation of the powers and functions of the principal organs of the Authority in respect of the area covered by the plan of work.

2. Transferred data in respect of the area covered by the plan of work, deemed to be proprietary may only be used for the purposes set forth in this article. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment and safety other than equipment design data shall not be deemed to be proprietary.

3. Data transferred to the Authority by prospectors, applicants for contracts for exploration and exploitation, and contractors deemed to be proprietary shall not be disclosed by the Authority to the Enterprise or outside the Authority, but the data on the reserved sites may be disclosed to the Enterprise. Such data transferred by such persons to the Enterprise shall not be disclosed by the Enterprise to the Authority or outside of the Authority. The responsibilities set forth in article 168, paragraph 2, of Part XI of this Convention are equally applicable to the staff of the Enterprise.

Article 15
Training programmes

The contractor shall draw up practical programmes for the training of personnel of the Authority and developing States, including the participa-

tion of such personnel in all activities covered by the contract, in accordance with article 144, paragraph 2, of Part XI of this Convention.

...

ANNEX IV
STATUTE OF THE ENTERPRISE

Article 1
Purpose

1. The Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly, pursuant to article 153, paragraph 2 (a), of Part XI of this Convention, as well as transportation, processing and marketing of minerals recovered from the Area.

2. In carrying out its purposes and in the performance of its functions, the Enterprise shall act in accordance with the provisions of this Convention, including its annexes, and the rules, regulations and procedures of the Authority.

3. In developing the resources of the Area pursuant to paragraph 1, the Enterprise shall, subject to the provisions of this Convention, operate on sound commercial principles.

Article 2
Relationship to the Authority

1. Pursuant to article 170 of Part XI of this Convention, the Enterprise shall act in accordance with the general policies of the Assembly and the directives of the Council.

2. Subject to paragraph 1, the Enterprise shall enjoy autonomy in the conduct of its operations.

3. Nothing in this Convention shall make the Enterprise liable for the acts or obligations of the Authority or the Authority liable for the acts or obligations of the Enterprise.

Article 3
Limitation of liability

Without prejudice to article 11, paragraph 3, no member of the Authority shall be liable by reason only of its membership for the acts or obligations of the Enterprise.

Article 4
Structure of the Enterprise

The Enterprise shall have a Governing Board, a Director-General and the staff necessary for the performance of its functions.

Article 5
Governing Board

1. The Governing Board shall be composed of 15 members elected by the Assembly in accordance with article 160, paragraph 2 (c), of Part XI of this Convention. In the election of the members of the Board, due regard shall be paid to the principle of equitable geographical distribution. In submitting nominations of candidates for election to the Board, members of the Authority shall bear in mind the need to nominate candidates of the highest standard of competence, with qualifications in relevant fields, so as to ensure the viability and success of the Enterprise.

2. Members of the Board shall be elected for a term of four years and shall be eligible for re-election. In the election and re-election of the members of the Board, due regard shall be paid to the principle of rotation.

3. Each member of the Board shall have one vote. All matters before the Board shall be decided by a majority of the members of the Board. If a member has a conflict of interest on a matter before the Board he shall refrain from voting on the matter.

4. Each member of the Board shall receive remuneration to be paid out of the funds of the Enterprise. The amount of remuneration shall be fixed by the Assembly, upon the recommendation of the Council.

5. Members of the Board shall act in their personal capacity. In the performance of their duties they shall not seek or receive instructions from any Government or from any other source. The members of the Authority shall respect the independent character of the members of the Board and refrain from all attempts to influence any of them in the discharge of their duties.

6. Members of the Board shall continue in office until their successors are elected. If the office of a member of the Board becomes vacant, the Assembly shall, upon the recommendation of the Council elect another member for the remainder of the unexpired term.

7. The Board shall normally function at the principal office of the Enterprise and shall meet as often as the business of the Enterprise may require.

8. A quorum for any meeting of the Board shall be two thirds of the members of the Board.

9. Any member of the Authority may ask the Board for information in respect of its operations which particularly affect that member. The Board shall endeavour to provide such information.

Article 6
Powers and functions

The Governing Board shall direct the business operations of the Enterprise. Subject to the provisions of this Convention and its Annexes, the Governing Board shall exercise all the powers necessary to fulfil the purposes of the Enterprise, including powers:

(a) to develop plans of work and programmes in carrying out activities as provided for in article 170 of Part XI of this Convention;

(b) to draw up and submit formal written plans of work to the Council in accordance with article 153, paragraph 3 and article 162 paragraph 2 (j), of Part XI of this Convention;

(c) to prepare and submit applications for production authorization to the Council in accordance with article 151, paragraph 2, Part XI of this Convention;

(d) to authorize negotiations on the acquisition of technology, including those provided for in Annex III, article 5, paragraphs 3 (a), 3 (c) and 3 (d) and to approve the results of such negotiations;

(e) to establish terms and conditions and to authorize negotiations for entering into joint ventures and other forms of joint arrangements as provided for in Annex III, article 9 and article 11, and to approve the results of such negotiations;

(f) to recommend what portion of its net income should be retained as its reserves in accordance with article 160, paragraph 2 (f), of Part XI of this Convention;

(g) to approve the annual budget of the Enterprise;

(h) to authorize the procurement of goods and services in accordance with article 12, paragraph 3;

(i) to submit an annual report to the Council as provided for in article 9;

(j) to submit to the Council for the approval of the Assembly, rules in respect of the organization, management, appointment and dismissal of the staff of the Enterprise, and to adopt regulations to give effect to such rules;

(k) to elect a Chairman from among its members;

(l) to adopt its own rules of procedure;

(m) to borrow funds and to furnish such collateral or other security as it may determine in accordance with article 11, paragraph 2;

(n) to enter into any legal proceedings, agreements and transactions and to take any other actions in accordance with article 13;

(o) to delegate, subject to the approval of the Council, any non-discretionary powers to the Director-General and to its committees.

Article 7
Director-General and staff

1. The Assembly shall, upon the recommendation of the Council, and the nomination of the Governing Board, elect the Director-General who shall not be a member of the Board. The Director-General shall be the legal representative of the Enterprise. He shall participate in the meetings of the Board but shall have no vote. He may participate in meetings of the Assembly and the Council when these organs are dealing with matters concerning the Enterprise, but shall have no vote at such meetings. The Director-General

shall hold office for a fixed-term not exceeding five years and may be re-elected for further terms.

2. The Director-General shall be the chief executive of the Enterprise and shall be directly responsible to the Governing Board for the conduct of the business of the Enterprise. He shall be responsible for the organization, management, appointment and dismissal of the staff in accordance with the rules and regulations referred to in article 6, subparagraph (j).

3. The Director-General and the staff of the Enterprise, in the discharge of their duties, shall not seek or receive instructions from any Government or from any other source. They shall refrain from any action which might reflect on their position as international officials of the Enterprise responsible only to the Enterprise. The members of the Authority shall respect the international character of the Director-General and the staff of the Enterprise and shall refrain from all attempts to influence any of them in the discharge of their duties.

4. In appointing the staff, the Director-General shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on an equitable geographical basis.

Article 8
Location

The Enterprise shall have its principal office at the seat of the Authority. The Enterprise may establish other offices and facilities in the territory of any member of the Authority with the consent of that member.

Article 9
Provision of reports

1. The Enterprise shall, not later than three months after the end of each financial year, submit to the Council for its consideration an annual report containing an audited statement of its accounts and shall transmit to the Council at appropriate intervals a summary statement of its financial position and a profit and loss statement showing the results of its operations.

2. The Enterprise shall publish its annual report and such other reports as it deems appropriate.

3. Copies of all reports and financial statements referred to in this article shall be distributed to the members of the Authority.

Article 10
Allocation of net income

1. Subject to paragraph 3, the Enterprise shall make payments to the Authority under Annex III, article 13, or their equivalent.

2. The Assembly shall, upon the recommendation of the Governing Board, determine what portion of the net income of the Enterprise shall be retained as its reserves. The remainder shall be transferred to the Authority.

3. During an initial period required for the Enterprise to become self-supporting, which shall not exceed 10 years from the commencement of its commercial production, the Assembly shall exempt the Enterprise from the payments referred to in paragraph 1, and shall leave all of the net income of the Enterprise in its reserves.

Article 11
Finance

1. The funds of the Enterprise shall include:

(a) amounts received from the Authority in accordance with article 173, paragraph 2 (b), of Part XI of this Convention;

(b) voluntary contributions made by States Parties for the purpose of financing activities of the Enterprise;

(c) amounts borrowed by the Enterprise in accordance with the provisions of paragraphs 2 and 3;

(d) income of the Enterprise through its operations;

(e) other funds made available to the Enterprise to enable it to carry out its functions and to commence operations as soon as possible.

2. (a) The Enterprise shall have the power to borrow funds and to furnish such collateral or other security as it may determine. Before making a public sale of its obligations in the markets or currency of a State Party, the Enterprise shall first obtain the approval of that State Party. The total amount of borrowings shall be approved by the Council upon the recommendation of the Governing Board;

(b) States Parties shall make every reasonable effort to support application by the Enterprise for loans in capital markets and from international financial institutions.

3. (a) The Enterprise shall be provided with the funds necessary to explore and exploit one mine site, and to transport, process and market the metals recovered therefrom, namely nickel, copper, cobalt and manganese and to meet its initial administrative expenses. The amount of the said funds, and the criteria and factors for its adjustment, shall be included by the Preparatory Commission in the draft rules, regulations and procedures of the Authority;

(b) All States Parties shall make available to the Enterprise an amount equivalent to one half of the funds referred to in subparagraph (a) by way of long-term interest-free loans in accordance with the scale of assessments for the United Nations regular budget in force at the time when the contributions are made, adjusted to take into account the States which are not members of the United Nations. Debts incurred by the Enterprise in raising the other half of the funds shall be guaranteed by all States Parties in accordance with the same scale;

(c) In the event that the sum of the financial contributions of States Parties ratifying or acceding to this Convention is less than the funds to be provided to the Enterprise under subparagraph (a), the

Assembly shall, at its first meeting, examine the extent of the shortfall and, taking into account the obligation of States Parties under subparagraphs (a) and (b) and the recommendations of the Preparatory Commission, adopt, by consensus, measures for dealing with the shortfall;

(d) Each State Party shall, within 60 days after the entry into force of this Convention, or within 30 days after the date of deposit of its instrument of ratification, acceptance or approval, whichever is later, deposit with the Enterprise irrevocable non-negotiable non-interest bearing promissory notes in the amount of the share of such State Party of interest-free loans under paragraph 3 (b);

(i) At the earliest practicable date after this Convention enters into force and thereafter, at annual or other appropriate intervals, the Governing Board of the Enterprise shall prepare a schedule of the magnitude and timing of its requirements for the funding of its administrative expenses and for carrying out activities under article 170 of Part XI of this Convention and Annex IV, article 12;

(ii) The States Parties shall, thereupon, be notified by the Enterprise, through the Authority, of their respective shares of the funds in accordance with paragraph 3 (b), required for such expenses. The Enterprise shall encash such amounts of the promissory notes as may be required to meet the expenditure referred to in the schedule with respect to interest-free loans;

(iii) States Parties shall, upon receipt of such notification, make available their respective shares of guarantees of debt of the Enterprise in accordance with paragraph 3 (b);

(e) Upon request by the Enterprise, a State Party may provide a guarantee covering debts additional to the amount it has guaranteed in accordance with or on the basis of the said scale. In lieu of debt guarantee, a State Party may make a voluntary contribution to the Enterprise in an amount equivalent to that portion of the debts which it would otherwise be liable to guarantee;

(f) The repayment of the interest-bearing loans shall have priority over the repayment of the interest-free loans. The repayment of interest-free loans shall be in accordance with a schedule adopted by the Assembly, upon the recommendation of the Council and the advice of the Governing Board of the Enterprise. In the performance of this function the Governing Board of the Enterprise shall be guided by the relevant provisions of the rules, regulations and procedures. Such rules, regulations and procedures shall take into account the paramount importance of ensuring the performance of the Enterprise and in particular, ensuring its financial independence;

(g) Funds made available to the Enterprise shall be in freely usable currencies or currencies which are freely available and effectively

usable in the major foreign exchange markets. These currencies shall be defined in the rules, regulations and procedures of the Authority in accordance with prevailing international monetary practice. Except as provided in article 6 (m) no State Party shall maintain or impose restrictions on the holding, use or exchange by the Enterprise of these funds;

(h) A "debt guarantee" shall mean a promise of each State Party to creditors of the Enterprise to pay, pro rata *in accordance with the appropriate scale, the financial obligations of the Enterprise covered by the guarantee following notice by the creditors to the State Party of a default by the Enterprise. Procedures for the payment of those obligations shall be in conformity with the rules, regulations and procedures of the Authority.*

4. The funds, assets and expenses of the Enterprise shall be kept separate from those of the Authority. The provisions of this article shall not prevent the Enterprise from making arrangements with the Authority regarding facilities, personnel and services and arrangements for reimbursement of administrative expenses paid in the first instance by either organization on behalf of the other.

5. The records, books and accounts of the Enterprise, including its annual financial statements, shall be audited annually by an independent auditor to be appointed by the Council.

Article 12
Operations

1. The Enterprise shall propose to the Council projects for carrying out activities in accordance with article 170 of Part XI of this Convention. Such proposals shall include a formal written plan of work for activities in the Area in accordance with article 153, paragraph 3, of Part XI of this Convention, and all such other information and data as may be required from time to time for its appraisal by the Technical Commission and approval by the Council.

2. Upon approval by the Council, the Enterprise shall execute the project on the basis of the formal written plan of work referred to in paragraph 1.

3. (a) To the extent that the Enterprise does not at any time possess the goods and services required for its operations, it may procure and employ them. Procurement of goods and services required by the Enterprise shall be effected by the award of contracts, based on response to invitations to tender, to bidders offering the best combination of quality, price and most favourable delivery time;

(b) If there is more than one bid offering such a combination, the contract shall be awarded in accordance with the following:

(i) the principle of non-discrimination on the basis of political or other considerations not relevant to the carrying out of operations with due diligence and efficiency;

(ii) guidelines approved by the Council with regard to the preferences to be accorded to goods and services originating in the developing States, including the landlocked or otherwise geographically disadvantaged among them;

(c) The Governing Board may adopt rules determining the special circumstances in which the requirement of invitations to bid may in the best interests of the Enterprise be dispensed with.

4. The Enterprise shall have title to all minerals and processed substances produced by it.

5. The Enterprise shall sell its products on a non-discriminatory basis. It shall not give non-commercial discounts.

6. Without prejudice to any general or special power conferred on the Enterprise under any other provision of this Convention, the Enterprise shall exercise such powers incidental to its business as shall be necessary.

7. The Enterprise shall not interfere in the political affairs of any member; nor shall it be influenced in its decisions by the political character of the member or members concerned. Only commercial considerations shall be relevant to its decisions, and these considerations shall be weighed impartially in order to carry out the purposes specified in article 1.

Article 13
Legal status, immunities and privileges

1. To enable the Enterprise to perform its functions, the status, immunities and privileges set forth herein shall be accorded to the Enterprise in the territories of States Parties. To give effect to this principle the Enterprise and States Parties may, where necessary, enter into special agreements.

2. The Enterprise shall have such legal capacity as is necessary for the performance of its functions and the fulfilment of its purposes and, in particular, the capacity:

(a) to enter into contracts, joint arrangements, or other arrangements, including agreements with States and international organizations;

(b) to acquire, lease, hold and dispose of immovable and movable property;

(c) to be a party to legal proceedings in its own name.

3. Actions may be brought against the Enterprise only in a court of competent jurisdiction in the territories of a member in which the Enterprise has an office, has appointed an agent for the purpose of accepting service or notice of process, has entered into a contract for goods or services, has issued securities or is otherwise engaged in commercial activity. The property and assets of the Enterprise, wheresoever located and by whomsoever held, shall be immune from forms of seizure, attachment or execution before the delivery of final judgement against the Enterprise.

4. (a) The property and assets of the Enterprise, wheresoever located and by whomsoever held, shall be immune from confiscation, expropriation, requisition, and any other form of seizure by executive or legislative action;

(b) The property and assets of the Enterprise, wheresoever located and by whomsoever held, shall be free from discriminatory restrictions, regulations, controls and moratoria of any nature;

(c) The Enterprise and its employees shall respect local laws and regulations in any State or territory in which the Enterprise or its employees may do business or otherwise act;

(d) States Parties shall assure that the Enterprise enjoys all rights, immunities and privileges afforded by States to entities conducting business within such States. These rights, immunities and privileges shall be afforded the Enterprise on no less favourable a basis than afforded by States to similarly engaged commercial entities. Where special privileges are provided by States for developing States or their commercial entities, the Enterprise shall enjoy such privileges on a similarly preferential basis;

(e) States may provide special incentives, rights, privileges and immunities to the Enterprise without the obligation to provide such incentives, rights, privileges, or immunities to other commercial entities.

5. The Enterprise shall negotiate with the host countries in which its offices and facilities are located for exemption from direct or indirect taxation.

6. Each member shall take such action as is necessary for the purpose of making effective in terms of its own law the principles set forth herein in this Annex and shall inform the Enterprise of the detailed action which it has taken.

7. The Enterprise in its discretion may waive any of the privileges and immunities conferred under this article or in the special agreements referred to in paragraph 1 to such extent and upon such conditions as it may determine.

…

End Notes

[1] For the full text of the report under the same title, *see Official Records of the Third United Nations Conference on the Law of the Sea,* Vol. XV, (United Nations Publications, Sales No. E.83. V.4), Summary Records of meetings, Tenth Session and resumed Tenth Session: New York, 9 March-16 April 1981; Geneva, 3-28 August 1981, Document A/CONF.62/L.65, 18 February 1981, pp. 102-118.

[2] For full text of the report under the same title, *see* Ibid, Document A/CONF. 62/L.66, 24 February 1981, pp. 119-145.

[3] Ibid, Document A/CONF. 62/L.70, Report of the Chairman of the First Committee, 16 April 1981, p. 148, paras 3-4.
[4] Ibid, 53rd meeting of the First Committee, 7 April 1981, p. 82, paras 2-4.
[5] Ibid, 54th meeting of the First Committee, 27 August 1981, pp. 86-89. The full text of the Chairman's report discussed during the resumed Tenth Session was circulated under the symbol A/CONF. 62/C.1/L.29. His report on the work of the First Committee during the resumed Tenth Session was contained in Ibid, document A/CONF. 62/L.81 (29 September 1981), pp. 241-242.
[6] Ibid, 66th meeting of the Plenary, 24 August 1981, p. 65, paras 3-5.
[7] For the full text of the draft Convention *see* Ibid, Document A/CONF. 62/L.78, pp. 172-240.

X. ELEVENTH SESSION (NEW YORK, 8 MARCH-30 APRIL 1982) RESUMED ELEVENTH SESSION (NEW YORK, 22-24 SEPTEMBER 1982) FINAL PART OF THE ELEVENTH SESSION (MONTEGO BAY, 6-10 DECEMBER 1982)

The Conference continued consultations and negotiations on pending issues during the first three weeks of the Session.

The First Committee held two formal meetings on 9 and 29 March 1982.[1] The Committee met also on 10 March in an informal meeting to examine a document referred to as the "Green Book," submitted by the United States delegation. This document was the revised version of a document circulated on 24 February 1982 by the same delegation and entitled, "Approaches to Major Problems in Part XI of the draft Convention on the Law of the Sea."[2] As stated by the Chairman of the First Committee, its purpose was to try to explain the problems the United States had identified with Part XI, to apprise other delegations of the range of solutions the United States had reviewed and, primarily, to elicit the advice and suggestions of others as to how best to solve those problems in the interests of developing a universally acceptable Convention.[3]

Following are the proposed changes in the "Green Book" which are of relevance to the Enterprise. As originally noted in the document of WG21/ Informal Paper 18, proposed additions are indicated by underlining and proposed deletions by square brackets. In addition, where whole paragraphs or articles are added, they are not underlined and deletions of such paragraphs and articles are simply noted as "delete article___ or paragraph___."[4]

WG.21 / Informal Paper 18[5]
(10 March 1982)
Changes suggested by the Delegation of the United States of America

...

Article 153
System of exploration and exploitation

1. Activities in the Area shall be [organized, carried out and controlled] <u>regulated</u> by the Authority on behalf of mankind as a whole in accordance with the provisions of this article as well as other relevant provisions of this Part and the relevant Annexes, and the rules, regulations and procedures of the Authority.

2. Activities in the Area shall be carried out as prescribed in paragraph 3:

(a) by the Enterprise, and

(b) [in association with the Authority] by States Parties or States Entities, or natural or juridical persons 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 which meets the requirements provided in this Part including Annex III.

3. Activities in the Area shall be carried out in accordance with a formal written plan of work drawn up in accordance with the Annex III and approved by the Technical Subcommission of [Council after review by] the Legal and Technical Commission, in accordance with article 165, paragraph 3 (g) and Annex III. In the case of activities in the Area carried out as authorized by the Authority by the entities specified in paragraph 2 (b), such a plan of work shall, in accordance with Annex III, article 3, be in the form of a contract. Such contracts may provide for joint arrangements in accordance with Annex III, article 11.

4. (a) The Authority shall exercise such control over activities in the Area carried out by the Enterprise in accordance with article 162, paragraph (2) (aa), as is necessary for the purpose of securing compliance with the relevant provisions of this Part and the Annexes relating thereto, and the rules, regulations and procedures of the paragraph 3. [States Parties shall assist the Authority by taking all measures necessary to ensure such compliance in accordance with article 139.]

Add new paragraph 4 (b)

(4) Each State Party shall exercise such control over activities in the Area carried out by that State Party, by one of its States Entities, or by any of the entities referred to in paragraph 2 (b), when sponsored by that State Party, as is necessary for the purpose of securing compliance with the relevant provisions of this Part, the rules, regulations and procedures of the Authority, and the plans of work approved in accordance with paragraph 3. States Parties shall cooperate with the Authority in the exercise of its functions pursuant to article 162, paragraph 2 (k).

5. The Authority, in the exercise for the regulatory functions conferred upon it by this Part, shall have the right to take at any time any measures provided for under this Part to ensure compliance with its terms [,and the performance of the functions of control and regulation assigned to it thereunder or under any contract]. The Authority shall have the right to inspect all installations in the Area used [in connection with] for the conduct of activities in the Area.

*6. Paragraph 6 as in L.78**

...

Article 170
The Enterprise

1. The Enterprise shall be the organ of the Authority which shall carry out prospecting and activities in the Area directly, pursuant to article 153, paragraph 2 (a), well as transportation, processing and marketing of minerals recovered from the Area.

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* L.78 refers to the draft Convention on the Law of the Sea, UN Doc. A/CONF.62/L.78, 28 August 1981.

2. The Enterprise shall, within the framework of the international legal personality of the Authority, have such legal capability as is provided for in the Statute set forth in Annex IV. The Enterprise shall act in accordance with the provisions of this Convention including all provisions applicable to contractors, unless such provisions expressly exempt the Enterprise, and the rules, regulations and procedures of the Authority, [,as well as the general policies established by the Assembly, and shall be subject to the directives and control of the Council].

Paragraph 3 as in L. 78

4. The Enterprise shall, in accordance with article 173, paragraph 2, and Annex IV, article 11 (bis), be provided with such funds as it may require to carry out its functions, and shall receive technology as provided in article 144 and Annex IV, article 11 (bis) [other relevant provisions of this Convention].

...

ANNEX III
BASIC CONDITIONS OF PROSPECTING, EXPLORATION AND EXPLOITATION

Article 1
Title to minerals

Title to minerals shall pass to the operator upon recovery of the minerals from the Area. [in accordance with this Convention.]

Article 3
Exploration and exploitation

1. The Enterprise, States Parties, and the other entities referred to in article 153, paragraph 2 (b), of Part XI of this Convention, may apply to the Technical Subcommission [Authority] for approval of plans of work covering activities in [of] the Area. Upon approval of a plan of work, any such entity shall be an "operator" for the purposes of this Convention.

Paragraph 2 as in L.78

3. Exploration and exploitation shall be carried out only in areas specified in plans of work referred to in article 153, paragraph 3, of Part XI of this Convention and approved [by the Authority] in accordance with the provisions of this Annex and the [relevant] rules, regulations and procedures of the Authority.

4. Every approved plan of work [approved by the Authority] shall:

(a) be in strict conformity with this Convention, this Annex, and the rules, regulations and procedures of the Authority;

(b) ensure control [by the Authority] of activities in the Area in accordance with article 153, paragraph 4 of Part XI of this Convention.

5. [Except for plans of work proposed by the Enterprise,] Each approved plan of work shall take the form of a contract... (words missing in the original text) *or their agent. [upon approval of the plan of work by the Authority.]*

...

Article 8
Reservation of sites

Each application, other than those proposed by the Enterprise or by any others for reserved sites, shall cover a total area, which need not be a single continuous area, [sufficiently large and of sufficient estimated commercial value to allow] sufficient for two areas [mining operations] of equivalent size and *comparable value. The applicant shall indicate the co-ordinates dividing the area into two parts of equal estimated commercial value. [and submit all the data obtained by him with respect to both parts of the area. Without prejudice to the powers of the Authority pursuant to article 17 the data to be submitted concerning polymetallic nodules will relate to mapping, sampling, the density of nodules, and the composition of metals in them. Within 45 days of receiving such data the Authority shall designate the part which is to be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing States. This designation may be deferred for a further period of 45 days if the Authority requests an independent expert to assess whether all data required by this article has been submitted to the Authority. The area designated shall become a reserved area.] The Enterprise and the applicant may agree on which site is to be reserved for exploration and exploitation in accordance with article 9. If the Enterprise and the applicant have not so agreed by the time that the application is taken up by the Technical Subcommission, the Technical Subcommission shall allocate the two sites at random. The site which is allocated to the Enterprise either by agreement or by random selection shall become a reserved site as soon as the plan of work for the non-reserved area is approved and the contract is signed. When the contract is signed, the contractor shall submit all the data obtained by it with respect to the reserved site. Without prejudice to the powers of the Authority pursuant to article 17, the data to be submitted concerning polymetallic nodules will relate to mapping, sampling, the density of nodules, and the composition of metals in them.*

Article 9
Activities in reserved sites

Delete Article 9 and insert:

1. If the Enterprise does not submit a proposed plan of work for a reserved site that is approved by the Technical Subcommission within four years of the designation of that site pursuant to article 8, then the Enterprise shall offer to enter into a joint venture with the contractor who proposed the site, provided that the contractor has obtained the sponsorship of a developing State Party for the proposed joint venture, in accordance with paragraph 4.

The four-year time period shall be extended for any time during which prevailing market prices for the commodities to be produced from the minerals to be derived from the site indicate that the site could not be exploited profitably.

2. If the contractor referred to in paragraph 1 does not enter into force a joint venture with the Enterprise within four years of the offer, the Enterprise may offer to enter into a joint venture with any entity referred to in article 153, paragraph 2 (b), in accordance with paragraph 4. The Technical Subcommission shall not approve any plan of work submitted by any resulting joint venture unless it contains a commitment to establish a feasible procedure to compensate fully, from the proceeds of the proposed activities, the contractor referred to in paragraph 1 for the value of any data submitted pursuant to article 8. At the request of either the contractor or the joint venture, any dispute concerning the adequacy of the proposed compensation shall be submitted to binding commercial arbitration. Unless otherwise agreed by the contractor and the joint venture, the Technical Subcommission shall defer consideration of the plan of work proposed by the joint venture until it can incorporate the arbitral award into the plan of work.

3. If the Enterprise does not enter into a joint venture within six years of the close of the time period specified in paragraph 1, the contractor referred to in paragraph 1 may submit a proposed plan of work for that site. The requirements of article 8 shall not apply with respect to any such plan of work. If the contractor does not submit a proposed plan of work within eight years of the time period specified in paragraph 1, the site shall lose its status as a reserved area. At that time, any entity referred to in article 153, paragraph 2 may submit an application for a plan of work covering that site, provided that the proposed plan of work contains procedures for full compensation as referred to in paragraph 2. Any disputes concerning the adequacy of the proposed compensation shall be resolved in accordance with paragraph 2.

4. The Enterprise may conclude contracts for the execution of part of its activities in accordance with Annex VI, article 12. It may also enter into joint venture for the conduct of such activities with any willing entities which are eligible to carry out activities in the Area pursuant to article 153, paragraph 2 (b), of Part XI of this Convention. When considering such joint ventures, the Enterprise shall offer to Parties which are developing States and their nationals the opportunity of effective participation.

Article 11
Joint arrangements

Paragraph 1 as in L.78

2. Contractors entering into such joint arrangements with the Enterprise may receive financial incentives [as provided for in the financial arrangements] established in <u>accordance with</u> article 13, <u>paragraph 14.</u>

3. Joint venture partners of the Enterprise shall be liable for the payments required by article 13 to the extent of their joint venture share, [subject to financial incentives as provided in] <u>in accordance with</u> article 13, <u>paragraph 14.</u>

Article 12
Activities conducted by the Enterprise

Delete paragraphs 1 and 2 and insert the following:

This Convention, its Annexes, the rules, regulations and procedures of the Authority and the decisions of any organ of the Authority shall apply to the Enterprise in the same manner as they would to any other operator except in those cases where the Convention expressly provides otherwise.

...

ANNEX IV
STATUTE OF THE ENTERPRISE

Article 1
Purpose

1. The Enterprise shall be the organ of the Authority which shall carry out prospecting and activities in the Area directly, pursuant to article 153, paragraph 2 (a), of Part XI of this Convention, as well as transportation, processing and marketing of minerals recovered from the Area.

Delete paragraph 2. See Annex III, article 12.

3. [In developing the resources of the Area pursuant to paragraph1, the] The purpose and fundamental policy of the Enterprise shall be to develop the resources of the Area profitably. The Enterprise shall [,subject to provisions of this Convention,] operate on the basis of sound commercial principles.

Article 2
Relationship to the Authority

Delete paragraph 1

1 [2]. [Subject to paragraph 1, the] The Enterprise shall enjoy autonomy in the conduct of its operation, except as otherwise specifically provided in this Convention.

2 [3]. New paragraph 2 is the same as paragraph 3 of L. 78.

Article 5
Governing Board

1. The Governing Board shall be composed of 15 members elected by the Assembly in accordance with article 160, paragraph 2 (c) of Part XI of this Convention. Until the Enterprise has repaid all debt obligations incurred pursuant to article 11 (bis), paragraph 1, the Assembly shall ensure that members of the Governing Board include members nominated by States Parties that account for at least one-half of the total amount of such obligations outstanding. Consistent with the foregoing requirement. [In the election of the members of the Board], due regard shall be paid to the principle of equitable geographic distribution. In submitting nominations of candidates

for election to the Board, members of the Authority shall bear in mind the need to nominate candidates of the highest standard in competence, with qualifications in relevant fields, so as to ensure the viability and success of the Enterprise.

Paragraphs 2 and 3 as in L. 78.

4. Each member of the Board shall receive remuneration to be paid out of the funds of the Enterprise. [The amount of remuneration shall be fixed by the Assembly, upon the recommendation of the Council.]

Paragraph 5 as in L.78.

6. Members of the Board shall continue in office until their successors are elected. If the office of a member of the Board becomes vacant, the Assembly shall, upon the recommendation of the Council, elect another member for the remainder of the unexpired term in accordance with the requirements of paragraph 1.

Paragraphs 7-9 as in L.78.

Article 6
Powers and functions

The Chapeau and paragraph (a) remain as in L.78.

(b) to draw up and submit formal written plans of work to the Technical Subcommission [Council] in accordance with article 153, paragraph 3 and article 165 [162], paragraph 3 (g) [2 (j)], of Part XI of this Convention;

Delete subparagraph (c)

(d) to authorize negotiations on the acquisition of technology, [including those provided for in Annex III, article 5, paragraphs 3 (a), 3 (c) and 3 (d),] and to approve the results of such negotiations;

Paragraph (e) as in L. 78.

(f) to recommend what portion of its net income should be retained as its reserves in accordance with article [160] 162, paragraph 2 (cc) [2 (f)], of Part XI of this Convention;

Paragraphs (g), (h) and (i) as in L. 78.

(j) to adopt *[submit to the Council for the approval of the Assembly,] rules in respect of the organization, management, appointment and dismissal of the staff and the Enterprise [, and to adopt regulations to give effect to such rules];*

paragraphs (k)-(n) as in L. 78.

(o) to delegate [,subject to the approval of the Council,] any non-discretionary powers to the Director-General and to its Committees.

Article 10
Allocation of net income

1. Subject to paragraph 3, the Enterprise shall make payments to the Authority under Annex III, article 13 [, or their equivalent].

2. The Director-General [Assembly] shall, upon the recommendation of the Governing Board, determine what portion of the net income of the Enterprise remaining after the payments called for in paragraph 1 are made

shall be retained as its reserves. [The remainder shall be transferred to the Authority.]

Article 11
Finance

Subparagraphs 1 (a) and (b) remain as in L. 78.

(c) amounts borrowed by the Enterprise in accordance with the provisions of paragraph 2 and article 11 (bis), paragraph 1 [2 and 3];

Subparagraphs 1 (d) and (e) and paragraph 2 remain as in L. 78.

Delete paragraph 3; see article 11 (bis).

Paragraphs 4 and 5 remain as in L. 78.

Article 11 (bis)
Initial operations

1. FINANCE:

(a) The Enterprise shall be provided with the funds necessary to explore and exploit the polymetallic nodules within one mine site, and to transport, process and market the commodities product therefrom, and to meet its initial administrative expenses. The amount of the said funds, and the criteria and factors for its adjustment, shall be included in the rules, regulations and procedures of the Authority.

(b) All States Parties shall make available to the Enterprise an amount equivalent to one half of the funds referred to in subparagraph (a) by way of long-term interest-free loans in accordance with the scale of assessments for the United Nations regular budget in force at the time when the contributions are made, adjusted to take into account the States which are not members of the United Nations. Debts incurred by the Enterprise in raising the other half of the funds shall be guaranteed by all States Parties in accordance with the same scale.

(c) In the event that the sum of the financial contributions of States Parties ratifying or acceding to this Convention is less that the funds to be provided to the Enterprise under subparagraph (a), the Assembly shall, at its first meeting, examine the extent of the shortfall and, taking into account the obligation of States Parties under subparagraphs (a) and (b) and the recommendations of the Preparatory Commission, adopt, by consensus, measures for dealing with the shortfalls.

(c bis) Each State Party shall deposit with the Enterprise irrevocable non-negotiable non-interest-bearing promissory notes in accordance with the following schedule:

(i) within 60 days of the entry into force of this Convention, or within 30 days after the date of deposit by the State Party of its instrument of ratification or accession, 30% of its share of interest-free loans, assessed in accordance with paragraph 1 (b);

(ii) one year after the deposit referred to in subparagraph (d) (i), 30% of its share of interest-free loans, assessed in accordance with paragraph 1 (b);

(iii) two years after the deposit referred to in subparagraph (d) (i), 20% of its share of interest-free loans, assessed in accordance with subparagraph 1 (b);

(iv) three years after the deposit referred to in subparagraph (d) (i), the remainder of its share of interest-free loans, assessed in accordance with paragraph 1 (b).

(d) At the earliest practicable date after this Convention enters into force and thereafter, at annual or other appropriate intervals, the Governing Board of the Enterprise shall prepare a schedule of the magnitude and timing of its requirements for the funding of its administrative expenses and for carrying out activities under article 170 of Part XI and this Convention and Annex IV, article 12.

(d bis) The States Parties shall, thereupon, be notified by the Enterprise, through the Authority, of their respective shares of the funds in accordance with paragraph 1 (b), required for such expenses. The Enterprise shall encash such amounts of the promissory notes as may be required to meet the expenditure referred to in the schedule with respect to interest-free loans.

(d ter) States Parties shall, upon receipt of such notification, make available their respective shares of guarantees of debt of the Enterprise in accordance with paragraph 1 (b).

(e) Upon request by the Enterprise, a State Party may provide a guarantee covering debts additional to the amount it has guaranteed in accordance with or on the basis of the said scale. In lieu of debt guarantee, a State Party may make a voluntary contribution to the Enterprise in an amount equivalent of that portion of the debts which it would otherwise be liable to guarantee.

(f) The repayment of interest-bearing loans shall have priority over the repayment of interest-free loans. The repayment of interest-free loans shall be in accordance with a schedule specified in the rules, regulations and procedures. Such rules, regulations and procedures shall take into account the paramount importance of ensuring the performance of the Enterprise and in particular, ensuring its financial independence.

(g) Funds made available to the Enterprise shall be in freely usable currencies or currencies which are freely available and effectively usable in the major foreign exchange markets. These currencies shall be defined in the rules, regulations and procedures of the Authority in accordance with prevailing international monetary practice. Except as provided in article 6 (m) no State Party shall maintain or impose restrictions on the holding, use or exchange by the Enterprise of these funds.

(h) A "debt guarantee" shall mean a promise of each State Party to creditors of the Enterprise to pay, pro rata *in accordance with the appropriate scale, the financial obligations of the Enterprise covered by the guarantee following notice by the creditors to the State Party of a default by the Enterprise. Procedures for the payment of those obligations shall be in conformity with the rules, regulations and procedures of the Authority.*

(i) The Enterprise shall notify the Council of an imminent default in the repayment of interest-bearing and interest-free loans in accordance with paragraph 1 (f). Default procedures, including provisions for receivership, shall be included in the rules, regulations and procedures of the Authority.

2. TRANSFER OF TECHNOLOGY:

It is the policy of the Authority to ensure that the Enterprise is able to become a viable commercial entity and to engage successfully in the operations referred to in article 170, paragraph 1 at the earliest possible date. To this end, States Parties which engage in activities in the Area, or which sponsor an entity referred to in article 153, paragraph 2 (b) which engages in activities in the Area in accordance with Part XI, shall convene a committee comprising all such States which shall have the responsibility, in co-operation with and at the request of the Enterprise, to facilitate the acquisition by the Enterprise of appropriate technology necessary to commence at the earliest possible date the recovery and processing of minerals derived from the Area pursuant to paragraph 1 (a). Such assistance shall include:*

(a) identification of potential developers and suppliers of such technology;

(b) development of an exploratory plan for the selected site, based on available prospecting data, that will compare the economic trade-offs between various methods and technologies, considering the unique topography of the site and mining equipment being considered;

(c) conduct a technical and economic analysis of competing designs of seabed mining equipment suitable for the selected site;

(d) conduct of an analysis of estimated costs associated with the procurement of equipment evaluated in (c), with specific emphasis on an examination of the feasibility and desirability of the utilization of developing State suppliers for such procurement;

(e) conduct of an analysis of the competing mineral processing technologies;

(f) conduct of an analysis of the feasible alternatives for the location of minerals processing, including transportation distances and systems; the availability of additional materials and energy necessary for processing; transportation infrastructures for shipment of processed products to various markets; feasibility and costs of various waste disposal procedures; availability of required labour force; and examination of economic and other incentives that may be available from host governments;

(g) conduct of a market analysis which would also provide production and development strategies based upon a range of demand growth assumptions for the processed minerals;

(h) making available independent advice and evaluation of the terms and conditions upon which such technology is offered;

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* The contemplated PIP article will contain a provision requiring preparations to meet this obligation to commence as soon as the Convention enters into force.

(i) advice to the Enterprise, in the course of its negotiations with potential suppliers of technology, concerning methods by which the Enterprise can obtain this technology on the commercial terms and conditions most favourable to the Enterprise; and

(j) making available to the Enterprise experts in the fields related to the fulfilment of this obligation and in such other areas as are requested by the Enterprise.

3. In addition, States Parties referred to in paragraph 2 shall take appropriate measures, consistent with national law, to prevent persons subject to their jurisdiction from engaging in a concerted refusal to supply technology to the Enterprise on commercial terms and conditions.

4. The States Parties referred to in paragraph 2 shall take, on a cost reimbursable basis, the same measures as those prescribed in paragraphs 2 and 3 for the benefit of a developing State or group of developing States which has applied for a contract pursuant to Annex III, article 9, provided that these measures shall relate solely to activities in the Area and that no State may receive the benefit of the measures in paragraph 2 with respect to more than one mine site, or for more than 15 years after the entry into force of this Convention.

Article 12
Operations

1. The Enterprise shall propose [to the Council projects for carrying out activities in accordance with] projects for carrying out the functions conferred upon it by article 170, paragraph 1, of Part XI of this Convention. [Such proposals shall include a] Proposals for activities in the Area shall be submitted as formal written plans of work [for activities in the Area in accordance with article 153, paragraph 3, of Part XI of this Convention, and all other such information and data as may be required from time to time for its appraisal by the Technical Commission and approval by the Council] and shall be approved in accordance with Annex III and article 165. Proposals for all other projects shall be submitted to the Council, together with all relevant information and data, for approval in accordance with article 162, paragraph 2 (i).

2. delete the existing text and replace with

(a) The Enterprise shall execute plans of work upon their approval by the Technical Subcommission.

(b) The Enterprise shall carry out any other projects proposed in accordance with paragraph 1 upon their approval by the Council.

Delete paragraph 4

Renumbered paragraphs 4, 5 and 6 remain as in L.78.

Article 13
Legal status, immunities and privileges

Paragraphs 1 and 2 remain as in L. 78

3. Action may be brought against the Enterprise only in a court of competent jurisdiction in the territories of a member in which the Enterprise

has an office, has appointed an agent for the purpose of accepting service or notice of process, has entered into a contract for goods or services, has issued securities or is otherwise engaged in commercial activity. [The property and assets of the Enterprise, wheresoever located and by whomsoever held, shall be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Enterprise.]

4. [(a) The property and assets of the Enterprise, wheresoever located and by whomsoever held, shall be free from restrictions, requisition, and any other form of seizure by executive or legislative action.]

Subparagraphs 4 (b)-(e) and paragraphs 5-7 remain as in L.78.

As the Chairman of the First Committee stated at the Plenary meeting of the Conference held on 29 March 1982 that at a second informal meeting of the First Committee held on 12 March 1982, apart from varying degrees of solidarity expressed by some industrialized countries, all the other interest groups represented, including many western countries, had expressed the view that the "Green Book" could not possibly provide a good basis for negotiation.[6]

A group of heads of delegations from eleven developed countries of the West, acting in their personal capacities and encouraged by the President of the Conference and the Chairman of the First Committee, had voluntarily undertaken to develop a set of proposals (WG.21/Informal Paper 21 and Add.1) which they had hoped might bridge the gap between the position of the United States and some of the other potential western seabed miners, on the one hand, and the Group of 77 and those who shared their concerns, on the others. Those proposals have been issued as an informal paper of the Working Group of 21 on 25 March 1982. Following are the changes, underlined in the text, relevant to the Enterprise.[7]

(WG.21 / Informal Paper 21)
Changes suggested by the heads of delegations of Australia, Canada, Denmark and Norway
on behalf of a group of ten heads of delegations[8]

...

ANNEX III
BASIC CONDITIONS OF PROSPECTING, EXPLORATION AND EXPLOITATION

Article 1
Title to minerals

Title to minerals shall pass to the operator *upon recovery* of the minerals *from the Area in accordance with this Convention.*

Article 2
Prospecting

(no change)

Article 3
Exploration and exploitation

1. The Enterprise, States Parties, and other entities referred to in article 153, paragraph 2 (b), of Part XI of this Convention, may apply to the Authority for approval of plans of work covering activities of the Area. Upon approval of a plan of work any such entity shall be referred to as an "operator" for the purposes of this Convention.

2. (as in L.78)

3. (as in L.78)

4. Every plan of work approved by the Authority shall:

(a) be in strict conformity with this Convention and the rules, regulations and procedures of the Authority;

*(b) include the following undertakings by the applicant:**

(i) to accept as enforceable and comply with the applicable obligations created by the provisions of Part XI, the rules, regulations and procedures of the Authority and the decisions of the organs of the Authority in force at the time the plan of work is approved, and the terms of his contracts with the Authority;

(ii) to accept control by the Authority of activities in the Area, as authorized by this Convention;

(iii) to provide the Authority with a written assurance that his obligations under the contract will be fulfilled in good faith;

(iv) to comply with the provisions on the transfer of technology set forth in article 5.

(c) (as in L.78)

5. (as in L. 78)

Article 4
Qualifications of applicants

1. Applicants, other than the Enterprise, shall be qualified if they have the nationality or control and sponsorship required in article 153, paragraph 2 (b), of Part XI of this Convention and if they follow the procedures established by the Authority by means of rules, regulations and procedures and meet the following qualification standards:

(a) financial and technical capability including the capacity to generate internally or to raise funds necessary to comply with the minimum annual expenditures for exploration established in the rules, regulations and procedures of the Authority;

(b) except for the Enterprise and State Party applicants, the provision of a satisfactory financial guarantee to assume performance of the ob-

* Consequently, article 17, paragraph 1 (b) (iii) should be redrafted as follows: (iii) performance requirements including assurances pursuant to article 3, paragraph 4;

ligations under the proposed plan of work in the amount of 50 per cent of minimum annual expenditures for the first three years of exploration;

(c) any additional qualifications as may be determined by the Authority in its rules, regulations and procedures.

2. (as in L.78)

3. (as in L.78)

4. (deleted)

5. (deleted)

6. (deleted)

Article 4 (bis)
Qualification of applicants

1. A State Party or States Parties which sponsor an applicant, or in the case of the Enterprise, the Authority, shall provide the Legal and Technical Commission with a certification that the applicant which it sponsors in accordance with article 153, paragraph 2, is in full compliance with article 4 and the rules, regulations and procedures of the Authority concerning qualification standards for applicants.

2. A State Party shall not be subject to certification requirements but shall comply with article 4 and the rules, regulations of the Authority concerning qualification standards for applicants.

Article 5
Transfer of technology

1. (as in L.78)

2. (as in L.78)

3. Every contract for the conduct of activities in the Area entered into by Authority shall contain the following undertakings by the contractor:

(a) to co-operate with the Authority in the acquisition by the Enterprise on fair and reasonable commercial terms and conditions of the technology necessary for the carrying out of its activities in the Area;

(b) to make available to the Enterprise, if and when the Authority shall so request, the technology which he uses in carrying out activities in the Area, which he is legally entitled to transfer and which he has *made available or is willing to make available to third parties. This should be done by means of a licence or other appropriate arrangements which the operator shall negotiate with the Enterprise and shall be on terms and conditions no less favourable than the terms and conditions under which the operator has made or is willing to make the technology available to third parties;*

(c) to acquire, if and when requested to do so by the Enterprise and whenever it is possible to do so without substantial cost to the con-

tractor, a right to transfer to the Enterprise any other technology than that mentioned in subparagraph (b) which he uses in carrying out activities in the Area;

(d) to assist, if and when the Authority so requests, the Enterprise in obtaining on the free market efficient and useful technology through purchase, licensing, leasing or other appropriate agreement or arrangement on fair and reasonable commercial terms and conditions;

(e) to take the same measures as those mentioned in subparagraphs (a) to (d) for the benefit of a developing State or group of developing States which have applied for a contract under article 9, provided that these measures shall be limited to the exploitation of the part of the Area proposed by the contractor which has been reserved pursuant to article 8.

4. Disputes concerning the undertakings required by paragraph 3 between the contractor and the Authority and between States Parties and the Authority shall be subject to compulsory dispute settlement in accordance with Part XI as appropriate. Disputes arising under subparagraph (b) may be submitted by either party to commercial arbitration in accordance with the UNCITRAL Arbitration Rules or other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority.

5. In order to comply with the policy of Part XI, the States Parties undertake to ensure that the Enterprise is able to become a viable commercial entity and to engage successfully in the operations referred to in article 170. To this end, States Parties which engage in activities in the Area or which sponsor an entity referred to in article 153, paragraph (2), subparagraph (b) shall take effective measures to ensure that the provisions of paragraph 3 are brought into effect and shall take appropriate measures consistent with national law to prevent persons subject to their jurisdiction from engaging in a concerted refusal to supply technology to the Enterprise on commercial terms and conditions.

6. (as paragraph 5)

7. (as paragraph 6)

8. (as paragraph 7)

At the 167th Plenary meeting, on 7th April 1982, the Conference decided to allow the submission of statements on the amendments.[9] Following are the excerpts from the statements on the amendments which are of relevance to the Enterprise:

A/CONF.62/L.104 and Add.1[10]
Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand, Norway, Sweden and Switzerland: amendments.

...

ANNEX III
BASIC CONDITIONS OF PROSPECTING, EXPLORATION AND EXPLOITATION

Article 1 should read as follows: "Title to minerals shall pass to the operator upon recovery of the minerals from the Area in accordance with this Convention."

Article 3, paragraph 1, should read as follows:

"1. The Enterprise, States Parties, and the other entities referred to in article 153, paragraph 2 (b), of this Convention, may apply to the Authority for approval of plans of work covering activities in the Area. Upon approval of a plan of work, any such entity shall be referred to as an 'operator' for the purposes of this Convention."

Paragraphs 4 (a) and (b) should read as follows:

"4. Every plan of work approved by the Authority shall:

(a) be in strict conformity with this Convention and the rules, regulations and procedures of the Authority;

(b) include the following undertakings by the applicant:

(i) to accept as enforceable and comply with the applicable obligations created by the provisions of Part XI, the rules, regulations and procedures of the Authority and the decisions of the organs of the Authority in force at the time the plan of work is approved, and the terms of his contracts with the Authority;

(ii) to accept control by the Authority of activities in the Area, as authorized by this Convention;

(iii) to provide the Authority with a written assurance that his obligations under the contract will be fulfilled in good faith;

(iv) to comply with the provisions on the transfer of technology set forth in article 5."

Subparagraph (b) replaces article 4, paragraph 6. Consequently article 17, paragraph 1 (b) (iii), should be redrafted as follows:

"(iii) Performance requirements including undertakings pursuant to article 3, paragraph 4 (b);"

Article 4, paragraph 1, should read as follows:

"1. Applicants, other than the Enterprise, shall be qualified if they have the nationality or control and sponsorship required by article 153, paragraph 2 (b), of this Convention and if they follow the procedures established by the Authority by means of rules, regulations and procedures and meet the following qualification standards:

(a) financial and technical capability including the capacity to generate internally or to raise funds necessary to comply with the minimum annual expenditures for exploration established in the rules, regulations and procedures of the Authority;

(b) except for the Enterprise and State Party applicants, the provision of a satisfactory financial guarantee to assure performance of the

obligations under the proposed plan of work in the amount of 50 per cent of minimum annual expenditures for the first three years of exploration;

(c) any additional qualifications as may be determined by the Authority in its rules, regulations and procedures."

Delete paragraphs 4, 5 and 6.

Add a new article 4 (bis) to read as follows:

"Article 4 (bis)
Certification of applicants

1. A State Party or States Parties which sponsor an applicant, or in the case of the Enterprise, the Authority, shall provide the Legal and Technical Commission with a certificate that the applicant which it sponsors in accordance with article 153, paragraph 2, is in full compliance with article 4 and the rules, regulations and procedures of the Authority concerning qualification standards for applicants.

2. A State Party shall not be subject to certification requirements but shall comply with article 4 and the rules, regulations and procedures of the Authority concerning qualification standards for applicants."

Article 5, paragraphs 3 and 4 should read as follows:

"3. Every contract for the conduct of activities in the Area entered into by the Authority shall contain the following undertakings by the contractor;

(a) to co-operate with the Authority in the acquisition by the Enterprise on fair and reasonable commercial terms and conditions of the technology necessary for the carrying out of its activities in the Area;

(b) to make available to the Enterprise, if and when the Authority shall so request, the technology which he uses in carrying out activities in the Area, which he is legally entitled to transfer and which he has made available or is willing to make available to third parties. This should be done by means of a licence or other appropriate arrangements which the contractor shall negotiate with the Enterprise and shall be on terms and conditions no less favourable than the terms and conditions under which the contractor has made or is willing to make the technology available to third parties;

(c) to acquire, if and when requested to do so by the Enterprise and whenever it is possible to do so without substantial cost to the contractor, a right to transfer to the Enterprise any other technology than that mentioned in subparagraph (b) which he uses in carrying out activities in the Area;

(d) to assist, if and when the Authority so requests, the Enterprise in obtaining on the free market efficient and useful technology through purchase, licensing, leasing or other appropriate agreement or arrangement on fair and reasonable commercial terms and conditions;

(e) to take the same measures as those mentioned in subparagraphs (a) to (d) for the benefit of a developing State or group of developing

States which has applied for a contract under article 9, provided that these measures shall be limited to the exploitation of the part of the area proposed by the contractor which has been reserved pursuant to article 8.

4. Disputes concerning the undertakings required by paragraph 3 between the contractor and the Authority and between States Parties and the Authority shall be subject to compulsory dispute settlement in accordance with Part XI as appropriate. Disputes arising under subparagraph (b) may be submitted by either party to commercial arbitration in accordance with the United Nations Commission on International Trade Law arbitration rules or other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority."

Add a new paragraph 5 as follows:

"5. In order to comply with the policy of Part XI, States Parties undertake to ensure that the Enterprise is able to become a viable commercial entity and to engage successfully in the operations referred to in article 170. To this end, States Parties which engage in activities in the Area or sponsor an entity referred to in article 153, paragraph 2 (b), shall take effective measures to ensure that the provisions of paragraph 3 are brought into effect and shall take appropriate measures consistent with national law to prevent persons subject to their jurisdiction from engaging in a concerted refusal to supply technology to the Enterprise on commercial terms and conditions."

Delete paragraph 7. Renumber existing paragraph 5 as paragraph 6 and paragraph 6 as paragraph 7.

Article 6, paragraphs 1 and 2, should read as follows:

"1. The Legal and Technical Commission shall take up for consideration and recommendation to the Council, as expeditiously as possible, proposed plans of work in the order in which they are received.

2. When considering an application for approval of a plan of work with respect to activities in the Area, the Commission shall presume that the requirements of article 4 have been met in the case of applicants which have been certified pursuant to article 4 (bis), unless the Commission decided otherwise by a three-fourths majority of its members. In such a case, or in the absence of any of the undertakings referred to in article 3, the applicant shall be given 45 days to remedy any deficiencies."

Paragraphs 3 and 3 (a) should read as follows:

"3. The Commission shall recommend for approval the plan of work submitted by the Enterprise, State Party applicants and applicants which have been certified by States Parties pursuant to article 4 (bis) and whose applications have not been rejected pursuant to paragraph 2 unless:

(a) it determines by a three-fourths majority of its members that the plan of work does not conform to the Convention and the requirements established by the rules, regulations and procedures of the Authority,".

Reletter subparagraphs (a), (b) and (c) accordingly.

In paragraph 4 references to paragraph 3 (c) should be to paragraph 3 (d).

In paragraph 5, the reference to paragraph 3 (a) should be to paragraph 3 (b).

Article 163, paragraph 11, should, consequently, read as follows:

"Without prejudice to Annex III, article 6, paragraphs 2 and 3 (a), the decision-making…"

Article 17, paragraph 1 (b): add a new subparagraph XV to read as follows:

"(xv) Exploration for and exploitation of resources of the Area other than polymetallic nodules".

.....

A/CONF.62/L.121

Belgium, France, Germany, Federal Republic of, Italy, Japan, United Kingdom of Great Britain and Northern Ireland and United States of America: amendments[11]

ANNEX III

BASIC CONDITIONS OF PROSPECTING, EXPLORATION AND EXPLOITATION

Article 1: redraft the text to read as follows:

"Title to minerals shall pass to the operator upon recovery of the minerals from the Area in accordance with this Convention."

Article 3, paragraph 1: at the end of the paragraph add the following text:

"Upon approval of a plan of work, any such entity shall be referred to as an 'operator' for the purposes of this Convention."

Article 3, paragraphs 4 (a) and 4 (b): replace the text by the following:

"(a) be in strict conformity with this Convention and the rules, regulations and procedures of the Authority;

(b) include the following undertakings by the applicant:

(i) to accept as enforceable and comply with the applicable obligations created by the provisions of Part XI, the rules, regulations, and procedures of the Authority in force at the time its plan of work is approved, decisions of the organs of the Authority directed to the operator, and the terms of his contract;

(ii) to accept control by the Authority of activities in the Area, as authorized by this Convention;

(iii) to provide the Authority with a written assurance that his obligations under the contract will be fulfilled in good faith;

(iv) to comply with the provisions on the transfer of technology set forth in article 5."

Article 3, paragraph 5: redraft as follows:

"5. Each approved plan of work shall take the form of a contract to be signed by the Authority and the operator or operators."

Article 4, paragraph 1: redraft the text as follows:

"1. Applicants, other than the Enterprise, shall be qualified if they have the nationality or control and sponsorship required in article 153, paragraph 2 (b), of this Convention and if they follow the procedures established by the Authority by means of rules, regulations and procedures and meet the following qualification standards:

(a) the capacity to generate internally or to raise funds necessary to comply with the minimum annual expenditures for exploration established in the rules, regulations and procedures of the Authority;

(b) except for the Enterprise and State Party applicants, the provision of a financial guarantee to assure performance of the obligations under the proposed plan of work in the amount of 50 per cent of the minimum annual expenditures for the first three years of exploration;

(c) in the case of an applicant that has previously held a plan of work, certification that the plan of work was not terminated in accordance with article 18."

Article 4, paragraphs 4, 5 and 6: delete these paragraphs.

Add a new article 4 (bis) reading as follows:

"CERTIFICATION OF APPLICANTS

1. A State Party or States Parties which sponsor an applicant in accordance with article 153, paragraph 2, or in the case of the Enterprise, the Authority, shall provide the Legal and Technical Commission with a certification that the applicant is in full compliance with article 4 and the rules, regulations and procedures of the Authority.

2. A State Party shall not be subject to certification requirements but shall comply with article 4 and the rules, regulations, and procedures of the Authority."

Article 5, paragraph 3: replace "undertakings by the operator" by "undertakings by the contractor."

Article 5, paragraph 3: delete subparagraphs (a), (b), (c) and (d) and add the text as follows:

"(a) to co-operate with the Authority in the acquisition by the Enterprise on fair and reasonable commercial terms and conditions of the technology necessary for the carrying out of its activities in the Area;

(b) to make available to the Enterprise, if and when the Authority shall so request, the technology which he uses in carrying out activities in the Area, which he is legally entitled to transfer and which he has made available or is willing to make available to third parties for use in carrying out activities in the Area. This should be done by means of a licence or other appropriate arrangements which the contractor shall negotiate with the Enterprise and shall be on terms and conditions no less favourable than the terms and conditions under which the contractor has made or is willing to make the

technology available to third parties under similar circumstances;

(c) to acquire, if and when requested to do so by the Enterprise whenever it is possible to do so and without cost to the contractor, a right to transfer to the Enterprise any technology which he uses in carrying out activities in the Area under the contract which he is not legally entitled to transfer and which he is willing to make available to third parties for use in carrying out activities in the Area on terms and conditions no less favourable than the terms and conditions under which the contractor is willing to make the technology available to third parties under similar circumstances;

(d) to assist, if and when the Authority so requests, the Enterprise in obtaining on the free market efficient and useful technology through purchase, licensing, leasing or other appropriate agreement or arrangement on fair and reasonable commercial terms and conditions. Such assistance shall consist of:

(i) identification of potential developers and suppliers of such technology known to the contractor;

(ii) advice and evaluation of the terms and conditions upon which such technology is offered; and

(iii) advice in the course of the Enterprise's negotiations with potential suppliers of technology, concerning methods by which the Enterprise can obtain this technology on the commercial terms and conditions most favourable to the Enterprise,".

Article 5, paragraph 3 (e): redraft the text as follows:

"(e) to take the same measures as those prescribed in subparagraphs (a), (b), (c) and (d) for the benefit of a developing State or group of developing States which has applied for a contract under article 9, provided that these measures shall be limited to the exploitation of the part of the Area proposed by the contractor which has been reserved pursuant to article 8 and provided that activities under the contract sought by the developing State or group of developing States would not involve transfer of technology to a third State or the nationals of a third State. Obligations under this provision shall only apply with respect to any given contractor when technology has not been requested or transferred by him to the Enterprise."

Article 5, paragraphs 4 and 5: delete paragraphs 4 and 5 and add the following text:

"4. Disputes concerning the undertakings required by paragraph 3 between the contractor and the Authority and between States Parties and the Authority shall be subject to compulsory dispute settlement in accordance with Part XI as appropriate. Disputes arising under subparagraphs (b) or (c) may be submitted by either party to commercial arbitration in accordance with the United Nations Commission on International Trade Law Arbitration Rules or other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority.

5. The States Parties undertake to assist the Enterprise to become a viable commercial entity and to engage successfully in the operations referred to in article 170. To this end, States Parties which engage in activities in the Area or which sponsor an entity referred to in article 153, paragraph (2), subparagraph (b), shall take effective measures to ensure that the provisions of paragraph 3 are brought into effect and shall take appropriate measures consistent with national law to prevent persons subject to their jurisdiction from engaging in a concerted refusal to supply technology to the Enterprise on commercial terms and conditions. The Authority shall rely on such States Parties for the enforcement of the undertakings in this article."

Article 5, paragraph 8: delete paragraph 8.

Article 6: the title should read: "Approval of plans of work." Replace article 6 by the following text:

" 1.Except as otherwise provided for in paragraphs 4 (b), (c), and (d) of this article, the Authority shall approve an application for a plan of work in accordance with this article and article 162 (2) (j), if the plan of work conforms to the requirements of article 4 of this annex and the rules, regulations, and procedures of the Authority.

2. The Legal and Technical Commission shall take up for consideration and recommendation to the Council proposed plans of work in the order in which they are received.

3. When considering an application for approval of a plan of work with respect to activities in the Area, the Commission shall presume that the requirements of article 4 have been met in the case of applicants which have been certified pursuant to article 4 (bis) unless the Commission decides otherwise by a three-fourths majority of its members. In such a case, or in the absence of any of the commitments and assurances referred to in article 3, the applicant shall be given 45 days to remedy any deficiencies.

4. The Commission shall within 120 days of taking up a plan of work for consideration recommend to the Council for approval the plans of work submitted by the Enterprise, State Party applicants and applicants which have been certified by States Parties pursuant to article 4 (bis) and whose applications have not been rejected pursuant to paragraph 3, unless:

(a) it determines by a three-fourths majority of its members that the plan of work does not conform to articles 4 and 6 of this annex;

(b) part or all of the proposed area is included in a previously approved plan of work or a previously submitted proposed plan of work which has not yet been finally acted on by the Authority, or

(c) part or all of the proposed area is disapproved by the Authority pursuant to article 162, paragraph 2 (w), of this Convention;

(d) the proposed plan of work has been submitted or sponsored by a State Party which already holds:

(i) plans of work for exploration and exploitation of polymetallic nodules in non-reserved sites that, together with either part of the proposed site, would exceed in size 30 per cent of a circular

area of 400,000 square kilometres surrounding the centre of either part of the area covered by the proposed plan of work;

(ii) plans of work for the exploration and exploitation of polymetallic nodules in non-reserved sites which in aggregate size constitute 2 per cent of the total seabed area which is not reserved or otherwise withdrawn by the Authority from eligibility for exploitation pursuant to article 162, paragraph 2 (w), of this Convention.

5. For the purpose of the standard set forth in paragraph 4 (d), a plan of work proposed by a partnership or consortium shall be counted on a pro rata *basis among the sponsoring States Parties involved according to article 4, paragraph 2. The Authority may approve plans of work covered by paragraph 4 (d) if it determines that such approval would not permit a State Party or persons sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the Area.*

6. Notwithstanding the provisions of paragraph 4 (b), after the end of the interim period as defined in article 151 of this Convention, the Authority may adopt by means of rules, regulations and procedures other procedures and criteria consistent with this Convention for deciding which applicants shall have plans of work approved in cases of selection among applicants for a proposed area. These procedures and criteria shall ensure approval of plans of work on an equitable and non-discriminatory basis."

Article 7, paragraph 1: replace the paragraph by the following text:

"1. The Authority shall take up applications for production authorizations in the order they are received and issue authorizations in the same order provided the applicant certifies that it intends to commence commercial production within 5 years. Authorizations shall be issued within 30 days. These authorizations shall entitle the applicant to commence production at any time within the period referred to above. Such period shall be extended for a reasonable period of time by the Legal and Technical Commission if the applicant offers evidence that, for reasons beyond its control, production cannot begin on an economically viable basis at the time originally planned. Once production begins, the applicant shall be entitled to engage in commercial production according to its stated production requirements."

Article 8: redraft the text to read as follows:

"Each application, other than those proposed by the Enterprise or by any others for reserved sites, shall cover a total area, which need not be a single continuous area, sufficient for two areas of equivalent size and comparable value. The applicant shall indicate the co-ordinates dividing the area into two parts of equal estimated commercial value. The Enterprise and the applicant may agree on which site is to be reserved for exploration and exploitation in accordance with article 9. If the Enterprise and the applicant have not so agreed by the time that the application is taken up by the Legal and Technical Commission, the Legal and Technical Commission shall allo-

cate the two sites at random. The site which is allocated to the Enterprise either by agreement or by random selection shall become a reserved site as soon as the plan of work for the non-reserved area is approved and the contract is signed. When the contract is signed, the contractor shall submit all the data obtained by it with respect to the reserved site. Without prejudice to the powers of the Authority pursuant, to article 17, the data to be submitted concerning polymetallic nodules will relate to mapping, sampling the density of nodules and the composition of metals in them."

Article 9: add a paragraph 5, reading as follows:

"5. (a) If after 10 years from the date an area is designated as a reserved area pursuant to article 8, commercial production has not commenced in the area, the area, together with any data related thereto, shall be made available to any entity which indicates its willingness to propose a plan of work for it in a joint venture with a developing country or group of developing countries;

(b) If within twelve months, no plan of work has been submitted and approved in accordance with paragraph (a), the area, together with any data related thereto, shall be made available to the entity which originally applied for approval of the plan of work under which the area was reserved pursuant to article 8 of this annex. If such entity has not proposed a plan of work which is approved within a further period of six months then the area and data shall be made available to any entity referred to in article 153, paragraph 2;

(c) Plans of work submitted in accordance with this article shall be exempt from the requirements of article 8 of this annex;

(d) The Council shall establish competitive procedures in conformity with the provisions of this Convention, its annexes, and the rules, regulations and procedures adopted thereunder for the award of contracts pursuant to paragraphs (a) and (b);

(e) The 10-year time period referred to in paragraph (a) shall be extended for any time period during which prevailing market prices for the commodities to be produced from the minerals to be derived from the site indicate that the site could not be exploited profitably."

Article 12: replace paragraphs 1 and 2 by the following text:

"This Convention, the rules, regulations and procedures for the Authority, and the decisions of any organ of the Authority shall apply to the Enterprise in the same manner as they would to any other operator except in those cases where the Convention expressly provides otherwise."

Article 17, paragraph 1:redraft the text to read as follows:

"1. The Authority shall adopt and uniformly apply rules, regulations and procedures in accordance with article 160, paragraph 2 (f), article 162, paragraph 2 (n), and article 165, paragraph 2 (f) in Part XI of this Convention, for the implementation of its functions as prescribed in Part XI. Rules and regulations shall address the following matters:"

Article 17, paragraph 1 (b): add a new clause (xv) reading as follows

"(xv) exploration for and exploitation of resources of the Area other than polymetallic nodules;"

ANNEX IV
STATUTE OF THE ENTERPRISE

Article 5, paragraph 1: redraft the text to read as follows:

"1. The Governing Board shall be composed of 15 members elected by the Assembly in accordance with article 160, paragraph 2 (c) of this Convention. Until the Enterprise has repaid all debt obligations incurred pursuant to article 11, paragraph 1, the Assembly shall ensure that members of the Governing Board include members nominated by States Parties that account for at least one half of the total amount of such obligations outstanding. Consistent with the foregoing requirement, due regard shall be paid to the principle of equitable geographic distribution. In submitting nominations of candidates for election to the Board, members of the Authority shall bear in mind the need to nominate candidates of the highest standard of competence, with qualifications in relevant fields, so as to ensure the viability and success of the Enterprise.

4. Each member of the Board shall receive remuneration to be paid out of the funds of the Enterprise."

Article 5, paragraph 6: redraft the text to read as follows:

"6. Members of the Board shall continue in office until their successors are elected. If the office of a member of the Board becomes vacant, the Assembly shall, upon the recommendation of the Council, elect another member for the remainder of the unexpired term in accordance with the requirements of paragraph 1."

Article 11, paragraph 3 (b): redraft the text to read as follows:

"3. (b) All States Parties shall make available to the Enterprise in three equal annual instalments an amount equivalent to one half of the funds referred to in subparagraph (a) by way of long-term, interest-free loans in accordance with the scale of assessments for the United Nations regular budget in force at the time when the contributions are made, adjusted to take into account the States which are not members of the United Nations. Debts incurred by the Enterprise in raising the other half of the funds shall be guaranteed by all States Parties in accordance with the same scale: provided that no state shall be required to assume in any one year any new guarantee obligation exceeding one third of its total obligations under this subparagraph."

Article 11, paragraph 3 (d) (i): at the end of the subparagraph add the following text: "and shall submit the proposed schedule to the Council for approval."

Article 11, paragraph 3: add a new subparagraph 3 (i) reading as follows:

"(i) The rules, regulations and procedures of the Authority shall

specify default procedures, including receivership provisions, for defaults on the repayment of loans referred to in subparagraph 3 (f) above."

Several delegations submitted letters to the President of the Conference in which they stated their position regarding the proposed amendments. Following is a letter dated 22 April 1982 from the representative of the **Libyan Arab Jamahiriya** relating to the Enterprise:

A/CONF.62/L.131
Letter dated 22 April 1982 from the representative of the Libyan Arab Jamahiriya to the President of the Conference[12]

"I wish to make it clear, at this important stage in the history of the Conference, that the Socialist People's Libyan Arab Jamahiriya strongly opposes any substantive changes in the provision of Part XI of the draft Convention on the Law of the Sea contained in document A/CONF/.62/L.78, for the following reasons.

1. The provisions of Part XI do not represent the basic position of the developing countries. Rather, they are compromise solutions at which it was possible to arrive, at the end of the resumed Ninth Session at Geneva in 1980, after rigorous efforts and lengthy and complex negotiations. Those delegations which are now trying to demolish the foundations of these provisions took part in the drafting of those compromise solutions.

2. It was possible to arrive at those compromise solutions after a lengthy series of concessions which we, together with the group of developing countries, offered. It is not possible for those States to agree to any more concessions, or the Convention would become useless with regard to us. This is a matter which must be taken into account, just as the interest of other States are taken into account.

3. Any substantive amendment to the provisions of Part XI will, in fact, disturb the components of the overall package.

The successive rapid events which have taken place at this Session underscore the fact, without any doubt, that a number of States have been greedy to obtain more concessions from the developing countries, to an extent which knows no limit. Indeed, some of these States, in order to obtain more concessions, have gone so far as to exert various kinds of pressure on the delegations participating in the Conference, sometimes threatening non-participation in the Convention, sometimes submitting proposals which would take us back to the early days of the Conference and sometimes threatening to lay the responsibility for the failure of the Conference on the developing countries unless their wishes are met. They have forgotten that they are responsible for the obstacles which they have placed before the Conference. They have started to give the delicate balance between the provisions of the draft Convention and the components of the package a meaning

which conflicts with the proper logic of things. While they call for radical changes to Part XI, they see in the amendments which establish harmony and balance among the provisions of the Convention a disturbance of the delicate balance and the overall package.

For all these reasons, the Socialist People's Libyan Arab Jamahiriya strongly opposes any substantive amendments to the provisions of Part XI of the draft Convention, and in particular articles 137, 138, 140, 150, 151, 152, 153, 155, 158, 160, 161, 162, 163, 165, 178, 188 and 189, Annex III and Annex IV.

It strongly opposes also any preparatory investment regime which would discriminate between States and affect the substantive provisions of Part XI."

The Plenary Conference met from 15 to 17April 1982 to discuss the amendments. Following are excerpts of statements having direct relevance to the Enterprise:

(a) The representative of the **United States** introducing the amendments contained in document A/CONF.62/L.121 on behalf of the sponsors, said that, earlier in the Session, his delegation had submitted informally what had become known as the "Green Book" of amendments (WG.21/Informal paper/18). The United States had since withdrawn those amendments, which had been superseded by those being introduced. The sponsors had given careful consideration to all the proposals circulated since the start of the Session. To the extent possible and as far as was consistent with the need to protect vital national interests, they had tried to work on the basis of those proposals, with a view to improving the prospects for consensus; in formulating their amendments, the sponsors had drawn substantially on them in an effort to remedy the deficiencies identified in Part XI of the draft Convention.[13]

Turning to Annex III, he said that the sponsors had borrowed substantially from the proposals made by the Group of 11. They were particularly concerned with the issues referred to in articles 7, 8 and 9. Article 9 had been criticized on the grounds that the Enterprise could hoard mining sites, perhaps as a means of retaining control of valuable real estate until its value increased. He believed it was reasonable to ask the Enterprise to entertain some kind of limit on the extent of the areas it kept out of production. The sponsor's proposal was, therefore, that if, after ten years, an area was not in production, efforts should be made to involve developing countries in bringing it into production; and if after twelve months no suitable plan of work had been submitted, the area concerned should be opened to other parties. The sponsors envisaged the use of a competitive system in awarding contracts for the exploitation of such areas.[14]

The amendments to the Statute of the Enterprise proposed by the sponsors were modest, but likely to increase the chances of support from industrialized countries. Essentially, they were designed to give the Enterprise's creditors an opportunity to have some say in the use of their assets. If moreover the Enterprise faced economic difficulties, its creditors should know that

means of recovering their assets existed. There was nothing unusual in such provisions in any legal system.[15]

Speaking, finally, on behalf of his own delegation only, he admitted that his Government had spent a long and difficult time reviewing the draft Convention and had taken difficult decisions regarding its continuing participation in the Conference. It must be clear to all delegations that his country, up to its highest levels, was ready, willing, able and anxious to take part in a consensus on a Convention by 30 April. It had done everything possible, consistent with its vital interests, to reduce its negotiating demands to a minimum. It was in the interests of the United States not to remain outside the Convention, but it was also in the interests of all countries to produce an instrument which would command the widest possible support.[16]

(b) The representative of **Norway**, speaking on behalf of the Group of 11 developed countries sponsoring the amendments proposed in document A/CONF.62/L.104, said that the extensive changes of Part XI of the draft Convention proposed by the United States, and the subsequent reluctance by the Group of 77 to consider the United States proposals as a basis for negotiation, had created a serious impasse which the Conference had not yet overcome. The Group appreciated the efforts by the United States delegation to reduce its lists of proposed changes, but remained concerned that the extensive package of amendments introduced by the United States representative (A/CONF.62/L.121) might not be conducive to overcoming the difficulties which the Conference was facing.[17]

The Group of 11 had prepared its proposal with the purpose of making progress within the consensus of Part XI reached at the end of the Ninth Session, and felt that its package did not alter the fundamental balance of the draft Convention. It was not seeking to protect any special interests of its own, but to provide a framework within which the Conference might find generally acceptable solutions to the principal concerns of the United States and others.[18]

The Group had proposed an amendment to article 1 of Annex III, on title to minerals, to clarify that title. According to article 137, paragraph 2, and article 157, paragraph 1 of the draft Convention, the Authority exercised the sovereign rights to resources on behalf of mankind. The purpose of Annex III, article 1, was to stipulate when the title to the minerals passed to others. Legal clarity on that point was essential. The Group had introduced a definition of the term "operator" in article 3, paragraph 1 of Annex III; the amendments to article 1 would make it clear that the Enterprise also had the right to dispose of the minerals, to refine them or make other commercial uses of them without further authorization from the Authority. "Operator" was introduced as a general term comprising all seabed miners as distinct from contractors. Contractors comprised seabed miners other than the Enterprise, namely all those for whom an approved plan of work took the form of a contract signed by the Authority. Consequential changes would have to be made in other articles of Annex III.[19]

Article 5, on the transfer of technology, was crucial for obtaining a universal Convention adopted by consensus. The amendments suggested by the

Group attempted to reconcile the task of making the Enterprise a viable commercial entity with the obstacles involved in compelling seabed miners to accept the principle and consequences of a mandatory transfer of technology to the Enterprise. The Group had used the provisions of article 144, paragraph 2, of the draft Convention, which called for the Authority and States Parties to "co-operate" in promoting the transfer of technology and scientific knowledge, as its starting point. It proposed reducing the burden of the mandatory transfer of technology required under Annex III, article 5, of the current text, instead of imposing on the contractor the obligation to co-operate with the Authority in securing the necessary technology for the Enterprise, and to assist the Enterprise in obtaining such technology on the free market. Under paragraph 3 (b), however, mandatory transfer of technology placed it on the open market: it would be unreasonable to allow the owner to discriminate against the Enterprise. Under paragraph 3 (c) of the Group's proposal, the contractor would still in principle be under an obligation to secure technology for the Enterprise, but only if it was possible to do so without substantial cost. The contractor would also retain considerable discretion in deciding whether such an obligation existed in the specific circumstances. With the change in approach to the transfer of technology in article 5, the Group felt that the ten-year time limit provided for in paragraph 7 was unnecessary. The Group proposed a new paragraph 5, however, making it an obligation for States Parties both to insure that the Enterprise became a viable commercial entity and to prevent concerted refusal by persons under their jurisdiction to supply technology to the Enterprise.[20]

(c) The representative of the **United Republic of Tanzania** said that it would be recalled that, at the beginning of the Conference, there had been a wide gap between the position of the Group of 77 and that of the industrialized States, and that to resolve the deadlock the Group of 77 had accepted, by way of compromise, the so-called "parallel system" proposed by the then Secretary of State of the United States, Dr. Kissinger. The Group of 77 had reconciled itself to that proposal with considerable misgivings, since some members felt that the system would lead to a kind of "apartheid" by which the Area would be divided into two halves, one for the rich few and one for the impoverished many. They were none the less consoled by the proposal to establish an Enterprise through which the poor majority would be able to participate in the exploitation of the resources of the Area, and would be guaranteed both technology and financial capital and areas of established commercial value which had already been surveyed. It was also proposed that the parallel system would operate for a period of not more than twenty years, after which there would be a Review Conference with the option of changing the system.[21]

With regard to the so-called "reserved area," the amendments sought to give absolute power to those who had secured a large area of the common heritage for themselves. They wanted the real power to be vested in a Council in which they had permanent membership and an absolute veto. Production policies did not adequately protect land-based producers, and the amend-

ments were intended to remove whatever production limitation was currently embodied in the text of the draft Convention as contained in document A/CONF.62/L.78. The provisions of that document failed to specify who would be responsible for the transfer of technology to the Enterprise and the amendments sought to remove whatever element of obligations there was. The bulk of the burden of financing the Enterprise had been placed on the developing countries, and the Review Conference would be unable to change the system automatically even if the parallel system become untenable.[22]

It was to be hoped that the Conference would not be called upon to start negotiations afresh. His delegation felt betrayed by the succession of promises that had been broken over the previous eight years, and would find it difficult to enter into renewed negotiations with any confidence of good faith. In 1976 Dr. Kissinger, with all the prestige of his office as a representative of the United States, had made firm promises which had led to the acceptance of the parallel system by the Conference. However, while the Conference was working on Part XI, the United States and its allies were enacting unilateral legislation. The greater portion of Part XI had been formulated by the sponsors of draft resolution A/CONF.62/L.121. In the period between 1978 and 1980, when the majority of delegations were excluded from the negotiations, Belgium, France, the Federal Republic of Germany, Italy, Japan, the United Kingdom and the United States were constantly engaged in negotiations. In 1980 those countries were parties to the consensus which had emerged in the Conference. In 1981, however, the Conference had been stunned by the actions taken by the United States, but genuine efforts had been made to understand the meaning of those actions, and patience had been exercised by the Conference for a whole year. During that time the sponsors of draft resolutions A/CONF.62/L.121 and L.122 were negotiating their mini-treaty in Brussels and elsewhere. What had been witnessed during the current Session was a concerted effort by those delegations to substitute their mini-treaty for the text contained in document A/CONF.62/L.78. He did not believe that those delegations were interested in any Convention that did not accord with their unilateral actions and the mini-treaty they were engaged in negotiating. That was clearly shown by the negotiations at the current Session of the Conference on preparatory investment protection. Indeed, the new paragraph 5 which they proposed to add to Article 151 was an attempt to incorporate the mini-treaty into the Convention in the guise of preparatory investment protection.[23]

In conclusion, he said that it was the responsibility solely of the authors of the amendments contained in documents A/CONF.62/L.121 and L.122 to demonstrate that they had the interests of everyone, and the principles of justice and fair play, at heart. Any attempt to extract further concessions from the Group of 77 would serve only to render meaningless all that the Conference had achieved in respect of Part XI of the draft Convention.[24]

(d) The representative of **Thailand** said that Thailand appreciated the efforts that had been made by the United States to reduce its negotiating demands, as indicated in the amendments contained in documents A/CONF.62/

L.121 and L. 122. However, as the spokesman of the Group of 11 had pointed out, the proposed amendments were not yet conducive to consensus and the United States must therefore make further constructive efforts to find a proper place for its concerns within the international regime set up by the draft Convention. Thailand had taken an active part in the negotiations on Part XI, although it stood to derive little direct benefit, because Part XI was an essential part of the whole substantive package and should command as wide acceptance as possible. Thailand hoped that no country would seek to exclude itself from the universal system and that the continuing process of negotiation would soon yield positive results. No State, in its anxiety to preserve its national interests, should lose sight of the overriding general interest of humanity.[25]

(e) The representative of the **Union of Soviet Socialist Republics** said that the United States, Japan and a number of western European countries had put forward, in documents A/CONF.62/L.104 and L.121, a series of amendments to the compromise provisions of Part XI of the draft Convention, many of which did not directly affect Soviet interests but appeared to create difficulties for the Group of 77 and to threaten the compromises reached on Part XI and on the draft Convention as a whole. His delegation was sympathetic to the points made by the Chairman of the Group of 77 in his recent statement.[26]

(f) The representative of **Algeria** said that the amendments submitted reflected a wide divergence of views and should therefore be inadmissible since they would in no way contribute to arriving at the consensus everyone was striving to attain. Some delegations were attempting to raise new difficulties that had been painfully resolved at lengthy meetings. For example, the amendments proposed to Part XI and related annexes had caused great disquiet in the Conference. His delegation failed to understand the purpose behind the attempt by a certain group of countries to transform radically Part XI and related annexes. He pointed out that that part of the draft Convention did not fully meet the wishes of his delegation and others. When the compromise had been reached on matters such as the Review Conference and the transfer of technology, his delegation had expressed dissatisfaction at a Plenary meeting. The amendments now proposed were attempting to create a barrier to consensus; his delegation would have suspected their sponsors to appreciate the sacrifice already made by the developing countries and to understand that their amendments were not practical. They should realize the consequences of their proposals and the fact that they could not demand further compromise from the developing countries on a text that was already in their favour.[27]

(g) The representative of **Mozambique** said that the strenuous effort of negotiation carried out in the Conference was not finally achieving its goal of establishing a new legal order for the seas. Several of the proposed amendments entailed innovations regarding subjects previously negotiated, as in the case of Part XI. In August 1980, a delicate balance of interests had been achieved in Geneva and a consensus had been reached on those important matters. Unfortunately, in 1981 the United States delegation had created a deadlock in the work of the Conference, which had culminated in the presentation of the

so-called "Green Book." While everyone appreciated the attitude of the United States in withdrawing that document, his delegation believed that the amendments submitted in document A/CONF.62/L.121 would disturb the balance of Part XI of the draft Convention and feared that any consideration of those proposals would alter the programme of work established and approved for the current Session. The sponsors of the amendments were unhappy with the draft Convention, but so were the members of the Group of 77. However, in a spirit of compromise, the Group of 77 had accepted the draft Convention as contained in document A/CONF.62/L.78 and was opposed to any element that would disturb the delicate balance of that package.[28]

(h) The representative of **Trinidad and Tobago** said that as a member of the Group of 77, his delegation had taken no final position on the amendments proposed by the Group of 7 (A/CONF.62/L.121) or the Group of 11 (A/CONF.62/L.104). He could accept most of the proposals of the latter Group. While acknowledging the efforts of the sponsors to deal with the transfer of technology, he thought their proposed amendments to Annex III, article 5, eroded the guarantees which were essential if the Enterprise was to flourish.[29]

(i) The representative of **Tunisia** said with regard to the proposed amendments to Part XI, that she supported the position of Group of 77 in that she wished to preserve the basic elements of Part XI while remaining open to suggestions which would improve the text.[30]

(j) The representative of **Sierra Leone**, speaking on behalf of the group of African States, said the amendments proposed by the industrial countries (A/CONF.62/L.121 and L.122) were a direct challenge to the principle that the resources of the seabed belonged to mankind as a whole.

The quid pro quo for the parallel system of exploration and exploitation was supposed to have been the financing of the Enterprise by the industrialized countries and the transfer to the Enterprise of technology required to make it operational. There was to be a Review Conference at a date to be decided in order to ascertain whether the system had proved useful both to developing and to industrialized countries and it was only on those conditions that agreement had been reached on the parallel system.

The draft Convention imposed a heavy burden on developing States in terms of financing a system which was not expected to pay any dividends for the foreseeable future. Moreover, the effect of the amendment to Annex III, article 5, proposed in A/CONF.62/L.121 would be to make the transfer of technology no longer an obligation but a matter left to the discretion of contractors.

With those considerations in mind, the group of African States, acting in line with the recommendations of the Group of 77, had mandated him to state that no further dilution or concessions could be made with regard to the following provisions of the draft Convention: the production ceiling; the Review Conference; the transfer of technology; and the composition, procedure and voting provisions of article 161. Any further concessions regarding any of those provisions could lead to a unilateral system of exploration and exploitation unduly favouring the industrialized countries.[31]

(k) The representative of **Viet Nam** said that the amendments presented by the major western industrialized countries in documents A/CONF.62/L.121 and L. 122 were however, irrational and exorbitant in their demands. The United States, in particular, had placed a serious obstacle in the path of the Conference by its unrealistic and intransigent claims, and it was a matter for regret that certain other delegations had taken advantage of the impasse created by the actions of the United States to revive some of their former claims, thus introducing a further element of confusion.

His delegation fully supported the views expressed by the Chairman of the Group of 77 in his statement at the 169th Plenary meeting, and particularly his contention that the major western industrialized countries must recognize that the fact the Group had agreed to discuss the question of preparatory investment protection was in itself a substantial concession. The Group had, however, firmly opposed any renegotiation on the fundamental elements of Part XI and related annexes.[32]

(l) The representative of the **Libyan Arab Jamahiriya** said that his delegation opposed the amendments in document A/CONF.62/L.121 whose real purpose was to prevent the Conference from adopting the Convention and place the blame on the Group of 77, and also to grant a minority of countries exclusive access to the resources of the sea through the conclusion of bilateral arrangements.

In general, the aim of presenting such a large number of amendments at such a late stage was to deprive the members of the Group of 77 of what few benefits would accrue to them under the Convention by establishing a unified system in which activities would be monopolized by international companies in both the reserved and non-reserved areas.

The Group of 77 had refrained from proposing counter amendments despite the fact that the text of the present draft Convention did not fully reflect the views. Such restraint indicated the seriousness of their desire to see the Conference complete its work. The amendments in document A/CONF.62/L.104 were not acceptable to his delegation as they would upset the balance of the draft Convention.[33]

(m) The representative of **Bulgaria** said that he was firmly convinced that any further concessions to certain States, based on political, technological or other advantages, could be detrimental to the interests of the large majority of States and to the international community as a whole.

In that connection, he fully supported the statement made by the Chairman of the Group of 77, on 15 April on matters relating to the regime of the exploration and exploitation of the international seabed area. There should be no substantial changes in that regime. He therefore opposed the amendments in document A/CONF.62/L.121, which not only affected 32 articles but could destroy the very foundations of the Convention, particularly its Part XI. The amendments in document A/CONF.62/L.104 were similarly unacceptable in that they affected substantive elements.[34]

(n) The representative of **Yugoslavia** said that he wished to reiterate the position of his Government in support of the position of the Group of 77 with respect to Part XI and the relevant annexes of the draft Convention in document A/CONF.62/L.78. The Group of 77 had always been willing to search for

agreement and had made many concessions to that end. Such aspects of the draft Convention as production ceilings, transfer of technology, composition of and decision-making in the Council, the Review Conference, separation of powers in the Authority, general resource policy in the Area and the status of the Enterprise could not be renegotiated.[35]

(o) The representative of **Uruguay** said that the amendments submitted by Peru on behalf of the Group of 77 represented a final offer. No further concessions could be made. His delegation appealed to the industrialized countries not insist on their proposals concerning matters that had already been finally negotiated, such as production ceilings, transfer of technology, the composition of the Council, the Review Conference, the powers and functions of the Assembly, resources policy and the Enterprise and its powers.[36]

(p) The representative of **Mexico** said that with regard to Part XI of the draft Convention, her delegation wished to reaffirm that any attempt to change substantively the basic elements of the seabed regime, as was proposed in the amendments contained in document A/CONF.62/L.121, would fail. Mexico appealed to the sponsors of those amendments to be realistic and withdraw them in view of the tremendous concession which draft resolution II represented.[37]

(q) The representative of **São Tomé and Principe** reiterated his delegation's position against the reopening of negotiations on Part XI of the draft Convention, particularly with regard to the basic elements. Experience had shown that, whenever Part XI was discussed, it was the developing countries that made concessions. Acceptance of the concerns of the industrialized countries on the fundamental issues of Part XI and the related annexes, as expressed in documents A/CONF.62/L.121 and L.122, could destroy the parallel system, which was the cornerstone of the draft Convention.[38]

(r) The representative of **Hungary** said that his delegation saw the amendments submitted by delegations as falling roughly into three categories. The first category contained those which were clearly opposed to the major components of the package deal which had been so painstakingly worked out over the previous eight years; those his delegation would not accept. Among them were the extensive proposals submitted in document A/CONF.62/L.121 by the United States and six other developing countries, which would radically alter 32 important articles in Part XI of the Convention and relevant annexes. As the Chairman of the Group of 77 had stated, such amendments were designed to upset the delicate balance of the compromise reached on some of the key elements of the deep seabed mining regime.[39]

(s) The representative of **China** said that in accordance with its position of principle on Part XI of the draft Convention and the related Annex III, his delegation had welcomed the statement of the representative of the United States on 15 April, to the effect that its delegation had withdrawn its "Green Book" and was ready and willing to be a part of the consensus for the adoption of the Convention by 30 April. However, the fact that the United States together with six other countries, was again asking for a large number of substantive amendments to the Convention was hardly in line with that atti-

tude; it was to be hoped that the delegation of the United States would prove the validity of its words through actions.[40]

(t) The representative of **Congo** pointed out in connection with the amendments to Part XI of the draft Convention (A/CONF.62/L.121 and L.122) that the text as it stood provided a democratic and balanced system for managing the resources of the sea and the seabed as the common heritage of mankind with due regard for the reasonable self-interest of certain countries. It reflected a consensus reached after lengthy and very detailed negotiations in which the authors of the amendments had played a very active part.

Moreover, through the Enterprise, a unitary system had been established under which all peoples of the world held the monopoly for the direct exploitation of the sea's resources. Moreover through the Authority, provision had been made for a parallel system of exploitation by certain public and private national enterprises, most of them from the countries which had submitted the amendments in documents A/CONF.62/L.121 and L.122. Through the Enterprise, the parallel system accorded those national enterprises, the privilege of individual access to the sea's resources and therefore required them to provide and ensure the financing of the transfer of technology required for exploitation of those resources. The effort of the two amendments A/CONF.62/L.121 and L.122 would be to reduce the parallel system to a unitary system for the benefit of a few powerful national enterprises in the rich countries.

The amendments in documents A/CONF.62/L.121 and L.122 were a severe blow to the concept of the resources of the sea and the seabed as the common heritage of mankind.

The proposed amendments to Annex III would have the effect of awarding contracts for exploitation to any company holding a contract for exploration and the obligation to transfer technology to the Enterprise would become a mere recommendation.[41]

(u) The representative of **Kenya** said that a number of amendments had been proposed which seemed designed to shatter the package which had been so laboriously put together. He did not doubt the good faith of the sponsors of those amendments, but if each individual State had pursued its own interests in a similar way, there would have been no draft Convention. He appealed to the sponsors of amendments which would change the draft Convention substantially to withdraw them if there was no prospect of reaching a consensus on them. It was essential that all States should demonstrate the political will necessary to conclude the Convention on the Law of the Sea.[42]

(v) The representative of **Pakistan** said that his delegation held firmly to the view that Part XI was a package of negotiated texts which should not be subjected to fundamental and substantial changes. He hoped that the delegations which had submitted amendments to Part XI would agree that the package should be left intact; to insist on substantial changes would inevitably wreck the package and would be unacceptable to a vast majority of the Conference. He therefore urged those delegations which had proposed amendments to Part XI to withdraw them and not to press them to a vote.[43]

(w) The representative of **Zambia** said that his delegation found it very difficult to understand, let alone accept the amendments proposed in documents A/CONF.62/L.100, L.104, L.121 and L.122. The second document (L.104), in particular, which appeared to be a successor to the document of the Group of 11, amounted to a betrayal of the draft Convention. The Group of 11 had originated in an attempt to break out of the impasse in negotiations between the Group of 77 and the industrial nations which wished to exploit the Area. Unfortunately, its document had since taken on a life of its own, and a well-meant effort had been distorted to suit certain national ambitions. Since some sponsors of the amendment had said that they could live with the draft Convention as it stood, his delegation hoped that the amendment would be withdrawn.[44]

At the 174th meeting, on 23 April 1982, the President of the Conference read out his report contained in document A/CONF.62/L.132 on his efforts to achieve general agreement in the period of deferment of voting on the amendments submitted in documents A/CONF.62/L.96 to L.126 and drew attention to the proposals in the annexes to his report. He reminded the Conference that a number of amendments were submitted to Part XI of the draft Convention. At the request of the sponsors of these amendments and with the concurrence of other delegations, the President and the Chairman of the First Committee conducted intensive consultations on these amendments. In assessing the results of these consultations, the President has borne in mind that the basic texts of the Conference are contained in document A/CONF.62/L.78, L.93 and L.94 and any modifications thereon must offer a substantially improved prospect of achieving general agreement. Guided by this criterion, the President felt able to recommend only three modifications to the provisions of Part XI in document A/CONF.62/L.78.[45]

Following are excerpts from document A/CONF.62/L.132 and Add.1. Although none of them is related directly to the Enterprise, draft resolution II governing preparatory investment in pioneer activities relating to polymetallic nodules in Annex IV of the documents touches upon the Enterprise.[46] Annex IV is hereafter reproduced:

A/CONF.62/L.132 and Add.1
Report of the President to the Conference in accordance with rule 37 of the rules of procedure[47]

...

ANNEX IV
PROPOSED NEW TEXT TO DRAFT RESOLUTION II TO REPLACE THE TEXT CONTAINED IN DOCUMENT A/CONF.62/L.94:

DRAFT RESOLUTION II GOVERNING PREPARATORY INVESTMENT IN PIONEER ACTIVITIES RELATING TO POLYMETALLIC NODULES

The Third United Nations Conference on the Law of the Sea,

Having this day adopted the Convention on the Law of the Sea the ('Convention')

Having this day also established by resolution the Preparatory Commission for the International Seabed Authority and the International Tribunal for the Law of the Sea (the 'Commission') and directed it to prepare such draft rules, regulations and procedures as it deems necessary to enable the Authority to commence its functions, as well as to make recommendations for the early entry into effective operation of the Enterprise;

Desirous of making provision for investments by States and other entities made in a manner compatible with the international regime set forth in Part XI of the Convention and the annexes relating thereto, prior to the entry into force of the Convention;

Recognizing the need to ensure that the Enterprise will be provided with the funds, technology and expertise necessary to enable it to keep pace with the States and other entities referred to in the preceding paragraph, with respect to activities in the Area;

Decides as follows:

1. For the purposes of this resolution:

(a) ' pioneer investor' refers to:

(i) France, Japan, India and the Union of Soviet Socialist Republics, or a State enterprise of each of those States or one natural or juridical person which possesses the nationality of or is effectively controlled by each of those States, or their nationals, provided that the States concerned sign the Convention and the States or State enterprises or natural or juridical persons have expended, prior to 1 January 1983, an amount equivalent to at least $US 30 million (United States dollars calculated in constant dollars relative to 1982) in pioneer activities and has expended no less than 10 per cent of that amount in the location, survey and evaluation of the area referred to in paragraph 3 (a);

(ii) four entities, whose components being natural or juridical persons possess the nationality of, or are effectively controlled by, one or more of the following States: Belgium, Canada, the Federal Republic of Germany, Italy, Japan, Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America or their nationals, provided that the certifying State or States sign the Convention and the entity concerned has expended, prior to 1 January 1983, the levels of expenditure and for the purpose stated in subparagraph (a) (i);

(iii) any developing State signatory of the Convention or any State entity or natural or juridical person which possesses the nationality of such State or is effectively controlled by it or its nationals, or any group of the foregoing which, prior to 1 January 1985, has expended the levels of expenditure and for the purpose stated in subparagraph (a) (i);

The rights of the pioneer investor may devolve upon its successor in interest;

(b) 'pioneer activities' means undertakings, commitments of resources, investigations, findings, research, engineering development and other activities relevant to the identification, discovery and systematic analysis and evaluation of polymetallic nodules and to the determination of the technical and economic feasibility of exploitation. Pioneer activities include:

(i) any at-sea observation and evaluation activity which has as its objective the establishment and documentation of:

a. the nature, shape, concentration, location and grade of polymetallic nodules;

b. the environmental, technical, and other appropriate factors which must be taken into account prior to exploitation;

(ii) the taking from the deep seabed of polymetallic nodules with a view to the designing, fabricating and testing of equipment which is intended to be used in the exploitation of polymetallic nodules.

(c) 'certifying State' means a signatory of the Convention standing in the same relation to a pioneer investor as would a sponsoring State pursuant to Annex III, article 4 of the Convention and which certifies the level of investment specified in subparagraph (a);

(d) 'polymetallic nodules' means one of the resources of the Area, consisting of any deposit or accretion on or just below the surface of the deep seabed consisting of nodules which contain manganese, nickel, cobalt and copper:

(e) 'pioneer area' means an area allocated by the Commission to a pioneer investor for pioneer activities pursuant to this resolution. A pioneer area shall not exceed 150,000 square kilometres. The pioneer investor shall relinquish portions of the pioneer area to revert to the international Area, in accordance with the following schedule:

(i) 20 per cent of the area allocated by the end of the third year from the date of the allocation;

(ii) an additional 10 per cent of the area allocated by the end of the fifth year from the date of the allocation;

(iii) an additional 20 per cent of the area allocated or such larger amount as would exceed the exploitation area decided upon by the Authority in its rules, regulations and procedures, after eight years from the date of the allocation of the area or the date of the award of a production authorization, whichever is earlier;

(f) 'Area,' 'Authority,' 'activities in the Area' and 'resources' shall have the meanings assigned to those terms under the Convention.

2. As soon as the Preparatory Commission begins to function, any State signatory of the Convention may apply to the Commission on its own

behalf or on behalf of any State enterprise or entity or natural or juridical person specified in paragraph 1(a), for registration as a pioneer investor. The Commission shall register the applicant as a pioneer investor if the application:

(a) in the case of a State signatory, is accompanied by a statement certifying the level of expenditure made in accordance with paragraph 1 (a), and, in all other cases, a certificate concerning such level of expenditure issued by a certifying State or States; and

(b) is in conformity with the other provisions of this resolution, including paragraph 5;

3. (a) Every application shall cover a total area, which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations. The application shall indicate the co-ordinates of the area, defining the total area and dividing it into two parts of equal estimated commercial value, and contain all the data available to the applicant with respect to both parts of the area. Such data shall include, inter alia, information relating to mapping, sampling, the density of nodules and the composition of metals in them. In dealing with such data, the Commission and its staff shall act in accordance with the relevant provisions of the Convention and its annexes concerning the confidentiality of data;

(b) Within 45 days of receiving the data required by subparagraph (a) above, the Commission shall designate the part of the area to be reserved in accordance with the Convention for the conduct of activities by the Authority through the Enterprise or in association with developing States. The other part of the area shall be allocated to the pioneer investor as a pioneer area;

4. No pioneer investor may be registered in respect of more than one pioneer area. In the case of a pioneer investor which is made up of two or more components, none of such components may apply to be registered as a pioneer investor in its own right or under paragraph 1 (a) (iii):

5. (a) Any State signatory which is a prospective certifying State shall ensure, before making applications to the Preparatory Commission under paragraph 2, that areas in respect of which applications are made do not overlap with one another or with areas previously allocated as pioneer areas. The States concerned shall keep the Commission currently and fully informed of any efforts to resolve conflicts with respect to overlapping claims and the results thereof;

(b) Certifying States shall, prior to the entry into force of the Convention, ensure that pioneer activities are conducted in a manner compatible with it;

(c) In carrying out the conflict resolution procedure required under subparagraph (a) above, the prospective certifying States, including all potential claimants, shall resolve their conflicts by negotiations within

a reasonable period. If such conflicts have not been resolved by 1 March 1983, the prospective certifying States shall arrange for the submission of all such claims to binding arbitration in accordance with United Nations Commission on International Trade Law arbitration rules to commence not later than 1 May 1983 and to be completed by 1 December 1984. If one of the States concerned does not wish to participate in the arbitration, it shall arrange for a juridical person of its nationality to represent it in the arbitration. The arbitration tribunal may, for good cause, extend the deadline for the making of the award for one or more 30-day periods;

(d) In determining the issue as to which applicant involved in a conflict shall be awarded all or part of each area in conflict, the arbitral tribunal shall find a solution which is fair and equitable, having regard, with respect to each applicant involved in the conflict, to the following factors:

(i) deposit of the relevant co-ordinates with the prospective certifying State or States not later than the date of adoption of the Final Act or 1 January 1983, whichever is earlier;

(ii) the continuity and extent of past activities relevant to each area in conflict and the application area of which it is a part;

(iii) the date on which each pioneer investor concerned or predecessor in interest or component organization thereof commenced activities at sea in the application area;

(iv) the financial cost of activities measured in constant dollars relevant to each area in conflict and to the application area of which it is a part; and

(v) the time when activities were carried out and the quality of activities;

6. A pioneer investor registered pursuant to this resolution shall, as from the date of such registration, have the exclusive right to carry out pioneer activities in the pioneer area allocated to him;

7. (a) Every applicant for registration as a pioneer investor shall pay to the Commission a fee of $US 250,000. When the pioneer investor applies to the Authority for a plan of work for exploration and exploitation the fee referred to in Annex III, article 13, paragraph 2 shall be $US 250,000;

(b) Every registered pioneer investor shall pay an annual fixed fee of $US 1 million commencing from the date of the allocation of the pioneer area. The payments shall be made by the pioneer investor to the Authority upon the approval of its plan of work for exploration and exploitation. The financial arrangements undertaken pursuant to such plan of work shall be adjusted to take account of the payments made pursuant to this paragraph;

(c) Every registered pioneer investor shall agree to incur periodic expenditures, with respect to the pioneer area allocated to it, until

approval of its plan of work pursuant to paragraph 8, of an amount to be determined by the Commission. The amount should be reasonably related to the size of the pioneer area and the expenditures which would be expected of a bona fide operator who intends to bring the area into commercial production within a reasonable time:

8. (a) Within six months of the entry into force of the Convention and certification by the Commission in accordance with paragraph 11 hereof of compliance with the provisions of this resolution, the pioneer investor so registered shall apply to the Authority for a plan of work for exploration and exploitation, in accordance with the Convention. The plan of work in respect of such application shall comply with and be governed by the relevant provisions of the Convention and the rules, regulations and procedures of the Authority, including the operational requirements, the financial requirements and the undertakings concerning the transfer of technology. Accordingly, the Authority shall approve such application;

(b) When an application is made by an entity other than a State, pursuant to subparagraph (a), the certifying State or States shall be deemed to be the sponsoring State for the purposes of Annex III, article 4 of the Convention, and shall thereupon assume such obligations;

(c) No plan of work for exploration and exploitation shall be approved unless the certifying State is a party to the Convention. In the case of the entities referred to in paragraph 1 (a) (ii), the plan of work for exploration and exploitation shall not be approved unless all the States whose natural or juridical persons comprise those entities are parties to the Convention. If any such State fails to ratify the Convention within six months after it has received a notification from the Authority that an application by it, or sponsored by it, is pending, its status as a pioneer investor or certifying State, as the case may be shall terminate, unless the Council, by a majority of three fourths of its members present and voting, decides to postpone the terminal date by a period not exceeding six months;

9. (a) In the allocation of production authorization, in accordance with article 151 of the Convention and Annex III, article 7, the pioneer investors who have obtained approval of plans of work for exploration and exploitation shall have priority over all applicants other than the Enterprise as contained in paragraph 2 (c) of article 151. After each of the pioneer investors has obtained production authorization for its first mine site, the priority for the Enterprise contained in Annex III, article 7, paragraph 6 shall apply;

(b) Production authorizations shall be issued to each pioneer investor within 30 days of the date on which the pioneer investor notifies the Authority that it will commence commercial production within five years. If a pioneer investor is unable to begin production within the period of five years for reasons beyond its control, it shall apply to

the Legal and Technical Commission for an extension of time. The said Commission shall grant such extension of time, for a period not exceeding five years and not subject to further extension, if it is satisfied that the pioneer investor cannot begin on an economically viable basis at the time originally planned. Nothing in this subparagraph shall prevent the Enterprise or any other pioneer applicant, who has notified the Authority that it will commence commercial production within five years, from being given a priority over any applicant who has obtained an extension of time under this subparagraph;

(c) If, upon being given notice, pursuant to subparagraph (b), that the Authority determines that the commencement of commercial production within five years would exceed the production ceiling in Article 151, paragraph 2, the applicant shall hold a priority over any other applicant for the award of the next production authorization allowed by the production ceiling;

(d) In the event that two or more pioneer investors apply for production authorizations to begin commercial production at the same time and Article 151, paragraph 2 (a) would not permit all such production to commence simultaneously, the Authority shall notify the pioneer investors concerned. Within three months of such notification, they shall decide whether and, if so, to what extent they wish to apportion the allowable tonnage among themselves;

(e) If, pursuant to subparagraph (d) above, they decide not to apportion the available production among themselves, they shall agree on an order of priority for production authorizations, and all subsequent applications for production authorizations will be granted after those referred to in this subparagraph have been approved;

(f) If, pursuant to subparagraph (d), they decide to apportion the available production among themselves, the Authority shall award each of them a production authorization for such lesser quantity as they have agreed. In each such case the stated production requirements of the applicant will be approved and their full production will be allowed as soon as the production ceiling admits of additional capacity sufficient for the applicants involved in the competition. All subsequent applications for production authorizations will be granted only after the requirements of this subparagraph have been met and the applicant is no longer subject to the reduction of production provided for in this subparagraph;

(g) If the parties fail to reach agreement within the stated time period, the matter shall be decided immediately by the ..... in accordance with the criteria set forth in article 7, paragraph 3 and 5 of Annex III;

10. (a) Any rights acquired by entities, or natural or juridical persons which possess the nationality of or are effectively controlled by a State or States whose status as certifying State has been terminated,

shall lapse unless the pioneer investor alters its nationality and sponsorship within six months of the date of such termination as provided for in subparagraph (c);

(b) A pioneer investor may alter its nationality and sponsorship from that prevailing at the time of its registration as a pioneer investor to that of any State Party to the Convention which has effective control over the pioneer investor in terms of paragraph 1(a);

(c) Alterations of nationality and sponsorship pursuant to this paragraph shall not affect any right or priority conferred on a pioneer investor pursuant to paragraphs 6 and 8 of this resolution:

11. The Commission shall:

(a) provide pioneer investors with the certificates of compliance with the provisions of this resolution referred to in paragraph 8 hereof; and

(b) incorporate in its final report, provided for in paragraph 10 of resolution I of the Conference, details of all registrations of pioneer investors and allocation of pioneer areas pursuant to this resolution;

12. In order to ensure that the Enterprise is able to carry out activities in the Area in such a manner as to remain in step with States and other entities:

(a) Every registered pioneer investor shall:

(i) carry out exploration at the request of the Commission in the area reserved pursuant to paragraph 3 of this resolution in connection with its application for activities by the Authority through the Enterprise or in association with developing States on the basis that the costs so incurred plus interest thereon at the rate of 10 per cent per annum shall be reimbursed;

(ii) provide training at all levels for personnel designated by the Commission;

(iii) undertake, prior to the entry into force of the Convention, to perform the obligations prescribed in the provisions of the Convention relating to transfer of technology;

(b) Every certifying State shall:

(i) ensure that the necessary funds are made available to the Enterprise in a timely manner in accordance with the provisions of the Convention, upon its entry into force; and

(ii) report periodically to the Commission on the activities carried out by it, by its entities or natural or juridical persons;

13. The Authority and its organs shall recognize and honour the rights and obligations arising from this resolution and the decisions of the Preparatory Commission taken pursuant to it:

14. Without prejudice to paragraph 13, this resolution shall have effect until the entry into force of the Convention;

15. Nothing in this resolution shall derogate from the provisions of Annex III, article 6, paragraph 3 (c) of the Convention.

At the 175th meeting, on 26 April 1982, the President of the Conference appealed to all sponsors of draft amendments not to press for their amendments to be put to the vote. He said that if a controversial and divisive amendment were put to the vote and adopted, it could jeopardize the Conference's hopes of adopting the Convention by consensus. He indicated that some members had already responded to that appeal. The United States representative said that his delegation and the other sponsors of the amendments in documents A/CONF.62/L.121 and L.122 were prepared not to press for a vote on their amendments provided that the sponsors of other amendments did likewise.[48]

The President's appeal was echoed with support from sponsors of the proposed amendments contained in document A/CONF.62/L.104. Accordingly all the amendments to the articles related to the Enterprise were withdrawn.[49]

The report of the President (A/CONF.62/L.132) was discussed at the 177th, 178th and 179th Plenary meetings on 28 and 29 April 1982.[50]

Following are the excerpts of statements relevant to the Enterprise:

(a) The representative of **Peru**, speaking as Chairman of the Group of 77, said that he wished to comment in particular on the proposals contained in Annexes IV and V of the report of the President (A/CONF.62/L.132). The Group of 77 was willing in principle to accept those proposals, although to do so would mean making concessions, the magnitude of which should be recognized by other members. The draft resolution in Annex IV was not in the Group's interest and the Group would like to see it brought further into line with the basic parameters of the Convention. Its main concerns, which had already been expressed directly to the President, related to the size of the pioneer area (paragraph 1(e)) of the draft resolution II and the status of the Enterprise, as outlined in paragraphs 9 (a) and 9 (b).[51]

(b) The representative of **Sierra Leone** said that his delegation had understood that the so-called parallel system of exploration and exploitation laid down in the Convention would place the Enterprise on an equal footing with other entities involved in seabed mining. The new draft resolution II in Annex IV of the report of the President (A/CONF.62/L.132), however would create an unbalanced and inequitable regime. Its legal effect would be to restore legitimacy to the unilateral national legislation already enacted by certain countries, namely France, the United Kingdom, the United States and the Federal Republic of Germany, authorizing and regulating the mining of polymetallic nodules outside the provisions of the Convention. That legislation called for the reciprocal recognition of authorizations issued by the States concerned, and also dealt with the resolution of potential conflicts concerning the size and shape of unexplored areas. The Conference had declared all such legislation illegal, but the proposed draft resolution II, by implication, recognized and legitimised it. The draft resolution also made provision for exploration before the entry into force of the Convention and for resolution of conflicts with respect to overlapping claims. It would thus place certain countries in a privileged position and prevent the parallel system from coming into effect, at least for many years, and perhaps forever, if the privileged countries decided to set up a cartel against

which the Enterprise would not be able to compete. Paragraphs 1 and 9, in particular were weighed against the Enterprise.[52]

(c) The representative of **Zambia** said that his delegation's understanding of paragraph 9 (a) of the draft resolution II was that it would suspend or freeze the parallel system, which might therefore not come into operation until the twenty-eighth year when, if all went well, the Enterprise would have its eight mine sites. Such provision was unfair.[53]

(d) The representative of **Trinidad and Tobago** said that in order to correct what appeared to be an imbalance in the development of the parallel system, it might be necessary to make certain changes in paragraph 9 (a) so as to ensure that exploitation of the reserved areas could take place during the interim period whenever fewer reserved sites than non-reserved sites were under exploitation.[54]

(e) The representative of **Guyana** said he was unhappy about the preparatory investment protection provisions; in his view, draft resolution II did not give the Enterprise the competitive edge which it should have by right. The draft resolution gave little encouragement to those States which considered that the majority of mankind in the developing countries were represented by the Enterprise, because the Enterprise would have only one mine site while the few States in the other groups would certainly have six or seven. However, he understood that what was practically attainable might not be acceptable to all; that was the case with draft resolution II, but he would not raise any formal objection to the President's proposals.[55]

(f) The representative of **Algeria** said that Annex IV concerning the draft resolution on preparatory investment caused his delegation serious concern because of certain provisions which would lead to the collapse of the parallel system. The provisions relating to the size of a pioneer area, to the number of mine sites reserved for the Enterprise made the draft resolution controversial.[56]

(g) The representative of **Iran** noted, with regard to the draft resolution contained in Annex IV, that most of the texts submitted at the current Session had the drawback of emphasizing the protection of preparatory investment at the expense of the international community's interests in the common heritage of mankind. The President's report was open to the same criticism, since it unduly increased the number of "pioneer investors," who would be the future competitors of the Enterprise, and barred the way to the development of the parallel system that was the very foundation of the regime for exploitation of the common heritage. Where the definition of a pioneer investor was concerned, he felt that the President's proposal, by expressly listing in paragraphs 1(a) and (b) the States which would have that status, ensured that they would be recognized as such. That list would become to some extent a source of law, inasmuch as the Preparatory Commission would, in accordance with paragraph 2 of the draft resolution, register almost automatically any entity that applied for registration as a pioneer investor. The requirements laid down in the paragraph consisted mainly of a statement, by the State designated in paragraph 1, certifying the level of expenditure made by that State or any of its

entities. Those misgivings were even more justified in view of the fact that the approval of plans of work by the Authority, as provided for in paragraph 8 (a), was not subject to adequate safeguards. It seemed to his delegation that, under the terms of paragraph 8, the functions of the Authority with respect to the approval of plans of work were not discretionary but mandatory.

Although he approved of the inclusion in paragraph 1 of a formula in favour of developing countries, he pointed out that that formula might ultimately benefit certain entities of developing countries wishing to begin exploitation of the seabed, since there was a risk that the status of pioneer investor might be granted with the concurrence of some developing countries and at the expense of the Enterprise. In order to prevent possible abuses, the provisions of paragraph 10 must be strengthened so that the Preparatory Commission could satisfy itself that States Parties to the Convention did not have effective control over entities possessing their nationality. Secondly, the proposals contained in the report would have a serious impact on the parallel system and might in fact hamstring it for the entire period before the Review Conference. The eleven States listed in paragraphs 1 (a) and (b) would in practice be assured of access to some two million square kilometres of the richest part of the international area, which from the very moment of the entry into force of the Convention would be closed to the Enterprise. It had been argued that the reversion clause reduced the drawbacks of the excessive size of the "pioneer area," but that was by no means certain, since the entity engaged in exploitation might relinquish those portions of the Area which exploratory operations showed to be least promising. Unfortunately, the Enterprise would be excluded not only during the exploration phase, since paragraph 9 (a) suspended priority for the Enterprise with regard to the issue of production authorizations until the pioneer investors had obtained production authorization for their first mine site. Despite the exception provided for in paragraph 9 (b) of the draft resolution, paragraph 9 (a) entailed a serious risk of imbalance, to the detriment of the Enterprise in terms of the number of mine sites it could obtain in the first years of the production. His delegation could not agree to such discrimination, which cast doubt on the working of the parallel system that it had accepted as a provisional compromise. The provisional regime proposed in the President's report for preparatory investment would postpone for a long time the establishment of the unitary system which had been and continued to be the ultimate objective for his delegation.[57]

(h) The representative of **Uruguay** said with respect to draft resolution II concerning preparatory investments in Annex IV of the report, it was necessary to strike a balance between the actual and the ideal administration of the common heritage of mankind. It should be borne in mind that the aim was to construct a set of provisions which were essentially of a transitional nature so that flexible formulae could be used pending the establishment of a definitive regime. However, the wording of the final sentence of paragraph 9 (a) of the draft resolution should be amended in order to give a better reflection of the essence of the parallel system. At the very least, it was important to eliminate

the rigid condition of precedence for pioneer investors with regard to priority for the Enterprise, in accordance with article 7, paragraph 6, of Annex III to the Convention, pending a formulation that would offer the best prospects for consensus.[58]

(i) The representative of **Ivory Coast** said that the draft resolution in question was very unbalanced; it differed considerably from the earlier draft and buttressed the rights of private entities and of a few countries at the expense of the Authority, which ended up with duties and obligations but very few rights. It contained provisions (paragraphs 1(e) and 9 (a)) which at some future time might seriously limit the rights of the Authority or the Enterprise, especially in terms of the effective implementation by the Enterprise of the parallel system, because of the large number of sites allocated to pioneer investors and the unjustifiable size of those sites.[59]

(j) The representative of **Zaire** said that with respect to paragraph 9 (a) of draft resolution II contained in Annex IV to the report, it must be pointed out that the provision would for a time reverse the parallel system which had cost so much effort. It has been said that after the first stage, the system would operate as envisaged. However, it was difficult to foresee when the first stage would end and above all, whether there would be any resources left to exploit when the second stage was reached.

The Enterprise, if it came into operation, would have certain advantages: the exploration would have been done and the financing and technology provided by the pioneer investors. Nevertheless, it was necessary to proceed cautiously, because those positive factors could also affect its autonomy.[60]

(k) The representative of **New Zealand** said that the proposals in the President's report were a substantial step towards general agreement. There was still no consensus regarding the texts which would govern deep seabed mining, but he nevertheless believed that Annex IV to the report was a remarkable achievement. The industrialized countries had sought a regime that would enable pioneer investors to proceed with exploration on a sound financial basis in the interim period before the Convention entered into force and with security for investments made during that period, and he thought that that objective had been met in a fair and reasonable way and that the President's proposal was a balanced one. Only a small number of pioneer entities were contemplated, while the Enterprise was given a valuable headstart and the fundamentals of the parallel system were well represented. Moreover the proposal offered good prospects for consensus on arrangements for the protection of preparatory investments.[61]

(l) The representative of **Madagascar** said that if the Enterprise was to be treated as a poor relation, as the machinery provided for in the draft resolution in Annex IV seemed to imply, the rules in the Convention governing the status and operation of the Enterprise, particularly as regards the absolute priority which the Enterprise should have in obtaining a second site, would be vitiated. He saw no reason why rules applying to pioneer investors should be contained in a document which was merely an addendum to the constitutional provisions of the law of the sea.[62]

(m) The representative of the **Libyan Arab Jamahiriya** said, with reference to Annex IV of the President's report (A/CONF.62/L.132), that when the Conference had decided at the 174th meeting on 23 April, that all efforts at reaching general agreement had been exhausted, neither the Group of 77 nor the group of African States had in fact had time to study the proposal properly and express their views. It was therefore possible that even if the proposals in the annex were formally adopted, sufficient objections to them might be raised to prevent the Conference from reaching consensus on the Convention. It appeared from paragraph 1 of draft resolution II contained in Annex IV that the major part of the Area was to be divided among a handful of countries, which would then have it virtually to themselves for thirty or forty years. That provision seriously jeopardized the parallel system and put the Enterprise in a very disadvantageous position.[63]

(n) The representative of **Senegal** said, with regard to Annex IV, that his delegation welcomed the provision allowing developing countries to become pioneer investors, but thought that it should be implemented with great care. The protection of the preparatory investments could jeopardize the parallel system and widen the gap between developing and developed countries. A pioneer area should not be as large as 150,000 square kilometres, and the Preparatory Commission would have to ensure that the portions to be relinquished in accordance with paragraph 1 (e) were not the least productive parts. The protection of preparatory investments must not take precedence over the viability of the Enterprise, the implementation of the parallel system and above all, the key idea that the seabed was the common heritage of mankind, which was one of the most innovative concepts in modern international law.[64]

(o) The representative of **Qatar** said that its only objection to the draft resolution in Annex IV related to paragraph 1 (e) concerning pioneer areas. The size of the Area which it was proposed to grant to pioneer investors was excessive and would reduce the common heritage of mankind. His delegation considered that the Area should be limited to 100,000 square kilometres; a larger area might well lead to monopolies by a small number of countries. There should also be equality of treatment as between the Enterprise and the entities referred to in paragraph 1 (a). If those two requirements were taken into account his delegation could accept draft resolution II.[65]

At the 180th Plenary meeting, on 29 April 1982, the President of the Conference said in its report on Informal Consultations conducted on 27 and 28 April that the representatives of the Group of 77 had made three requests concerning the draft resolution in Annex IV. First they had maintained that the size of the pioneer area contained in paragraph 1 (e) was too large and should be reduced. Secondly, they had requested that in paragraph 9 (a), the Enterprise should be guaranteed production authorization in respect of two mine sites instead of one and that the authorization should enjoy priority over the pioneer investors. Thirdly, they had requested that the industrialized countries should assist the Enterprise in financing the exploration and exploitation of the second mine site. The last demand had been opposed by the Soviet Union and

others. They had argued that it was an unacceptable attempt to reopen the negotiations on financial matters which had been conducted in Negotiating Group 2 and which had been settled. In respect of the first and the second demands, a deal had been struck whereby in return for the Group of 77 not insisting on its position on paragraph 1 (e), the industrialized countries would agree that the Enterprise should have production authorization for two mine sites and such production authorization would enjoy priority over the pioneer investors. That proposed reformulation of paragraph 9 (a) was contained in the annex to document A/CONF.62/L.141.[66]

With respect to the proposals of the United States and the other sponsors of document A/CONF.62/L.121, he said that the relevant negotiations and consultations had been conducted within the following parameters. Firstly, any proposed modification must not call into question the fundamental framework and elements of the existing text of Part XI and the related annexes; secondly, any proposed modification must take into account the interests of other countries and must not be harmful to them; and thirdly, the proposed modification must be negotiated within the framework and deadlines set out in document A/CONF.62/L.116. On that basis, he had proposed a number of modifications (A/CONF.62/L.141, annex) to Part XI and to Annex III which in his view, did not hurt the interests of the developing countries or the countries of the group of Eastern European (socialist) States and which would enhance the prospects that the United Sates and the other major industrialized countries would sign and ratify the Convention. It was his hope that all delegations would support the proposed modifications. He was asking the developing countries to make a series of unilateral concessions to the United States and other industrialized countries, bearing in mind that those concessions did not hurt in any significant way the interests of their group or of their countries, that that price was worth paying in order to enhance the prospects of attracting universal support for the Convention, and that Part XI was not only part of the Convention. The modifications he had proposed to Part XI and the related annexes in the annexes to documents A/CONF.62/L.132 and L. 141 looked meagre compared to the demands in document A/CONF.62/L.121, but did address most of the fundamental concerns of the United States and the other sponsors of the latter document, and he hoped that it would be possible for them to join the Conference in adopting the Convention.[67]

At the 181st Plenary meeting, on Friday 30 April 1982, the President of the Conference informed the members of the Conference that he had, prior to the meeting, received a letter from the head of the United States delegation, in which a recorded vote on the draft Convention was requested in view of the outstanding difficulties his delegation had with the emerging package. The President also reminded delegations that the draft Convention contained in document A/CONF.62/L.78 as modified by document A/CONF.62/L.93, by document A/CONF.62/L.132, Annexes I, II, III and V, document A/CONF.62/L.137 and by the annex to document A/CONF.62/L.141 and the related draft resolutions constituted an integral whole.[68]

At the 182nd meeting, on Friday, 30 April 1982, the draft Convention together with the draft resolutions I to IV was adopted by 130 votes to 4 and 17 abstentions. Among the four States which voted against were Israel, Turkey, United States and Venezuela.[69]

It was decided that the Conference would resume from 22 to 24 September 1982 to consider the recommendations of the Drafting Committee. At the 183rd meeting held the 22 September 1982, the Chairman of the Drafting Committee presented the Committee's recommendations.[70]

At the 183rd meeting held on 22 September 1982, the Chairman of Drafting Committee presented the Committee's recommendations. The Conference adopted all the proposals contained in the report of the Chairman of the Drafting Committee.[71]

During the final part of the Session from 6 to 10 December 1982 held in Montego Bay, Jamaica, and prior to the signing of the Convention, delegations were given the opportunity to make statements. Some referred to the Enterprise:

(a) ***Canada***

To ensure that the Enterprise becomes a viable entity, the Convention includes several unique positions. Parties to the Convention will be required to finance one Enterprise mine site on the basis of the United Nations scale of assessment calculated as being applicable to all nations, including non-members of the United Nations. Private and national operators will have to agree to transfer technology to the Enterprise in certain circumstances and pursuant to defined terms and conditions. While the extent of the funds provided the Enterprise to purchase technology might well be such as to make the transfer of mining technology provisions unnecessary, their temporary and unique nature cannot make them precedents for other international negotiations.

We must also recognize that the best way to ensure that there are sufficient funds to establish the Enterprise is through universal acceptance of the Convention.[72]

(b) ***Peru***

In the written statement I shall submit on behalf of the group of Latin American States, I sum up the very special contributions made by the group of Latin American States to the reform of the law of the sea. Without that support, it would not have been possible to obtain, among the most important changes to the former rules, the recognition of the rights of sovereignty and jurisdiction of coastal States to the 200-mile limit, the new definition of the continental shelf or the establishment of the International Authority with its operative aim, the Enterprise, designed to regulate, control and carry out exploitation of the seabed beyond the limits of national jurisdiction as the common heritage of mankind.[73]

(c) ***Trinidad and Tobago***

It has been in a spirit of compromise that my delegation has gone along with the parallel system of exploitation for the mining of deep seabed manga-

nese nodules. We would have preferred and we did form part of the consensus to this effect in the group of Latin American States, a unitary joint venture system. We believe that only one limb, the private entity limb, of the parallel system will work. The Convention does not provide adequate guarantees and we have fought to get such guarantees, but unsuccessfully for the other limb of the parallel system, the Enterprise, to receive technology for deep-sea mining and to engage in mining activities under the parallel system on an equal footing with private entities. The fair and reasonable commercial terms on which the Enterprise is to purchase seabed technology may in fact turn out to be prohibitive.[74]

(d) *Ireland*

Perhaps the most historic achievement of the Conference is the inclusion in the Convention of the regime for the international seabed area beyond the limits of national jurisdiction, an entirely new branch in the international Law of the Sea. Not surprisingly, this was one of the most controversial fields covered by the negotiations and is at the root of the misgivings of many of the countries hesitating to give their approval to the Convention. My country does not at this stage stand to benefit directly from the exploitation of the international area as we are neither among the countries having the technology to engage in and profit from exploitation nor among those that will be the primary beneficiaries of the wealth accruing to the International Authority from that exploitation. And, while our lack of technological expertise prevents us from making a detailed assessment of the scheme, our lack of direct interest probably enables us to take a more detached view of the broad features of the regime than many other countries can take. We accordingly think that it is worth making a general observation about it.[75]

(e) *Indonesia*

The problems relating to deep seabed mining have caused some anxiety. Indonesia, like many other developing countries, is dependent to a great extent on the export of its minerals for its economic development. The minerals to be produced from the Area would compete in the world market with those produced in developing countries. Since the markets for the minerals are primarily in the highly industrialized countries, complete freedom to mine and market the seabed resources would create very serious dislocations in the already frail and fragile economies of the developing countries. It is therefore essential that the International Authority regulate the development and exploration of seabed resources which, after all, have been declared the common heritage of mankind. The Conference has exerted tremendous efforts and long years of negotiations to achieve a balance that would protect the economies of the developing countries, bring benefits to the rest of the world and, at the same time, guarantee the industrialized countries access to the resources. In this endeavour, the developing countries have offered numerous concessions. We are hopeful that after all these conclusions the

industrialized countries will finally recognize that the present Convention would provide all States with best legal framework for the exploration of the resources of the deep seabed area. We are deeply disappointed, however, that after these efforts to reach a compromise certain industrialized countries are still demanding more concessions which go beyond the limits of possible accommodation.[76]

(f) ***India***

I trust that our experience may also be useful to the Enterprise, the business arm of the International Seabed Authority, in its exploitation of the reserved mine sites, in step with the other States and entities.[77]

(g) ***Tanzania***

Part XI is one of the most important areas of the Convention. In regard to an area and resources declared to be the common heritage of mankind, it has been our belief that a system whereby all States would undertake all activities jointly would have been the best way of ensuring the equitable distributions of the benefits. At the insistence of the industrial powers, however, we have compromised on a dual or parallel system. But, even then, the provisions in that part do not strike a particularly good balance to make the system work smoothly and effectively. On the one hand, private companies will have almost automatic access to the unreserved area. On the other hand, however, the provisions are full of loopholes which will impede the availability to the Enterprise of capital and technology to enable it to explore and exploit the resources of the reserved area.[78]

(h) ***Mauritius***

The system of exploitation and exploration which is enshrined in the Convention is the embodiment of the preference of the industrialized countries for the parallel system, the detriment of the unitary system. It is good to note that this compromise on the system was made possible by the undertaking given by industrialized countries to give the means, both financial and technological, to the Enterprise, the operational arm of the International Seabed Authority, to make it viable. We may rightly ask ourselves the question whether this undertaking has been fulfilled. We all know the answer to that question.

...

What is definite, however, is that Part XI of the Convention represents the ultimate compromise. Any further tampering with it will result in making a mockery of the common heritage of mankind.[79]

(i) ***Cuba***

This is the first triumph in our struggle to establish the new international economic order even if it is a limited triumph. We now have an international

system for exploitation of the polymetallic nodules of the seabed situated beyond the limits of national jurisdiction established by the Convention. The fact that the International Seabed Authority, made up of all the Member States, will regulate the exploitation of these immense riches, in order to ensure so far as possible that in the contemporary world these resources will be used for the benefit of countries that are relatively less developed, heralds without any doubt the beginning of a new international economic order in this sphere, which is so important precisely because of its enormous wealth.[80]

(j) *Belgium*

With respect to the regime of exploitation of ocean mineral resources, Belgium takes the view that the spirit of compromise was not maintained to the same degree. As a result, the provisions of Part XI of the Convention give rise to concerns on the part of my Government that, in our view justify its making a more exhaustive study of the matter. On the basis of that study which is currently being conducted, the Government of Belgium will reach a definitive decision as to whether or not it will sign the Convention.[81]

(k) *Yugoslavia*

The provisions on the transfer of technology to the Enterprise under fair and reasonable conditions and the provisions on the initial financing of the Enterprise are in fact the essence of the parallel system.[82]

(l) *Tunisia*

International co-operation thus extends into a new field. According to the text that has been adopted, developing countries have the same rights to profits from the great wealth of the international area as developed countries with the financial and technological means to exploit those resources, particularly polymetallic nodules. In this area, the International Seabed Authority is called upon to play a regulating role, in particular by preventing the over-exploitation of the heritage and unilateral recourse to the exploitation of those spaces by certain States that would thus be tempted to bring their selfish interests to bear over the interests of mankind.[83]

(m) *United Kingdom*

The British Government has given very careful consideration to the Convention. Much is acceptable, as I have already indicated. But the provisions relating to the deep seabed, including the transfer of technology, are unacceptable to my own Government, and a number of other industrialized countries share our misgivings. We need to obtain significant and satisfactory improvements in the text of these provisions, and we wish in the months ahead to explore with others the prospects for such improvements. The Convention remains open for signature for two years, and there is time for revision before the United Kingdom need to take a final decision on signature.[84]

(n) ***Republic of Korea***

I should like to stress the serious interest of the Korean Government in deep seabed mining...

...

... It is therefore the policy of the Korean Government strongly to encourage its private companies to participate in deep seabed mining activities. At the present time, a modest number of our own private companies are preparing to participate actively in the exploration and exploitation of deep seabed resources by meeting the requisite conditions laid down under the Convention. In this connection, I should like to state that the Government of the Republic of Korea, as one of the developing countries looks forward to organizing joint ventures with other newly industrializing and developing third-world countries to exploit the seabed resource.[85]

(o) ***The Federal Republic Germany***

As a highly industrialized country dependent on development of technology, on a sufficient supply of raw materials and on free trade, the Federal Republic of Germany has consistently been critical of the deep seabed regime worked out by the Conference. We have been especially concerned over the provisions relating to transfer of technology and production limitation, as well as over financial burdens resulting from the system, in particular the highly risky investments in deep seabed mining.[86]

(p) ***France***

…Certain provisions of Part XI of the Convention and its Annexes III and IV have serious defects and shortcomings that explain why, unfortunately a consensus could not be achieved on this text last spring. These defects and shortcomings relate, for example, to the obligatory transfer of technology, the cost and financing of the future Authority and the first seat of the Enterprise.

The French Government is indeed convinced that the success of the new regime, the effective establishment of the International Seabed Authority and the economic viability of the Enterprise will depend on the quality, the earnestness and the results of the work of the Preparatory Commission.[87]

(q) ***The Bahamas***

... We belong to the school of thought that claims the resources of the international area to be the common heritage of mankind. The Conference's negotiations led us to believe that all participating States shared this belief. We felt that the task of the Conference was then to work out acceptable arrangements which would transform the common heritage into meaningful reality. To our mind the provisions of the Convention, together with the resolution for the protection of the preparatory investment, accomplishes this. We would have preferred a unilateral rather than a parallel system of exploita-

tion but we are along with the rest of the developing world, prepared to accept the present system as a compromise. In doing so, we barred ideological differences and concentrated instead on obtaining the best possible formula which we felt should have been acceptable to all.[88]

(r) *The United States*

…The deep seabed mining regime that would be established by the Convention is unacceptable and would not serve the interests of the international community.

The Conference undertook, for the first time in history, to create novel institutional arrangements for the regulation of seabed mining beyond the limits of national jurisdiction. It attempted to construct new and complex institutions to regulate the exploitation of these resources in a field requiring high technology that has not yet been fully developed, and massive investments. We had all hoped that these institutions would encourage the development of seabed resources which, if left undeveloped, would benefit no one. A regime which would promote seabed mining to the advantage of all was the objective towards which we laboured.

We regret that objective was not achieved. Our major concerns with the seabed mining texts have been set forth in the records of the Conference and I shall not use this occasion to repeat them suffice it to say that along the road some lost sight of what it was the world community had charged us to do. They forgot that in the process of political interchange the political and economic costs can become too high for some participants to bear. They forgot that to achieve the global consensus we all sought, no nation should be asked to sacrifice fundamental national interests.[89]

(s) *Pakistan*

My delegation, believing firmly in and committed to the concept of the common heritage of mankind with regard to the resources beyond the limits for national jurisdiction, is of the view that the Convention does not adequately reflect that concept in the mechanisms, machinery and system of exploitation adopted by the Conference. It is our apprehension that in practical terms the major beneficiaries of the parallel system as adopted will be a few industrialized countries. The system is not likely to lead to a balance in the exploitation between States or private companies, on the one hand, and the Enterprise, on the other; and despite determined efforts during the negotiations by the developing countries to protect their legitimate and just interests and aspirations, it is heavily tilted in favour of the industrialized world.[90]

(t) *Sierra Leone*

... The Convention provides for a parallel system of exploration and exploitation by private consortia and the Enterprise, the commercial arm of the International Seabed Authority. The benefit of that compromise outcome

may again prove illusory to African States. In the first place, the Group of 77 of which the African States are a component part had agreed to a unilateral system of exploration of mineral nodules, but that was resisted and rejected by the industrialized countries, which offered a parallel system of development of the nodules in exchange for financing the Enterprise to commence production, the transfer of technology to the Enterprise and a Review Conference after 20 years.

What finally emerged from the package and is written into the Convention is that the financing of the first mine site for the Enterprise now estimated to cost between $800 million and $1.2 billion will have to be funded by contributions from all States Parties and by borrowing. Under this scheme the poorest African States will be expected to pay approximately $1 million each to become members of the International Seabed Authority, with no guarantee that such investment will yield dividends. In terms of our gross national product, that is not an inconsiderable membership fee. On the other hand, when production starts, several African mineral producing countries which now produce the same commodities as would be produced from seabed mining will find themselves competing with seabed mines and may even go out of business, with all the consequences that that may involve, while at the same time the industrialized countries will become self-sufficient even in raw materials and mineral resources.

The major innovation of the last Session was a scheme to protect preparatory investments in the seabed area. That feature had been requested by the industrialized countries, which wanted to ensure that the consortia that invested money and technology in seabed prospecting would be sure of being able to mine the sites when seabed mining became commercially feasible. What emerged as resolution II in one of the annexes to the Final Act was a scheme to permit up to eight potential mine sites to be explored, evaluated and exploited by States and international consortia. Although no commercial production can take place until the Convention comes into force, it assures the pioneers authorization to mine their sites when the Convention comes into force. Thus the Authority is reduced to a licensing organ and given the production ceiling, the parallel system will be put on hold. Whereas private consortia would be allowed to mine sites, the Enterprise, which is representative of all nations, would be authorized to mine only two. No African country will be in a position to become pioneer investor by the cut-off date of 1 January 1985 and thus be able to benefit from the scheme.[91]

End Notes

[1] *Official Records of the Third United Nations Conference on the Law of the Sea,* Vol. XVI, (United Nations Publication Sales No. E.84.V.2), Summary Records of meetings and Documents, Eleventh Session: New York, 8 March-30 April 1982, 55th and 56th meetings of the First Committee, 9 and 29 March 1982, pp. 160-170.

[2] The full text of the U.S. "Green Book" was reproduced in Renate Platzöder, *Third United Nations Conference on the Law of the Sea: Documents,* Vol. VIII, 1985 Oceana Publications, Inc., pp. 304-337. It was revised and circulated on 10 March 1982 as WG.21/Informal Paper under the title "Changes suggested by the delegation of the United States," which was reproduced in Plazöder, Vol. VI, pp. 278-303.

[3] Ibid, Document A/CONF.62/L.91, Report of the Chairman of the First Committee, 29 March 1982, p. 206, para. 29.

[4] Plazöder, Vol. VI, p. 278.

[5] Ibid, pp. 278-303.

[6] *Official Records of the Third United Nations Conference on the Law of the Sea,* Vol. XVI, 157th meeting of the Plenary, 29 March 1982, p.10, para. 19.

[7] Ibid, p.10, para.22.

[8] The texts of WG.21/Informal Paper 21 and WG.21/Informal Paper/Add.1were reproduced in Plazöder, Vol. VI under the same title, pp. 306-314.

[9] Official Records of the Third United Nations Conference on the Law of the Sea, Vol. XVI, 167th meeting of the Plenary, 7 April 1982, p. 85, para. 3.

[10] Ibid, pp. 219-220.

[11] Ibid, pp. 226-231.

[12] Ibid, pp. 235-236.

[13] Ibid, 168th meeting of the Plenary, 15 April 1982, p. 87, paras 4-5.

[14] Ibid, p. 88, paras 19-20.

[15] Ibid, p. 89, para.24.

[16] Ibid, pp. 88-89.

[17] Ibid, p. 89, para. 25.

[18] Ibid, p. 89, para. 26.

[19] Ibid, p. 89, para. 32.

[20] Ibid, p. 90, para.36.

[21] Ibid, 169th meeting of the Plenary, 15 April 1982, p. 95, para. 32.

[22] Ibid, para. 34.

[23] Ibid, pp. 95-96, para. 35.

[24] Ibid, pp. 96. para.36.

[25] Ibid, 170th meeting of the Plenary, 16 April 1982, p. 101, para. 21.

[26] Ibid, p. 102, para. 30.

[27] Ibid, p. 104, para. 55.

[28] Ibid, p. 105, para. 66.

[29] Ibid, 171st meeting of the Plenary, 16 April 1982, p. 108, para. 33.

[30] Ibid, p. 109, para. 37.

[31] Ibid, p. 109, paras 45-47.

[32] Ibid, p. 110, paras 54-55.

[33] Ibid, p. 110, paras 60-62.

[34] Ibid, p. 111, paras 73-74.

[35] Ibid, 172nd meeting of the Plenary, 16 April 1982, p. 115, para. 16.

[36] Ibid, p. 117, para. 44.

[37] Ibid, p. 118, para. 51.

[38] Ibid, p. 119, para. 71.

[39] Ibid, 173rd meeting of the Plenary, 17 April 1982, p. 120, para. 1.
[40] Ibid, p. 121, para.8.
[41] Ibid, p. 123, paras 31, 32 & 34.
[42] Ibid, p. 124, para. 55.
[43] Ibid, p. 125, para. 62.
[44] Ibid, p. 125, para. 66.
[45] Ibid, p. 174th meeting of the Plenary, 23 April 1982, p. 126. For the full text of the Report of the President in accordance with rule 37 of the rules of procedure, *see* ibid, pp. 236-240.
[46] In recognizing the preparatory investments by States and other entities relating to seabed mining, they recognize the need to ensure that the Enterprise will be provided with the funds, technology and expertise necessary to enable it to keep pace with the States and other entities.

The 1994 Agreement relating to the Implementation of Part XI has modified this requirement. In terms of the provisions contained in the Agreement, Annex, section 5, the Enterprise shall seek to obtain the technology on fair and reasonable commercial terms and conditions in the open market or through the joint venture arrangement. In the event the Enterprise is unable to obtain the technology, States having such technology can be requested to facilitate the acquisition of such technology on fair and reasonable commercial terms and conditions consistent with the effective protection of intellectual property rights. States Parties have undertaken to cooperate fully and effectively for this purpose. The question of transfer of technology at the present stage, therefore, does not arise.

[47] Ibid, Documents A/CONF.62/L.132 and Add.1, pp. 236-240.
[48] Ibid, 175th meeting of the Plenary, 26 April 1982, p. 131, paras 3 & 5.
[49] Ibid, p. 131.
[50] Ibid, pp. 135-149. Fifty-three delegations make statements on the President's report. Representatives of G77 and the Eastern European Group approached the President and the Chairman of the First Committee for further informal consultations on Annex IV of the document A/CONF.62/L.132. Following these consultations the President, Mr. T. T .B. Koh, Chairman of the First Committee, Mr. P. B. Engo, and Ambassador Nandan of Fiji held intensive consultations, which were indicated in a further report of the President to the Conference A/CONF.62/L.141 and Add.1. Annex IV (as contained in document A/CONF.62/L.132), paragraph 9 (a): redraft the text to read as follows:

"9. (a) In the allocation of production authorization, in accordance with article 151 of the Convention and annex III, article 7, the pioneer investors who have obtained approval of plans of work for exploration and exploitation, shall have priority over all applicants other than the Enterprise which shall be entitled to production authorization for two mine sites including that referred to in article 151, paragraph 2 (c). After each of the pioneer investors has obtained production authorization for its first mine site, the priority for the Enterprise contained in annex III, article 7, paragraph 6 shall apply."

[51] Ibid, 177th meeting of the Plenary, 26 April 1982, p. 135, para. 1.
[52] Ibid, p. 135, para. 4.
[53] Ibid, p. 136, para. 17.
[54] Ibid, p. 137, para. 29.
[55] Ibid, p. 138, para. 38.
[56] Ibid, 178th meeting of the Plenary, p. 140, para. 20.
[57] Ibid, pp. 141-142, paras 31-32.
[58] Ibid, p. 142, para. 41.
[59] Ibid, p. 144, para. 60.
[60] Ibid, pp. 144-145, paras 68-70.
[61] Ibid, 179th meeting of the Plenary, 29 April 1982, pp. 145-146, para. 6.

[62] Ibid, p. 146, paras 10-11.
[63] Ibid, p. 147, para. 27.
[64] Ibid, p. 147, paras 27 & 31.
[65] Ibid, pp. 148-149, paras 48 & 50.
[66] Ibid, 180th meeting of the Plenary, 29 April 1982, p. 149, paras 1-3.
[67] Ibid, p. 150, paras 8-10.
[68] Ibid, 181st meeting of the Plenary, 30 April 1982, p. 152, para. 8; p. 151, para. 2.
[69] Ibid, 182nd meeting of the Plenary, 30 April 1982, pp. 154-155, para. 28.
[70] Ibid, p. 165, para. 179.
[71] Ibid, *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. XVII, (United Nations Publication Sales No. E.84. V.3), Summary Records of meetings and Documents, resumed Eleventh Session: New York, 22-24 September 1982; Final part of the Eleventh Session and conclusion of the Conference: Montego Bay, 6-10 December 1982, 183rd meeting of the Plenary, 22 September 1982, p. 3, para. 3; Document A/CONF. 62/L.152, Report of the Chairman of the Drafting Committee, 15 September 1982; 184th meeting of the Plenary, 24 September 1982, p. 5, para.9.
[72] Ibid, p.15, paras 70-71.
[73] Ibid, p. 21, para. 153.
[74] Ibid, p. 23, para. 174.
[75] Ibid, 186th meeting of the Plenary, 6 December 1982, p. 24, para. 5.
[76] Ibid, pp. 25-26, para. 21.
[77] Ibid, 187th meeting of the Plenary, 7 December 1982, p. 38, para 6.
[78] Ibid, p. 51, para. 184.
[79] Ibid, 188th meeting of the Plenary, 7 December 1982, p. 58, paras 53-54.
[80] Ibid, p. 61, para. 108.
[81] Ibid, p. 64, para. 160.
[82] Ibid, 189th meeting of the Plenary, 8 December 1982, p. 68, para. 29.
[83] Ibid, p. 79, para. 192.
[84] Ibid, p. 80, para. 205.
[85] Ibid, 190th meeting of the Plenary, 8 December 1982, p. 84, para. 15-16.
[86] Ibid, p. 86, para. 36.
[87] Ibid, p. 87, paras 53-54.
[88] Ibid, 191st meeting of the Plenary, 9 December 1982, p. 105, para. 58.
[89] Ibid, 192nd meeting of the Plenary, 9 December 1982, p. 107, paras 4-6.
[90] Ibid, p. 120, para. 43.
[91] Ibid, p. 131, paras 221-223.

PART THREE

DEVELOPMENTS DURING THE SECRETARY-GENERAL'S INFORMAL CONSULTATIONS ON OUTSTANDING ISSUES RELATING TO THE DEEP SEABED MINING PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (1990-94)

The United Nations Convention on the Law of the Sea was opened for signature on 10 December 1982 in Montego Bay, Jamaica. On the same day, 119 States signed the Convention and Final Act of UNCLOS III. The Final Act was also signed by 32 full participants in UNCLOS III which included 23 States and 9 States and territories with observer status. Fiji deposited its instrument of ratification of the Convention on the same day.[1] Following the signature the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea ("the Preparatory Commission") was established to prepare for the establishment of the Authority and the Tribunal, in accordance with resolution I of the Final Act.[2]

The Preparatory Commission met from 1983 to 1994. The United States did not attend any of the Sessions. In a statement made on 30 December 1982 the President of the United States had declared that " the Preparatory Commission is called upon to develop rules and regulations for the seabed mining regime under the treaty. It has no authority to change the damaging provisions and precedents in that part of the treaty."[3] On the same day during the 1989 summer meeting of the Preparatory Commission, the Chairman of the Group of 77 made a statement in which he underlined that the developing countries continued to be ready to hold discussions, without any preconditions, with any delegations or group of delegations whether signatories or non-signatories to the Convention on any issues related to the Convention and work of the Preparatory Commission. He added that as the entry into force of the Convention became imminent the willingness to do so was born out of a genuine desire to ensure the universality of the Convention.[4] In 1990, the Secretary-General of the United Nations, Javier Perez de Cuellar undertook some soundings with key signatory and non-signatory States[5] and thereafter decided to convene Informal Consultations on the outstanding issues.[6]

These Informal Consultations took place from 1990 to 1994 during which 15 meetings were convened.[7] As indicated by the Secretary-General in his report on the Consultation issued on 9 June 1994, the Consultations could be

"conveniently divided into two phases. The first phase was devoted to the identification of issues of concern to some States, the approach to be taken in examining them and the search for solutions. During the second phase more precision was given to the results reached so far; additional points were raised for consideration and participants directed their attention whereby they might be adopted."[8]

From 1990 to 1991, the first phase of the Consultation, participation in these Informal Consultations was restricted to some 30 key players including the three major non-signatory States, Germany, the United States and the United Kingdom. During the initial part of the first phase the Consultations identified nine issues as representing areas of difficulty:

- Costs to States Parties
- The Enterprise
- Decision-making
- The Review Conference
- Transfer of technology
- Production limitation
- Compensation fund
- Financial terms of contract
- Environmental considerations.

During the second phase, the Consultations were opened to all delegations and some 75 to 90 delegations attended these meetings. While the nine issues were considered, it was decided to remove the issue of environmental considerations from the list as it was no longer considered a controversial issue in the context of deep seabed mining.[9] Following is a chronology of the discussions relating to the Consultations.

I. First round (19 July 1990)

In his introductory remarks at the first round of Informal Consultations held on the 19 July 1990, the Secretary-General exhorted all States that had not done so to ratify or accede to the Convention while recognizing that the problems with some aspects of the deep seabed mining provisions had inhibited some States from ratifying or acceding to it. He said these problems had to be addressed. He pointed out that since the Convention was adopted, eight years ago, important political and economical changes had taken place, some directly affecting the seabed mining part of the Convention. Prospects for commercial mining of deep seabed minerals had receded into the next century, contrary to the expectations held when the Convention was being negotiated. International relations had developed from tension and confrontation to co-operation. The general economic climate had changed markedly in the past decade. Furthermore as the work of the Preparatory Commission had progressed, it had brought a more detailed understanding of the practical aspects of deep seabed mining. This was, according to the Secretary-General, an opportune time for States to make a concerted effort to resolve the outstanding problems in a manner satisfactory to all.[10] At the same meeting the following seven areas of

difficulties were identified by the delegation of United Kingdom:[11]

- The Enterprise
- Costs to States Parties
- Production limitation
- Compensation fund
- Financial terms for commercial operations
- Decision-making
- Review Conference

Two other issues of concern were added to the list by Germany and the Soviet Union: "transfer of technology" and "environment," thus bringing the total issues of concern to nine.[12]

II. Second round (30 October 1990)

During the second round of Informal Consultations held on 30 October 1990, the industrialized countries voiced their concerns with regard to the nine issues identified. Regarding the Enterprise and the transfer of technology, the Convention seeks to ensure that the Enterprise is enabled to operate effectively. For this purpose, 50 per cent of the funds for its initial operation are to be provided by States Parties by way of long-term interest-free loans. Debts incurred by the Enterprise in raising the other half are to be guaranteed by States Parties. The transfer of technology provisions was designed to ensure that the Enterprise would have access to the required technology if such technology was not available on the open market. In such circumstances, the Convention requires a contractor to make available to the Enterprise the technology that he is using. The obligation to transfer the technology would apply during the first ten years of a contract with the Authority and the Authority must pay a fair and reasonable price for it. A contractor would have the same obligation with respect to developing country operators in the areas reserved for the Authority.

The industrialized countries pointed out that the financial and other privileges accorded to the Enterprise enabled it to undertake activities on more favourable terms and conditions than commercial operators. Moreover, there were high costs and risks involved for States Parties in the Enterprise undertaking mining on its own behalf. The mandatory requirement for transfer of technology to the Enterprise raised issues of principle. There were also practical difficulties for the commercial operators, especially if they were not owners of the technology in question. It was suggested that if the Enterprise which already had some reserved mining areas were to operate through joint ventures with partners who possess the necessary financial resources as well as the required technology most of the difficulties could be overcome.[13]

III. Third round (29 March 1991)

At the third round of Informal Consultations on 25 March 1991 consideration was given to the approach that might be taken in examining these areas of difficulty. An Information Note of 8 March 1991 issued by the Secretariat had identified the following approaches:

(1) to deal with the outstanding issues in a comprehensive manner with a view to resolving them all; under this approach each item would be taken up in turn, examined and resolved;[14]

(2) to deal with some of the issues and postpone consideration of others to a future date according to developments in deep seabed mining.

The Information Note acknowledged that this approach will raise a number of questions such as how would the two categories be determined? what will be the consequence of postponement? will the present provisions relating to those issues remain a part of the Convention? and at what point will the issues that have been postponed be taken up for consideration?[15]

(3) to examine all the outstanding issues with a view to resolving them and decide on how to deal with those that may remain unresolved.

The Information Note pointed out that this last approach did not exclude the possibility of resolving all issues nor did it exclude the possibility that there may be issues which are not capable of being resolved at this time and therefore may be postponed.[16]

Another question to be discussed was the instrument in which an agreement on outstanding issues would be embodied. The Information Note suggested that a protocol be used, the purpose of which would be to facilitate the general acceptance of the Convention.[17]

At the conclusion of that meeting there was a general convergence towards the third approach. It was agreed too that this approach did not exclude the possibility that there would be issues which were not capable of being resolved at this time and therefore would be postponed. It was decided also, as a first step, that the next round of Consultations should examine the individual issues.[18]

IV. Fourth round (23 July 1991)

At the fourth round of Informal Consultations on 23 July 1991, delegations examined the first issue, that of cost to States Parties. In the Information Note provided by the Secretariat it was noted that the Authority would not be expected to deal with commercial deep seabed mining activities for at least the initial ten to fifteen years. Its administrative functions would, therefore, relate to the various stages of pre-commercial production activities. Furthermore in the light of the prolonged delay in the development of deep seabed mining activities, it was unlikely that the Enterprise would be able to undertake operational activities on its own for quite some time. Therefore, there may be no need to invoke the funding provisions of the Convention. If seabed mining becomes technologically and economically feasible, consideration would need to be given to the various organizational and operational options for the Enterprise. In doing so, it should be recognized that the Enterprise was intended to provide an opportunity for all States, especially developing States, to participate in deep seabed mining. It should also be recognized that there is a growing global trend in favour of more efficient market-oriented commercial operations. It was suggested therefore that the following matters be addressed:

- Should an evolutionary approach be adopted towards the Enterprise starting with a small unit monitoring the developments in deep seabed mining and undertaking feasibilities studies within the Secretariat of the Authority until such time as deep seabed mining activities begin in earnest?

- Should operational options, such as joint ventures with commercial partners, be considered as a possible means to overcome the concerns regarding the funding of the first operation of the Enterprise?[19]

In his summary at the conclusion of these Consultations, the Special Representative of the Secretary-General for the Law of the Sea, indicated that there was a broad consensus on a number of matters. General agreement was reached about the fact that costs to States Parties should be minimized and that all institutions to be established under the Convention should be cost-effective. In this regard there was a general agreement that the establishment of the various institutions should be based on an evolutionary approach, taking into account the functional needs of the institution concerned. These institutions, however, should be able to effectively discharge their responsibilities at each stage. These principles apply to the organs of the Authority and its subsidiary bodies. As regards the Enterprise, there was agreement that it should operate on the basis of sound commercial principles and should be free of political domination. There was also agreement that the Enterprise should begin its operations through a joint venture arrangement as a means for minimizing costs to States Parties. This would not reduce the future operational options of the Enterprise, nor affect its autonomy.[20]

V. Fifth round (14 – 15 October 1991)

At the fifth round of Informal Consultations on the 14 and 15 October 1991, three further issues relating to the deep seabed mining part of the Convention were examined, namely decision-making, the Review Conference and transfer of technology. Delegations had before them an Information Note prepared by the Secretariat on 1 October 1991. Concerning the transfer of technology the Information Note indicated that the issue of transfer of technology, which was intrinsically linked to the Enterprise, was referred to by a number of participants in the last Consultations when the costs relating to the Enterprise were discussed. Since there was a convergence towards the view that the Enterprise should undertake its operation through commercial joint ventures, it was stated that the availability of technology to the Enterprise should be part of the joint venture arrangement. This was consistent with the provisions of the Convention which, in Annex III, article 5, paragraph 6, states that in the case of joint ventures with the Enterprise, the transfer of technology will be in accordance with the terms of the joint venture agreement. The prevailing view in the Preparatory Commission was also that the joint venture option offers clear advantages with respect to the transfer of technology. In the light of the general agreement on commercial joint ventures as an operational option for the Enterprise and the acceptance of the fact that availability of technology for the Enterprise should be the subject of joint venture agreements, a possible approach would be that the

imperative provisions in the Convention on transfer of technology may no longer be as relevant as they were when the Convention was being negotiated. It may suffice if there was an agreement on a general provision that the Authority may invite all contractors and their respective sponsoring States to co-operate with it in the acquisition of the required technology by the Enterprise or the joint venture on fair and reasonable terms and conditions, if the technology in question was not available on the open market. In addition all States Parties should undertake in good faith to assist the Enterprise to become a viable commercial entity and to engage successfully in deep seabed mining operations.[21]

VI. Sixth round (10 – 11 December 1991)

The sixth round of Informal Consultations held from 10 to 11 December 1991 was devoted to the remaining four issues, namely production limitation, compensation fund, financial terms of contracts and environmental considerations. It was generally agreed that it was neither necessary nor prudent to formulate a new set of detailed rules for these items. In assessing the discussions that took place in 1990 and 1991, the Secretary-General stated on 11 December 1991 that this informal forum had proved to be quite effective. He suggested that the next step in the process be to give more precision to the emerging approaches towards resolving the issues. He also expressed his belief that the opportunity should be given to all interested States to participate in these Consultations through open-ended meetings, while maintaining a core group.[22]

VII. Seventh and Eighth rounds (16 – 17 June 1992; 6 – 7 August 1992)

Two rounds of Informal Consultations were held in 1992. They were open-ended and attended by some seventy-five delegations. During these two rounds, consideration was given to all nine key issues. In his introductory remarks to this new phase of Informal Consultations, the newly elected Secretary-General, Mr. Boutros Boutros Ghali, stressed that the Convention would be severely damaged if it would enter into force without the participation of the industrialized States since they were the major users of the sea, heaviest polluters and important parties to disputes at sea. Fifty-one States had at that time ratified or acceded to the Convention and it was expected that the nine remaining ratifications or accessions would take place in one or two years. He made it clear that the purpose of these Consultations was not to renegotiate Part XI but to find a practical way out of the difficulties which have inhibited the industrialized countries from ratifying or acceding to the Convention.[23]

During the Consultations it was decided to remove the issue entitled "Environmental considerations" from the list of issues to be dealt with, since it was no longer considered a hard-core issue in the context of deep seabed mining.[24] With regard to issues such as costs to States Parties, decision-making, Review Conference, transfer of technology and the Enterprise, areas of agreement were reaffirmed. The areas of agreement on the Enterprise and the transfer of technology were summarized in the Information Note of the

Secretariat of 10 December 1992 as follows:

- When deep seabed mining becomes feasible, the Enterprise should begin its operations through joint ventures.[25]

- Funding obligations for the first mining operation of the Enterprise will not arise since the exploitation is to be carried out at least in the initial phase through joint ventures and funds shall be provided pursuant to the provisions of the joint venture arrangements.[26]

- There was general agreement that in the initial operational phase of the Enterprise the obligation of mandatory transfer of technology will not arise since at least during this phase exploitation will be carried out through joint ventures and the availability of technology will be part of the joint venture agreements.[27]

- There was also general agreement that the Authority may invite all contractors and their respective sponsoring States to co-operate with it in the acquisition of technology by the Enterprise or the joint venture on fair and reasonable terms and conditions, if the technology in question was not available on the open market. In addition, all States Parties should undertake in good faith to assist the Enterprise to become a viable commercial entity and to engage successfully in deep seabed mining operations. States sponsoring deep seabed mining operations and those whose nationals may develop such technology should agree to take effective measures consistent with this obligation.[28]

A proposal was made by the Dutch delegation during the June meeting that a system of royalties or taxation should be considered as an alternative to the Enterprise. Such a system of royalties would consist of a simple royalty fee or a system of taxation on profits or a combination of these systems. The details would be elaborated when the first deep seabed mining operation was due to commence and would take into account the actual practice at that time. However the majority of participants seemed to favour the establishment of an Enterprise and the Dutch proposal was not considered further.[29]

VIII. Ninth round (28–29 January 1993)

The Information Note of 10 December 1992, indicated that if the Enterprise were to be established upon the entry into force of the Convention, the following initial function might be considered:

(a) regular analysis of world market conditions and metal prices, trends and projections;
(b) collection of information on the availability of technology and trained manpower and the evaluation of technological developments;
(c) assessment of the state of knowledge of deep-sea environments and possible effects of activities thereon; and
(d) assessment of criteria and data relating to prospecting and exploration.

These functions, as pointed out in the Information Note, were “fairly identical” to those identified for the Authority in the initial phase.[30]

Further discussions of the eight remaining issues took place on the 28 and 29 January 1993. Although representatives of some of the developing States expressed concern over some of the findings included in the Information Note of 10 December 1992, there was general support for the division of the eight issues into five issues of particular practical importance and three issues on which only the formulation of general principles was required at that stage. Additional points relating to the five issues, namely, costs to States Parties, the Enterprise, decision-making, Review Conference and transfer of technology were submitted by the Secretariat for consideration. Additional points concerning the Enterprise and the transfer of technology are summarized as follows in the Information Note of 10 December 1992:

- If technology would not readily be available on the open market, a State or several States seeking access to technology should enter into a joint venture agreement with the seabed miner having the necessary technology or with the Enterprise. The Authority would make every effort to assist in the acquisition of necessary technology by the requesting State or States and in the conclusion of joint venture agreements.[31]

- As a general rule States Parties should endeavour to promote international technical and scientific co-operation either between the parties concerned in activities relating to the seabed area, or by developing training, technical assistance and scientific co-operative programmes.[32]

IX. Tenth round (27–28 April 1993)

At the tenth round of Informal Consultations it was generally felt among participants that the stage had been reached when a text based on a more operational approach should be prepared in a form which could be the basis of an agreement. In accordance with this request an Information Note dated 8 April 1993 was prepared and submitted to the delegations at the Informal Consultations held on 27 and 28 April 1993.[33] This Information Note contained two parts: Part A on consideration of procedural approaches and Part B on formulation of the results of the Consultations.

With regard to Part A which dealt with various procedural approaches with respect to the use to be made of the results of the Consultations,[34] it was generally agreed that, whatever approach might be adopted, it must be of a legally binding nature. It was also pointed out that a duality of regimes must be avoided. As the position of States which have ratified or acceded to the Convention must be respected, it was considered useful to examine the role that the notion of implied or tacit consent might play in protecting their positions.[35]

Part B set out an operationally directed formulation of the results reached so far. It was divided into two sections. Chapter I was devoted to the arrangements following the entry into force of the Convention. Chapter II contained draft texts on the definitive deep seabed mining regime.

The Information Note underlined that the entry into force of the Convention would not coincide with the beginning of deep seabed mining. Therefore there would be a prolonged period before the commencement of commercial

production of deep seabed minerals. However Part XI foresaw that the institutions established by it would be set up immediately following the entry into force of the Convention. It was noted that during the Consultations it was repeatedly emphasized that all institutions should be cost effective and that no institution should be established which was not required and that the establishment and operation of the various institutions should be based on an evolutionary approach, taking into account the need for the institutions concerned. Consequently the institutions to be established under the Convention in the interim period had to be set up in a minimal form in accordance with the actual need for them.[36]

Institutional arrangements in the interim period would be as follows:

An International Seabed Authority with a limited structure would be established. An initial Enterprise with a limited structure would be also established. Its functions would include the regular analysis of world market conditions and metal prices, trends and projections; the collection of information on the availability of technology and trained manpower and the evaluation of technological developments; the assessment of the state of knowledge of deep-sea environments and possible effects of activities thereon; and the assessment of criteria and data relating to prospecting and exploration.[37]

The substantive staff of the initial Authority would also provide secretariat services for the Enterprise.[38]

Finally, during the interim period, the administrative expenses of the Enterprise shall be subsumed under those of the Authority. There shall be no obligation for States Parties to make advance payments with a view to the future mining operation of Enterprise.[39]

As indicated in the Information Note of 4 June 1993, while Part B, Chapter I was considered with twenty-nine interventions made, Part B, Chapter II (The draft texts concerning the definitive deep seabed mining regime) was not addressed owing to lack of time.[40] In the draft texts the paragraph on the Enterprise reads as follows:

A. Operations

When commercial production of deep seabed minerals becomes feasible, the Enterprise shall begin its operations through joint ventures.

The fact that the operations of the Enterprise shall begin by joint ventures shall be without prejudice to the future options of the Enterprise. However the Enterprise shall always be free to revert to joint venture arrangements.

States Parties shall not be under an obligation to fund a mining operation of the Enterprise. Since the Enterprise shall begin its operations through joint ventures and is free to engage in this type of operations at any time thereafter, funds shall be provided pursuant to the provisions of the joint venture arrangements.

B. Transfer of technology

The obligation of mandatory transfer of technology to the Enterprise shall not arise since the Enterprise shall begin its operations through joint ventures and is free to engage in this type of operation at any time thereafter. The

availability of technology shall be part of the joint venture arrangements.

The Authority shall have the power to invite all contractors and their respective sponsoring States to co-operate with it in the acquisition of technology by the Enterprise or the joint ventures on fair and reasonable commercial terms and conditions, if the technology in question was not available on the open market. In addition, all States Parties are called upon to undertake in good faith to assist the Enterprise to become a viable commercial entity and to engage successfully in deep seabed mining operations. States sponsoring deep seabed mining operations and those whose nationals may develop such technology should agree to take effective measures consistent with this undertaking.

If technology is not readily available on the open market, a State or several States seeking access to technology should enter into a joint venture agreement with the operator having the necessary technology, or with the Enterprise. The Authority shall make every effort to assist in the acquisition of necessary technology by the requesting State or States and in the conclusion of joint venture agreements.

As a general rule States Parties should endeavour to promote international technical and scientific co-operation either between the parties concerned in activities relating to the seabed, or by developing training, technical assistance and scientific co-operative programmes.[41]

X. Eleventh round (2–6 August 1993)

Representatives of 96 States participated in the eleventh round of Informal Consultations held from 2 to 6 August 1993. The discussions dealt with the problems arising out of Part XI and the related annexes of the Convention as they had been identified in the course of the Secretary-General's Informal Consultations, in the order in which they were presented in Part B, Chapter II (Draft texts governing the regime for deep seabed mining) of the Information Note of 4 June 1993.[42] Topics included, *inter alia*, the question of cost-effectiveness as it applies to the institutions; the composition of the organs of the Authority; their decision-making and their functions. The Enterprise was specifically addressed.

Informal contacts between representatives of some developing and developed States were established in an effort to find a new way forward, not based precisely on any of the options contained in the Information Note of 8 April 1993. At an early stage during the Consultations in August 1993, an informal group drawn from both developing and developed States was formed. The group, which included Australia, Fiji, Indonesia, Italy, Jamaica, Nigeria, Germany, United Kingdom and the United States, agreed to table during the Consultations a draft resolution for adoption by the General Assembly, to which was attached a draft Agreement, on the implementation of Part XI of the Convention. It was indicated that the draft did not necessarily reflect the position of any of the delegations involved. The draft was referred to as "the August 1993 Paper," or "the Boat Paper" with reference to a boat depicted on the cover page.[43] That paper was

divided into three parts: (i) a draft resolution for adoption by the General Assembly; (ii) a draft Agreement relating to the implementation of Part XI of the Convention; and (iii) two annexes. Annex I contained the agreed conclusions of the Secretary-General's Consultations and Annex II was entitled " Consequential adjustments." As recorded in the Secretary-General's report on Agenda item 36 "Law of the Sea" submitted to the Forty-eighth Session of the United Nations General Assembly, it was understood that the Boat Paper *"did not necessarily reflect the position of any of the delegations involved, but that it was considered to provide a useful basis for negotiation."*[44]

According to David H. Anderson, the then leader of the UK delegation to the Consultations, in the discussions which followed the appearance of the Boat Paper, the delegates referred both to the Information Note and to the Boat Paper. *"Gradually, however, the discussions came to focus more and more upon the Boat Paper and less and less upon the Information Note. The Boat Paper was criticized in many respects including its form and phraseology. Annexes I and II were said to be confusing because they both covered the same ground. Another criticism concerned the use of words such as " amend" and " replace" in relation to certain terms in Part XI. This phraseology suggested to representatives of States which had ratified the Convention that Part XI was being renegotiated as a whole, thereby creating problems with their legislatures which had approved Part XI."*[45]

XI. Twelfth round (8–12 November 1993)

At the twelfth round of Informal Consultations held from 8 to 12 November 1993, the Secretary-General, in his opening statement, urged participants, in view of the imminent entry into force of the Convention - the sixtieth instrument of ratification was deposited by Guyana on 16 November 1993 - to expend maximum efforts in order to resolve the outstanding issues which continue to hinder participation in the Convention.[46] An updated version of the Boat Paper incorporating the annexes into one was circulated.[47] Section B (The Enterprise) and E (Transfer of technology) of the annex read as follows:

B. THE ENTERPRISE

1. The Enterprise shall conduct its initial operations through joint ventures. The Council shall decide upon the commencement of the functioning of the Enterprise.

2. The obligation of States Parties to fund one mine site of the Enterprise as provided for in Annex IV, Article 11 (3) to the Convention, shall not apply and States Parties to the Convention shall be under no obligation to finance any of the operations in any mine site of the Enterprise or under its joint venture arrangements.

3. The Secretariat of the Authority shall perform the preparatory functions necessary for the commencement of the functioning of the Enterprise. These shall include the monitoring of developments in the deep seabed mining sector, in particular the prevailing conditions in the world metal market,

developments in deep seabed mining technology, and data and information on the environmental impact of activities in the Area.

4. The Authority shall draw up the terms of reference of the Enterprise in the light of this Part. Consideration of such terms of reference shall begin prior to commencement of commercial production, at a time determined by the Council, and may be concluded in the course of the elaboration of the rules, regulations and procedures for exploitation in accordance with paragraph 12 of Part A above.

5. Notwithstanding the provisions of Article 153, paragraph 3 of the Convention, and Annex III, Article 3, paragraph 5 of the Convention, a plan of work for the Enterprise upon its approval shall be in the form of a contract concluded between the Authority and the Enterprise. Therefore, obligations applicable to contractors shall be equally applicable to the Enterprise.

6. Sub-section E of Section 4 of Part XI, Annex IV and other provisions of the Convention relating to the Enterprise shall be modified by this Part.

E. TRANSFER OF TECHNOLOGY

The policy of the Authority on transfer of technology shall be in accordance with the provisions of Article 144 of the Convention and the following principles which replace the provisions of Article 5 of the Annex III of the Convention:

(a) The Enterprise shall endeavour to obtain the technology required for its operations through its joint venture arrangements.

(b) The Authority may invite all, or any of the contractors and their respective sponsoring States or States, to co-operate with it in the acquisition of technology by the Enterprise or its joint venture, or a developing State or States seeking to acquire such technology, on fair and reasonable commercial terms and conditions, if the technology in question is not available on the open market. States Parties undertake to co-operate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also fully co-operate with the Authority.

(c) As a general rule, States Parties shall endeavour to promote international technical and scientific co-operation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific co-operation programmes.[48]

The delegation of Sierra Leone submitted a non-paper entitled "Agreement on the Implementation of Part XI and Annexes III and IV of the UN Convention on the Law of the Sea," which contained a draft resolution for adoption of an annexed "Agreement on the establishment of an interim regime from the coming into force of the Convention to the time when seabed mining becomes feasible."

In this paper it was proposed that during the interim period the Preparatory Commission would have its mandate extended and would perform all the initial functions of the Authority and the Enterprise. A Review Conference would be convened at the time when commercial seabed mining would be about to begin.[49]

Intensive discussions continued on the basis of the Secretariat Information Note of 4 June 1993 and the consolidated Boat Paper.

During this round of Consultations, the discussions in the first stage covered the remaining substantive issues as follows: transfer of technology, the Review Conference, production limitation, compensation fund, financial terms of contracts and the Finance Committee were covered. After having completed consideration of these issues, delegations embarked on a renewed consideration of the issue of "Costs to States Parties and institutional arrangements" basing themselves essentially on the consolidated Boat Paper. The issue of the Enterprise was also reconsidered.[50]

Regarding the transfer of technology there seemed to be agreement on the basic matter of the elimination of mandatory transfer of technology to the Enterprise or developing countries. Regarding details, different views were expressed, in particular, on the following: whether mention of article 5 of Annex III of the Convention (transfer of technology) should be retained or not; and what should be stated with regard to transfer of technology to developing countries in the absence of joint ventures.[51]

Concerning the Enterprise there seemed to be agreement on two basic matters (a) the Enterprise shall commence its operations with joint ventures and (b) the provisions of the Convention regarding the financing of one site of the Enterprise shall not apply.

Regarding details, different views were expressed, in particular, on the following: the Council deciding the date of the commencement of the operations of the Enterprise; the early functions of the Enterprise; the Authority drawing up the terms of reference of the Enterprise, and the Council determining the time when consideration of such terms of reference would begin. An alternative formulation was submitted in writing dealing with the arrangement between the Enterprise and a contractor which has contributed a particular area to the Authority as a reserved area.[52]

At the end of this round, the matter of procedural approaches with respect to the use to be made of the results of the Consultations was raised and briefly discussed. Doubts were expressed as to the possibility of completing the procedure of making the results of the Consultations operative before the entry into force of the Convention. In this respect one view preferred an interpretative agreement, while the other referred specifically to the use of the amendment procedure contained in article 314 of the Convention. It was however pointed out by some other delegations that amendments concerning activities in the Area adopted in accordance with the amendment procedure of the Convention would enter into force only after the expiration of at least one year, and in any event it was essential that the industrialized States participate

in the process of adoption of any such agreement, and also participate in the setting up of the Authority from the beginning.[53]

XII. Thirteenth round (31 January – 4 February 1994)

During this round, the delegations examined a revised version of the Boat Paper, dated November 1993. This revision took into account the discussions during the Informal Consultations in November 1993.[54] Paragraphs 1, 2, and 3 under Annex, "B. The Enterprise" in the August 1993* version remained basically the same in the November 1993 version, under "Section 2. The Enterprise."[55] Paragraph 4 in the August 1993* version, which used to deal with "terms of reference of the Enterprise," was deleted and replaced by a new paragraph 4 in the November 1993 version which read as follows:

The obligations applicable to contractors shall apply to the Enterprise. Notwithstanding the provisions of Article 153, paragraph 3 of the Convention, and Annex III, Article 3, paragraph 5 of the Convention, a plan of work for the Enterprise upon its approval shall be in the form of a contract concluded between the Authority and the Enterprise.[56]

A new paragraph 5 was now added in the November 1993 version, which read:

A contractor which has contributed a particular area to the Authority as a reserved area shall have priority to enter a joint venture arrangement with the Enterprise for exploration and exploitation of that area, subject to agreement on the terms and conditions of the joint venture arrangement. If the Enterprise does not commence activities on such a reserved area within ten years of the commencement of its functioning or within ten years of the date on which that area is reserved for the Authority, whichever is the later, the contractor which contributed the area shall be entitled to apply for a plan of work for that area provided it offers to include the Enterprise as a joint venture partner.[57]

Paragraph 6, which used to read in the August 1993* version *"Sub-section E of Section 4 of Part XI, Annex IV and other provisions of the Convention relating to the Enterprise shall be modified by this Part,"* was now revised in the November 1993 version in the following manner:

Article 170, paragraph 4, Annex IV and other provisions of the Convention relating to the Enterprise shall be interpreted and applied in accordance with this Part.[58]

As to the provisions on transfer of technology, there were no substantive changes made to those under "E. Transfer of technology" in the August 1993* version except that paragraph (a) was amended in the following manner:

While paragraph (a) in the August 1993* version read: *"The Enterprise shall endeavour to obtain the technology required for its operations through its joint venture arrangements,"* the new paragraph (a) in the November 1993 version under Section 5 read: *"The Enterprise shall take measures to obtain the technology required for its operations* ***on the open market or through its joint venture arrangements."***[59]

A revised version of the non-paper submitted by Sierra Leone was submitted to this round of meetings.[60]

The work of the current round of Consultations focused on the following issues:

(a) Decision-making;

(b) Whether the administrative expenses of the Authority should be met by assessed contributions of its members, including the provisional members of the Authority, or through the budget of the United Nations; and

(c) The issue of provisional application of the Agreement and of the provisional membership in the Authority.

Progress was made on the latter two issues.[61]

XIII. Fourteenth round (4–8 April 1994)

At the fourteenth round of Informal Consultations held from 4 to 8 April 1994, the participants discussed a further updated version of the Boat Paper entitled "Draft resolution and draft Agreement relating to the implementation of Part XI of the 1982 UN Convention on the Law of the Sea," dated 14 February 1994. Compared with the previous versions of the Boat Paper, no major changes were made to the provisions on the Enterprise and the transfer of technology in this draft except that the detailed functions of the Enterprise which were supposed to be performed by the Secretariat of the Authority were added to Section 2 (The Enterprise) as a new paragraph 1. This new paragraph 1 is hereby reproduced:

1. The Secretariat of the Authority shall perform the functions of the Enterprise until it begins to operate independently of the Secretariat. To this end the Secretary-General shall appoint a Co-ordinator to oversee the performance of these functions by the staff of the Secretariat.

These functions shall be:

(a) monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;

(b) assessment of the results of the conduct of marine scientific research with respect to activities in the Area, with particular emphasis on research related to the environmental impact of the activities in the Area;

(c) assessment of available data relating to prospecting and exploration including the criteria for such activities;

(d) assessment of technological developments relevant to activities in the Area, in particular, technology relating to the protection and preservation of the marine environment;

(e) evaluation of information and data relating to areas reserved for the Authority;

(f) assessment of approaches to joint-venture operations;

(g) collection of information on the availability of trained man-power;

(h) study of managerial policy options for the administration of the Enterprise at varying stages of its operations.[62]

The meeting undertook an article-by-article review of the draft. Attention was then focused on the two most important issues facing the Consultations:

decision-making in the Council, and the Enterprise. The discussion on the Enterprise centred on the type of mechanism which would trigger the commencement of its operations as well as its functions. During this round of Consultations, according to many delegations, significant progress was achieved. It appeared that solutions to several important issues, including the Enterprise, were found. A revised draft was issued on the last day of the meeting.[63]

XIV. Fifteenth round (31 May – 3 June 1994)

The fifteenth and last round of Informal Consultations took place from 31 May to 3 June 1994. The first part of the meeting addressed the substantive issues that were still pending, and solutions were found for some of those issues. Delegations continued their search for solutions on matters relating, inter alia, to the treatment of the registered pioneer investors and the issue of representation in the Council. The second part of the meeting was devoted to the task of harmonizing the languages versions of the draft resolution and draft Agreement. The final part dealt with the decisions to be taken with regard to the convening of a resumed Forty-eighth Session of the General Assembly to adopt the draft resolution and draft Agreement.[64] A revised text was issued at the close of the meeting.[65] The delegation of the Russian Federation made a statement reserving its position in view of the fact that a number of proposals it had made had not been reflected in the draft Agreement. In reply, it was pointed out that all proposals made by delegations or groups had been thoroughly examined without exception but that it had not been possible to accept every one of them.[66] The meeting then indicated that Member States wished to convene a resumed Forty-eighth Session of the General Assembly of the United Nations from 27 to 29 July 1994, for adoption of the resolution.

The Agreement was adopted by the General Assembly on 28 July 1994 by 121 votes in favour. Seven abstentions were recorded and no vote against. The representative of Fiji, Ambassador Satya N. Nandan, who introduced before the General Assembly the draft resolution containing the Agreement pointed out that under the Agreement the regime for the mining of deep seabed was considerably streamlined and simplified. It had taken a functional approach towards the establishment of the administrative institutions under Part XI; it had provided for a stable environment for investors in deep seabed minerals under a market-oriented regime; it had guaranteed access to the resources of the seabed to all qualified investors; it had provided for the establishment of a system of taxation which is fair to the seabed miner and from which the international community as a whole may benefit; and it had made provisions for assistance to developing land-based producers of minerals whose economies may be affected as a consequence of deep seabed mining. Thus the Agreement had provided a practical and realistic basis for the realization of the principle of the common heritage of mankind.[67]

The Agreement establishes that the Enterprise will conduct its initial mining operations by way of joint ventures. In the beginning, the functions of the Enterprise are to be performed by the Secretariat of the Authority, operating

under an interim Director-General. The question of the functioning of the Enterprise independently of the Secretariat will be taken up by the Council of the Authority, either upon the approval of a plan of work for exploitation for an entity other than the Enterprise, or upon receipt by the Council of an application for a joint venture operation with the Enterprise. If such joint ventures accord with sound commercial principles, the Council must then issue a directive under article 170 (2) of the Convention, providing for such independent functioning of the Enterprise. Plans of work for the Enterprise are now to take the form of a contract between the Authority and the Enterprise and the obligations applicable to other contractors are to apply also to the Enterprise. The Agreement also relieves States Parties of any obligation to fund mine sites for the Enterprise. The Agreement further established that the transfer of technology is no longer mandatory since Annex III, article 5 of the Convention shall not apply. Under the Agreement such technology must first be sought on fair and reasonable commercial terms and conditions on the open, or through joint venture agreements. Even in cases where such efforts are unsuccessful, other States are obliged only to co-operate with the Authority in facilitating its acquisition on such terms and consistent with the effective protection of intellectual property rights.[68]

The Agreement would be applied provisionally pending its entry into force by States which so agreed with effect from 16 November 1994.[69]

End Notes

1 The Law of the Sea (United Nations Publication Sales No. E.83.V.5), United Nations, New York, 1983, p. 190.

2 *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. XVII, (United Nations publication, Sales No. E.84.V.3), Final Act of UNCLOS III, Annex I, Resolution I, Establishment of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea, pp. 145-146.

3 "Statement on Withholding of United States Funds." 18 Weekly Comp. Pres. Doc. 94 (Jan. 29, 1982).

4 Renate Platzöder, The Law of the Sea: Documents 1983-1989-Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea, Vol. X, 1990 Oceana Publications, Inc. New York, Press Release Sea/1089, 1 September 1989, Plenary 52nd Meeting and Round-up of Session, p. 472.

5 Forty-four countries, most of them from the developing world, had at that time ratified the Convention.

6 United Nations General Assembly, Forty-eighth Session, Agenda Item 36, Law of the Sea, Consultations of the Secretary-General on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea, Report of the Secretary-General, A/48/950, 9 June 1994, Reproduced with all the other major documents circulated during the four-year Informal Consultations in: Secretary-General's Informal Consultation on Outstanding Issues Relating to the Deep Seabed Mining Provisions of the United Nations Convention on the Law of the Sea: Collected

Documents, published by the International Seabed Authority, 2002, hereinafter referred to as 'ISA Collected Documents', p. 338, para.4

[7] Ibid. Informal Consultations were held on the following dates: 19 July 1990; 30 October 1990; 25 March 1991; 23 July 1991; 14 and 15 October 1991; 10 and 11 December 1991; 16 and 17 June 1992; 6 and 7 August 1992; 28 and 29 January 1993; 27 and 28 April 1993; 2-6 August 1993; 8-12 November 1993; 31 January-4 February 1994; 4-8 April 1994; and 31 May-3 June 1994.

[8] Ibid.

[9] United Nations General Assembly, Forty-eighth Session, Agenda Item 36, Law of the Sea, Consultations of the Secretary-General on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea, Report of the Secretary-General, A/48/950, 9 June 1994, paras 5 & 9. ISA Collected Documents, pp. 338-339, supra note 6.

[10] Introductory Remarks by the Secretary-General for the Informal Consultation on the Law of the Sea, 19 July 1990; United Nations General Assembly, Forty-fifth Session, Agenda item 33, Law of the Sea, Report of the Secretary-General, document A/45/721, 19 November 1990 and A/45/721/Corr.1; and A/46/724; and United Nations General Assembly, Forty-sixth Session, Agenda item 36, Law of the Sea, Report of the Secretary-General, document A/46/724, 5 December 1991.

[11] Information Note concerning the Secretary-General's Consultation on outstanding issues relating to the deep seabed mining part of the Convention, 24 October 1990, ISA Collected Documents, p. 13, supra note 6.

[12] *See* David H. Anderson, *Efforts to Ensure Universal Participation in the United Nations Convention on the Law of the Sea*, International and Comparative Law Quarterly, Vol. 42, July 1993, p. 657.

[13] Background Paper issued by the Secretariat concerning the difficulties raised at the second Informal Consultations of the Secretary-General, 8 March 1991, ISA Collected Documents, pp. 16-20, supra note 6.

[14] Information Note concerning the Secretary-General's informal consultation on outstanding issues relating to the deep seabed mining provisions of the UN Convention on the Law of the Sea. 8 March 1991, ISA Collected Documents, pp. 13-14, supra note 6.

[15] Ibid.

[16] Ibid.

[17] Ibid.

[18] Information Note concerning the Secretary-General's Informal Consultation on outstanding issues relating to the deep seabed mining provisions of the Convention, 3 July 1991, ISA Collected Documents, pp. 23-25, supra note 6.

[19] Ibid.

[20] Mr. Nandan's summary at the conclusion of the Secretary-General's Informal Consultation on outstanding issues relating to the deep seabed mining provisions of the Convention, 23 July 1991.

[21] Unofficial Summary of the Secretary-General's Informal Consultation on the Law of the Sea, 6 November 1991, ISA Collected Documents, pp. 49-52, supra note 6.

[22] Summary of Informal Consultations conducted by the Secretary-General on the Law of the Sea during 1990 and 1991, 31 January 1992, ISA Collected Documents, pp. 65-78, supra note 6.

[23] See Introductory Remarks by the Secretary-General, 16-17 June 1992, in ISA Collected Documents, p. 86, supra note 6; United Nations General Assembly, Forty-eighth Session, Agenda Item 36, Law of the Sea, Consultations of the Secretary-General on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea, Report of the Secretary-General, A/48/950, 9 June 1994, p. 3, para. 9. *See also* L.D.M. Nelson, *Some observations on the Agreement*

Implementing Part XI of the 1982 Convention on the Law of the Sea in Ocean Governance: Strategies and Approaches for the 21st Century edited by Thomas A. Mensah and published by the Law of the Sea Institute of University of Hawaii, 1996, pp. 203-218.

[24] Information Note concerning the Secretary-General's Informal Consultations on outstanding issues relating to the deep seabed mining provisions of the UN Convention on the Law of the Sea (New York, 28 and 29 January 1993)—Background document submitted on 10 December 1992, para. 4, ISA Collected Documents, pp. 89-105, supra note 6.

[25] Ibid, paras 15, 16 and 17.

[26] Ibid, para. 17.

[27] Ibid, para. 43.

[28] Ibid.

[29] Ibid, para. 17; Non-paper prepared by the Netherlands Delegation on the Enterprise, 7 August 1992.

[30] Information Note concerning the Secretary-General's Informal Consultations on outstanding issues relating to the deep seabed mining provisions of the UN Convention on the Law of the Sea (New York, 28 and 29 January 1993))—Background document submitted on 10 December 1992, para. 19, ISA Collected Documents, pp. 89-105, supra note 6.

[31] Ibid, para. 43.

[32] Ibid.

[33] Information Note concerning the Secretary-General's Informal Consultations on outstanding issues relating to the deep seabed mining provisions of the Convention on the Law of the Sea (New York, 27 and 28 April 1993)— Background document submitted on 8 April 1993, ISA Collected Documents, pp. 108-127, supra note 6.

[34] Ibid. *See also* United Nations General Assembly, Forty-eighth Session, Agenda Item 36, Law of the Sea, Consultations of the Secretary-General on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea, Report of the Secretary-General, A/48/950, 9 June 1994, pp. 3-4, para. 11, and D. H. Anderson, *Efforts to Ensure Universal Participation in the United Nations Convention on the Law of the Sea,* International and Comparative Law Quarterly, Vol. 42, 1993, p. 663, as well as D.H. Anderson, *Further Efforts to Ensure Universal Participation in the United Nations Convention on the Law of the Sea*, The International and Comparative Law Quarterly, Vol. 43, October 1994, p. 887.

[35] United Nations General Assembly, Forty-eighth Session, Agenda Item 36, Law of the Sea, Consultations of the Secretary-General on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea, Report of the Secretary-General, A/48/950, 9 June 1994, p. 4, para. 12.

[36] Information Note concerning the Secretary-General's Informal Consultations on outstanding issues relating to the deep seabed mining provisions of the Convention on the Law of the Sea (New York, 27 and 28 April 1993)—Informal background document submitted on 4 June 1993, Part B (Formulation of the Results of the Consultations), Section I, paras 12-13, ISA Collected Documents, p. 138, supra note 6.

[37] Ibid.

[38] Ibid, para. 14.

[39] Ibid, para. 15

[40] Ibid, Introductory remarks p. 129.

[41] Ibid, Part B, paras 34-40, ISA Collected Documents, p. 144, supra note 6.

[42] Report on the Secretary-General's Informal Consultations on Outstanding Issues relating to the deep seabed mining provisions of the UN Convention on the Law of the Sea (2-6 August 1993), prepared pursuant to the request addressed to the Secretary-General by the participants for a short and factual account of the meeting, ISA Collected Documents, pp. 151-152, supra note 6.

[43] Ibid, and D.H. Anderson, *Further efforts to ensure universal participation in the United Nations Convention on the Law of the Sea*, The International and Comparative Law Quarterly, Volume 43, 1994, p. 887. For the full text of the Boat Paper (original version of August 1993 and revised version of November 1993), ISA Collected Documents, supra note 6.

[44] United Nations General Assembly, Forty-eighth Session, Agenda Item 36, Law of the Sea, Consultations of the Secretary-General on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea, Report of the Secretary-General, A/48/950, 9 June 1994, p. 4, para. 13.

[45] D.H. Anderson, p. 889, supra note 43.

[46] Summary report on the Secretary-General's Informal Consultations on outstanding issues relating to the deep seabed mining provisions of the Convention on the Law of the Sea (8-12 November 1993), 14 December 1993.

[47] Boat Paper dated August 1993. As indicated by the footnote of the Boat Paper of August 1993, "for ease of reference, Annexes I, II and III of the original paper have been consolidated into a single Annex, with such adjustments in drafting as were necessary to avoid duplication and to remove inconsistencies. The substance is not changed." Reproduced in ISA Collected Documents, pp. 167-191, supra note 6.

[48] Ibid, pp. 8-9 and p. 12.

[49] United Nations General Assembly, Forty-eighth Session, Agenda Item 36, Law of the Sea, Consultations of the Secretary-General on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea, Report of the Secretary-General, A/48/950, 9 June 1994, p. 5, para. 15.

[50] Ibid.

[51] Summary report on the Secretary-General's Informal Consultations on outstanding issues relating to the deep seabed mining provisions of the Convention on the Law of the Sea (8-12 November 1993), 14 December 14 1993, Brief Summary of the Discussions, A. First Part of the November 1993 Consultations: Completion of the Consideration of the Outstanding Substantive Issues, Initiated During the August 1993 Consultations, para. 1, ISA Collected Documents, pp. 153-157, supra note 6.

[52] Ibid, B. Second Part of the November 1993 Consultations: Renewed Consideration of Outstanding Substantive Issues, Based Essentially on the Consolidated Boat Paper.

[53] Ibid, C. Third Part of the November 1993 Consultations: Consideration of Procedural Issues.

[54] United Nations General Assembly, Forty-eighth Session, Agenda Item 36, Law of the Sea, Consultations of the Secretary-General on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea, Report of the Secretary-General, A/48/950, 9 June 1994, p. 5, para. 17. For the revised Boat Paper of November 1993, *see* ISA Collected Documents, supra note 6.

[55] The Boat Paper of August 1993, and The Boat Paper of November 1993, ISA Collected Documents, pp. 167-191 and pp. 197-222, supra note 6.

[56] Ibid.

[57] Ibid.

[58] Ibid.

[59] Ibid.

[60] United Nations General Assembly, Forty-eighth Session, Agenda Item 36, Law of the Sea, Consultations of the Secretary-General on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea, Report of the Secretary-General, A/48/950, 9 June 1994, p. 5, para. 17, reproduced in ISA Collected Documents, p. 341.

[61] Ibid.

[62] Draft resolution and draft Agreement relating to the implementation of Part XI of the 1982 UN Convention on the Law of the Sea, dated 15 April 1994, reproduced in ISA Collected Documents, pp. 232-234, supra note 6.

[63] Ibid.

[64] United Nations General Assembly, Forty-eighth Session, Agenda Item 36, Law of the Sea, Consultations of the Secretary-General on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea, Report of the Secretary-General, A/48/950, 9 June 1994, pp. 6-7, paras 23-24. Reproduced in ISA Collected Documents, pp. 337-344, supra note 6.

[65] Ibid, para. 25; Document SG/LOS/CRP.1/Rev.1. ISA Collected Documents, pp. 342-343.

[66] Ibid, p. 7, para. 26.

[67] *Official Records of the United Nations General Assembly*, Forty-eighth Session, 99th meeting, 27 July 1994.

[68] Ibid, p. 5.

[69] Ibid, p. 4.

ANNEX

RELEVANT PROVISIONS UNDER THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA AND AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE CONVENTION

I. ARTICLE 170 OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Article 170
The Enterprise

1. The Enterprise shall, be the organ of the Authority which shall carry out activities in the Area directly, pursuant to article 153, paragraph 2 (a), as well as the transporting, processing and marketing of minerals recovered from the Area.

2. The Enterprise shall, within the framework of the international legal personality of the Authority, have such legal capacity as is provided for in the Statute set forth in Annex IV. The Enterprise shall act in accordance with this Convention and the rules, regulations and procedures of the Authority, as well as the general policies established by the Assembly, and shall be subject to the directives and control of the Council.

3. The Enterprise shall have its principal place of business at the seat of the Authority.

4. The Enterprise shall, in accordance with article 173, paragraph 2, and Annex IV, article 11, be provided with such funds as it may require to carry out its functions, and shall receive technology as provided in article 144 and other relevant provisions of this Convention.

II. STATUTE OF THE ENTERPRISE UNDER ANNEX IV TO THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

ANNEX IV. STATUTE OF THE ENTERPRISE

Article 1
Purpose

1. The Enterprise is the organ of the Authority which shall carry out activities in the Area directly, pursuant to article 153, paragraph 2 (a), as well as the transporting, processing and marketing of minerals recovered from the Area.

2. In carrying out its purposes and in the exercise of its functions, the Enterprise shall act in accordance with this Convention and the rules, regulations and procedures of the Authority.

3. In developing the resources of the Area pursuant to paragraph 1, the Enterprise shall, subject to this Convention, operate in accordance with sound commercial principles.

AGREEMENT, ANNEX, SECTION 2

Section 2. The Enterprise

1. The Secretariat of the Authority shall perform the functions of the Enterprise until it begins to operate independently of the Secretariat. The Secretary-General of the Authority shall appoint from within the staff of the Authority an interim Director-General to oversee the performance of these functions by the Secretariat.

These functions shall be:

(a) Monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;

(b) Assessment of the results of the conduct of marine scientific research with respect to activities in the Area, with particular emphasis on research related to the environmental impact of activities in the Area;

(c) Assessment of available data relating to prospecting and exploration, including the criteria for such activities;

(d) Assessment of technological developments relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;

(e) Evaluation of information and data relating to areas reserved for the Authority;

(f) Assessment of approaches to joint venture operations;

(g) Collection of information on the availability of trained manpower;

(h) Study of managerial policy options for the administration of the Enterprise at different stages of its operations.

2. The Enterprise shall conduct its initial deep seabed mining operations through joint ventures. Upon the approval of a plan of work for exploitation

for an entity other than the Enterprise, or upon the receipt by the Council of an application for a joint venture operation with the Enterprise, the Council shall take up the issue of the functioning of the Enterprise independently of the Secretariat of the Authority. If joint venture operations with the Enterprise accord with sound commercial principles, the Council shall issue a directive pursuant to article 170, paragraph 2, of the Convention providing for such independent functioning.

…

6. Article 170, paragraph 4, Annex IV and other provisions of the Convention relating to the Enterprise shall be interpreted and applied in accordance with this section.

Article 2
Relationship to the Authority

1. Pursuant to article 170, the Enterprise shall act in accordance with the general policies of the Assembly and the directives of the Council.

2. Subject to paragraph 1, the Enterprise shall enjoy autonomy in the conduct of its operations.

3. Nothing in this Convention shall make the Enterprise liable for the acts or obligations of the Authority, or make the Authority liable for the acts or obligations of the Enterprise.

Article 3
Limitation of liability

Without prejudice to article 11, paragraph 3, of this Annex, no member of the Authority shall be liable by reason only of its membership for the acts or obligations of the Enterprise.

Article 4
Structure

The Enterprise shall have a Governing Board, a Director-General and the staff necessary for the exercise of its functions.

Article 5
Governing Board

1. The Governing Board shall be composed of 15 members elected by the Assembly in accordance with article 160, paragraph 2 (c). In the election of the members of the Board, due regard shall be paid to the principle of equitable geographical distribution. In submitting nominations of candidates for election to the Board, members of the Authority shall bear in mind the need to nominate candidates so as to ensure the viability and success of the Enterprise.

2. Members of the Board shall be elected for four years and may be re-elected; and due regard shall be paid to the principle of rotation of membership.

3. Members of the Board shall continue in office until their successors are elected. If the office of a member of the Board becomes vacant, the Assembly shall, in accordance with article 160, paragraph 2 (c), elect a new member for the remainder of his predecessor's term.

4. Members of the Board shall act in their personal capacity. In the performance of their duties they shall not seek or receive instructions from any government or from any other source. Each member of the Authority shall respect the independent character of the members of the Board and shall refrain from all attempts to influence any of them in the discharge of their duties.

5. Each member of the Board shall receive remuneration to be paid out of the funds of the Enterprise. The amount of remuneration shall be fixed by the Assembly, upon the recommendation of the Council.

6. The Board shall normally function at the principal office of the Enterprise and shall meet as often as the business of the Enterprise may require.

7. Two thirds of the members of the Board shall constitute a quorum.

8. Each member of the Board shall have one vote. All matters before the Board shall be decided by a majority of its members. If a member has a conflict of interest on a matter before the Board he shall refrain from voting on that matter.

9. Any member of the Authority may ask the Board for information in respect of its operations which particularly affect that member. The Board shall endeavour to provide such information.

Article 6
Powers and functions of the Governing Board

The Governing Board shall direct the operations of the Enterprise. Subject to this Convention, the Governing Board shall exercise the powers necessary to fulfil the purposes of the Enterprise, including powers:

(a) to elect a Chairman from among its members;

(b) to adopt its rules of procedure;

(c) to draw up and submit formal written plans of work to the Council in accordance with article 153, paragraph 3, and article 162, paragraph 2(j);

AGREEMENT, ANNEX, SECTION 3, PARAGRAPH 11 (B)

11. (b) The provisions of article 162, paragraph 2 (j), of the Convention shall not apply.

(d) to develop plans of work and programmes for carrying out the activities specified in article 170;

(e) to prepare and submit to the Council applications for production authorizations in accordance with article 151, paragraphs 2 to 7;

AGREEMENT, ANNEX, SECTION 6, PARAGRAPH 7

2. The provisions of article 151, paragraphs 1 to 7 of the Convention shall not apply.

(f) to authorize negotiations concerning the acquisition of technology, including those provided for in Annex III, article 5, paragraphs 3 (a), (c), and (d), and to approve the results of those negotiations;

AGREEMENT, ANNEX, SECTION 5, PARAGRAPH 2

2. The provisions of Annex III, article 5, of the Convention shall not apply.

(g) to establish terms and conditions, and to authorize negotiations, concerning joint ventures and other forms of joint arrangements referred to in Annex III, articles 9 and 11, and to approve the results of such negotiations;

(h) to recommend to the Assembly what portion of the net income of the Enterprise should be retained as its reserves in accordance with article 160, paragraph 2 (f), and article 10 of this Annex;

(i) to approve the annual budget of the Enterprise;

(j) to authorize the procurement of goods and services in accordance with article 12, paragraph 3, of this Annex;

(k) to submit an annual report to the Council in accordance with article 9 of this Annex;

(l) to submit to the Council for the approval of the Assembly draft rules in respect of the organization, management, appointment and dismissal of the staff of the Enterprise and to adopt regulations to give effect to such rules;

(m) to borrow funds and to furnish such collateral or other security as it may determine in accordance with article 11, paragraph 2, of this Annex;

(n) to enter into any legal proceedings, agreements and transactions and to take any other actions in accordance with article 13 of this Annex;

(o) to delegate, subject to the approval of the Council, any non-discretionary powers to the Director-General and to its committees.

Article 7
Director-General and staff of the Enterprise

1. The Assembly shall, upon the recommendation of the Council and the nomination of the Governing Board, elect the Director-General of the Enterprise who shall not be a member of the Board. The Director-General shall hold office for a fixed term, not exceeding five years, and may be re-elected for further terms.

2. The Director-General shall be the legal representative and chief executive of the Enterprise and shall be directly responsible to the Board for the conduct of the operations of the Enterprise. He shall be responsible for the organization, management, appointment and dismissal of the staff of the Enterprise in accordance with the rules and regulations referred to in article 6, subparagraph (1), of this Annex. He shall participate, without the right to vote,

in the meetings of the Assembly and the Council when these organs are dealing with matters concerning the Enterprise.

3. The paramount consideration in the recruitment and employment of the staff and in the determination of their conditions of service shall be the necessity of securing the highest standards of efficiency and of technical competence. Subject to this consideration, due regard shall be paid to the importance of recruiting the staff on an equitable geographical basis.

4. In the performance of their duties the Director-General and the staff shall not seek or receive instructions from any government or from any other source external to the Enterprise. They shall refrain from any action which might reflect on their position as international officials of the Enterprise responsible only to the Enterprise. Each State Party undertakes to respect the exclusively international character of the responsibilities of the Director-General and the staff and not to seek to influence them in the discharge of their responsibilities.

5. The responsibilities set forth in article 168, paragraph 2, are equally applicable to the staff of the Enterprise.

Article 8
Location

The Enterprise shall have its principal office at the seat of the Authority. The Enterprise may establish other offices and facilities in the territory of any State Party with the consent of that State Party.

Article 9
Reports and financial statements

1. The Enterprise shall, not later than three months after the end of each financial year, submit to the Council for its consideration an annual report containing an audited statement of its accounts and shall transmit to the Council at appropriate intervals a summary statement of its financial position and a profit and loss statement showing the results of its operations.

2. The Enterprise shall publish its annual report and such other reports as it finds appropriate.

3. All reports and financial statements referred to in this article shall be distributed to the members of the Authority.

Article 10
Allocation of net income

1. Subject to paragraph 3, the Enterprise shall make payments to the Authority under Annex III, article 13, or their equivalent.

2. The Assembly shall, upon the recommendation of the Governing Board, determine what portion of the net income of the Enterprise shall be retained as reserves of the Enterprise. The remainder shall be transferred to the Authority.

3. During an initial period required for the Enterprise to become self-supporting, which shall not exceed 10 years from the commencement of commercial production by it, the Assembly shall exempt the Enterprise from the payments referred to in paragraph 1, and shall leave all of the net income of the Enterprise in its reserves.

Article 11
Finances

1. The funds of the Enterprise shall include:
(a) amounts received from the Authority in accordance with article 173, paragraph 2(b);
(b) voluntary contributions made by States Parties for the purpose of financing activities of the Enterprise;
(c) amounts borrowed by the Enterprise in accordance with paragraphs 2 and 3;
(d) income of the Enterprise from its operations;
(e) other funds made available to the Enterprise to enable it to commence operations as soon as possible and to carry out its functions.

2. (a) The Enterprise shall have the power to borrow funds and to furnish such collateral or other security as it may determine. Before making a public sale of its obligations in the financial markets or currency of a State Party, the Enterprise shall obtain the approval of that State Party. The total amount of borrowings shall be approved by the Council upon the recommendation of the Governing Board.
(b) States Parties shall make every reasonable effort to support applications by the Enterprise for loans on capital markets and from international financial institutions.

3. (a) The Enterprise shall be provided with the funds necessary to explore and exploit one mine site, and to transport, process and market the minerals recovered therefrom and the nickel, copper, cobalt and manganese obtained, and to meet its initial administrative expenses. The amount of the said funds, and the criteria and factors for its adjustment, shall be included by the Preparatory Commission in the draft rules, regulations and procedures of the Authority.
(b) All States Parties shall make available to the Enterprise an amount equivalent to one half of the funds referred to in subparagraph (a) by way of long-term interest-free loans in accordance with the scale of assessments for the United Nations regular budget in force at the time when the assessments are made, adjusted to take into account the States which are not members of the United Nations. Debts incurred by the Enterprise in raising the other half of the funds shall be guaranteed by all States Parties in accordance with the same scale.
(c) If the sum of the financial contributions of States Parties is less than the funds to be provided to the Enterprise under subparagraph (a), the Assembly shall, at its first session, consider the extent of the

shortfall and adopt by consensus measures for dealing with this shortfall, taking into account the obligation of States Parties under subparagraphs (a) and (b) and any recommendations of the Preparatory Commission.

(d) (i) Each State Party shall, within 60 days after the entry into force of this Convention, or within 30 days after the deposit of its instrument of ratification or accession, whichever is later, deposit with the Enterprise irrevocable, non-negotiable, non-interest-bearing promissory notes in the amount of the share of such State Party of interest-free loans pursuant to subparagraph (b).

(ii) The Board shall prepare, at the earliest practicable date after this Convention enters into force, and thereafter at annual or other appropriate intervals, a schedule of the magnitude and timing of its requirements for the funding of its administrative expenses and for activities carried out by the Enterprise in accordance with article 170 and article 12 of this Annex.

(iii) The States Parties shall, thereupon, be notified by the Enterprise, through the Authority, of their respective shares of the funds in accordance with subparagraph (b), required for such expenses. The Enterprise shall encash such amounts of the promissory notes as may be required to meet the expenditure referred to in the schedule with respect to interest-free loans.

(iv) States Parties shall, upon receipt of the notification, make available their respective shares of debt guarantees for the Enterprise in accordance with subparagraph (b).

(e) (i) If the Enterprise so requests, States Parties may provide debt guarantees in addition to those provided in accordance with the scale referred to in subparagraph (b).

(ii) In lieu of debt guarantees, a State Party may make a voluntary contribution to the Enterprise in an amount equivalent to that portion of the debts which it would otherwise be liable to guarantee.

(f) Repayment of the interest-bearing loans shall have priority over the repayment of the interest-free loans. Repayment of interest-free loans shall be in accordance with a schedule adopted by the Assembly, upon the recommendation of the Council and the advice of the Board. In the exercise of this function the Board shall be guided by the relevant provisions of the rules, regulations and procedures of the Authority, which shall take into account the paramount importance of ensuring the effective functioning of the Enterprise and, in particular, ensuring its financial independence.

(g) Funds made available to the Enterprise shall be in freely usable currencies or currencies which are freely available and effectively usable in the major foreign exchange markets. These currencies shall be defined in the rules, regulations and procedures of the Authority in accordance with prevailing international monetary practice. Except as provided in

paragraph 2, no State Party shall maintain or impose restrictions on the holding, use or exchange by the Enterprise of these funds.

(h) "Debt guarantee" means a promise of a State Party to creditors of the Enterprise to pay, *pro rata* in accordance with the appropriate scale, the financial obligations of the Enterprise covered by the guarantee following notice by the creditors to the State Party of a default by the Enterprise. Procedures for the payment of those obligations shall be in conformity with the rules, regulations and procedures of the Authority.

AGREEMENT, ANNEX, SECTION 2, PARAGRAPH 3

3. The obligation of States Parties to fund one mine site of the Enterprise as provided for in Annex IV, article 11, paragraph 3, of the Convention shall not apply and States Parties shall be under no obligation to finance any of the operations in any mine site of the Enterprise or under its joint-venture arrangements.

4. The funds, assets and expenses of the Enterprise shall be kept separate from those of the Authority. This article shall not prevent the Enterprise from making arrangements with the Authority regarding facilities, personnel and services and arrangements for reimbursement of administrative expenses paid by either on behalf of the other.

5. The records, books and accounts of the Enterprise, including its annual financial statements, shall be audited annually by an independent auditor appointed by the Council.

Article 12
Operations

1. The Enterprise shall propose to the Council projects for carrying out activities in accordance with article 170. Such proposals shall include a formal written plan of work for activities in the Area in accordance with article 153, paragraph 3, and all such other information and data as may be required from time to time for its appraisal by the Legal and Technical Commission and approval by the Council.

2. Upon approval by the Council, the Enterprise shall execute the project on the basis of the formal written plan of work referred to in paragraph 1.

3. (a) If the Enterprise does not possess the goods and services required for its operations it may procure them. For that purpose, it shall issue invitations to tender and award contracts to bidders offering the best combination of quality, price and delivery time.

(b) If there is more than one bid offering such a combination, the contract shall be awarded in accordance with:

(i) the principle of non-discrimination on the basis of political or other considerations not relevant to the carrying out of operations with due diligence and efficiency; and

(ii) guidelines approved by the Council with regard to the preferences to be accorded to goods and services originating in developing States, including the landlocked and geographically disadvantaged among them.

(c) The Governing Board may adopt rules determining the special circumstances in which the requirement of invitations to bid may, in the best interests of the Enterprise, be dispensed with.

4. The Enterprise shall have title to all minerals and processed substances produced by it.

5. The Enterprise shall sell its products on a non-discriminatory basis. It shall not give non-commercial discounts.

6. Without prejudice to any general or special power conferred on the Enterprise under any other provision of this Convention, the Enterprise shall exercise such powers incidental to its business as shall be necessary.

7. The Enterprise shall not interfere in the political affairs of any State Party; nor shall it be influenced in its decisions by the political character of the State Party concerned. Only commercial considerations shall be relevant to its decisions, and these considerations shall be weighed impartially in order to carry out the purposes specified in article 1 of this Annex.

Article 13
Legal status, privileges and immunities

1. To enable the Enterprise to exercise its functions, the status, privileges and immunities set forth in this article shall be accorded to the Enterprise in the territories of States Parties. To give effect to this principle the Enterprise and States Parties may, where necessary, enter into special agreements.

2. The Enterprise shall have such legal capacity as is necessary for the exercise of its functions and the fulfilment of its purposes and, in particular, the capacity:

(a) to enter into contracts, joint arrangements or other arrangements, including agreements with States and international organizations;

(b) to acquire, lease, hold and dispose of immovable and movable property;

(c) to be a party to legal proceedings.

3. (a) Actions may be brought against the Enterprise only in a court of competent jurisdiction in the territory of a State Party in which the Enterprise:

(i) has an office or facility;

(ii) has appointed an agent for the purpose of accepting service or notice of process;

(iii) has entered into a contract for goods or services;

(iv) has issued securities; or

(v) is otherwise engaged in commercial activity.

(b) The property and assets of the Enterprise, wherever located and by whomsoever held, shall be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Enterprise.

4. (a) The property and assets of the Enterprise, wherever located and by whomsoever held, shall be immune from requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

(b) The property and assets of the Enterprise, wherever located and by whomsoever held, shall be free from discriminatory restrictions, regulations, controls and moratoria of any nature.

(c) The Enterprise and its employees shall respect local laws and regulations in any State or territory in which the Enterprise or its employees may do business or otherwise act.

(d) States Parties shall ensure that the Enterprise enjoys all rights, privileges and immunities accorded by them to entities conducting commercial activities in their territories. These rights, privileges and immunities shall be accorded to the Enterprise on no less favourable a basis than that on which they are accorded to entities engaged in similar commercial activities. If special privileges are provided by States Parties for developing States or their commercial entities, the Enterprise shall enjoy those privileges on a similarly preferential basis.

(e) States Parties may provide special incentives, rights, privileges and immunities to the Enterprise without the obligation to provide such incentives, rights, privileges and immunities to other commercial entities.

5. The Enterprise shall negotiate with the host countries in which its offices and facilities are located for exemption from direct and indirect taxation.

6. Each State Party shall take such action as is necessary for giving effect in terms of its own law to the principles set forth in this Annex and shall inform the Enterprise of the specific action which it has taken.

7. The Enterprise may waive any of the privileges and immunities conferred under this article or in the special agreements referred to in paragraph 1 to such extent and upon such conditions as it may determine.

III. THE ENTERPRISE, SECTION 2 OF ANNEX TO THE AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

ANNEX, SECTION 2
THE ENTERPRISE

1. The Secretariat of the Authority shall perform the functions of the Enterprise until it begins to operate independently of the Secretariat. The Secretary-General of the Authority shall appoint from within the staff of the Authority an interim Director-General to oversee the performance of these functions by the Secretariat.

These functions shall be:

(a) Monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;

(b) Assessment of the results of the conduct of marine scientific research with respect to activities in the Area, with particular emphasis on research related to the environmental impact of activities in the Area;

(c) Assessment of available data relating to prospecting and exploration, including the criteria for such activities;

(d) Assessment of technological developments relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;

(e) Evaluation of information and data relating to areas reserved for the Authority;

(f) Assessment of approaches to joint venture operations;

(g) Collection of information on the availability of trained manpower;

(h) Study of managerial policy options for the administration of the Enterprise at different stages of its operations.

2. The Enterprise shall conduct its initial deep seabed mining operations through joint ventures. Upon the approval of a plan of work for exploitation for an entity other than the Enterprise, or upon the receipt by the Council of an application for a joint venture operation with the Enterprise, the Council shall take up the issue of the functioning of the Enterprise independently of the Secretariat of the Authority. If joint venture operations with the Enterprise accord with sound commercial principles, the Council shall issue a directive pursuant to article 170, paragraph 2, of the Convention providing for such independent functioning.

3. The obligation of States Parties to fund one site of the Enterprise as provided for in Annex IV, article 11, paragraph 3 of the Convention shall not apply and States Parties shall be under no obligation to finance any of the operations in any mine site of the Enterprise or under its joint venture arrangements.

4. The obligations applicable to contractors shall apply to the Enterprise. Notwithstanding the provisions of article 153, paragraph 3 and Annex III, article 3, paragraph 5, of the Convention, a plan of work for the Enterprise upon its approval shall be in the form of a contract concluded between the Authority and the Enterprise.

5. A contractor which has contributed a particular area to the Authority as a reserved area has the right of first refusal to enter into a joint venture arrangement with the Enterprise for exploration and exploitation of that area. If the Enterprise does not submit an application for a plan of work for activities in respect of such a reserved area within 15 years of the commencement of its functions independent of the Secretariat of the Authority or within 15 years of the date on which that area is reserved for the Authority, whichever is the later, the contractor which contributed the area shall be entitled to apply for a plan of work for that area provided it offers in good faith to include the Enterprise as a joint venture partner.

6. Article 170, paragraph 4, Annex IV and other provisions of the Convention relating to the Enterprise shall not be interpreted and applied in accordance with this section.

IV. TRANSFER OF TECHNOLOGY, SECTION 5 OF ANNEX TO THE AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

ANNEX, SECTION 5
TRANSFER OF TECHNOLOGY

1. In addition to the provisions of article 144 of the Convention, transfer of technology for the purposes of Part XI shall be governed by the following principles:

(a) The Enterprise, and developing States wishing to obtain deep seabed mining technology, shall seek to obtain such technology on fair and reasonable commercial terms and conditions on the open market, or through joint venture arrangements;

(b) If the Enterprise or developing States are unable to obtain deep seabed mining technology, the Authority may request all or any of the contractors and their respective sponsoring State or States to co-operate with it in facilitating the acquisition of deep seabed mining technology by the Enterprise or its joint venture, or by a developing State or States seeking to acquire such technology on fair and reasonable commercial terms and conditions, consistent with the effective protection of intellectual property rights. States Parties undertake to co-operate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also co-operate fully with Authority;

(c) As a general rule, States Parties shall promote international technical and scientific co-operation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific co-operation programmes in marine science and technology and the protection and preservation of the marine environment.

2. The provisions of Annex III, article 5, of the Convention shall not apply.

INDEX

The index to this publication was prepared by a professional indexer in consultation with the Office of Legal Affairs of the International Seabed Authority.

In conformity with standard indexing practice, only substantive discussions of each topic, not passing mentions, have been indexed. For instance, the "Authority" is mentioned throughout the publication, but it was not really necessary to index all those mentions. If a section was actually about the annual reports of the Enterprise, then, although the reports were to be submitted to the Authority, that section was still about the Enterprise, not about the Authority. Thus the "reports" were indexed under "Enterprise" instead of "Authority".

Since the scope of the publication is broad and comprehensive, efforts have been made to accommodate the greatest variety of users' needs by double-posting information (e.g., "research, scientific" and "scientific research"), while at the same time striving to achieve the right balance between multiple points of access to information and over indexing. Efforts in making the index user-friendly may also be found in the incorporation of the names of States whose delegates intervened or submitted draft proposals. In this regard, the names of new States, which came into existence in the1990s as a result of either dismemberment or unification of certain former States whose names appeared in the original United Nations documents concerned, have also been added as entries, with cross-references to the entries of their respective former States. The names of individual delegates have also been indexed. Where they were speaking for their respective countries, their names and the positions of their countries have been indexed. Where a delegate was speaking in his capacity as Chairman of a Committee, only the speaker's name, not the name of his country, has been indexed.