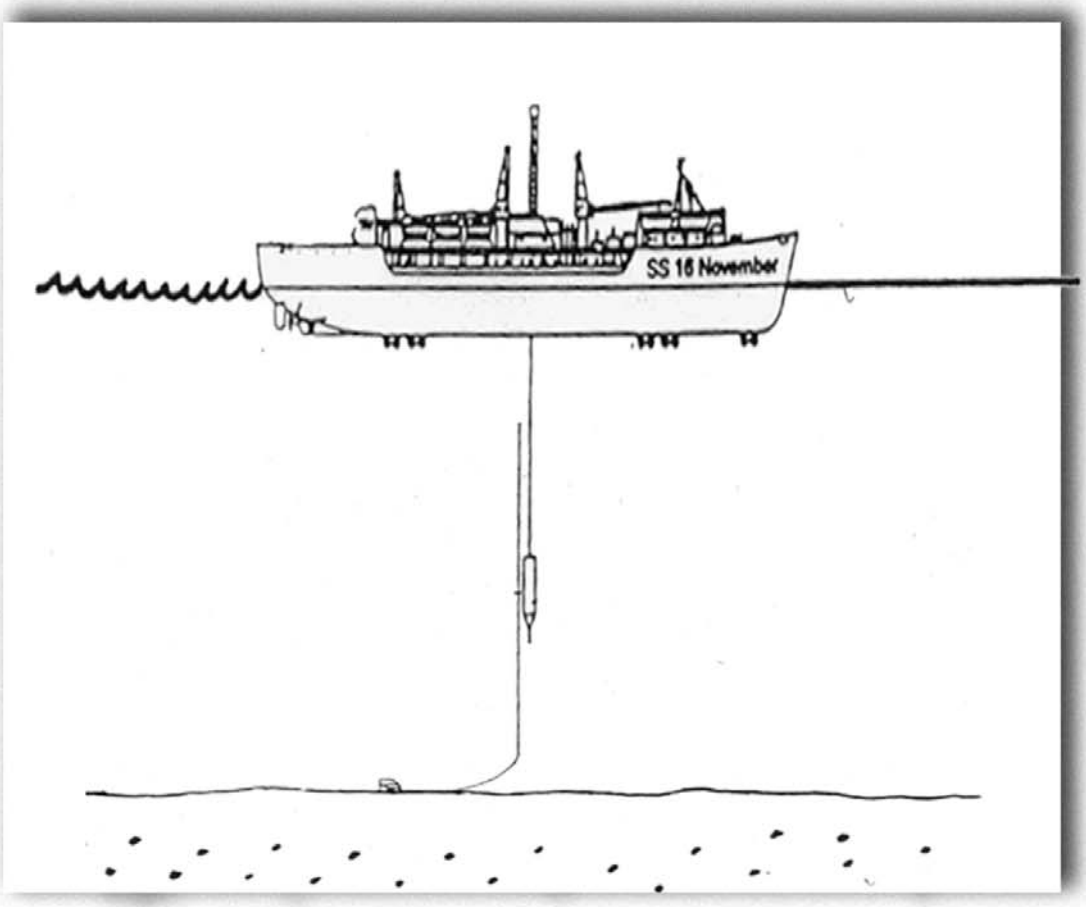
Secretary-General's Informal Consultations on Outstanding Issues Relating to the Deep Seabed Mining Provisions of the United Nations Convention on the Law of the Sea: *Collected Documents*



INTERNATIONAL SEABED AUTHORITY

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

COLLECTED DOCUMENTS

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INTRODUCTION

1. This volume contains the full text of the documents issued 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. Those consultations, which took place from 1990 to 1994, led to the adoption in 1994 of the Agreement for the Implementation of the Provisions of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. That Agreement, by introducing significant changes to the regime for deep seabed mining contained in Part XI of the Convention, paved the way for universal participation in the Convention. The documents contained in this volume provide an insight into the problems that needed to be addressed and the manner in which they were addressed. As such, they provide an important background to the adjustments that were made through the Agreement to the regime for deep seabed mining contained in the 1982 Convention.

2. It had been clear from the date of adoption of the Convention in 1982 that it would be impossible to secure the participation of the United States and a number of other industrialized countries, including the United Kingdom, the Federal Republic of Germany, Netherlands, Belgium, Italy and the Soviet Union, if the provisions on deep seabed mining remained unchanged. By 1990, as the number of ratifications or accessions to the Convention approached 60, there became a real prospect that the Convention would come into force with minimal developed State participation. On the other hand, in the Preparatory Commission, there was a growing acceptance amongst the Group of 77 that the prospects for deep seabed mining were substantially less interesting than they had been in the 1970s and early 1980s. Private investment in deep seabed mining had virtually ceased and even State-operated research activities were continuing at greatly reduced levels.

3. In these circumstances, and in the light of the fundamental ideological, political and economic changes that had taken place since 1982 when the Convention was adopted with respect to international relations generally, it was considered opportune to open a dialogue with key industrialized States on the outstanding issues with respect to Part XI with a view to ensuring universal participation in the Convention when it entered into force. As a result, and despite initial scepticism on the part of the United States, the then Secretary-General of the United Nations, Javier Perez de Cuellar, took the initiative in 1990 to convene informal consultations with a representative group of some thirty interested States, including Germany, the United Kingdom and the United States.

4. The results of these informal consultations and the manner in which they proceeded are described in the report of the Secretary-General presented to the General Assembly at the time of adoption of the Agreement

in July 1994.[*] In essence, there were two phases to the consultations. The objective of the first phase, from 1990 to 1992, and involving a small group of some 30 key States, was to identify the issues which were of most concern to key States and that had prevented widespread ratification or accession to the Convention. Many of these issues were similar to those that had been identified by the Reagan administration in 1981 as factors which would prevent U.S. participation in the Convention. They included: (1) costs to States Parties, (2) the Enterprise, (3) decision-making, (4) the Review Conference, (5) transfer of technology, (6) production limitation, (7) compensation fund, (8) financial terms of contracts and, (9) environmental considerations.[†]

5. The second phase of the informal consultations, lasting from 1992 to 1994, was open to all interested delegations. As many as 90 delegations took part in the consultations. The objective of this phase was to identify possible solutions for the implementation of Part XI based on a market-oriented approach. In all, fifteen rounds of informal consultations were held on the following dates:

19 July 1990
30 October 1990
25 March 1991
23 July 1991
14-15 October 1991
10-11 December 1991
16-17 June 1992
6-7 August 1992
28-29 January 1993
27-28 April 1993
2-6 August 1993
8-12 November 1993
31 January – 4 February 1994
4-8 April 1994
31 May – 3 June 1994

6. No official records were kept during the informal consultations. Indeed, until the latter stages of the consultations, when a number of draft versions of the 1994 Agreement and accompanying draft resolution were issued, no official documents were issued. The negotiating technique adopted by the participants was first to identify the issues, then to reach general agreement on possible solutions to some problems, while isolating areas of difficulty for later discussion. To assist participants, the Special

[*] A/48/950.
[†] See Information Note of 26 May 1992.

Representative of the Secretary-General for the Law of the Sea* issued a series of Information Notes, supported at critical stages in the negotiations by more comprehensive summaries of the issues upon which agreement had been reached and the areas of disagreement. These Information Notes and summaries were issued informally, in English only, and did not form part of the official documentation issued by the United Nations. None of the documents were identified by symbol or number.

7. This method of negotiation had the advantage of flexibility and did not commit any participant to a firm position; thus allowing all possible solutions to be fully explored. However, the disadvantage for students of the negotiations is that there exists no single authoritative account of the consultations and no official travaux preparatoire. Indeed, the Information Notes and summaries are published collectively for the first time in this volume. There does exist, however, a considerable body of published literature on the negotiations, much of it written by participants in the informal consultations. This volume therefore also contains a bibliography of the most important published sources.

8. In proceeding in this way, participants in the informal consultations were, in effect, continuing the tradition that had been established during the Third United Nations Conference on the Law of the Sea (UNCLOS III) of dealing with the most difficult issues in private negotiating groups under the guidance of a few key individuals.

9. Agreement on the general principles for solving the key problems with Part XI began to emerge late in 1992. Attention then turned to the form such an agreement might take and the various procedural approaches that might be adopted. The Information Note of April 1993 identified four possible approaches:

(a) A contractual instrument such as a protocol amending the Convention;

(b) An interpretative agreement consisting of understandings on the interpretation and application of the Convention;

(c) An interpretative agreement on the establishment of an initial Authority and an initial Enterprise during an interim regime accompanied by a procedural arrangement for the convening of a conference to establish the definitive regime for the commercial production of deep seabed minerals when such production became feasible;

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* Satya N. Nandan served as Under-Secretary-General for Oceans and the Law of the Sea and the Special Representative of the Secretary-General for Law of the Sea from 1983 to 1991 and returned to the negotiations as the representative of Fiji from 1992 to 1994.

(d) An agreement additional to the Convention providing for the trasition between the initial phase and the definitive regime, in particular, the Authority would be mandated to develop solutions for issues still outstanding on the entry into force of the Convention.

10. In August 1993, a core group of individuals from developed and developing countries (Australia, Brazil, Fiji, Indonesia, Italy, Jamaica, Kenya, Germany, Nigeria, United Kingdom and United States) put forward an informal and anonymous paper as a "contribution to the process of consultations." This paper, which became known as the "Boat Paper" did not necessarily reflect the position of any of the delegations involved, but was intended to provide a useful basis for negotiation. The paper retirned to the report of discussions recorded in the summary of the consultations dated 31 January 1992 and re-introduced the idea of an implementing agreement in the final paragraph of that summary (see page 78). Although additional informal papers were put forward by the delegations of Sierra Leone and the Netherlands, the Boat Paper very quickly became the *de facto* reference text for the negotiations and a revised version of the paper was issued in November 1993.

11. By the thirteenth round of informal consultations in February 1994, the revised Boat Paper had been reissued under the title "Draft resolution and draft Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea" dated 14 February 1994. Negotiations continued on the basis of this document both in the enlarged core group and in the Secretary-General's consultations and revisions were made to the draft Agreement in the light of the discussions on the various issues. Based on these revisions, the draft resolution and draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea were revised in their entirety and a revised text was issued on 15 April 1994.

12. The last round of consultations took place from 31 May to 3 June 1994. The primary purpose of this final round was the harmonization in the various language versions of the draft resolution and draft Agreement. The consultation had before it the draft resolution and draft Agreement dated 15 April 1994 which had been further revised on the basis of discussions in the previous round of consultations and a corrigendum to the document dated 23 May 1994. Two documents (SG/LOS/CRP.1 and SG/LOS/CRP.2), containing suggested amendments of a drafting nature prepared by the Secretariat, were also submitted in order to facilitate the process of harmonizing the language versions of the text. At the close of the meeting, delegations were presented with a revised text (SG/LOS/CRP.1/Rev.1) dated 3 June 1994.

13. On 28 July 1994, during the resumed forty-eighth session of the General Assembly, the draft resolution (A/RES/48/263), with the Agreement annexed to it, was adopted by 121 votes in favor and none against, with 7 abstentions.

PART 1

Informal notes, statements and summary reports issued during the consultations

Introductory Remarks by the Secretary-General for the informal consultation on the Law of the Sea, 19 July 1990

I am grateful to all of you for attending this informal meeting and I would like especially to thank those who have come from the capitals. I am pleased that Ambassador José Luis Jesus of Cape Verde, Chairman of the Preparatory Commission, is also with us.

I have convened this meeting in order to discuss with you informally how States can co-operate to overcome the existing difficulties with certain provisions of the UN Convention on the Law of the Sea, in particular those relating to its deep seabed mining part (Part XI). A discussion at this time would seem advisable because the entry into force of the Convention is imminent. Efforts in this area should also benefit from the present atmosphere of international co-operation and accommodation on a large number of regional and global issues. There is an opportunity here that should not be allowed to pass.

The Convention has had and continues to have a far-reaching effect on States as is reflected in current State practice. States are implementing its provisions even before its entry into force.

However, as Secretary-General I am concerned that the Convention should be able to enjoy broad acceptance and should be consistently and uniformly applied. To this end, States should give it their concrete support by becoming parties to it.

The future of the Convention cannot be left to chance. It represents many years of negotiation and it successfully establishes a delicate balance on many issues of global concern. Without a concerted effort to assure the future of the Convention, the law of the sea could revert to the very uncertainty and instability that the Convention was designed to remove.

As the depositary of the Convention, I will, of course, continue to encourage all States that have not done so to ratify or accede to it. Yet, it has to be recognized that the problems with some aspects of the deep seabed mining provisions have inhibited some States from ratifying or acceding to it. These problems have to be addressed.

It is now eight years since the Convention was adopted and in that time a number of important political and economic changes have taken place, some directly affecting the seabed mining part of the Convention, others affecting international relations in general. These will of necessity also be a factor in considering the outstanding issues at this time. Among the changes that have taken place are the following:

(a) Prospects for commercial mining of deep seabed minerals have receded into the next century. This is contrary to the expectations held when the Convention was being negotiated;

(b) There has been an evolution in international relations from tension and confrontation towards cooperation in resolving outstanding problems of regional and global concern;

(c) The general economic climate has changed markedly in the past decade. The approaches to economic issues at national and international levels have also undergone a considerable transformation;

(d) As the work of the Preparatory Commission has progressed, it has brought about a more detailed understanding of the practical aspects of deep seabed mining.

It will be recalled that the problems which arose from overlapping claims for mine sites which at first appeared to be intractable and which could have jeopardized the work of the Preparatory Commission were resolved only because States demonstrated considerable flexibility and ingenuity. The consensus that was achieved must be attributed to the cooperative and collective efforts made both inside and outside of the Preparatory Commission, and by signatories and non-signatories alike.

This very same spirit of co-operation and accommodation is what is needed now to deal with the substantive differences relating to the deep seabed mining provisions which have persisted for the last eight years. Based on my contacts and on consultations undertaken on my behalf, it would appear that this is an opportune time for States to make a concerted effort to resolve the outstanding problems in a manner satisfactory to all.

Indeed, the General Assembly, at its last session, has invited all States to make renewed efforts to achieve universal participation in the Convention. In view of the realistic and pragmatic attitude that prevails among States on matters relating to the law of the sea, I feel confident that the outstanding problems can be resolved. States must be ready to commit themselves to the achievement of this goal.

I have therefore convened this meeting at this time to informally seek your views on how a constructive dialogue can be encouraged among all States.

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INFORMATION NOTE

concerning the Secretary-General's informal consultation on outstanding issues relating to the deep seabed mining part of the UN Convention on the Law of the Sea

New York, 30 October 1990

The first informal consultation convened by the Secretary-General to encourage States to enter into dialogue in order to resolve the problems that some States have with the deep seabed mining part of the Convention was held on 19 July 1990. Participants at that meeting welcomed the Secretary-General's initiative and affirmed their willingness to enter into dialogue to address the difficulties. They also expressed the desire that the Secretary-General should continue the consultation.

At the conclusion of the meeting, the Secretary-General had stated that the consultation would continue following a period of reflection and that the next meeting should concern itself with more substantive issues. In this regard, the United Kingdom, during the consultation, had identified seven areas of difficulties. These related to: 1. the Enterprise; 2. cost to States Parties; 3. production limitation; 4. compensation fund; 5. financial terms for commercial operations; 6. decision-making and 7. the Review Conference. It was the desire of some participants that these points should be elaborated upon in order that the problems may be better understood by all.

A second informal consultation has now been convened for Tuesday, 30 October, at 11 a.m. It is hoped that, at this meeting, those who have difficulties will be able to explain them.

———

8 March 1991

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

New York, 25 March 1991

At the second informal consultation which was convened by the Secretary-General on 30 October 1990 to encourage States to enter into dialogue in order to resolve the problems that some States have with the deep seabed mining part of the Convention, the following areas of difficulty were identified:

(a) the Enterprise

(b) transfer of technology

(c) cost to States Parties

(d) production limitation

(e) compensation fund

(f) financial terms for commercial operations

(g) decision-making

(h) environmental considerations and

(i) the Review Conference

An explanation of the nature of the problems was also provided by certain participants. A background paper on these issues is appended hereto.

In the course of the last meeting, a number of delegations suggested that, at the next consultation, it would be useful to discuss which approach should be taken in examining these issues. Accordingly, this question will be taken up during the informal consultation on March 25. In this regard, several approaches may be considered, among them the following:

(a) 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.

(b) to deal with some of the issues and postpone consideration of others to a future date according to developments in deep seabed mining.

This approach raises a number of questions: How do we determine the two categories of issues? What will be the consequence of postponement? Will the present provisions relating to those issues remain a part of the Convention? At what point will the issues that have been postponed be taken up for consideration?

(c) to examine all the outstanding issues with a view to resolving them and decide on how to deal with those that may remain unresolved.

This last approach does not exclude the possibility of resolving all issues nor does it exclude the possibility that there may be issues which are not capable of being resolved at this time and therefore may be postponed.

A further question that required discussion is the instrument in which an agreement on outstanding issues would be embodied. Since the Convention is not yet in force, a protocol could be used, the purpose of which would be to facilitate the general acceptance of the Convention and its entry into force. Such a protocol could be designed to enter into force simultaneously with the Convention.

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BACKGROUND PAPER

concerning the difficulties raised at the last Informal Consultation of the Secretary-General with respect to the deep sea-bed mining provisions of the UN Convention on the Law of the Sea

An attempt is made below to summarize the nature of the difficulties which certain States have concerning the issues mentioned during the consultation of 30 October. This summary is not exhaustive nor does it reflect the views of all sides on the issues.

1. The Enterprise and

2. Transfer of Technology (these issues are inter-related)

Convention provisions: The Convention seeks to ensure that the Enterprise is enabled to operate effectively. For this purpose, 50 percent 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 were 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 in respect of a developing country operator.

Concerns expressed: The financial and other privileges accorded to the Enterprise enable it to undertake activities on more favourable terms and conditions than commercial operators. Moreover, there are 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 raises issues of principle. There are also practical difficulties for the commercial operators, especially if they are not owners of the technology in question.

Note: It has been suggested that if the Enterprise which already has 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.

3. Cost to States Parties

Convention provisions: The Convention provides for a Secretariat of the International Seabed Authority and staff for its operational arm, the Enterprise. It also calls for an annual meeting of the Assembly of all States

members of the Authority and for at least three meetings a year of its 36-member Council. In addition, it requires a number of meetings of the Legal and Technical Commission and of the Economic Planning Commission, each of which will have 15 members. Costs are involved in the maintenance of staff and headquarters, and the servicing of the meetings of the various organs of the Authority. In addition, the Convention establishes a 21 member International Tribunal for the Law of the Sea. The members of the Tribunal have to be remunerated and it is necessary to maintain its headquarters and to remunerate the Registrar and his staff. The meetings of the Tribunal will also incur servicing costs.

Concerns expressed: There is a common concern among all States with respect to the financial implications arising from the present structure of the institutions established by the Convention. The structure of the Authority is considered too elaborate at a time when the prospect for commercial deep seabed mining seems remote. The running costs for both the Authority and the Tribunal would be considerable. The operational costs to States for the start-up of the Enterprise could be burdensome.

Note: It is generally agreed that the Authority's structure should be scaled down to respond to the current state of seabed mining and that the Tribunal should be phased in. The Secretariat has already submitted to the Preparatory Commission studies on reduced structures for the Authority and of the Tribunal, and on possible budgetary options for the States parties during the transitional period. Since commercial deep seabed mining activities are not likely to take place for the next few decades, the need to fund the first operation of the Enterprise is therefore not going to be a factor, especially since other operational options for the Enterprise are also being considered.

4. Production limitation

Convention provisions: The Convention attempts to integrate deep seabed mineral production into the international metal market without undue disruption of the market in an effort to minimize adverse effects on the economies of land-based producer countries. A formula was devised to limit the minerals that can be produced from the deep seabed to 60 percent of the growth in nickel consumption based on 15 years of historical data. The Convention also refers to the problem of unfair economic practices such as dumping of metal from subsidized sea-bed mining. In addition, it requires the Authority to study the impact of deep sea-bed mining on developing land-based producer States and to consider measures such as an assistance fund or a compensation fund for developing land-based producer States whose economies may be affected. No source for such funds is identified but reference is made to existing international institutions.

Concerns expressed: The present provisions contain regulatory principles which reflect central planning. They also give the Authority a

certain discretion in selecting applications to whom it will grant authorization to proceed to commercial exploitation when there are competing applicants for the allowable level of production. Furthermore, it is considered by some that a formula based on nickel consumption alone is not realistic. The formula is also not acceptable as a commodity arrangement since it protects land-based but not seabed producers and therefore may have the effect of deterring investment in seabed mining. The prolonged recession in the international metal market over the past decade or more has rendered the formula more restrictive than was intended with the result that the application of the formula would severely reduce the number of possible deep sea-bed mining operations. There is concern, therefore, that not all those seeking production authorizations would be able to obtain them.

Note: Land-based producers consider that the provisions on unfair economic practices require strengthening, at least at the commercial stage of a seabed mining operation, in order to ensure that the basic principle of free competition is maintained and that their products are not displaced from the market by subsidized metals produced from the seabed. They would also wish to see that there is an orderly integration of metals from this new source into the market. Developing land-based producers also consider that some adverse impact on their economies from deep sea-bed mining is inevitable and that therefore some form of financial assistance scheme for them is essential.

5. Compensation fund

Convention provisions: The Convention provides that the Authority shall establish a system of compensation or take other measures of economic adjustment assistance including co-operation with specialized agencies and other international organizations to assist developing land-based producer States which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the international seabed area.

Concerns expressed: Any scheme for compensation can be very costly for all States parties. For instance, compensating the closure of land-based mining operation could run into hundreds of millions of dollars.

Note: The Convention requires that studies be undertaken on a continuing basis on the possible impact of sea-bed mining on the economies of developing land-based producer States and those who are seriously affected should be provided special assistance. The Convention suggests that this may be done, inter alia, through the cooperation of existing international financial institutions. In addition to this, the Authority could also create a special assistance fund from the proceeds of deep seabed mining to assist developing land-based producer States.

6. Financial terms for commercial operations

Convention provisions: The taxation scheme in the Convention requires that deep seabed miners should pay to the Authority a US$1 million dollar annual fixed fee following the approval of a contract to explore and/or exploit the mineral resources. The scheme provides for taxation on the profits at a graduated level once the tax on profits is higher than US$ 1 million. The fixed fee was seen as a minimum up-front payment to ensure that the Authority had some income to sustain itself. It was also intended to be a diligence fee to ensure that frivolous claims for seabed mining areas were not staked by speculators who might prevent more serious miners from having access to the resources.

Concerns expressed: In the present economic circumstances and the expected delay in commercial seabed mining, it is considered that the fixed fee has become a disincentive to prospective miners, especially since there is likely to be a long lead-time between the exploration stage and commercial exploitation due to inadequate technology development and current market conditions. There is also some concern over the rate of taxation on profits though this, in fact, compares favourably with the rates paid by land-based operators.

Note: The Preparatory Commission has already agreed to forego the fixed fee of US$ 1 million for registered pioneer investors during a prescribed period provided they complete free of cost a certain stage of exploration for the Enterprise in an area reserved for the Authority and also to implement a training programme to develop a pool of qualified personnel for the future staffing of the Enterprise. The period for which the fixed fee is waived may be extended if following a review immediately prior to the entry into force of the Convention, it is assessed that there is a prolonged delay in commercial seabed mining.

7. Decision-making

Convention provisions: The Convention provides a hierarchical structure for decision-making based on the importance of the issues. Certain important decisions many of which protect the interests of contractors are to be taken by consensus in the Council, the executive body of the Authority. Decisions of somewhat lesser importance are to be taken by a three-fourths majority in the Council. For the next category of decisions the required majority in the Council is a two-thirds majority and, lastly decisions on other matters are to be taken by a simple majority. Decisions on the budget of the Authority are taken by a two-thirds majority of the Assembly following a recommendation of the Council.

Concerns expressed: Industrialized States want more weight to be given in the decision-making process to States which are either major financial contributors or major investors in seabed mining. Some view with

concern the present composition of the Council of the Authority which they consider has a bearing on the decision-making procedure. In other areas of decision-making, they would like to remove the requirement to evaluate the financial and technical viability of a mining operation before approving its plan of work since they consider this to be a constraint on access to deep seabed mining. They view such restraints as self-defeating if the resources of the deep seabed are to be developed for the benefit of mankind. Consequently they would prefer a more automatic procedure for the approval of mining applications.

Note: Most States are sensitive to the issue of the decision-making procedure. There is some discussion that the Council of the Authority which is the main recommendatory body on most substantive and financial matters of the Authority should follow the decision-making procedure adopted in the CPC and that the Assembly of the Authority should follow the practice of the General Assembly on budgetary and financial matters. The Preparatory Commission is currently considering the establishment of a Finance Committee as an advisory body to the Council and the Assembly of the Authority (along the lines of the ACABQ) on matters having financial implications. Issues that have to be agreed upon are the composition of the Committee, its functions, its role vis-à-vis the Council and the Assembly of the Authority and its decision-making procedure.

8. Environmental considerations

Convention provisions: Under the Convention States have the obligation to protect and preserve the marine environment from activities in the international seabed area and are required to cooperate directly or through competent international organizations for this purpose.

Concerns expressed: While it is accepted that it is inevitable that there will always be some impact on the marine environment as a consequence of any activity on the seabed, the concern is in respect of any effect from such activities on the living or non-living components of the marine environment and associated ecosystems beyond that which is negligible or which has been assessed and judged to be acceptable in accordance with relevant rules and regulations for this purpose.

Note: The Preparatory Commission has been considering a comprehensive set of rules which inter alia require that activities in deep seabed area can only take place if they do not cause harm to the marine environment beyond a prescribed acceptable level, established on the basis of data and information gathered at each stage of the activities. Under this monitoring scheme, such activities can only take place if the technology and procedures used are safe, if there is the capacity to monitor the environment prarmeters and ecosystem components so as to identify any adverse effect and if there is the capacity to respond effectively to accidents, particularly those which might cause serious harm to the marine environment. No plan

of work for exploration would be approved under these rules unless an environmental report is submitted by the applicant based on data collected during the prospecting stage, together with a programme for oceanographic and baseline environmental studies of a general as well as site-specific nature. In the case of exploitation, no approval will be given unless an environmental impact-statement of a site-specific nature is submitted and evaluated and found to be consistent with the requirements of the rules.

A special preservation reference zone within a mine site is to be set aside in which no mining is to occur to ensure representative and stable biota of the seabed in order to assess any changes in the flora and fauna of the marine environment. The rules would also provide for the responsibility of the sponsoring State and the liability of the operator for any serious harm to the marine environment.

9. The Review Conference

Convention provisions: The Convention provides that 15 years after the commencement of commercial production a conference would be convened to review the system of exploration and exploitation of the resources of the deep sea-bed area. In particular the Conference would review whether the parallel system has worked satisfactorily. Any amendments following the review would not affect rights acquired under existing mining licences. The Convention provides that, if no consensus on amendments to the system of exploration and exploitation of the resources of the deep seabed can be reached after five years of negotiations, the conference may decide by a three-fourths majority to adopt the amendments and submit them to the States parties for ratification or accession. Such amendments shall enter into force for all States parties twelve months after the deposit of instruments of ratification or accession by three-fourths of the States parties.

Concerns expressed: The problem lies with the decision-making procedure for the Review Conference where there is no consensus. Some States find it unacceptable that any amendment should become binding on them automatically without their approval. Moreover, certain States feel that any amendments relating to the system should become effective only if ratified or acceded to by all States parties.

Note: Under the Vienna Convention on the Law of Treaties an amendment does not bind any State party which does not become a party to the amending agreement.

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Introductory Remarks by the Secretary-General for the Informal Consultation on the Law of the Sea, 25 March 1991

May I thank you for attending this third informal consultation. As you will recall, the purpose of these consultations is to facilitate the broadest possible participation in the Convention on the Law of the Sea so as to make it an instrument which is universally accepted and consistently applied in all its aspects.

At the last meeting on 30 October we made good progress in that we were able to identify the key issues. While it is recognized that the list of issues discussed at that time might not be exhaustive, it is however a very useful basis for continuing our discussion of the problems.

Several of you had suggested that at this third meeting we should discuss various approaches towards resolving the outstanding issues. I hope we will proceed to do so. A number of ideas have been suggested in this regard, both in the consultations and elsewhere. We should take this opportunity to discuss them. In order to assist you, an Information Note on some of the possible approaches has been prepared. Three such approaches have been identified; however, this does not preclude a discussion of others.

A further matter that is raised in the Information Note relates to the type of instrument in which any eventual agreement might be embodied. I hope this will also be discussed.

A Background Paper on the issues has also been prepared to provide you with information on the nature of the problems, so that these discussions will not take place in a vacuum. This paper is not exhaustive nor does it necessarily reflect all of the views on the various issues. Its purpose it to assist us in examining the issues.

Both the Information Note and the Background Paper have already been made available to you.

I would now like to hear your comments.

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3 July 1991

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

New York, 23 July 1991

1. At the third informal consultation which was convened by the Secretary-General on 25 March 1991, consideration was given to the approach that might be taken in examining the areas of difficulty identified at the previous meetings in respect of part XI of the Convention. Various alternatives were considered, including the three identified in the Information Note of 8 March 1991. At the conclusion of that meeting, there was a general convergence towards the third approach which was to examine all the outstanding issues with a view to resolving them and decide on how to deal with those that may remain unresolved. This approach does not exclude the possibility of resolving all issues nor does it exclude the possibility that there may be issues which are not capable of being resolved at this time and therefore may be postponed.

2. Therefore, as a first step, it is now necessary to examine the individual issues. This Note has been prepared to assist participants in addressing the first such issue, that of cost to States parties. While this consultation is confined to the problems relating to the deep seabed mining part of the Convention (Part XI), in addressing the question of cost account has to be taken of all the organizations, institutions and responsibilities established under the Convention that have cost implications. Accordingly, in addition to the cost relating to the International Seabed Authority, this Note deals also with the International Tribunal for the Law of the Sea, the Commission on the Limits of the Continental Shelf and the responsibilities imposed by the Convention on the Secretary-General of the United Nations which go beyond his usual depositary functions. For ease of reference, the Annex to this Information Note provides a brief description of the nature and functions of these organizations, institutions and responsibilities.

COST TO STATES PARTIES

The International Seabed Authority

3. For at least the initial 10 to 15 years the Authority will not be expected to deal with commercial deep seabed mining activities. Its administrative functions would, therefore, relate to the various stages of pre-commercial production activities. These will include receiving and

processing of any new applications for mine sites and approving plans of work for the exploration phase; monitoring the implementation of the obligations of operators; monitoring and reviewing trends and developments relating to deep seabed mining activities including those concerning the marine environment and the development of technology; assessing the feasibility of commercial deep seabed mining; monitoring the training programme being carried out by operators; and studying the problems that may arise from deep seabed mining for the economies of land-based mineral producer States.

4. Bearing in mind the functions of the Authority during the initial phase and taking into account the need for an efficient and effective institution and the necessity to minimize costs, some of the questions that need to be addressed are:

(a) Should the establishment of the Authority be based on an evolutionary approach whereby its organs and subsidiary bodies evolve according to the scale and pace of developments in the activities relating to deep seabed mining?

(b) Should a more flexible and functional approach be adopted towards the frequency of meetings prescribed in the Convention for the various organs and subsidiary bodies of the Authority so as to reflect the evolving state of deep seabed mining?

The Enterprise

5. In the light of the prolonged delay in the development of deep seabed mining activities, it is 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 will 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.

6. The matters that need to be addressed, therefore, are:

(a) Should an evolutionary approach be adopted towards the Enterprise starting with a small unit monitoring the developments in deep seabed mining and undertaking feasibility studies, etc. within the Secretariat of the Authority until such time as deep seabed mining activities begin in earnest?

(b) 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? It should be noted that the Authority will already have certain assets in the form of reserved mining areas which the Enterprise can use as its contribution to the joint venture. The capital requirements for the joint venture and other matters relating to the mining operation could be considered by the Enterprise together with its partners in the context of the joint venture arrangement.

The International Tribunal for the Law of the Sea

7. Taking into account that the work of the Tribunal will evolve over a number of years and in order to minimize costs, should consideration be given to phasing in the Tribunal in a manner which does not detract from its status and its role under the Convention? Phasing-in may mean utilizing only a certain number of judges initially. The others may be called upon as required. This would reduce the cost of remuneration for the judges and also the staff required to service the Tribunal.

The Commission on the Limits of the Continental Shelf

8. The Convention provides that the secretariat for servicing the meetings of the Commission on the Limits of the Continental Shelf shall be provided by the Secretary-General of the United Nations. The General Assembly by its resolution 37/66 approved the assumption by the Secretary-General of this responsibility. The cost for servicing the Commission will, therefore, be borne by the United Nations.

The responsibilities of the Secretary-General of the United Nations

9. Throughout the Convention and the related resolutions of the Conference, a number of responsibilities have been imposed on the Secretary-General of the United Nations which go beyond his usual depositary functions. Many of these are already being performed and are of a continuing nature. Others arise only after entry into force of the Convention. The General Assembly, in its resolution 37/66, approved the assumption by the Secretary-General of these additional responsibilities, which were the subject of a report to the General Assembly (A/38/570). Thus, the cost relating to the responsibilities of the Secretary-General will be borne by the United Nations.

ANNEX

ORGANIZATIONS, INSTITUTIONS AND RESPONSIBILITIES UNDER THE CONVENTION WHICH HAVE COST IMPLICATIONS FOR STATES

The International Seabed Authority

1. The Authority, under the Convention, has the following principal organs:

(a) The Assembly which will consist of all members of the Authority (all States parties are members of the Authority) is to establish general policies on any question or matters within the competence of the Authority. It has a number of specific functions, *inter alia*, to elect members of the Council, appoint the Secretary-General and adopt the administrative budget and assess contributions. It is required to meet in annual sessions and may meet in special sessions;

(b) The Council which will consist of 36 members is the executive organ of the Authority. Its function is to establish the specific policies to be pursued by the Authority on any question or matter within the competence of the Authority and in conformity with the general policies established by the Assembly. Its responsibilities include extensive supervisory and management functions regarding the regime for deep seabed minerals on behalf of the Authority and over the financial management and internal administration of the Authority. It is required to meet as often as the business of the Authority may require but not less than three times a year. The Council is to have two organs: an Economic Planning Commission and a Legal and Technical Commission, each having a membership of 15 experts. The functions of the two Commissions are to advise, recommend or report to the Council on various matters of a technical nature. The Commissions are to meet as often as required.

(c) The Secretariat will consist of a Secretary-General and such other staff as the Authority may require. The Secretary-General is to be elected by the Assembly upon the recommendation of the Council. He will be the chief administrative officer of the Authority.

The Enterprise

2. The Enterprise is the organ of the Authority which would carry out deep seabed mining activities, including processing and marketing of minerals recovered from the deep seabed, on behalf of the Authority. It may also undertake its activities in association with other entities. The Enterprise is required to operate in accordance with sound commercial principles.

3. It is to have a fifteen member Governing Board to be elected by the Assembly, a Director-General and other staff. In order that the Enterprise becomes operational, the Convention provides that the finances for its first mining operation shall be provided by States parties. Accordingly, 50% of the funds are to be provided by way of long-term interest-free loans while debts incurred by the Enterprise in raising the other half are to be guaranteed by States parties.

The International Tribunal for the Law of the Sea

4. The International Tribunal for the Law of the Sea is an essential component of the dispute-settlement system for the Convention as a whole and the Secretary-General of the United Nations is required to arrange for the election of judges within six months of the entry into force of the Convention.

5. The Tribunal will have 21 judges, each having a 9-year term. Its quorum will consist of 11 members. It is to have a Seabed Disputes Chamber consisting of 11 of its members to deal with disputes arising from Part XI. The Tribunal may also form special chambers including the Chamber of Summary Procedure with five judges and other chambers of three or more judges for dealing with particular categories of disputes. The Tribunal, either directly or through its chambers, has the power to prescribe provisional measures to preserve the rights of parties to a dispute or to prevent serious harm to the marine environment, pending a final decision by a court or tribunal. It is also required to deal without delay with applications made to it by or on behalf of a flag State for the prompt release of a detained vessel and crew upon the posting of a reasonable bond or other financial security. The nature of some of its functions requires the Tribunal to be in a position to convene at short notice. The Tribunal is to have a registrar and other officers and support staff.

The Commission on the Limits of the Continental Shelf

6. The function of the Commission on the Limits of the Continental Shelf is to make recommendations to coastal States on matters relating to the establishment of the outer limits of their continental shelf beyond the exclusive economic zone.

7. The Commission will consist of 21 members elected by States parties. The members will be experts in the field of geology, geophysics or hydrography. The responsibility to organize the election is that of the Secretary-General of the United Nations who is also required to provide the Secretariat for the Commission. The meetings of the Commission are to be held at the UN Headquarters.

Responsibilities of the Secretary-General of the United Nations

8. Interspersed throughout the Convention and the related resolutions of the Third UN Conference on the Law of the Sea, there are a number of substantive responsibilities imposed on the Secretary-General of the United Nations which go beyond his usual depositary functions. These responsibilities of the Secretary-General were reviewed in a report to the General Assembly (A/38/570). Many of these responsibilities are already being discharged by the Office for Ocean Affairs and the Law of the Sea while others, such as those relating to meetings of State Parties, elections, reports to States parties and international organizations on issues that have arisen in respect of the law of the sea and the servicing of the Continental Shelf Commission will begin upon entry into force of the Convention. The Secretary-General is also required to keep a register of maps, charts and lists of geographical coordinates relating to the various limits of national sovereignty or jurisdiction which the Convention requires States to submit to him.

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Introductory Remarks by the Secretary-General for the Informal Consultation on the Law of the Sea, 23 July 1991

This is now the fourth meeting in the series of consultations that I have been undertaking on the outstanding issues relating to the deep sea-bed mining part of the UN Convention on the Law of the Sea. So far, our discussions of these issues have been very constructive and we have made some progress. We have already identified the areas where problems exist and there is a consensus that they should be addressed.

At our last meeting we considered the various approaches that might be taken in the examination of the issues. There was a general convergence towards an approach which would enable us "to examine all the outstanding issues with a view to resolving them and decide on how to deal with those that may remain unresolved."

In this informal setting it should be possible for you to have an open and frank exchange of views on the problem areas, in the course of which I hope it will be possible to achieve three objectives:

(i) a better understanding of the issues from all perspectives;

(ii) an identification of the areas where broad agreement already exists or can be readily achieved; and

(iii) an identification of those issues which may be more difficult to resolve.

Thus, once we have examined all the issues, we will be in a better position to decide on how to proceed to an agreement.

As we begin to examine the substantive issues, I wish to recall what I said in my statement at the first consultation in July 1990: that it is now eight years since the Convention was adopted and that in that time a number of important political and economic changes have taken place, some directly affecting the sea-bed mining part of the Convention, others affecting international relations in general. I further noted that the prospects for commercial mining of deep sea-bed minerals had receded into the next century and that this was contrary to the expectations held when the Convention was being negotiated. These factors of necessity will have to be taken into account as we examine the substantive issues.

I would also like to note that many of these issues have already been considered over the last nine years in the Preparatory Commission and it is my hope that the informal consultations that we are undertaking here in a

small group will help us come to an understanding in broad terms on those issues. The detailed elaboration of such an understanding can be undertaken at a later time.

Since these informal consultations are complementary to the work of the Preparatory Commission, I have asked my Special Representative for the Law of the Sea, Mr. Satya Nandan, to continue to keep the members of the Commission informed of the informal discussions that are taking place here. I would like to reiterate that the purpose of these consultations is, on the one hand, to respond to the invitation of the General Assembly to all States to make renewed efforts to facilitate universal participation in the Convention and, on the other hand, to facilitate the successful completion of the work of the Preparatory Commission. If indeed broad agreement on substantive issues can be reached here, it will help in the achievement of these aspirations.

The Information Note which you have before you provides an agenda for today's meeting which is on the subject of "COST TO STATES PARTIES". In order to have a focused discussion, a number of questions have been raised in respect of the various institutions for which contributions are expected from States parties. This, of course, does not preclude your raising any other matters that are related to the subject we are now addressing.

I now open the floor for discussion.

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23 July 1991

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 UN Convention on the Law of the Sea

I thank you very much. That concludes the list of speakers and we are very close to 1 o'clock so perhaps we will adjourn. Before we do so, I don't know whether it is really possible for me to summarize all that has been said here this morning. I will, however, try to at least highlight some of he points where broad agreement exists.

First of all, I would like to observe that the tenor of the discussion has been very encouraging. This is the first time we have taken up a substantive issue and the level of discussion, and the constructive manner in which the issue was addressed augurs well for the examination of other issues, some of which I am sure would be more difficult than the item that we have examined today.

The discussion has revealed that there is a broad consensus on a number of matters, some of which were raised in the Information Note. There is, for instance, general agreement that cost to States Parties should be minimized; that all institutions to be established under the Convention should be cost-effective. In this regard there is 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 is agreement that its operations be based on commercial principles and free of political domination. There is also agreement that the Enterprise might begin its operations through a joint venture arrangement as a means of minimizing costs to States Parties. This is not intended to reduce the future operational options of the Enterprise, nor affect its autonomy.

There was general agreement also on the streamlining of the meetings of the various institutions in a manner that would reduce costs. This applies to the structure of the institutions and to the frequency and scheduling of meetings of the various organs.

As regards the International Tribunal for the Law of the Sea, there appears to be general agreement that the Tribunal should be phased-in in order to reduce costs. This is again a functional approach.

As regards the Continental Shelf Commission and the responsibilities of the Secretary-General, it is recognized that these have already been assumed by the Secretary-General in accordance with the decision of the General Assembly. The principle of cost-effectiveness will also apply to the Secretariat.

A number of procedural matters were raised – I think the first speaker to raise this was the distinguished Ambassador of Canada, and this was followed by others. He referred in particular to the procedure for dealing with the issues and he divided the issues into two categories: those that might be resolved now, and those for which certain principles could be agreed to now on the basis of which those issues might be resolved in the future. This is a matter which I think should be taken up later once we have examined all the issues, because that is the decision we came to at the last meeting. It was agreed that we will examine all the issues and then only we will determine which of these issues should be resolved and how we will deal with those that remain unresolved. So I would suggest that we postpone a discussion on this matter to a later date.

Some further procedural points were raised. The last speaker, the Ambassador of Tanzania, raised this matter and so also Mr. Matsumoto of Japan, and that concerns the agenda of our meetings. Let me confess that this was an experimental agenda because this is the first time we have taken up a substantive issue. Quite clearly we have to include more issues on the agenda of future meetings. As to which items we will take up next, I will try to touch base with some of you to see whether I can get some guidance. We have nine issues and we have to deal with all of them, and it's only a question of which ones we take up next.

As regards meetings, namely the frequency of these meetings, I take note of the points that have been raised that there is a general desire that we should meet more frequently in order to cover all the items as quickly as possible. I shall discuss this further with the Secretary-General to see how we can make these meetings more frequent.

Now, as to the next meeting, I will have to again consult with the Secretary-General to see what his schedule is and I will let you know of the date in due course. We will bear in mind that we should make it possible for as many of the experts to attend these meetings and we will see how this can be done in a practical way.

On behalf of the Secretary-General I thank you very much for attending this meeting, especially I would like to thank those who came from the capitals.

The meeting is adjourned.

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9 August 1991

NOTE ON SECRETARY-GENERAL'S INFORMAL CONSULTATION HELD AT NEW YORK, 23 JULY 1991

The Secretary-General held a further consultation on 23 July 1991 with a view to encouraging States to enter into dialogue on problems that have inhibited certain States from ratifying or acceding to the 1982 United Nations Convention on the Law of the Sea.

In his introductory remarks, the Secretary-General stated that the purpose of these consultations was, on the one hand, to respond to the invitation of the General Assembly to all States to make renewed efforts to facilitate universal participation in the Convention, and on the other, to facilitate the successful completion of the work of the Preparatory Commission. He noted that many of these issues have already been considered over the past nine years in the Preparatory Commission and it was his hope that the informal consultations in a small group would help States to come to an understanding in broad terms on those issues.

At the previous consultations a list of nine issues were identified as problem areas for some States: costs to States parties; the Enterprise; transfer of technology; production limitation; compensation fund; financial terms for commercial operations; decision making; environmental considerations; and the Review Conference.

At the last consultations, one of the issues, namely, costs to States parties was examined. In the course of the examination of this issue there appeared to be a convergence towards the view that costs to States parties should be minimized; that all institutions to be established under the Convention should be cost-effective; and that the establishment of the institutions should be based on an evolutionary approach, taking into account the functional needs of the institution concerned. The institutions should be able to effectively discharge their responsibilities at each stage. These principles would apply to the organs of the Authority and its subsidiary bodies. There was also the view that the meetings of the various institutions should be streamlined in a manner that would reduce costs, in particular with reference to structure, frequency and scheduling of meetings at the various organs.

As regards the Enterprise, the prevailing view was that its operations should be based upon sound commercial principles and that it should be free from political domination. The Enterprise might begin its operations through a joint venture arrangement as a means of minimizing costs to States parties. This would not reduce the future operational options for the Enterprise, nor affect its autonomy.

As regards the Tribunal, the general view was that its establishment should also be based on a functional approach and that the Tribunal should be phased-in in order to reduce costs.

It was recognized that the participants expressed their views in their individual capacities and not as representatives of any particular interest group. It was further understood that the process was one of examination of the issues with a view to ascertaining the precise difficulties. There was general agreement that this examination process should be completed as soon as possible.

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1 October 1991

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

New York, 14-15 October 1991

1. The fourth informal consultation convened by the Secretary-General on 23 July 1991 initiated an examination of each of the nine areas of difficulty identified at previous consultations. That meeting had completed the consideration of the issue relating to cost to States parties in respect of the institutions that are to be established under the Convention, including the Enterprise. A summary of the discussion is enclosed herewith.

2. At the forthcoming consultation it is intended that three further issues be examined, namely (a) decision-making, (b) the Review Conference and (c) transfer of technology. This Information Note is prepared to assist participants in addressing these issues.

A. DECISION-MAKING

General considerations

3. The system for deep seabed mining should ensure efficient and effective administration of the resources of the international seabed area and their development in a manner that would:

(a) give confidence to investors in deep seabed mining, and

(b) generate maximum benefit to mankind as a whole.

4. An important element that would contribute to these goals is the decision-making machinery in the institutions of the Authority. Those dealing with the Authority must feel confident that they will be treated fairly and objectively in any decision taken by the Authority which affects their interests. It is therefore essential that the decision-making machinery should encourage the harmonization of two principal interests – that of the international community as a whole and that of the legitimate operators under the system. This should be further underpinned by an impartial dispute settlement procedure to which any aggrieved party may have recourse. The decision-making machinery provided for in the Convention should be examined, taking into account the above-mentioned goals.

5. A decision-making machinery involves two important components: the composition of the decision-making body and the mechanism for making the decision. These would differ according to the nature and the effect of the decisions each body is mandated to take.

6. In the case of the International Seabed Authority the decision-making bodies are the Assembly, the Council and two advisory bodies - the Economic Planning Commission and the Legal and Technical Commission. Other subsidiary bodies may be established, such as a Finance Committee.

The Assembly

7. The Assembly will consist of all members of the Authority. All States Parties are members of the Authority. The procedure for decision-making in the Assembly as prescribed in the Convention is based on the normal procedure followed by most deliberative bodies when dealing with matters of general policies. Where specific functions are assigned to the Assembly the normal procedure is circumscribed by the requirement that the Assembly's decisions are based on the recommendation or proposal of the Council. While the Assembly may reject recommendations or proposals of the Council, on most important matters it cannot take a decision which is not based on these recommendations or proposals, e.g. the election of the Secretary-General of the Authority from among the candidates proposed by the Council. In some cases there are specific provisions that if the Assembly does not approve the recommendations of the Council, it shall return them to the Council for reconsideration in the light of the views expressed by the Assembly [art. 160 (2) (f) (i)]. An area of concern to States where this procedure is not clearly indicated is that relating to the approval of the proposal for the annual budget of the Authority submitted by the Council to the Assembly [art. 160 (2) (h), art. 162 (2) (r) and art. 172]. Consideration might also be given to establishing a relationship between the Council and the Assembly regarding the assessment of contributions of members to the administrative budget of the Authority which at present is to be dealt with by the Assembly acting in its own [art. 160 (2) (e)].

8. Given the nature of the Assembly, its composition and functions, the questions that need to be addressed are:

(a) Whether the present provisions of the Convention on decision-making in the Assembly are generally acceptable; and

(b) What, if any, adjustments may be necessary in order to clarify the procedure further in respect of certain decisions on substantive matters.

The Council

9. The Council, as the executive organ of the Authority, is charged with the responsibility of establishing the specific policies on any question

or matter within the competence of the Authority. The Council therefore has a pivotal role in the administration of the system for the exploration and exploitation of the mineral resources of the deep seabed.

10. It is important that there is a fair balance in the composition of the Council to ensure that the different interest groups directly concerned with deep seabed mining and the international community in general are adequately represented. It is equally important that the mechanism for decision-making should be such as would fairly protect the interests of all concerned.

11. It has been suggested that in respect of the present composition of the Council there is a need for a clearer definition of States belonging to each category of interest groups. This is rendered more complex by the necessity to draw up a number of sub-lists for States with special characteristics [art. 161 (1) (d)]. Account has also to be taken of the political changes that have taken place in the world at large and in Eastern Europe in particular.

12. There are four rules for decision-making in the Council. A simple majority for matters of procedure, and, for substantive issues, a consensus for matters of highest importance, a three-fourths majority for those which are slightly less important and a two-thirds majority for all other matters.

13. The mechanism is considered to be complex and may be difficult to implement in practice. Concern has been expressed that a consensus procedure in the case of the Council is not appropriate since it creates the possibility for a single State to prevent a decision from being taken on the most important issues, the consequences of which could be quite serious for investors. There is also a concern that not all the interest groups will be represented in the 36-member Council by 10 members which is the minimum number of votes required for the protection of interests of any group in decisions requiring a three-fourths majority. In the case of decisions requiring a two-thirds majority the number of votes required to protect the respective interests would rise to 13. Therefore, in these two cases no interest group would be able to protect the interests of its members effectively without the concurrence of other members of the Council. Further, it is not yet clear by how many members the various interest groups will be represented in the Council as a whole. It is also not known which interests the 18 members of the Council that are to be elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole [art. 161 (1) (e)] will represent. That will only be known after their election.

14. Bearing in mind the unique nature and functions of the Council and the need for a decision-making machinery that fairly balances the different interests involved in deep seabed mining and taking into account

the recent political and economic changes, the questions that require to be addressed are:

(a) whether the present provisions of the Convention on decision-making in the Council are satisfactory; and, if not,

(b) what alternative approaches to decision-making may be considered.

A possible approach

15. Any alternative approach must ensure that the composition of the Council reflects all the interests concerned. There are essentially two principal interests, the interest of the international community as a whole and the interests of investors in deep seabed mining activities. There are two other interests involved, namely those of the consumers of minerals to be produced from the deep seabed and those of the land-based producers of the minerals to be derived from the deep seabed.

16. It is necessary that States falling within each interest group should be clearly identifiable and that, to the extent possible, the interests of States within a group should be homogenous. The composition of the Council should also take into account recent political and economic developments. Moreover, the mechanism should be simple and easy to implement.

17. Based on these considerations, the following suggestion is made for the implementation of the Convention provisions. It attempts to incorporate such adjustments as would be appropriate to respond to the concerns of States and to update, streamline and simplify the machinery for decision-making in the Council:

(a) While maintaining a 36-member Council, there would be four categories of members: four members representing the largest consumers of metals or the largest importers of commodities produced from such metals, including the State having the largest economy in the Eastern European region and the State having the largest economy in the Western European and Others region; four members from States which have invested in deep seabed mining; four land-based producer States, two of which should be developing States; and 24 members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole. This would include six members from among developing States having special characteristics such as large populations, land-locked and geographically disadvantaged States, major importers of minerals, potential producers of minerals and least developed States.

(b) Decision-making in the Council on questions of procedure would be by a majority of members present and voting. Decision-making on questions of substance would be by a two-thirds majority of members

present and voting, provided that such decisions are not opposed by a majority in any one of the first three categories. Decisions within each category on matters of substance may be taken by a simple majority.

(c) The Convention already contains procedures for the settlement of disputes through a Special Chamber of the International Tribunal for the Law of the Sea, or through an *ad hoc* Chamber of the Special Chamber, or in respect of the interpretation and application of a contract, through binding commercial arbitration.

18. A detailed illustration of the above proposal is to be found in the Annex to this Information Note.

19. The above suggestion is designed to ensure that all categories of States having particular interests in deep seabed mining have the possibility of protecting their interests. At the same time, no decision can be taken on substantive matters without the support of a majority of the members in the fourth category which embodies the general interests of the international community as a whole. Within this category are also included developing States representing special characteristics such as large populations, land-locked and geographically disadvantaged States, major importers of minerals, potential producers of minerals and least developed States. The interests of these six States are not necessarily homogenous nor do they have a direct interest as such in deep seabed mining as is the case with the first three categories. Their interest is, in fact, no different from that of the rest of the international community and therefore they have been merged with the 18 States into one group representing the interests of the general international community. They should nevertheless be represented in the Council. It should be noted that the merging of the six seats with the 18 seats elected according to the principle of ensuring an equitable geographical distribution of States in the Council as a whole does not diminish the overall number of seats to be distributed to developing countries. States with special characteristics are to be accommodated within the seats allocated to the relevant regions as is done for elections in a number of UN bodies. In the first two categories the ideological criteria are removed to take account of recent developments and some clarification has been added to identify certain States on the basis of economic criteria.

20. The suggested procedure for decision-making responds to the concerns expressed by some States. It is designed to provide the three groups of States with particular interests in deep seabed mining and the international community as a whole with the possibility to protect their respective interests on an equal basis. Just as on substantive matters no decision can be taken if it is opposed by a majority of members in any one of the first three categories, equally no decision can be taken without the support of at least a majority of those members elected on the basis of equitable geographical representation. Under this scheme no single State

can prevent a decision from being taken. The suggested procedure simplifies the existing rather elaborate decision-making machinery and produces a mechanism which should be easier to implement.

The Economic Planning Commission and The Legal and Technical Commission

21. The Economic Planning Commission and the Legal and Technical Commission are advisory bodies, each composed of 15 technical experts. The members of the Commissions are to be elected by the Council with due account being taken of the need for equitable geographical distribution and the representation of special interests. The Commissions are to submit their recommendations on technical matters to the Council for its consideration and decision. Each Commission has to exercise its functions in accordance with the guidelines and directives adopted by the Council and the decision-making procedures of the Commissions are to be established by the rules, regulations and procedures of the Authority.

22. It is not always necessary to establish the requirement of a qualified majority for decision-making in such technical bodies. In this regard the Convention already provides that a summary of any divergences of opinion in the Commissions should accompany the recommendations so that the Council may take them into account when taking its decision. [art. 163 (11)].

23. One of the most important functions of the Legal and Technical Commission is to review plans of work and submit appropriate recommendations to the Council. This is a crucial first step for bona fide deep seabed miners to gain access to the resources of the deep seabed. It is, therefore, important that the criteria established in the rules and regulations of the Authority for reviewing a plan of work are objective and non-discriminatory. The procedure should also provide that the application would be considered without undue delay and the applicant must be given an opportunity to provide additional information or resubmit the plan of work in cases where this is necessary before any recommendation is made for disapproval of an application.

24. Where the Legal and Technical Commission, after having reviewed the application on the basis of objective and non-discriminatory criteria established by the rules and regulations of the Authority, has submitted to the Council a recommendation for the approval of a plan of work, a special procedure is necessary in the Council when dealing with such recommendation. This is already envisaged in the Convention. This procedure should ensure that access would not be denied to applicants who are found by the Legal and Technical Commission to be qualified under the rules and regulations of the Authority.

Decision-making in the Commissions

25. Taking into account the above considerations, the following procedure for both Commissions is suggested for discussion:

Decisions on matters of procedure and on matters of substance shall be taken by a majority of members present and voting. However, the Commission shall make every effort to arrive at decisions on matters of substance by consensus. If consensus is not achieved, the Commission shall submit to the Council its recommendation together with a summary of any divergences of opinion.

Special procedure in the Council for the approval of a plan of work

26. (a) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of categories (a), (b) and (c), the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its normal rules of procedure on matters of substance.

(b) Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement mechanism contained in the Convention [art. 187 (d)].

The Finance Committee

27. It should be noted that a Finance Committee is to be established to assist in the financial administration of the Authority. The proposal under consideration in the Preparatory Commission takes into account the need for representation in the Committee of States which will be among the highest contributors until the Authority becomes financially self-sufficient. An appropriate decision-making procedure for the Finance Committee that would promote the adoption of recommendations to the Council which have received broad-based support within the Committee is under consideration. The relationship between the Finance Committee and the Council and the Assembly is also being considered. The mechanism for decision-making suggested for the Council would offer safeguards for decisions on financial and budgetary matters.

B. THE REVIEW CONFERENCE

28. The Convention provides that 15 years after the commencement of commercial production a Review Conference be convened for the review of the provisions which govern the system for exploration and exploitation of the resources of the deep seabed in the light of the experience acquired in the implementation of those provisions. It also provides that the decision-making procedure applicable at the Review Conference shall be the same as that applicable at the Third United Nations Conference on the Law of the Sea. The Review Conference shall make every effort to reach agreement on any amendments by way of consensus and that there shall be no voting on such matters until all efforts at achieving consensus have been exhausted. It further provides that if, five years after its commencement, the Review Conference has not reached agreement on the system of exploration and exploitation of the resources of the deep seabed, it may decide during the ensuing 12 months, by a three-fourths majority of the States Parties, to adopt and submit to the States Parties for ratification or accession such amendments changing or modifying the system as it determines necessary and appropriate. Such amendments shall enter into force for all States Parties 12 months after the deposit of instruments of ratification or accession by three-fourths of the States Parties. Amendments adopted by the Review Conference shall not affect rights acquired under existing contracts.

29. The concerns that have been expressed are in relation to the decision-making procedure for the Review Conference, especially when there is no consensus. A number of States find it unacceptable that any amendment to the Convention should become binding on all States Parties automatically if ratified by only three-fourths of the States Parties which may not include States that have a particular interest in deep seabed mining. Moreover, certain states feel that any amendments relating to the system for exploration and exploitation of the resources of the deep seabed should become effective only if ratified or acceded by all States Parties, since there should be only a single regime governing deep seabed mining at any one time.

A possible approach

30. In the light of the above observations, the following procedure is suggested for discussion:

The Review Conference shall make every effort to reach agreement on any amendments by way of consensus and there should be no voting on such matters until all efforts at achieving consensus have been exhausted. If, five years after its commencement, the Review Conference has not reached agreement on the system of exploration and exploitation of the resources of the deep seabed, it may decide during the ensuing 12 months, by a two-thirds majority of the States Parties present and voting, to

adopt and submit to the States Parties for ratification or accession such amendments changing or modifying the system as it determines necessary and appropriate, provided that these amendments are not opposed by a majority of States Parties in any one of the categories in art. 161 (1) (a), (b) and (c). The amendments shall enter into force for all States Parties on the 30th day following the deposit of the instrument of ratification or accession by two-thirds of the States Parties or by 60 States, whichever is greater. Amendments adopted by the Review Conference shall not affect rights acquired under existing contracts.

31. The above procedure would ensure that there is a broad support for any amendment and that such amendment is not opposed by a majority of States in any one of the categories having particular interests in deep seabed mining. The procedure for ratification of an amendment to Part XI would be the same as for amendments to any other part of the Convention but the amendment shall be binding on all States Parties, in order to avoid having two regimes governing deep seabed mining at the same time. It should be noted that to require all States Parties to ratify an amendment before it enters into force would be imposing a condition which would be almost impossible to fulfil considering the large number of States involved. A safeguard for those States which have particular interests in deep seabed mining is provided at the time when an amendment is being adopted by the Review Conference.

C. TRANSFER OF TECHNOLOGY

32. This issue is intrinsically linked to the Enterprise. The Convention seeks to ensure that the Enterprise is enabled to operate effectively. The transfer of technology provisions provide, *inter alia*, that the Enterprise should have access to the required technology, if such technology is not available to it on the open market. The Convention requires a contractor to give an undertaking that, in such circumstances, it will make available to the Enterprise the technology that the contractor would be using. The obligation to transfer the technology would apply during the first 10 years of a contract with the Authority. The Enterprise is required to pay a fair and reasonable price for the purchase of such technology. A contractor would have the same obligation with respect to developing country operators in the areas reserved for the Authority.

33. Concerns have been expressed that the mandatory requirement for transfer of technology to the Enterprise raises issues of principle. There are also practical difficulties for commercial operators, especially if they are not owners of the technology in question.

34. The issue of transfer of technology was referred to by a number of participants in these consultations when the costs relating to the Enterprise were discussed. Since there was a convergence towards the view that the Enterprise should undertake its operations through commercial joint

ventures, it was stated that the availability of technology to the Enterprise should be part of the joint venture agreement. This is consistent with the provisions of the Convention which, in annex III, art. 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 joint venture agreement.

35. The prevailing view in the Preparatory Commission is also that the joint venture option offers clear advantages with respect to the transfer of technology.

36. Given the fact that there is general acceptance that the Enterprise will for the foreseeable future operate through joint ventures the question that needs to be addressed is: whether an understanding can be reached that would constitute the basis on which the acquisition of the technology required for the operations of the Enterprise can be dealt with.

A possible approach

37. 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, 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 is an agreement on a general provision that the Authority may invite all contractors and their respective sponsoring States to cooperate with it in the acquisition of the required technology by the Enterprise or the joint venture on fair and reasonable commercial terms and conditions if the technology is not available on the open market. 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 shall agree to take effective measures consistent with this obligation.

ANNEX

The Council

Composition

1. The Council shall be composed of 36 members as follows:

(a) four members from among States Parties which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of the total world consumption or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from

the Eastern European region and one State from the Western European and Others region having the largest economy in terms of gross national product;

(b) four members from States Parties which have made investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals;

(c) four members from among States Parties which on the basis of production in areas under their jurisdiction are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;

(d) twenty-four members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided:

(i) that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern Europe, Latin America and Western Europe and Others;

(ii) that this includes six members from among developing States, including States with large populations, States which are land-locked or geographically disadvantaged, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States;

2. The members of the Council shall be elected by the Assembly. Members representing categories (a), (b) and (c) shall be nominated respectively by States falling within these categories. A list of such states shall be prepared by the Assembly prior to each election.

Decision-making

3. The procedure for decision-making shall be as follows:

(a) Decisions on questions of procedure shall be taken by a majority of the members present and voting;

(b) Decisions on questions of substance shall be taken by a two-thirds majority of members present and voting provided that such decisions are not opposed by a majority of members in any one of categories (a), (b) and (c). Decisions within each category on matters of substance shall be by a simple majority.

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14 October 1991

Introductory Remarks by the Secretary-General for the informal consultation on the Law of the Sea

New York, 14-15 October 1991

Once again, I am very grateful to you for attending this fifth meeting in the series of consultations I have been undertaking on the outstanding issues relating to the deep seabed mining part of the UN Convention on the Law of the Sea. I have already explained in my introductory remarks at the last meeting on 23 July the purpose of these consultations.

At that meeting we began the examination of each of the nine substantive issues where difficulties exist for certain States. The first such issue was costs to States Parties under the Convention. The discussion we had on this subject was very useful and constructive. It was useful because I believe it has set the tone for discussion on other substantive issues. It was constructive because you approached the issue in a practical and pragmatic manner. It was no surprise, therefore, that there should be such a wide measure of agreement on that subject. This augurs well for our consideration of the remaining issues.

You will recollect that it was generally agreed that costs to States Parties should be minimized and that the various institutions that are to be established under the Convention should evolve as developments in deep seabed mining activities require. It was also agreed that the operations of the Enterprise should be based on sound commercial principles and that the Enterprise should be free from political domination. It was further agreed that the Enterprise might begin its operations through joint venture arrangements as a means of minimizing costs to States Parties. It was also generally accepted that the International Tribunal for the Law of the Sea should be phased in.

During this consultation we will proceed to examine three further issues. These are:

(a) Decision-making in the organs of the Authority;

(b) The Review Conference; and

(c) The transfer of technology.

As is now the practice, we have circulated an Information Note which provides a background to each of these issues and raises questions that might be addressed in relation to each of them. In some cases suggestions have been made for your consideration. These, however, do not

in any way preclude the discussion of other ideas on those issues. The purpose of the Information Note remains the same – that is to enable the discussions to be more focused.

Some of you had suggested that we should cover more than one item at each meeting in order to accelerate these consultations. In the light of that suggestion, the agenda has been expanded and the present consultation will be held over two days. We will begin with the issue of decision-making. This covers the composition of various organs of the Authority, as well as their decision-making procedures. It also deals with the interrelationship between the various institutions. As you are all aware, this is an important topic since an understanding on this subject would greatly facilitate the resolution of other issues. The discussion on decision-making is likely to take the whole of today.

Tomorrow morning we intend to begin with the issue of the Review Conference and if we can dispose of it by the end of the morning, we will take up the issue of transfer of technology in the afternoon. I hope we can cover all these topics in the course of these two days. If we can achieve this, it would leave four more items to be dealt with at the next meeting.

I would now like to open the floor for discussion of the first item, namely, decision-making in the organs of the Authority.

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6 November 1991

UNOFFICIAL SUMMARY OF THE SECRETARY-GENERAL'S INFORMAL CONSULTATION ON THE LAW OF THE SEA HELD AT NEW YORK, 14-15 OCTOBER 1991

At the above-mentioned consultation the Secretary-General invited participants to examine three further issues relating to the deep seabed mining part of the Convention. These were: decision-making in the organs of the Authority; the Review Conference and transfer of technology. Participants had before them an Information Note prepared by the Secretariat which provided a background on these issues and raised questions that might be addressed. It also suggested possible approaches towards resolving the issues.

The discussion on each of the issues can be summarized as follows:

1. DECISION-MAKING

Participants recognized that a generally acceptable decision-making procedure in the principle organs of the Authority and in its subsidiary bodies was essential to building confidence in the deep seabed mining system. Furthermore, a resolution of the concerns regarding the decision-making procedure would considerably enhance the prospect of agreement on other issues.

With regard to the Assembly, there was agreement that all matters of substance should be decided by a two-thirds majority of States present and voting, as provided in the Convention. The only issue raised, however, was the procedure to be followed by the Assembly in respect of certain specific decisions for which a prior recommendation of the Council is required where the Assembly does not agree with that recommendation. In most of such cases the decisions of the Assembly are to be based on the recommendations or proposals of the Council. On certain matters the Convention goes on to provide that if the Assembly does not approve the recommendations of the Council, it shall return them to the Council for reconsideration in the light of the views expressed by the Assembly. This procedure is not clearly indicated in respect of certain other matters, such as the adoption of the annual budget of the Authority proposed by the Council. Since this is an issue of particular concern to all States, it was agreed that the procedure ought to be clarified, so that the decision of the Assembly is consistent with the recommendation of the Council. It was also agreed that consideration should be given to establishing a relationship between the Council and the Assembly in respect of the assessment of contributions of States Parties to the administrative budget of the Authority.

As regards the Council, it was recognized that the Council, as the executive organ of the Authority, had a pivotal role in the administration of the mineral resources of the deep seabed. It was agreed that the nature and functions of the Council required that its composition should reflect a fair balance of interests. There are essentially two principal interests, that of the international community as a whole and that of the investors in deep seabed mining activities. There are two other interests involved: (i) those of the consumers of minerals to be produced from the deep seabed or importers of commodities which are produced from such minerals and (ii) those of the land-based producers of such minerals.

It was further recognized that the general structure of the membership of the Council in the Convention, which is based on different categories of States, represents the various interests involved. However, it was accepted that certain aspects of the composition and structure of the Council needed to be updated, clarified and streamlined as suggested in the Information Note. In this regard further attention needs to be given to the following:

(a) a clearer identification of States in each category where this is necessary;

(b) whether a State can be listed in more than one category; if not, whether that State will have to elect the category it wishes to represent in the Council;

(c) how to ensure that all States within a category will have an opportunity to serve in the Council if they so wish; and

(d) whether there should be four categories as suggested in the Information Note or five categories as is provided for in the Convention, bearing in mind the practical considerations raised in the Information Note.

As regards decision-making in the Council, there was general recognition that the mechanism should be fair and equitable to all interests and that the process should reflect democratic principles. It must also provide equal safeguards to each of the interest groups, as well as to the international community as a whole. Furthermore, the procedure should encourage decisions by consensus and voting should only be a last resort. Most participants found that a chamber system of voting, as suggested in the Information Note, presented a mechanism that would achieve the above goals, provided that each chamber has equal possibility of protecting its interests. There was general willingness to pursue this approach further, without prejudice to the consideration of other possible approaches.

As regards the Economic Planning Commission and the Legal and Technical Commission, there was general agreement that their procedures should be simple, as suggested in the Information Note. As far as possible they should work on the basis of consensus and voting should only be a last

resort. The precise voting mechanism might depend on the procedure that will be adopted for the Council. There was agreement, however, that a special procedure for the approval of a plan of work in the Legal and Technical Commission was required, as already envisaged in the Convention. The Information Note also provided for such a special procedure.

As far as the Finance Committee is concerned, it was noted that this was being discussed in the Preparatory Commission where considerable progress has been made already. However, it was pointed out that, if an agreement could be reached with respect to the decision-making procedure in the Council, this would considerably facilitate agreement in respect of the Finance Committee. Reference was also made to the relationship between the Finance Committee and the Council and the Assembly, and also to the need for representation in the Finance Committee of States which will be among the highest contributors until the Authority becomes financially self-sufficient.

2. REVIEW CONFERENCE

There was general agreement that the problem surrounding the Review Conference must be addressed and resolved. There are two issues here, both relating to procedure: firstly, the procedure to be applied in the adoption of an amendment by the Review Conference should a consensus not be reached within five years of the commencement of the Conference, and secondly, the procedure necessary for the entry into force of an amendment. The procedure prescribed in the Convention for both these aspects, which in each case is based on a qualified majority, is a matter of concern for a number of States since they feel that an amendment not acceptable to them could be adopted and imposed upon them.

With respect to the procedure for adoption of an amendment in the absence of consensus, there was considerable interest in the suggestion made in the Information Note that an amendment may be adopted by a two thirds majority of members present and voting, provided that it was not opposed by a majority of members in any one of the categories in the Council. Such a procedure would ensure a broad support for the amendment and also would provide a safeguard, at the time when the amendment is adopted by the Review Conference, to those States which have special interest in deep seabed mining.

On the second aspect, i.e. the procedure for bringing the amendment into force, it was suggested in the Information Note that for this purpose the ordinary rules for an amendment to the Convention should apply, i.e. ratification or accession by two-thirds of the States Parties or by 60 States, whichever is greater, with the addition that such an amendment shall be binding on all States Parties in order to avoid having two regimes governing deep seabed mining at the same time. This was not considered entirely

satisfactory to a few participants who felt that the amendment should be ratified by all States before it enters into force. It was, however, recognized that this could create practical difficulties by imposing a condition which would be almost impossible to fulfil, considering the large number of States involved. An all States formula may frustrate the bringing into force of a generally acceptable and necessary amendment. A suggestion was made that a possible solution to the problem may lie in building into the ratification procedure the chamber system suggested for the Council. The difficulty with this proposal is that the membership of the Council will change from the date of adoption of the amendment to the date of its entry into force which may take a number of years. Another suggestion was made that the ordinary procedure for entry into force of amendments prescribed in the Convention might be combined with a decision of the Council on the date of entry into force of the amendment following the receipt of the required number of ratifications or accessions.

In general, the participants felt that there should be a combination of quantitative and qualitative approaches as regards the procedure for entry into force. The quantitative aspect will ensure that there is broad support for an amendment and the qualitative aspect will ensure that States in all categories are involved. The discussion concluded with the agreement that the search for an appropriate solution should be continued.

3. TRANSFER OF TECHNOLOGY

Since there has already been a convergence at the previous consultation towards the view that the Enterprise should undertake its operations through commercial joint ventures, there was general agreement at this consultation that the availability of technology to the Enterprise should be part of the joint venture arrangement. This is consistent with the provisions of the Convention and the prevailing view in the Preparatory Commission. It was recognized, therefore, 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. The Information Note had suggested that in any case there should be agreement on a general provision that the Authority may invite all contractors and their respective sponsoring States to cooperate 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.

Participants recognized that the issue of transfer or technology would have to be resolved. They found the approach in the Information Note a

useful basis for resolution of this issue. Some participants wished to consider the proposal further and therefore reserved their position at this stage.

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25 November 1991

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

New York, 10-11 December 1991

1. At the fifth informal consultation convened by the Secretary General on 14 and 15 October 1991, participants completed the consideration of three further issues relating to the deep seabed mining part of the Convention. These were: decision-making in the organs of the Authority, the Review Conference and transfer of technology.

2. At the forthcoming consultation it is intended that the remaining four issues be examined, namely: (1) production limitation; (2) compensation fund; (3) financial terms of contracts and (4) environmental considerations. This Note provides information on these issues.

A. PRODUCTION LIMITATION

3. During the negotiations at the Conference, there was considerable optimism that commercial seabed mining was imminent and that there would be a rush to establish a number of mining operations for deep seabed minerals. It was anticipated that most, if not all, such operations would begin commercial production about the same time. It was therefore necessary that the Convention should provide for an orderly integration of metals from this new source into the existing international metal market without causing any undue disruption.

4. After considering a number of approaches, the Conference devised a formula to limit for an interim period the production of minerals from the deep seabed to 60 per cent of the growth in the consumption of nickel, calculated on the basis of the data of previous 15 years at the time when each production authorization is issued. In the late seventies when the formula was developed the historical data showed that the trend in the rate of growth of consumption of nickel was around 4 per cent. If this trend would have continued, as was originally anticipated, it would have enabled eight to ten mining projects to operate under the formula by the year 2000. However, there has been a dramatic decline in the consumption of nickel and other metals over the last decade with the result that the number of projects that could be accommodated under the formula would be reduced to approximately two in the year 2000. It should be noted that the growth in nickel consumption for the 15-year period 1965-1979 had been around 3.7

per cent. For the period 1972-1986 the growth rate dropped to around 1.6 per cent. Due to the prolonged global economic recession and its effect on the relevant metal market, as well as the use of substitutes for the metals concerned, the formula has been rendered more restrictive than was envisaged by the Conference. It has thus been viewed as a deterrent to investment in deep seabed mining. Furthermore, a formula based on the growth in consumption of only one metal is not considered realistic since it does not adequately protect land-based producers of the other three important metals to be produced from the seabed. In addition, some States do not believe the formula to be an acceptable commodity arrangement for the industry as a whole since it regulates seabed mining only and does not apply to land-based mining.

5. Land-based producers are, however, concerned that the principle of free competition should be maintained and that their products are not displaced from the market by subsidized production of metals from the deep seabed and that there should be no preferential access to markets for minerals produced from the deep seabed through use of tariff or non-tariff barriers. Developing land-based producers fear that deep seabed mining would have an adverse impact on their economies and therefore would require some form of economic assistance, if this should indeed happen.

6. In the light of the above considerations, the questions that need to be addressed are:

(a) whether the present formula is still viable and practical;

(b) if not, whether it is necessary and prudent at this stage to establish detailed rules on production policy in the light of the expected delay in commercial deep seabed mining; or

(c) should other alternatives be examined.

A possible approach

7. At this stage, a set of principles could be agreed to on the basis of which detailed rules and regulations may be established when commercial production is imminent. These principles could be as follows:

(a) there should be no subsidization of production of minerals from the deep seabed;

(b) there should be no discrimination between minerals from land and from the deep seabed. In particular, there should be no preferential access to markets for minerals produced from the deep seabed by use of tariff or non-tariff barriers or for imports of commodities produced from such minerals, nor should any preferences be given by States to minerals produced from the deep seabed by its own nationals;

(c) the plan of work approved by the Authority in respect of each mining area should indicate a production schedule which should include the estimated amounts of metals that would be produced per annum under the plan of work;

(d) the rights and obligations relating to unfair economic practices under relevant multilateral trade agreements shall apply to the exploration and exploitation of minerals from the deep seabed area;

(e) any disputes concerning the interpretation or application of the above principles shall be subject to the dispute settlement procedures under the Convention.

B. COMPENSATION FUND

8. Developing land-based producer States of the minerals to be derived from the deep seabed have consistently expressed their concern at the potential for adverse impact on their economies from the production of such minerals. These anxieties of States which are both economically vulnerable and heavily dependent upon the minerals in question were recognized by the Conference. The Convention provides that the Authority shall establish a system of compensation or take other measures of economic adjustment assistance including cooperation with specialized agencies and other international organizations to assist developing land-based producer States which may suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of affected minerals or in the volume of exports of such minerals to the extent that such reduction is caused by activities in the international seabed area. The Authority, if requested, is to initiate studies on the problems of those States which are likely to be most seriously affected with a view to minimizing their difficulties and assisting them in their economic adjustment. The Convention, while empowering the Authority to establish a system of compensation or economic adjustment does not, however, provide for a method of financing such a system nor does it specify the basis on which any compensation is to be calculated.

9. It is generally recognized that the affected developing land-based producer States should be provided with some economic assistance. There are a number of matters of detail which need to be fully elaborated and agreed upon, such as the level of dependency, the proof that adverse impact is due to seabed activities, the nature of economic assistance or compensation to be provided, and the length of the period of adjustment during which assistance is to be provided. These and other related issues will need to be studied on a continuous basis. The Preparatory Commission has done considerable ground-breaking work in this area which should be built upon. The precise measures that may be taken in anticipation of possible adverse effects can only be more realistically developed when commercial deep seabed mining has begun or is imminent. Factors that may

influence the determination of these measures will include the amount of seabed minerals that might be actually produced, the market conditions prevailing at the time, the number of land-based producer States that may be affected and the nature of their problems.

10. In the light of the above, the questions that need to be addressed are:

(a) whether it is prudent at this stage to develop a detailed system of assistance for developing land-based producer States that may be affected by deep seabed mining; or

(b) whether an agreement can be reached on certain principles which can be the basis for development in the future of a system of assistance for affected developing land-based producer States.

A possible approach

11. The following principles may be considered, on the basis of which a system of economic assistance could be developed in the future;

(a) an economic assistance fund should be established from a percentage of the revenues of the Authority in accordance with article 173 (2), provided that the amount accumulated in such fund does not at any time exceed a prescribed limit;

(b) the Authority should provide assistance from the fund to affected developing land-based producer States in cooperation with existing international institutions which have the infrastructure and expertise to carry out such assistance programmes;

(c) the extent and period of such assistance shall be determined on a case-by case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer States.

C. FINANCIAL TERMS OF CONTRACTS

12. The Convention contains detailed taxation schemes for exploration and/or exploitation of the mineral resources of the deep seabed.

13. There are two types of payments, those that are to be made before the exploitation stage and those to be made after exploitation begins.

14. The first type of payments includes an application fee of US$ 500,000 per application and annual fixed fee of US$ 1 million. The annual fixed fee is to be paid from the date of approval of a plan of work throughout the period of exploration. It becomes a part of the overall taxes when exploitation begins. In addition to providing the Authority a minimum

up-front income to sustain itself, the fixed fee is also a diligence fee to prevent land-grabs by speculators who might prevent serious miners from getting access to the deep seabed resources.

15. With respect to the second type of payments, beginning with exploitation, the Convention provides for two systems of taxes, one involving a "production charge" only and the other a combination of a production charge and a "share of net proceeds", attributable to the mining sector.

16. According to the Convention the operator has a right to choose either of the two systems.

17. A production charge is known in mining legislation as "royalty". It is usually a percentage of the market value of the minerals and usually slides with the volume of production and increases in market value.

18. The Authority's share of the "attributable net proceeds" is equivalent to the tax that a national government obtains from mining profits. It is calculated in the Convention on a three-tier sliding scale.

19. Two sets of rates are applied to each tier – a lower set during the first period of commercial production and a higher set during the second period. The determination of when the first period ends and the second begins is based on the concept known as "resource rent" and this concept is also the basis for the additional profit tax which is included in many fiscal regimes applied to minerals.

20. The main concerns regarding the present systems relate to such issues as whether the payments impose too heavy a burden on seabed miners and whether the systems are too complicated. Some States interested in deep seabed mining feel that changed circumstances call for a review of the systems and the rates of taxation. Because of the difficulties being encountered by prospective seabed miners as a result of decline in the growth rate of metal demand and because of technological complexities, a long period is required before deep seabed mining projects can be brought to the stage of exploitation. Therefore, front-end payments that are to be incurred before mining income is generated are considered onerous on the investors. These States would prefer two levels of fixed annual fees – one for exploration only and the other for exploration and exploitation. Other States feel that some reasonable payments should be made once prospective seabed investors have secured exclusive mining areas and obtained exploration rights.

21. The mining States further maintain that after exploitation begins, the rates of production charge and profit tax would be burdensome on seabed operators. Other States are concerned that lower rates would not only reduce the income of the Authority, but would also give rise to the

possibility that seabed miners would have a competitive advantage in comparison with land-based miners through a lenient tax system. They are further concerned that mining States would siphon away revenue benefits from the international community by seeking a reduction in tax revenues to the Authority while imposing their own national taxes on operators.

22. Both groups feel that some of the complicated accounting and bureaucratic tasks involved in determining the tax base and the tax payments under the present system may be too burdensome and expensive both for the Authority and the operator.

23. The production charge or royalty system of payment has several merits. First, it is a constant payment of a percentage of the gross value based on an established sliding scale related to volume and price from the time of commencement of production. This would be helpful to the Authority as a stable source of revenue; at the same time, the operator will also have a relatively well-defined and less uncertain basis for his tax payments. Secondly, it eases the task of the Authority with regard to monitoring the accounts of the operator; the accounting obligations of the operator are also minimized. Thirdly, it relieves the Authority from having to monitor stages of exploitation beyond the "activities in the Area", i.e. transportation, processing and marketing of metals.

24. In the light of the above concerns regarding the existing systems and the changed political and economic circumstances, the questions that need to be addressed are:

(a) whether it is prudent at this stage to devise a detailed new system of payment having regard to the prevailing uncertainties in deep seabed mining; or

(b) whether an agreement can be reached on certain principles on the basis of which a system of payment may be developed when commercial deep seabed mining is imminent.

A possible approach

25. The principles that may be considered are as follows:

(a) the system of financial payments to the Authority must be fair to the operator and to the Authority;

(b) the rates of taxation under the system should be within the range of those prevailing in respect of land-based mining of same or similar minerals in order to avoid artificial competitive advantage to seabed mining;

(c) the system should not be overcomplicated and should not impose major administrative costs on the Authority or on the operator – a system of royalty should be given further consideration;

(d) States must respect the extra-territorial nature of deep seabed mining in the international area and should avoid or minimize double taxation on the proceeds of deep seabed mining in order to ensure optimum revenues for the Authority.

(e) the annual fixed fee to be paid by an operator during the exploration stage may be adjusted at the time of the approval of the plan of work in order to take account of the anticipated delay in reaching the exploitation stage and the risks involved in establishing an industry in a new and unstable environment;

(f) any disputes concerning the interpretation or application of the above principles shall be subject to the dispute settlement procedure under the Convention.

D. ENVIRONMENTAL CONSIDERATIONS

26. The Convention on the Law of the Sea imposes upon all States the obligation to protect and preserve the marine environment from all sources of pollution. In addition, the Authority has a specific mandate to adopt appropriate rules, regulations and procedures to prevent, reduce and control pollution of the marine environment arising from the exploration and exploitation of the resources of the international deep seabed area. It is inevitable that there will be some impact on the marine environment as a consequence of activities in the deep seabed. The concern is over the effect of such activities on the living and non-living components of the marine environment and the associated ecosystems beyond that which is negligible or which has been assessed or judged to be acceptable in accordance with the standards to be established. The rules, regulations and standards that are to be established by the Authority, must ensure that there is a fair balance between the need to preserve and protect the marine environment and the development of the resources of the international seabed area for the benefit of all mankind.

27. The Preparatory Commission has been considering a comprehensive set of rules which, *inter alia*, require that activities in the deep seabed area can only take place if they do not cause unacceptable changes to the marine environment beyond the acceptability level to be established on the basis of data and information gathered at each stage of such activities. The rules would provide that such activities can only take place if the technology and procedure used are safe, if there is capacity to monitor environmental parameters and ecosystem components so as to identify any adverse effect. Further, there should also be the capacity to respond effectively to accidents, particularly those which might cause

unacceptable changes to the marine environment. Accordingly, no plan of work for exploration would be approved under the proposed rules, unless an environmental report is submitted by the applicant based on the data collected during the prospecting stage, together with a programme for oceanographic and baseline environmental studies of a general and site-specific nature. Such studies are to be submitted to the Authority as the project develops. In the case of exploitation, no approval will be given unless an environmental impact statement of a site-specific nature is submitted and evaluated and found to be consistent with the rules and regulations of the Authority.

28. The rules will require the setting aside of a special reference zone within a mining area in which no mining is to occur to ensure a representative and stable biota of the seabed in order to assess any changes in the flora and fauna of the marine environment. The rules would also provide for the responsibility of the sponsoring State and the liability of the operator for unacceptable changes to the marine environment. These matters assume great relevance in the case of deep seabed mining where environmental harm may occur in an area which lies beyond national jurisdiction and where harm is likely to occur to the marine environment itself rather than to a person or property. The rules contemplate establishing an upper limit on the liability of an operator and also the possibility of establishing a fund in order to ensure that liabilities which are not discharged by the operators are met.

29. In the light of the general agreement that there must be environmental rules to cover every stage of activities in the deep seabed, the question that needs to be addressed is: whether an agreement can be reached on a set of principles which would constitute the basis on which the Authority will adopt appropriate rules, regulations and procedures to prevent, reduce and control pollution of the marine environment arising from the exploration and exploitation of the resources of the deep seabed.

A possible approach

30. The principles which may be considered are as follows:

(a) the Authority shall establish a comprehensive set of rules and regulations which, *inter alia*, will ensure that exploration and exploitation of the resources in the deep seabed area can only take place if they do not cause harm beyond that which has been assessed as acceptable in accordance with the standards established by the Authority. Such rules, regulations and standards shall ensure that there is a fair balance between the need to protect and preserve the marine environment and the development of the resources of the deep seabed for the benefit of all mankind;

(b) the rules, regulations and environmental standards established by the Authority shall be reviewed and updated on a continuing basis in order to incorporate the latest results of research in the deep seabed and the experience derived from deep seabed mining when that takes place;

(c) each operator shall be required to submit at every stage of activity in the deep seabed an environmental report and a programme for oceanographic and baseline environmental studies and, before proceeding to exploitation, an environmental impact statement in accordance with the requirements of the Authority;

(d) the rules and regulations shall contain provisions on the responsibility and liability of operators for causing unacceptable changes to the marine environment;

(e) all rules and regulations relating to environmental matters shall apply to all operators, including the Enterprise;

(f) any disputes concerning the interpretation or application of the above principles shall be subject to the dispute settlement procedures under the Convention.

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31 January 1992

SUMMARY OF INFORMAL CONSULTATIONS CONDUCTED BY THE SECRETARY-GENERAL ON THE LAW OF THE SEA DURING 1990 AND 1991

1. In the light of the decision of the General Assembly inviting States to make renewed efforts to achieve universal participation in the United Nations Convention on the Law of the Sea, the Secretary-General convened a number of informal consultations to promote dialogue aimed at addressing issues of concern to some States which have inhibited their participation in the Convention. In the course of these informal consultations nine such issues were identified: costs to States Parties; the Enterprise; decision-making; the Review Conference; transfer of technology; production limitation; compensation fund; financial terms of contracts; and environmental considerations.

2. Participants agreed to examine all the issues before determining how to deal with them. Information Notes were provided by the Secretariat to assist in the examination of the issues. These contained background information, identified questions that needed to be addressed and suggested possible approaches towards the resolution of the issues.

3. The suggested approaches took into account that nine years had elapsed since the Convention was adopted during which time a number of important political and economic changes have taken place affecting international relations in general. Many of these have directly or indirectly affected the deep seabed mining part of the Convention. These include the following:

(a) the general economic climate has changed markedly in the last decade;

(b) the approaches to economic issues at national and international levels have also undergone a considerable transformation;

(c) prospects for commercial production of minerals from the deep seabed have receded into the next century, contrary to the expectations held when the Convention was being negotiated;

(d) the prolonged economic downturn that the world has experienced in the last decade or so has also seriously affected the world metal market to the extent that the premises on which certain provisions of the deep seabed mining regime were based have changed;

(e) as the work of the Preparatory Commission has progressed, there has been greater understanding of the practical aspects of deep seabed mining, as more information on these has become available.

4. With the changed circumstances, many of the issues of concern are more widely shared today, and the approaches towards resolving them are also more broadly accepted than was the case when the Convention was being negotiated. In addition, greater knowledge of deep seabed mining activities has given States more confidence in addressing these issues.

5. In assessing the discussions that have taken place, the Secretary-General on 11 December 1991 stated that:

> "In the process of examining the areas of difficulties, a solid foundation has been laid for resolving them which should be built upon. It is apparent that some of the issues need to be dealt with in detail at this stage. Others, however, can be resolved by way of agreement on certain fundamental principles on the basis of which detailed rules and regulations may be established when commercial production of minerals from the deep seabed becomes feasible.
>
> "Given the pragmatism and the commitment that has already been demonstrated by States, I believe these issues can be resolved to the satisfaction of all. A generally acceptable and workable regime for the development of the resources of the deep seabed is in the interest of all States. It will provide a level of certainty regarding the regulatory environment in which prudent investment decisions can be made and at the same time encourage the development of the resources of the deep seabed for the benefit of all mankind. It is thus the responsibility of all to make a serious effort to reach an agreement on the outstanding issues, in the interest of international cooperation and the promotion of the rule of law in the oceans. I particularly urge those that have been hesitant or not as forthcoming as others to take advantage of the window of opportunity that we have here for resolving their problems.
>
> "This informal forum has proved to be quite effective. Perhaps the next step in the process is to give more precision to the emerging approaches towards resolving the issues. I also believe that the opportunity should be given to all interested States to participate in these consultations. This could probably be done through open-ended meetings, while maintaining a core group."

6. The nine key issues identified were examined during the six informal consultations convened by the Secretary-General, Javier Perez de

Cuellar, in 1990 and 1991. The discussion on each of them may be summarized as follows:

I. COSTS TO STATES PARTIES

7. It was noted that there are a number of financial obligations for States when the Convention enters into force. States Parties are required to contribute towards the administrative costs of the Authority. These costs will be determined by the frequency and duration of the meetings of the Assembly, the Council, the Economic Planning Commission, the Legal and Technical Commission and other subsidiary bodies established by the Authority. The cost of the Secretariat of the Authority will be determined by its size which in turn will depend on the services it is required to provide. In addition to the administrative costs of the Authority, States Parties are also required to finance the first mining operation of the Enterprise. The Convention provides that 50 per cent of the funds are to be provided by way of long-term interest-free loans while debts incurred by the Enterprise in raising the other 50 per cent are to be guaranteed by States Parties. States Parties are also expected to contribute to the administrative costs of the 21-member International Tribunal for the Law of the Sea, an essential component of the dispute settlement system for the Convention as a whole.

8. Under the Convention the Commission on the Limits of the Continental Shelf is to be convened by the Secretary-General in New York and serviced by the Secretariat of the United Nations. This responsibility together with other substantive responsibilities imposed on the Secretary-General contained in different parts of the Convention and related resolutions of the Third United Nations Conference on the Law of the Sea were assumed by the Secretary-General of the United Nations, upon approval by the thirty-eight session of the General Assembly.

9. It was noted that, because of the unanticipated prolonged delay in the development of the deep seabed mining industry, the Authority will not be expected to deal with commercial deep seabed mining activities for at least the initial 10 to 15 years. Its administrative functions would, therefore, relate to the various stages of pre-commercial production activities. These will include receiving and processing of any new applications for mine sites and approving plans of work for the exploration phase; monitoring the implementation of the obligations of the operators in that phase; monitoring and reviewing trends and developments relating to deep seabed mining activities including those concerning the marine environment and the development of technology; assessing the feasibility of commercial deep seabed mining; monitoring the training programme being carried out by operators; and studying the problems that may arise from deep seabed mining for the economies of developing land-based mineral producer States.

10. The discussions revealed that there exists a broad consensus on a number of matters that were raised in the Information Note. There was general agreement that costs to States Parties should be minimized; that all institutions to be established under the Convention should be cost-effective. In this regard, there was general agreement that the establishment of the various institutions should be based on an evolutionary approach, taking into account the functional needs of the institutions concerned in order to effectively discharge their responsibilities at each stage. These principles apply to the organs of the Authority and its subsidiary bodies.

11. There was general agreement also on the streamlining of the meetings of the various institutions so as to reduce costs. This applies to the structure of the institutions, including the need to phase in the subsidiary bodies and to the frequency and scheduling of meetings of the various organs. There was also general agreement that this functional approach should also apply to the establishment of the International Tribunal for the Law of the Sea and that the Tribunal should be phased-in to reduce costs.

12. The principle of cost-effectiveness will also apply to the Secretariat of the United Nations as regards the servicing of the Commission on the Limits of the Continental Shelf and other responsibilities of the Secretary-General under the Convention and resolutions of the General Assembly.

II. THE ENTERPRISE

13. It was recognized that, 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. If seabed mining becomes technologically and economically feasible, consideration will need to be given to the various organizational and operational options for the Enterprise. In doing so, it should be noted 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 operators.

14. There was agreement, therefore, that the operations of the Enterprise should be based on sound commercial principles and that it should be autonomous and free from political domination. There was also agreement that in order to minimize costs to States Parties the Enterprise should begin its operations through joint venture arrangements and thus there would be no need to invoke the funding provisions of the Convention relating to the first mining operation of the Enterprise. This should not, however, reduce the future operational options of the Enterprise, nor affect its autonomy.

III. DECISION-MAKING

15. It was recognized that a generally acceptable decision-making procedure in the organs of the Authority and in its subsidiary bodies was essential to building confidence in the deep seabed mining system. Furthermore, a resolution of the concerns regarding the decision-making procedure would considerably enhance the prospect of agreement on other issues.

16. With regard to the Assembly, there was agreement that all matters of substance should be decided by a two-thirds majority of States present and voting, as provided for in the Convention. The only issue raised, however, was the procedure to be followed by the Assembly in respect of certain specific decisions which require a prior recommendation of the Council and where the Assembly does not agree with that recommendation. In most of such cases the Convention provides that decisions of the Assembly are to be based on the recommendations or proposals of the Council. On certain matters the Convention goes on to provide that, if the Assembly does not approve the recommendations of the Council, it shall return them to the Council for consideration in the light of the views expressed by the Assembly. This procedure is not clearly indicated in respect of certain other matters, such as the adoption of the annual budget of the Authority proposed by the Council. Since this is an issue of particular concern to all States, it was agreed that the procedure ought to be clarified, so that the decision of the Assembly and the recommendation of the Council are consistent. It was also agreed that reconsideration should be given to establishing a relationship between the Council and the Assembly in respect of the assessment of contributions of States Parties to the administrative budget of the Authority.

17. It was recognized that the Council, as the executive organ of the Authority, had a pivotal role in the administration of the mineral resources of the deep seabed. It was agreed that the nature and functions of the Council required that its composition should reflect a fair balance of interests. There are two principal interests: that of the international community as a whole and that of the investors in deep seabed mining activities. There are two other interests involved: those of the consumers of minerals to be produced from the deep seabed or importers of commodities which are produced from such minerals and those of the land-based producers of such minerals.

18. It was further recognized that the general structure as provided in the Convention for the membership of the Council, which is divided into five chambers consisting of different categories of States, represents the various interests involved. However, it was accepted that certain aspects of the composition and structure of the Council needed to be updated, clarified

and streamlined as suggested in the Information Note. In this regard, further attention needs to be given to the following:

(a) a clearer identification of States in each category where this is necessary;

(b) whether a State can be listed in more than one category; if not, whether that State will have to elect the category it wishes to represent in the Council; and

(c) how to ensure that all States within a category will have an opportunity to serve in the Council if they so wish.

19. As regards decision-making in the Council, there was general recognition that the mechanism should be fair and equitable to all interests and that the process should reflect democratic principles. It must also provide equal safeguards to each of the interest groups, as well as to the international community as a whole. Furthermore, the procedure should encourage decisions by consensus and voting should only be a last resort. Most participants found that a chamber system of voting, as suggested in the Information Note, but based on the five categories as is provided for in the Convention, presented a mechanism that would achieve the above goals, provided that each chamber has equal possibility of protecting its interests. The Information Note suggested that decision-making in the Council on questions of procedure should be by a majority of members present and voting. Decision-making on questions of substance should be by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers. Decisions within each chamber on matters of substance may be taken by a simple majority. There was general willingness to pursue this approach further, without prejudice to the consideration of other possible approaches.

20. As regards the Economic Planning Commission and the Legal and Technical Commission, there was general agreement that their procedures should be simple, as suggested in the Information Note. As far as possible they should work on the basis of consensus and voting should only be a last resort. The precise voting mechanism might depend on the procedure that will be adopted for the Council. There was agreement, however, that a special procedure for the approval of a plan of work in the Legal and Technical Commission was required, as had been envisaged in the Convention. There was also agreement on the special procedure suggested in the Information Note.

21. As far as the Finance Committee is concerned, it was noted that this was being discussed in the Preparatory Commission where considerable progress has been made already. However, it was pointed out that, if an agreement could be reached with respect to the decision-making procedure in the Council, this would considerably facilitate agreement in respect of the

Finance Committee. Reference was also made to the relationship between Finance Committee and the Council and the Assembly, and also to the need for representation in the Finance Committee of States which will be among the highest contributors until the Authority becomes financially self-sufficient.

IV. REVIEW CONFERENCE

22. There was general agreement that the problem surrounding the Review Conference must be addressed and resolved. There are two issues here, both relating to procedure. First, the procedure to be applied for the adoption of an amendment at the Review Conference should a consensus not be reached within five years of the commencement of the Conference, and second, the procedure necessary for the entry into force of an amendment. The procedure prescribed in the Convention for both these issues, which in each case is based on a qualified majority, is a matter of concern for a number of States since they are of the view that an amendment not acceptable to them could be adopted and imposed upon them.

23. With respect to the procedure for adoption of an amendment in the absence of consensus, there was considerable interest in the suggestion made in the Information Note that an amendment may be adopted by a two-thirds majority of members present and voting, provided that it was not opposed by a majority of members in any one of the categories in the Council. Such a procedure would ensure a broad support for the amendment and also would provide a safeguard, at the time when the amendment is adopted by the Review Conference, to those States which have special interest in deep seabed mining.

24. On the second issue, i.e. the procedure for bringing the amendment into force, it was suggested in the Information Note that for this purpose the ordinary rules for a amendment to the Convention should apply, i.e. ratification or accession by two-thirds of the States Parties or by 60 States, whichever is greater, with the addition that such an amendment shall be binding on all States Parties in order to avoid having two regimes governing deep seabed mining at the same time. This was not considered entirely satisfactory to a few participants who felt that the amendment should be ratified by all States before it enters into force. It was, however, recognized that this could create practical difficulties by imposing a condition which would be almost impossible to fulfil, considering the large number of Sates involved. An all States formula may frustrate the bringing into force of a generally acceptable and necessary amendment. A suggestion was made that a possible solution to the problem may lie in building into the ratification procedure the chamber system suggested for the Council. The difficulty of this proposal is that the membership of the Council will change from the date of adoption of the amendment to the date of its entry into

force which may take a number of years. Another suggestion was made that the ordinary procedure for entry into force of amendments prescribed in the Convention might be combined with a decision of the Council regarding the effective date of entry into force of the amendment following the receipt of the required number of ratifications or accessions.

25. In general, the participants felt that there should be a combination of quantitative and qualitative approaches as regards the procedure for entry into force. The quantitative aspect will ensure that there is broad support for an amendment and the qualitative aspect will ensure that States in all categories are involved. The discussion concluded with the agreement that the search for an appropriate solution should be continued.

V. TRANSFER OF TECHNOLOGY

26. Since there was already a convergence towards the view that the Enterprise should begin its operations through commercial joint ventures, there was general agreement that the availability of technology to the Enterprise should be part of the joint venture arrangement. This is consistent with the provisions of the Convention and the prevailing view in the Preparatory Commission. It was recognized, therefore, that the imperative provisions in the Convention on transfer of technology may no longer be considered as relevant as they were when the Convention was being negotiated. The Information Note had suggested that in any case there should be agreement on a general provision that the Authority may invite all contractors and their respective sponsoring States to cooperate 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.

27. Participants recognized that the issue of transfer of technology would have to be resolved. They found the approach in the Information Note a useful basis for the resolution of this issue. Some participants required more time to consider the proposal.

VI. PRODUCTION LIMITATION

28. There was general recognition that the production limitation formula in article 151 was no longer as practical as it was during the negotiations at the Conference. The formula was devised to limit for an interim period the production of minerals from the deep seabed to 60 per cent of the growth in consumption of nickel, calculated on the basis of data

of the previous 15 years at the time when each production authorization was issued.

29. In the late 70s, the trend in the rate of growth of consumption of nickel was around 4 per cent. This would have enabled 8-10 mining projects to operate under the formula by the year 2000. There has, however, been a dramatic decline in nickel consumption and in the metal market in general. The growth rate in nickel consumption which was around 3.7 per cent for the period 1965 to 1979 had dropped to around 1.6 per cent for the period 1972 to 1986. This would permit approximately two operations in the year 2000. The formula has thus been rendered more restrictive than was envisaged. Furthermore, it does not adequately protect land-based producers of the other three important metals to be produced from the deep seabed.

30. Land-based producers are concerned that the principle of free competition must be maintained and that their products are not displaced from the market by subsidized production of minerals from the deep seabed. There should be no preferential access to markets for such minerals through the use of tariff or non-tariff barriers. Developing land-based producers of similar metals also believe that the minerals they export should be given special consideration.

31. The discussion of the issues revealed that there was general agreement that due to lapse of time and the major changes in the economic situation that have occurred and using the recent statistical data available, the formula is no longer as practical as when it was adopted in that it has become more restrictive than was intended and will, therefore, not accommodate all aspiring seabed miners. There was also general agreement that it was neither necessary nor prudent at this stage to establish a new set of detailed rules for the implementation of production policy in the light of the expected delay in commercial deep seabed mining and the lack of adequate data on its impact.

32. There was, however, a broad agreement that it was better at this stage to establish certain principles on the basis of which detailed rules and regulations may be established when commercial production was imminent. The principles that were considered for this purpose and on which there was a convergence were as follows:

(a) there should no subsidization of production of minerals from the deep seabed;

(b) there should be no discrimination between minerals from land and from the deep seabed; in particular, there should be no preferential access to markets for minerals produced from the deep seabed by use of tariff or non-tariff barriers or for imports of commodities produced from such minerals, nor should any preference be given by States to minerals produced from the deep seabed by their nationals;

(c) the plan of work approved by the Authority in respect of each mining area should indicate a production schedule which should include the estimated amounts of minerals that would be produced per annum under that plan of work;

(d) the rights and obligations relating to unfair economic practices under the relevant multilateral trade agreements shall apply to the exploration and exploitation of minerals from the deep seabed area;

(e) any disputes concerning the interpretation or application of the rules and regulations based on the above principles shall be subject to the dispute settlement procedures under the Convention.

33. In the course of the discussion of the above principles, it was stated by some delegations that special consideration should be given to the exports of minerals from developing land-based producers. An observation was also made that the above principles may not be an adequate substitute for the production limitation formula.

VII. COMPENSATION FUND

34. It was generally recognized that the economies of land-based producer States of the minerals to be derived from the deep seabed which are heavily dependent upon the export of such minerals are vulnerable to the impact of deep seabed mining. It was therefore agreed that the affected developing land-based producer States should be provided with some economic assistance. However, there were a number of matters of detail which need to be fully elaborated and agreed upon, such as the level of dependency, the proof of adverse impact due to seabed activities, the nature of economic assistance or compensation to be provided, and the length of the period of adjustment during which assistance is to be provided. These and other related issues will need to be studied on a continuous basis. In this regard, it was noted that considerable ground-breaking work has been done by the Preparatory Commission which should be built upon by the Authority. However, the precise measures that may be taken in anticipation of possible adverse effects can only be more realistically developed when commercial deep seabed mining has begun or is imminent. Factors that may influence the determination of these measures will include the amount of deep seabed minerals that might be actually produced, the market conditions prevailing at the time, the number of land-based producer States that may be affected and the nature of their problems.

35. Taking into account the delays in deep seabed mining and the uncertainty of the conditions that may be prevailing at the time when production from the deep seabed takes place, it was agreed that it may not be prudent at this stage to develop a detailed system of assistance for affected developing land-based producer States. Instead, it was agreed that

certain principles could be established which in the future would be the basis for the development of such a system of assistance.

36. It was generally agreed that the following principles could be the basis for development of a system in the future:

(a) an economic assistance fund should be established from a percentage of the revenues of the Authority over and above those necessary for covering the Authority's administrative expenses in accordance with article 173 (2), provided that the amount accumulated in such fund does not at any time exceed a prescribed limit;

(b) the Authority should provide assistance from the fund to affected developing land-based producer States where appropriate in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes;

(c) the extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration should be given to the nature and magnitude of the problems encountered by affected developing land-based producer States.

VIII. FINANCIAL TERMS OF CONTRACTS

37. The main concerns regarding the present systems of taxation relate to such issues as whether the payments impose too heavy a burden on seabed miners and whether the two systems prescribed in the Convention are too elaborate. Some States interested in deep seabed mining are of the view that changed circumstances call for a review of the systems and the rates of taxation. The front-end payments that are to be incurred before mining income is generated are considered onerous by these States. They would prefer two levels of fixed annual fees – one for exploration only and the other for exploration and exploitation.

38. Other States are of the view that before mining income is generated, some reasonable payment should be made once prospective deep seabed miners have secured exclusive mining areas and obtained exploration rights. They are also concerned that lower rates of taxation of the mining income would not only reduce the revenues for the Authority, but would also give rise to the possibility that deep seabed miners would have a competitive advantage in comparison with land-based miners through a lenient tax system. They are further concerned that mining States would siphon away revenue benefits from the international community by seeking a reduction in tax revenues to the Authority while imposing their own national taxes on operators.

39. Both groups feel that some of the complicated accounting and bureaucratic tasks involved in determining the tax base and the tax payments under the present system may be too burdensome and expensive both for the Authority and the operator.

40. The Convention provides for two types of payments – those that are to be made before the exploitation stage and those to be made after exploitation begins. The first type of payment includes an application fee of $US 500,000 per applicant and an annual fixed fee of $US 1 million. The annual fixed fee is to be paid from the date of approval of a plan of work throughout the period of exploration. It becomes a part of the overall taxes when exploitation begins. For the second type of payment, which begins with exploitation, two systems of taxation are provided for: one involving a "production charge" only and the other a combination of a production charge and a "share of net proceeds" attributable to the mining sector.

41. It was recognized that the historical reasons for the two systems of taxation were no longer valid in the light of the recent changes that have taken place in Eastern Europe. It was agreed that a simplification of the present complex system was necessary.

42. It was further agreed that it would be difficult at this stage to attempt to develop a detailed set of rules for the purpose of taxation since the seabed mining industry had not yet developed. It would be more appropriate to agree to certain principles which could be the basis for setting up detailed rules and regulations at a future time when deep seabed production was imminent. It was recognized that the system should be such as to generate a fair competition between the contractors and the Enterprise, notwithstanding that the Enterprise may need some incentives in order to be able to operate in joint venture as was agreed previously. The system should also not preclude the possibility of the Authority giving special incentives to operators where appropriate. The mechanism should be flexible enough to enable such adjustments as necessary.

43. It was also recognized that a production charge or royalty system of payment has several merits. First, it is a constant payment of a percentage of the gross value based on an established sliding scale related to volume and price from the time of commencement of commercial production. This would be helpful to the Authority as a stable source of revenue; at the same time, the operator would also have a relatively well-defined and less uncertain basis for his tax payments. Secondly, it eases the task of the Authority with regard to monitoring the accounts of the operator and considerably reduces the accounting obligations of the operator. Thirdly, it relieves the Authority from having to monitor stages of exploitation beyond the "activities in the Area", such as transportation, processing and marketing of metals.

44. In the light of the above, there was general acceptance that a system of payment should be developed when commercial deep seabed mining was imminent based on the following principles:

(a) the system of financial payments to the Authority must be fair both to the operator and to the Authority;

(b) the rates of taxation under the system should be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage;

(c) there should be a single system which should not be complicated and should not impose major administrative costs on the Authority or on the operator and therefore preference should be given to the royalty system;

(d) States must respect the extra-territorial nature of deep seabed mining in the international seabed area and should avoid or minimize double taxation on the proceeds of deep seabed mining in order to ensure optimum revenues for the Authority;

(e) the annual fixed fee to be paid by an operator during the exploration stage may be adjusted at the time of the approval of the plan of work in order to take account of the anticipated delay in reaching the exploitation stage and the risks involved in establishing an industry in a new and unstable environment;

(f) any disputes concerning the interpretation or application of the rules and regulations based on these principles should be subject to the dispute settlement procedure under the Convention.

IX. ENVIRONMENTAL CONSIDERATIONS

45. It was noted that the Convention imposes upon all States the obligation to protect and preserve the marine environment from all sources of pollution. In addition, the Authority has a specific mandate to adopt appropriate rules, regulations and procedures to prevent, reduce and control pollution of the marine environment arising from the exploration and exploitation of the resources of the international deep seabed. Environmental aspects of deep seabed mining require continuous study at every stage of the activities and the submission of environmental impact statements before production of seabed minerals is undertaken.

46. It was agreed that this was not a controversial issue and was therefore qualitatively different from the other eight issues under consideration. It was noted that the Preparatory Commission has been considering a comprehensive set of rules concerning the environment, and

that there has been no insurmountable obstacle in the progress being made there.

X. OTHER MATTERS

47. The form in which any agreement is to be reflected has not been fully discussed. There is recognition, however, that the agreement should be of a binding character and the procedure by which it is adopted should be simple. Many States would prefer an "implementing agreement" using a procedure such as implied consent, which will not require those who have ratified the Convention to submit the agreement to their legislature for ratification. It was agreed that this matter should be discussed at a later stage.

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26 May 1992

INFORMATION NOTE

concerning the 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*

New York, 16 – 17 June 1992

INTRODUCTION

1. In 1990 and 1991, the Secretary-General held a first series of six informal consultations on the issues of concern to some – mostly industrialized – States, the participation of which in the United Nations Convention on the Law of the Sea is considered desirable. In the course of these informal consultations, nine critical areas were identified, all of which are situated in or related to Part XI of the Convention: costs to State Parties; the Enterprise; decision-making; the Review Conference; transfer of technology; production limitation; compensation fund; financial terms of contract; and environmental considerations. (A summary of these consultations has already been circulated).

2. As a second round of consultations is now beginning, the international community is confronted with the fact that the Convention on the Law of the Sea has received so far 51 ratifications or accessions. It is to be expected that the nine remaining ratifications or accessions will occur in no more than one or two years and that the Convention, therefore, will enter into force in the next two or three years.

3. It seems to be widely understood and agreed that a number of important political and economic changes that have taken place directly or indirectly affected the applicability of Part XI which therefore needs to be adapted. It seems also to be understood that the results of the consultations so far held indicate the broad lines on which adaptation of Part XI will have to be carried out. It seems, therefore, important, as the next step, to give additional precision, in a broadly acceptable form, to the results of the discussions which have taken place so far.

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* This Information Note is submitted as an informal background document for the next consultation of the Secretary-General which will take place on 16 and 17 June 1992.

Ed. Note: At this stage the consultations moved from some 30 delegations to an open-ended group. It was necessary, therefore, to revisit all the issues discussed in the smaller group.

4. Once sufficient precision has been given to the emerging approaches towards resolving the substantive issues, questions relating to measures to be taken upon entry into force of the Convention and the form in which any agreement may be embodied will have to be addressed.

RESULTS OF THE SECRETARY-GENERAL'S INFORMAL CONSULTATIONS HELD IN 1990/1991

A. COSTS TO STATES PARTIES

5. There was general agreement that costs to States Parties should be minimized and that all institutions to be established under the Convention should be cost-effective. The establishment of the various institutions should be based on an evolutionary approach, taking into account the functional needs of the institutions concerned in order to discharge effectively their responsibilities at each stage.

6. As far as the Authority is concerned, its administrative functions would relate at first to the various stages of pre-commercial production activities. These will include receiving and processing of any new applications for mine sites and approving plans of work for the exploration phase; monitoring and implementation of the obligations of the operators in that phase; monitoring and reviewing trends and developments relating to deep seabed mining activities including those concerning the marine environment and the development of technology; assessing the feasibility of commercial deep seabed mining; monitoring the training programme being carried out by operators; and studying the problems that may arise from deep seabed mining for the economies of developing land-based mineral producer States.

7. With respect to the Enterprise, it was recognized that, 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. If seabed mining becomes technologically and economically feasible, consideration will need to be given to the various organizational and operational options for the Enterprise.

8. An evolutionary approach and cost effectiveness shall apply to the structuring of all institutions, including the need to phase in the subsidiary bodies and to the frequency and scheduling of meetings of the various organs. There was also general agreement that this functional approach should also apply to the establishment of the International Tribunal for the Law of the Sea.

9. The following findings may be retained:

There was general agreement that, upon entry into force of the Convention, the establishment of the various institutions provided for in the Convention shall be based on an evolutionary approach and on cost-effectiveness.

There was also general agreement on the streamlining of the meetings of the various institutions so as to reduce costs. This applies to the size, functions and structure of the institutions, including the need to phase-in the subsidiary bodies and to the frequency and scheduling of meetings of the various organs.

B. THE ENTERPRISE

10. There was general agreement that the operations of the Enterprise should be based on sound commercial principles and that it should be autonomous and free from political domination. There was also agreement that in order to minimize costs to States Parties the Enterprise should begin its operations through joint venture arrangements, thus avoiding the need to invoke the funding provisions of the Convention relating to the first mining operation of the Enterprise. This should not, however, reduce the future operational options of the Enterprise, nor affect its autonomy.

11. The following findings may be retained:

There was general agreement that the Enterprise should begin its operation through joint ventures.

C. DECISION-MAKING

Assembly

12. The only issue raised was the procedure to be followed by the Assembly in respect of certain specific decisions which require a prior recommendation of the Council and where the Assembly does not agree with that recommendation. In most of such cases the Convention provides that decisions of the Assembly are to be based on the recommendations or proposals of the Council. On certain matters the Convention provides that, if the Assembly does not approve the recommendations of the Council, it shall return them to the Council for reconsideration in the light of the views expressed by the Assembly. However, this procedure is not clearly indicated in respect of certain other matters, such as the adoption of the annual budget of the Authority proposed by the Council. Since this is an issue of particular concern to all States, it was agreed that the procedure ought to be clarified, so that the decision of the Assembly and the recommendation of the Council are consistent. It was also agreed that consideration should be given to establishing a relationship between the Council and the Assembly in respect of the assessment of contributions of States Parties to the administrative budget of the Authority.

13. The following findings may be retained:

There was general agreement that the procedure to be followed by the Assembly in respect of recommendations of the Council should be clarified, so that the decisions of the Assembly and the recommendations of the Council should be consistent.

There was also general agreement that, if the Assembly does not approve the recommendations of the Council on the adoption of the annual budget of the Authority proposed by the Council and on the assessment of contributions of States parties to the administrative budget of the Authority, the Assembly shall return them to the Council for reconsideration in the light of the views expressed by the Assembly.

Council

14. It was agreed that the nature and functions of the Council required that its composition should reflect a fair balance of interests. There are two principal interests: that of the international community as a whole and that of the investors in deep seabed mining activities. There are two other interests involved: that of the land-based producers of such minerals and that of the consumers of minerals to be produced from the deep seabed or importers of commodities which are produced from such minerals.

15. The following findings may be retained:

(a) There was general agreement that, upon entry into force of the Convention, the composition and function of the Council will reflect the evolutionary approach. The decision-making procedure will have to reflect the balance of the interests existing at that time;

(b) There was general agreement that the following points regarding composition will have to be dealt with:

(i) a clearer identification of States in some of the categories;

(ii) whether a state can be listed in more than one category; if not, whether that State will have to select the category it wishes to represent in the Council; and

(iii) a system of rotation in accordance with article 161, paragraph 4;

(c) There was general agreement that decisions on questions of procedure would be taken by a majority of members present and voting and decisions on questions of substance should be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the categories referred to in article

161. Decisions within each category on matters of substance shall be taken by a simple majority.

Organs of the Council (Economic Planning Commission and Legal and Technical Commission)

16. There was general agreement that the decision-making procedures of the Economic Planning Commission and the Legal and Technical Commission should be simple.

17. The following finding may be retained:

There was general agreement that decisions should be taken by consensus and that there should be no voting until all efforts at consensus have been exhausted. A special procedure should be adopted for the approval of a plan of work.

Special procedure in the Council for approval of a plan of work

18. Where the Legal and Technical Commission, after having reviewed the application on the basis of objective and non-discriminatory criteria established by the rules and regulations of the Authority, has submitted to the Council a recommendation for the approval of a plan of work, a special procedure is necessary in the Council when dealing with such recommendation. This is already envisaged in the Convention. This procedure should ensure that access would not be denied to applicants who are found by the Legal and Technical Commission to be qualified under the rules and regulations of the Authority.

19. The following findings may be retained:

There was general agreement that the Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of categories (a), (b) and (c), the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. It the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its normal rules of procedure on matters of substance.

There was also general agreement that where dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement mechanism contained in the Convention [article 187, subparagraph (d)].

Finance Committee

20. It was noted that the Finance Committee was being discussed in the Preparatory Commission where considerable progress has been made already. However, it was pointed out that, if an agreement could be reached with respect to that decision-making procedure in the Council, this would considerably facilitate agreement in respect of the Finance Committee.

21. The following finding may be retained:

There was general agreement that the decision making procedure in the Finance Committee would be considerably facilitated if an agreement could be reached with respect to the decision-making procedure in the Council.

D. REVIEW CONFERENCE

22. In general, the participants felt that there should be a combination of quantitative and qualitative approaches as regards the procedure for the adoption of an amendment and for its entry into force. The quantitative aspect will ensure that there is broad support for an amendment and the qualitative aspect will ensure that States in all categories in the Council are involved.

23. The following findings may be retained:

There was general agreement that with respect to the adoption of an amendment by the Review Conference in the absence of consensus such amendment may be adopted by a two-thirds majority of members present and voting, provided that it was not opposed by a majority of members in any one of the categories of the Council.

There was general agreement that such amendments would enter into force for all States Parties 12 months after the deposit of instruments of ratification or accession by two-thirds of the States Parties or by 60 States Parties, whichever is greater, provided that this includes a majority in each category of the Council.

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Introductory Remarks by the Secretary-General at the informal consultation on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea, 16-17 June 1992

Distinguished Delegates,

It gives me pleasure to open a new round of informal consultations on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea.

I would particularly like to welcome those of you who are participating for the first time in these consultations and those who come from capitals. I extend special greetings to Ambassador Jesus, Chairman of the Preparatory Commission.

The United Nations convention on the Law of the Sea establishes a new legal order for the seas and oceans. It introduces a legal framework which provides a considerable measure of stability and predictability in the conduct of States with respect to the uses of the sea.

It is generally acknowledged that the 1982 Convention is of tremendous importance and indeed represents a major milestone in the codification and progressive development of the international law of the sea.

The Convention has as one of its major objectives the promotion of the peaceful uses of the seas and oceans. The new maritime order it creates contributes to the maintenance of peace on the high seas and in coastal waters.

More particularly the establishment of a 200-mile exclusively economic zone and a 12-mile territorial sea and the creation of precise rules for innocent passage, transit passage and archipelagic sealane passage do much to clarify the rights and duties of coastal States and third States and in this sense help in preserving peace on the seas and oceans.

The Convention imposes a general obligation on all States to protect and preserve the marine environment and contains a significant body of rules on the protection and preservation of the marine environment. These rules deal with the protection of the marine environment from all sources of pollution. States are directed to take all measures necessary to prevent, reduce and control pollution of the marine environment from any source. They are regarded as constituting a global legal framework for the

protection of the marine environment and as providing a solid foundation for further developments in international environmental law.

In this connection it must also be borne in mind that several provisions of the Convention are concerned with the conservation and management of living resources both in waters falling under the national jurisdiction of States and on the high seas.

The conservation of marine living resources forms an integral part of the protection of the marine environment. States are under an obligation to take conservation measures designed to maintain or restore marine living resources at levels ensuring the maximum sustainable yield as qualified by relevant environmental and economic factors.

The Convention has given coastal States extensive rights. These rights are, however, accompanied by obligations which serve as important limitations on exaggerated claims of coastal States, and protect the rights and interests of the navigational users of the seas. This system of checks and balances is designed to maintain an equilibrium between on the one hand the rights and duties of coastal States and on the other the rights and duties of the international community.

Another important feature of the Convention on the Law of the Sea is its comprehensive system for the settlement of disputes.

The objective of these provisions is generally to ensure that disputes concerning the interpretation or application of the provisions of the Convention should be settled either by peaceful means of the parties own choice or by the procedures provided for in the Convention.

The system of dispute settlement is one of the corner-stones of the new maritime legal order contained in the Convention and is the pivot upon which the delicate equilibrium of the compromises to be found in the Convention must be balanced.

The Convention has not been ratified or acceded to by any of the major industrialized States. These States, it must be pointed out, are the major users of the sea, the heaviest polluters of the seas and are important parties to disputes at sea. It is clear that the Convention itself will be severely damaged if it should enter into force without the ratification or accession of the industrialized States.

It is recognized that the problems with some aspects of the deep seabed mining provisions have inhibited the industrialized countries from ratifying or acceding to the Convention.

These obstacles should, and I hope can, be removed. If we fail to remove them we put at risk the entire Convention. As my distinguished

predecessor stated in his concluding remarks at the informal consultations on the law of the sea on 11 December 1991:

> "The present situation in which there is the unprecedented number of 159 signatures to the Convention, but only 51 ratifications and accessions-all but one from developing countries-is highly unsatisfactory. There is a real possibility that such a situation could lead to the erosion of the delicate balance contained in the Convention."

It should also be borne in mind that it is most probable that the nine remaining ratifications or accessions will take place in one or two years and that the Convention itself will enter into force within the space of two or three years.

It was to achieve wider participation in the Convention from the major industrialized States that my predecessor held in 1990-1991 a series of six informal consultations on outstanding issues relating to the United Nations Convention on the Law of the Sea. During these consultations nine crucial issues were identified namely: the Cost to States Parties; the Enterprise; Decision-making; the Review Conference; Transfer of Technology; Production Limitation; Compensation Fund; Financial Terms of Contracts; and Environmental Considerations. During the examination of these critical issues certain approaches have emerged which could constitute the basis for our future work.

I have, of course, not hesitated to follow the advice given to me by my predecessor and to continue the consultations. As the first step in the new round of these consultations which is now beginning, it seems necessary that additional precision should be given to the emerging approaches towards resolving these issues. Once sufficient precision has been attained questions relating to measures to be taken upon entry into force of the Convention and the form in which any agreement may be embodied will have to be addressed.

In this context, I would like to make quite clear that like the first round of six consultations held by my predecessor, this new round of consultations will not be a negotiation in disguise. We are not mandated to re-negotiate Part XI.

The object and purpose of these consultations is rather to shed light on our various positions with respect to the outstanding issues on the deep seabed mining provisions of the Convention which turn out to be, and will probably remain for some time to come, without practical application. We are comparing notes. Comparing notes, as experience shows, can be very helpful in the bridging of divergent positions and in finding acceptable solutions.

In order to make this exercise as meaningful as possible, it has been made and will remain open-ended.

As in the case of the previous consultations, an informal note has been prepared. There will be an occasion for remarks of a more general nature this morning and the consultations will then address each of the nine points in the order they were taken up in the first round of consultations.

I will follow your deliberations closely and be with you if and as long as my schedule permits. I wish you every success in this important endeavour.

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10 December 1992

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*

New York, 28 and 29 January 1993

INTRODUCTION

1. The first two rounds of the second phase of 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, were held during 16-17 June 1992 and 6-7 August 1992. They were open-ended and were attended by some 75 delegations each.

2. During these two rounds, consideration was given to all nine key issues, included in the Information Note of 26 May 1992, which had been identified and dealt with during the first phase of these consultations.

3. In his introductory remarks to the second phase of the informal consultations, the Secretary-General made it clear that the purpose of these consultations was not to renegotiate Part XI of the Convention but to find a practical way out of the difficulties which have inhibited the industrialized countries from ratifying or acceding to the Convention.

4. 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 not considered any more to be a hard-core issue in the context of deep seabed mining. The Secretary-General's informal consultations will continue to give further consideration to the remaining eight issues. This Information Note has been prepared to facilitate such consideration with a view to seeking solutions.

5. With regard to each of the eight issues, certain general agreements seem to have already been reached. On some of the issues additional points have been submitted for consideration in view of their particular practical importance. These issues are "Costs to States Parties", "The Enterprise", "Decision-making", "Review Conference", and "Transfer of technology".

* This Information Note is submitted as an informal background document for the next round of consultations of the Secretary-General which will take place on 28 and 29 January 1993.

6. As to the rest of the eight issues, namely, "Production limitation", "Compensation fund" and "Financial terms of contracts", in the light of the expected delay in deep seabed mining and the uncertainty of the economic, financial and technological conditions that may be prevailing at the time when commercial production from the deep seabed takes place, there seems to be agreement among participants in the consultations that it would be neither necessary nor prudent at this stage to go beyond general principles.

7. Accordingly, Part I of this Note recalls the results of the consultations reached so far, states the findings as they stand at present, and submits for consideration additional points relating to the five issues of "Costs to States Parties", "The Enterprise", "Decision-making", "Review Conference" and "Transfer of Technology".

8. With respect to the issues of "Production limitation", "Compensation fund" and "Financial terms of contracts", Part II of this Note limits itself to presenting the results reached so far in the consultations and suggests possible formulation of general principles.

9. What use shall be made of the findings resulting from the consultations and what arrangements shall be made for the period between the entry into force of the Convention and the time when deep seabed mining becomes commercially viable, as well as the legal form in which any general agreement or understanding that might arise from these informal consultations would have to be laid down, remain to be discussed at a later stage of the consultations.

PART I. THE FIVE ISSUES ON WHICH ADDITIONAL POINTS HAVE BEEN SUBMITTED FOR CONSIDERATION: A. COSTS TO STATES PARTIES; B. THE ENTERPRISE; C. DECISION-MAKING; D. REVIEW CONFERENCE; E. TRANSFER OF TECHNOLOGY

A. COSTS TO STATES PARTIES

(i) Overview of the results of the consultations held so far

10. In the consultations held in 1992 the findings contained in paragraph 9 of the Information Note of 26 May 1992 were reaffirmed, which reads as follows:

> "There was general agreement that, upon entry into force of the Convention, the establishment of the various institutions provided for in the Convention shall be based on an evolutionary approach and on cost-effectiveness.

"There was also general agreement on the streamlining of the meetings of the various institutions so as to reduce costs. This applies to the size, functions and structure of the institutions, including the need to phase in the subsidiary bodies and to the frequency and scheduling of meetings of the various organs."

11. There also appeared to be a shared feeling that it was necessary to include some more details to the text recorded in paragraph 9 of the Information Note of 26 May 1992.

12. In this respect, foremost was the statement that no institution should be created which was not required. It was also restated that "form should follow function" and that this evolutionary approach should apply both to the establishment of the organs as well as to the frequency of meetings. Nevertheless it was stated that in the process efficiency should not be sacrificed.

13. Moreover, it was generally felt that the functions to be carried out by the institutions would evolve over time and that there were functions which have to be discharged upon entry into force of the Convention, and others which have to be carried out at a later stage. With regard to the initial functions of the Authority, mention was made of paragraph 6 of the Information Note of 26 May 1992, the relevant part of which reads:

"…receiving and processing of any new application for mine sites and approving plans of work for the exploration phase; monitoring the implementation of the obligations of the operators in that phase; monitoring and reviewing trends and development relating to deep seabed mining activities including those concerning the marine environment and the development of technology; assessing the feasibility of commercial deep seabed mining; monitoring the training programme being carried out by operators; and studying the problems that may arise from deep seabed mining for the economies of developing land-based mineral producer States…"

Questions, however, were raised as to the necessity to include among these functions the assessment of the feasibility of commercial deep seabed exploitation as this, it was felt, was a matter for the operator and not for the Authority.

(ii) <u>The findings as they stand at present</u>

- **Costs to States Parties should be minimized.**

- **All institutions to be establishment under the Convention should be cost-effective, and no institution should be established which was not required.**

- **The establishment and the operation of the various institutions should be based on an evolutionary approach, taking into account the functional needs of the institutions concerned in order to discharge effectively their responsibilities at each stage.**

- **The meetings of the various institutions should be streamlined so as to reduce costs. This applies to the structure, size and functions of the institutions, including the need to phase in the subsidiary bodies and to the frequency and scheduling of meetings of the various organs.**

(iii) Additional points for consideration

14. Based on these findings, details may be worked out providing further elaboration. In this respect, it will have to be borne in mind that when the Convention enters into force: (a) States Parties would be required to contribute towards the administrative costs of the Authority; (b) if an Enterprise is established at the time, they would be required to contribute towards the initial administrative costs of the Enterprise. In the light of the foregoing, the following initial functions of the Authority upon entry into force of the Convention might be considered:

(a) As far as the registered pioneer investors are concerned:

Continuing the functions already being carried out by the Preparatory Commission concerning the implementation of their obligations, including

- reviewing periodic expenditures;
- receiving periodic reports;
- monitoring the implementation of the exploration programme;
- monitoring the training programmes.

(b) As far as possible new applicants for the exploration of mine sites are concerned:

- receiving and processing any new application;
- monitoring the implementation of their obligations as agreed upon by the Authority.

(c) In addition, the functions of the Authority would include:

- implementing the decisions of the Preparatory Commission taken pursuant to resolution II;
- monitoring and reviewing the trends and developments relating to the deep seabed mining activities, including those concerning the mineral market situation;

- development of mining and processing technologies for deep seabed minerals and the marine environment; and
- studying the problems that may arise from deep seabed mining for the economies of developing land-based producer States.

B. THE ENTERPRISE

(i) Overview of the results of the consultations held so far

15. In the consultations held in 1992 the findings contained in paragraph 11 of the Information Note of 26 May 1992 were reaffirmed, according to which the Enterprise would begin its operations through joint ventures. It was also noted that this should not prejudice the question of the autonomy or the future operational options of the Enterprise.

16. Consequently, it was agreed that the Enterprise shall develop its first mine site through a joint venture thus eliminating the need to invoke the funding provisions contained in annex IV, article 11, paragraph 3, of the Convention.

17. As an alternative to an operating Enterprise one delegation proposed that a system of royalties or taxation should be considered. Such a system of royalties could consist of a simple royalty fee or a system of taxation on profits or a combination of these systems. The details of such a system could be elaborated when the first deep seabed mining operation is due to commence and should take into account the actual practice at that time. This proposal has not been considered.

(ii) The findings as they stand at present

- **When deep seabed mining becomes feasible, the Enterprise should begin its operations through joint ventures.**

- **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.**

(iii) Additional points for consideration

18. It remains to be seen whether participants would wish to discuss the proposal mentioned in paragraph 17.

19. Participants might wish to consider whether the Enterprise will work only through joint ventures or will do so only in the initial phase.

20. If the Enterprise were to be established upon the entry into force of the Convention, the following initial functions 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.

It can be easily seen that these initial functions are fairly identical to those identified above for the Authority in the initial phase.

C. DECISION-MAKING

(i) Overview of the results of the consultations held so far / The findings as they stand at present

21. In the consultations held in 1992, there was general agreement that:

Decision-making in the organs of the Authority should be based on consensus and that there should be no voting until all efforts to reach agreement by consensus have been exhausted.

22. There was also general agreement that:

The relationship in the decision-making process between the Assembly and the Council should be clarified and that more consistency should be introduced.

To this end, there was general agreement with the idea of a renvoi or shuttle in the sense that if the Assembly wants to disagree with a decision of the Council, it should send its recommendations back to the Council and the Council should reconsider the matter in the light of the recommendations made by the Assembly. This would apply especially in the case of financial and budgetary matters.

The Assembly

23. In case voting in the Assembly was necessary, there was general agreement that:

All matters of procedure should be decided by a majority of States present and voting, and all matters of substance should be

decided by a two-thirds majority of States present and voting, as provided for in the Convention.

The Council

24. There was general agreement that:

The composition of the Council should reflect the major categories of interests and these categories should be treated as chambers for the purposes of decision-making.

25. In case voting in the Council was necessary, there was general agreement that:

Decisions on questions of procedure would be taken by a majority of members present and voting and decisions on questions of substance should be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to above. Decisions within each chamber on matters of substance shall be taken by a simple majority.

26. There was also general agreement that:

If a major interest of a State or a group of States seemed threatened, a motion could be passed which would have the effects of postponing a decision and starting a process of negotiation.

Organs of the Council (Economic Planning Commission and Legal and Technical Commission)

27. As regards the Economic Planning Commission and the Legal and Technical Commission, as and when they are established, there was general agreement that their procedures for decision-making should be simple. In case voting was necessary, the precise voting mechanism might depend on the procedure that will be adopted for the Council. There was agreement, however, that a special procedure for the approval of a plan of work in the Legal and Technical Commission was required, as has been envisaged in the Convention.

28. There was general agreement that:

The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the categories of the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. If the

Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its normal rules of procedure on matters of substance .

Where dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement mechanism contained in the Convention.

Finance Committee

29. As far as the Finance Committee is concerned, it was pointed out that, if an agreement could be reached with respect to the decision-making procedure in the Council, this would considerably facilitate agreement in respect of the Finance Committee. Consideration could also be given to the relationship between the Finance Committee and the Council and the Assembly, and also to the need for representation in the Finance Committee of States which will be among the highest contributors until the Authority becomes financially self-sufficient.

(ii) Additional points for consideration

30. With respect to the chambers of the Council, participants might give further consideration to some suggestions made earlier in the consultations on the following matters:

(a) a clearer identification of States in some of the chambers.

(b) the rotation of membership among the chambers;

(c) whether a State can belong to more than one chamber at the same time.

31. In this connection participants might wish to consider the following:

The Council shall consist of five chambers reflecting the major categories of interests as follows: (a) major consumers or net importers of the metals that can be produced from polymetallic nodules – four members; (b) largest investors in nodule development and exploitation – four members; (c) major net exporters of the metals that can be produced from polymetallic nodules – four members; (d) developing States representing special interests – six members; and (e) members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole – 18 members.

32. As a consequence of such a composition, a question may arise in relation to the composition of the chambers of the Council during the evolutionary phase. This phase will start with the entry into force of the

Convention twelve months after the Convention has been ratified or acceded to by 60 States, and a certain time may elapse until the number of Parties to the Convention becomes truly representative of the international community, and the required criteria are appropriately met.

33. With respect to category (a) consisting of major consumers of minerals derived from the international seabed area, it could be agreed that the calculation of consumption should be based in terms of value.

34. With respect to category (b) consisting of the largest investors in deep seabed mining activities, the requirements contained in Resolution II, paragraph 1, could serve as guidelines.

35. It could be agreed that the question of rotation of the members of the Council should be decided by the relevant interest group.

36. As regards the possibility of belonging to more than one category of interests, it could be agreed that a State Party fulfilling the criteria of more than one category should have the possibility of being listed in more than one category. However, that State Party can only be nominated by one group and can represent only that group in the Council.

D. REVIEW CONFERENCE

(i) Overview of the results of the consultations held so far / The findings as they stand at present

37. In the consultations held in 1992, it was generally agreed that what was proposed in paragraph 23 of the Information Note of 26 May 1992, was an improvement on the existing text of article 155 of the Convention.

38. The paragraph reads as follows:

> "There was general agreement that with respect to the adoption of an amendment by the Review Conference in the absence of consensus such amendment may be adopted by a two-thirds majority of members present and voting, provided that it was not opposed by a majority of members in any one of the categories of the Council.
>
> "There was general agreement that such amendments would enter into force for all States Parties twelve months after the deposit of instruments of ratification or accession by two-thirds of the States Parties or by 60 States Parties whichever is greater, provided that this includes a majority in each category of the Council."

39. It was, however, also felt that that solution did not go far enough. Some delegations pointed to the fact that the matter is after all adequately dealt with the Vienna Convention on the Law of Treaties.

40. In general, the participants held the view that there should be a combination of quantitative and qualitative approaches as regards the procedure for the adoption of an amendment and for its entry into force. The quantitative aspect will ensure that there is broad support for the amendment and the qualitative aspect will ensure that States in all categories in the Council are involved.

(ii) Additional points for consideration

41. For the sake of comprehensiveness, the following should be spelt out:

> The Review Conference should make every effort to reach agreement on amendments by way of consensus and there should be no voting on such matters until all efforts at achieving consensus have been exhausted.
>
> With respect to the adoption of an amendment by the Review Conference in the absence of consensus, such amendment may be adopted by a two-thirds majority of the members present and voting, provided that it was approved by a majority of members in each category of the Council.

42. The following could be added:

> Those amendments which have been adopted by consensus will enter into force for all States Parties on the thirtieth day following the deposit of instruments of ratification or accession by two-thirds of the States Parties or by 60 States Parties, whichever is greater.
>
> The amendments which have been adopted by a qualified majority shall enter into force for all States Parties, once three fourths of the States Parties have deposited their instruments of ratification or accession on the date which the Council shall determine, provided that these amendments were approved by a majority of the members in each category of States represented in the Council.
>
> The decision of the Council to determine the date of entry into force of the amendment shall be adopted by a three-fourths majority of the members present and voting, provided that it was approved by a majority of the members in each category of States represented in the Council.

E. TRANSFER OF TECHNOLOGY

(i) Overview of the results of the consultations held so far / The findings as they stand at present

43. In the consultations held in 1992, the findings contained in paragraph 25 of the Information Note of 26 May 1992 were reaffirmed, to the effect that:

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.

There was also general agreement that the Authority may invite all contractors and their respective sponsoring States to cooperate 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.

(ii) Additional points for consideration

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 seabed miner 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 cooperation either between the parties concerned in activities relating to the seabed area, or by developing training, technical assistance and scientific cooperative programmes.

PART II. POSSIBLE FORMULATION OF GENERAL PRINCIPLES WITH RESPECT TO: F. PRODUCTION LIMITATION; G. COMPENSATION FUND; AND H. FINANCIAL TERMS OF CONTRACTS

F. PRODUCTION LIMITATION

(i) Overview of the results of the consultations held so far

44. There was a reaffirmation of the findings contained in a paragraph 27 of the Information Note of 26 May 1992. It was felt that they constituted a useful starting point for the elaboration of an agreement at a later stage. Paragraph 27 reads as follows:

> "There was general agreement that it would be neither necessary nor prudent at this stage to establish a new set of detailed rules for the implementation of a production policy in the light of the expected delay in commercial deep seabed mining and the lack of adequate data on its impacts. The was also general agreement that, when commercial production was imminent, the following principles would apply:
>
> (i) there should be no subsidization of production of minerals from the deep seabed;
>
> (ii) there should be no discrimination between minerals from land and from the deep seabed; in particular, there should be no preferential access to markets for minerals produced from the deep seabed by use of tariff or non-tariff barriers or for imports of commodities produced from such minerals, nor should any preference be given by States to minerals produced from the deep seabed by their nationals;
>
> (iii) the plan of work approved by the Authority in respect of each mining area should indicate a production schedule which should include the estimated amounts of minerals that would be produced per annum under that plan of work;
>
> (iv) the rights and obligations relating to unfair economic practices under the relevant multilateral trade agreements shall apply to the exploration and exploitation of minerals from the deep seabed;
>
> (v) any disputes concerning the interpretation or application of the rules and regulations based on the

above principles shall be subject to the dispute settlement procedures under the Convention."

45. The two main themes running through the discussion were the necessity for non-subsidization and for non-discrimination between terrestrial mining and deep seabed mining. In this regard, it was noted that some findings were more of the character of general principles than others.

46. With respect to paragraph 27 (i) of the Information Note, one delegation noted that "As far as anti-subsidy provisions is concerned, the GATT rules must apply directly".

47. With respect to paragraph 27 (v) of the Information Note, the same delegation also noted that "…the content of article 151, paragraph 8, should not be challenged. Under the terms of that paragraph the rights and obligations provided for in the GATT apply to operations in the Area and members of the GATT have access to that organization's dispute settlement procedures".

(ii) Possible formulation of general principles

48. When commercial production is imminent, the following principles will apply:

There should be no subsidization of production of minerals from the deep seabed. As far as anti-subsidy provisions are concerned, the application of the GATT rules should be considered.

There should be no discrimination between minerals from land and from the deep seabed; in particular, there should be no preferential access to markets for minerals produced from the deep seabed by use of tariff or non-tariff barriers or for imports of commodities produced from such minerals, nor should any preference be given by States to minerals produced from the deep seabed by their nationals.

The plan of work approved by the Authority in respect of each mining area should indicate a production schedule which should include the estimated amounts of minerals that would be produced per annum under that pan of work.

The rights and obligations relating to unfair economic practices under the relevant multilateral trade agreements shall apply to the exploration and exploitation of minerals from the deep seabed.

States Parties which are Parties to such multilateral trade agreements shall have recourse to the dispute settlement procedures of such agreements.

G. COMPENSATION FUND

(i) Overview of the results of the consultations held so far

49. There was a reaffirmation of the agreement contained in paragraph 28 of the Information Note of 26 May 1992 that "affected developing land-based producer States should be provided with some economic assistance." There was also a reaffirmation of the findings contained in paragraph 29 of the Information Note, which reads:

> "There was general agreement that, taking into account the delays in deep seabed mining and the uncertainty of the conditions that may be prevailing at the time when production from the deep seabed takes place, it would neither be necessary nor prudent at this stage to develop a detailed system of assistance for affected developing land-based producer States. States further agree that, when commercial production was imminent, the following principles would apply:
>
> (i) an economic assistance fund should be established from a percentage of the revenues of the Authority over and above those necessary for covering the Authority's administrative expenses in accordance with article 173, paragraph 2, provided that the amount accumulated in such fund does not at any time exceed a prescribed limit;
>
> (ii) the Authority should provide assistance from the fund to affected developing land-based producer States where appropriate in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programme;
>
> (iii) the extent and period of such assistance shall be determined on a case by case basis. In doing so, due consideration should be given to the nature and magnitude of the problems encountered by affected developing land-based producer States."

50. With respect to paragraph 29 (i) of the Information Note, it was emphasized that it should be made clearer that the resources for economic assistance should come from surplus funds of the Authority.

(ii) Possible formulation of general principles

51. When commercial production is imminent, the following principles will apply:

Affected developing land-based producer States should be provided with some economic assistance.

An economic assistance fund should be established from surplus funds of the Authority, that is, from a percentage of the revenues of the Authority over and above those necessary for covering the Authority's administrative expenses, provided that the amount accumulated in such fund does not at any time exceed a prescribed limit.

The Authority should provide assistance from the fund to affected developing land-based producer States where appropriate in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes.

The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration should be given to the nature and magnitude of the problems encountered by affected developing land-based producer States.

H. FINANCIAL TERMS OF CONTRACTS

(i) Overview of the results of the consultations held so far

52. There was a reaffirmation of the findings contained in paragraph 31 of the Information Note of 26 May 1992 that:

> "There was general agreement that it would be neither necessary nor prudent at this stage to attempt to develop a detailed set of rules for the purpose of taxation. When commercial production was imminent, the following principles would apply:
>
> (i) the system of financial payments to the Authority must be fair both to the operator and to the Authority;
>
> (ii) the rates of taxation under the system should be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage;
>
> (iii) there should be a single system which should not be complicated and should not impose major administrative costs on the Authority or on the operator and therefore preference should be given to the royalty system;

(iv) States must respect the extra-territorial nature of deep seabed mining in the international seabed area and should avoid or minimize double taxation on the proceeds of deep seabed mining in order to ensure optimum revenues for the Authority;

(v) the annual fixed fee to be paid by an operator during the exploration stage may be adjusted at the time of the approval of the plan of work in order to take account of the anticipated delay in reaching the exploitation stage and the risks involved in establishing an industry in a new and unstable environment;

(vi) any disputes concerning the interpretation or application of the rules and regulations based on these principles should be subject to the dispute settlement procedure under the Convention.

53. With respect to paragraph 31 (iii) of the Information Note, some delegations criticized the Note for advocating the suppression of the dual system and giving preference to the royalty system over the mixed system. It would be premature to indicate a preference for any of the two systems. It was pointed out that both systems should be left for reasons of flexibility.

54. With respect to paragraph 31 (iv) which raised the question of double taxation, it was pointed out that this question raised technical issues which are not capable of being easily resolved. It was felt that this problem of double taxation should be left open at this stage.

55. It was suggested that the possibility should be included of a review of the tax system during the lifetime of contracts in view of changing circumstances. It was stated that that should be done through direct negotiations with the Authority on a non-discriminatory basis.

56. It was also suggested to develop a system on incentives to give more precision to the provisions of the Convention, and that it should be established on a non-discriminatory basis.

(ii) Possible formulation of general principles

57. When commercial production is imminent, the following principles will apply:

The system of financial payments to the Authority must be fair both to the operator and to the Authority.

The rates of taxation under the system should be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an

artificial competitive advantage. The possibility of a review of the tax system during the lifetime of contracts in view of changing circumstances, could be considered. That should be done through direct negotiations with the Authority on a non-discriminatory basis.

While the system should not be complicated and should not impose major administrative costs on the Authority or on the operator, consideration should be given to the adoption of both a royalty system and the mixed system. More consideration should also be given to developing a system of incentives; such a system should be established on a non-discriminatory basis.

States must respect the extra-territorial nature of deep seabed mining in the international seabed area and should avoid or minimize double taxation on the proceeds of deep seabed mining in order to ensure optimum revenues for the Authority. The issue of double taxation which raised highly technical issues, should be left open at this stage.

The annual fixed fee to be paid by an operator during the exploration stage should be adjusted at the time of the approval of the plan of work in order to take account of the anticipated delay in reaching the exploitation stage and the risks involved in establishing an industry in a new and unstable environment.

Any disputes concerning the interpretation or application of the rules and regulations based on these principles should be subject to the dispute settlement procedures under the Convention.

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8 April 1993

INFORMATION NOTE

concerning 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*

New York, 27 and 28 April 1993

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* This Information Note is submitted as an informal background document for the next round of consultations of the Secretary-General which will take place on 27 and 28 April 1993.

INTRODUCTORY REMARKS

At the last round of consultations held on 28 and 29 January 1993, the Secretary-General was asked to make operational suggestions on the results reached so far in the consultations. This request for operational suggestions touches upon two different sets of questions: namely, how these results can be used and how they are to be spelled out in drafting. Accordingly, the first part (A) of this Note considers various procedural approaches with respect to the use to be made of the results of the consultations and the second part (B) contains an operationally-directed formulation of the results reached so far.

PART A. CONSIDERATION OF PROCEDURAL APPROACHES

1. The results of the consultations on the eight issues as progressively refined during the informal consultations mainly address a period in time when the Convention will have entered into force and deep seabed mining will have become economically, financially and technologically viable. These two stages in the life of the Convention –the entry into force and the viability of deep seabed mining – will, however, not coincide. A dramatic and fundamental change in circumstances has occurred in the expectations on which Part XI was based. Part XI presupposed that the entry into force, which occurs after 60 ratifications or accessions and the lapse of one more year, would more or less coincide with the actual commencement of commercial deep seabed mining. However, 10 years after the opening of the Convention for signature, and after the ratification of or accession to the Convention by 55 States, the situation is that there is no economic need for, no technological feasibility of and , generally speaking, less interest than hitherto in deep seabed mining. This state of affairs presumably will remain for the foreseeable future. There will, therefore, be a prolonged period after the entry into force of the Convention in which there will be no deep seabed mining. This interim period – the duration of which it is impossible to foretell – will be followed by a period when the Convention will be in force and commercial production of deep seabed minerals has actually commenced as envisaged in Part XI.

2. However, Part XI is of relevance not only for the second phase, but also for the first one, that is, the interim period before the commencement of commercial production of deep seabed minerals and so are the results of the consultations. Part XI foresees that the institutions established by it shall be set up immediately following the entry into force of the Convention. Therefore, the question arises as to what is to become of the Authority and the Enterprise in the first phase, the interim period. In the consultations, it was repeatedly emphasized that all institutions to be established under the Convention 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 have to be set up in minimal form in accordance with the actual need for them. The next and main issue is, of course, the way in which the results of the consultations would influence the definitive deep seabed mining régime in the future, during the second phase. Although we do not know when and under what economic, financial and technological circumstances the commercial production of deep seabed minerals will take place, States want to know, to the extent possible, what they consent to be bound by, with respect to deep seabed mining, if they ratify or accede to the Convention.

3. Various procedural approaches can be adopted to deal with the results of the consultations. Four of these are outlined below:

(a) These results can be included in a contractual instrument (e.g. Protocol) which formally amends Part XI of the Convention, both with respect to the interim period and with respect to the future deep seabed mining régime. Should that approach be chosen, a number of points would have to be kept in mind: (i) the contractual instrument would have to be open to all States and entities entitled to become parties to the Convention under article 305 of the latter; (ii) the amendment of the Convention would be brought about in a procedure different from the amendment procedure provided for in Part XI in articles 155 and 314 of the Convention. However, multilateral treaties can be amended by agreements between the States concerned as in a fact provided for in articles 39 and 40 of the 1969 Convention on the Law of Treaties. Moreover, the amendment procedures provided for in Part XI in articles 155 and 314 clearly presuppose the entry into force of the Convention. Before the entry into force of the Convention, States are therefore not bound by these provisions; (iii) the general international law of treaties as well as the logic of orderly procedures require that the text of a contractual instrument be duly adopted and authenticated before it can be adhered to. Informal consultations, even if conducted by the Secretary-General of the United Nations, do not lend themselves easily to the adoption and authentication of the texts of contractual documents. This problem can, however, be overcome by the inclusion of the results of the consultations into, or their attachment to, a document emanating from a competent multilateral body, e.g. the General Assembly, for the purpose of adoption and authentication; (iv) separate from the adoption of the text of the contractual instrument is the expression of consent by States and the other entities mentioned in article 305 or the Convention to be bound by that instrument. A simple procedure can be foreseen for that purpose (e.g. simple notification instead of formal instrument of adherence); (v) finally, the entry into force of the instrument would have to take into account not only the position of States which have ratified or acceded to the Convention, but also the position of States which

have signed but not ratified, as well as that of States which have neither ratified nor signed the Convention.

This approach has the advantage of producing a clearly legally binding instrument. It would, however, also have disadvantages. One of these is that it would amount to a partial re-negotiation of Part XI. However, as the Secretary-General stated in his opening statement at the consultation round of 16-17 June 1992, there is no mandate for a re-negotiation of Part XI. While this could be remedied if the text of the contractual instrument is properly adopted as suggested above, this approach would compel those States which have ratified or acceded to go back on their ratifications. It follows, however, from the statements made by the Secretary-General in these consultations that their position should be protected to the extent possible. In addition, even if the instrument were to have a simplified mechanism for its entry into force, a considerable time might elapse before its entry into force. The risk of further delays in the achievement of universality of the United Nations Convention on the Law of the Sea is therefore considerable under this approach.

(b) Many of the results reached so far in the consultations, be they formulated as general principles or in a more precise form, constitute less changes in the actual text of the Convention than understandings on the interpretation or application of particular provisions of the Convention on the Law of the Sea. These results, therefore, could be treated operationally in a simple and yet legally binding form as an agreement containing authoritative interpretations of the provisions concerned. The text of the agreement would still be adopted by a competent multilateral body, but thereafter it would be dealt with in a simplified procedure analogous to the one provided for in article 313 of the Convention. Thus, States which have ratified the Convention would be considered as having accepted the interpretative agreement and being bound by it unless they formally object within a certain period of time after the adoption of the agreement. The interpretative agreement would then become an integral part of the Convention and States not yet parties at that time would be considered bound by it if they ratify or accede after the objection period has expired. This procedure prevents changes to the existing text of the Convention and thus protects, at least to a degree, the States which have ratified or acceded. Inasmuch as the period for objections is kept short, the period of uncertainty is reduced.

The drawback of that approach is that there are certain results of the consultations which amount to full-fledged amendments and go beyond the area of mere interpretation. While it seems that agreement on the establishment, during the interim period, of an Authority with a limited structure (Initial Authority) and an Enterprise with a limited structure (Initial Enterprise), could take the form of an interpretative agreement, other results, in particular those relating to Decision-making and the Review

Conference, could not. The interpretative agreement approach would therefore give only partial satisfaction.

(c) A third approach would consist of an interpretative agreement on the establishment of an Initial Authority and an Initial Enterprise for the duration of the interim period accompanied by a procedural arrangement providing for the convening of a Conference to establish the definitive régime for the commercial production of deep seabed minerals to be held when such production becomes feasible. The Conference would be triggered by a decision of the Initial Authority made in the light of a recommendation by a group of technical experts that commercial exploitation of deep seabed minerals will become feasible within (x) years. The group of technical experts would be convened upon a request made by the Initial Authority, either on its own initiative or upon receipt of a notification from an operator that he intends to commence commercial exploitation within (x) years. The Conference would be attended by all States Parties and other States and entities which are entitled to become parties to the Convention. The Conference shall ensure the maintenance of the principle of the common heritage of mankind as well as the implementation of the results of the consultations. It would have before it Part XI and the related annexes, as well as the results of the work of the Preparatory Commission and any other proposals which Member States might wish to make. The decision-making procedure applicable at the Conference shall be similar to that applicable at the Third United Nations Conference on the Law of the Sea.

This approach would have the advantage of leaving ratifications or accessions already completed formally intact; the States which have already ratified or acceded, would have to accept the interpretative agreement relating to the initial establishment of the Authority and Enterprise in a considerably reduced form and to agree to the holding of and participation in the Conference to be convened. For the States which have not yet ratified or acceded, the agreement to participate in the Conference would obviate the necessity – and that could be specifically indicated in the arrangement – to include Part XI and the related annexes in their consent to be bound by the Convention (be it ratification or accession) beyond their agreement to participate in the Initial Authority and the Initial Enterprise as well as in the Conference.

This third approach would essentially mean postponing the answering of questions which can hardly be answered beyond the results reached to date, while, at the same time, giving clear and binding directions on essential facets of a future deep seabed mining régime. It would come close to a reservation to Part XI, and if seen as such, would run counter to article 309 of the Convention. It would also deviate from the procedures provided for in articles 155 and 314 of the Convention. However, the deviation from a multilateral treaty is legally possible, as mentioned under 3

(a) above, by way of an agreement between the States concerned and can be politically justified in the light of the fundamental change of circumstances which has occurred in respect of Part XI. As this approach does not immediately change or amend substantive provisions of the Convention, once it is the object of general agreement in the consultations it could be adopted in a document of a competent multilateral body to which the agreement on the initial form of the institutions, the arrangements for the Conference and the results emanating from the consultations would be annexed as integral parts.

(d) A fourth approach was suggested by one delegation in the consultations on 16 and 17 June 1992 and 28 and 29 January 1993, and supported by two other delegations. That approach foresees the conclusion of an agreement additional to the Convention, which would become an integral part of, and enter into force together with the latter. That agreement would set forth the results of the consultations; they would, in particular, constitute the guiding framework for the action of the Authority, the structure, functions and composition which would also be provided for in the agreement. The Authority would initially be established in a very streamlined form and would evolve over time as needed. The major functions of the Authority would be to put in place the regulations regarding the activities relating to deep seabed mining and to control their application; to take such measures as are required for the exercise of its functions, including the possibility of entering into contracts with investors and other entities and the setting up of subsidiary organs as well as the employment of outside experts as necessary. Finally, the Authority would be mandated to develop solutions for issues still outstanding at the time the Convention enters into force. The Authority would perform its functions through the Assembly. However, there would also be established a general committee with executive functions. The Assembly would take decisions in general by consensus.

This approach would make the transition from the initial phase – in which there is no deep seabed mining – to the second phase – in which deep seabed mining is taken up – fleeting. There would be no necessity for a trigger mechanism and since the Authority would have all the necessary competences, there would not be a stringent necessity for a conference at the time of the transition from the interim phase to actual deep seabed mining. Nevertheless, this approach would leave the possibility open of establishing a procedure for a reconsideration mechanism, in particular with a view to the adoption of detailed provisions at such time when the commercial production of the deep seabed minerals has become feasible.

This fourth approach would undoubtedly have the advantage of considerable flexibility and relative simplicity. Its difficulty lies in the necessity of bringing about a formal agreement which will enter into force together with the Convention.

4. The fact that The Secretary-General has outlined these four approaches in the foregoing does not mean that other approaches might not be found. Nor does it mean that it would be impossible to combine elements of one approach with elements of one or more of the other approaches. Furthermore, the fact that the Secretary-General has outlined these procedural approaches does not mean that he considers the discussion of issues of substance as closed.

PART B. FORMULATION OF THE RESULTS OF THE CONSULTATIONS

I. Arrangements following the entry into force of the Convention

SECTION 1: INSTITUTIONAL ARRANGEMENTS IN THE INTERIM PERIOD

The International Seabed Authority

1. The entry into force of the Convention will be followed by an interim period during which no commercial production of deep seabed minerals will take place; during this period, an International Seabed Authority with a limited structure (Initial Authority), with its seat in Jamaica, shall nonetheless be established.

Functions of the Initial Authority

2. The functions of the Initial Authority shall be:

(a) as far as the registered pioneer investors are concerned, continuing the functions already being carried out by the Preparatory Commission concerning the implementation of their obligations, including reviewing periodic expenditures, receiving periodic reports, monitoring the implementation of the exploration programmes and monitoring the training programmes;

(b) as far as new applicants for the exploration of mine sites are concerned, receiving and processing any new application, monitoring the implementation of their obligations as agreed upon by the Initial Authority, and entering into arrangements similar to those made with the registered pioneer investors in accordance with resolution II and the related understandings;

(c) implementing the decisions of the Preparatory Commission taken pursuant to resolution II; and

(d) monitoring and reviewing the trends and developments relating to the deep seabed mining activities, including the protection of the marine environment;

[With reference to Part A.3(d):

(e) to set up regulations covering activities related to the deep seabed and to monitor their implementation;

(f) to contract with investors or other entities with a view to developing such activities;

(g) to take such measures as are required for the exercise of its functions, being empowered in particular to establish subsidiary bodies and to call in outside experts as required;

(h) to develop solutions for issues still outstanding at the close of the UN Secretary-General's informal consultations or at the time of the entry into force of the Convention.]

Structure and composition of the organs of the Initial Authority

3. There shall be an Assembly of the Initial Authority composed of all States Parties. Other States and entities entitled to become parties to the United Nations Convention on the Law of the Sea may participate fully in the deliberation of the Assembly as observers but shall not be entitled to participate in the taking of decisions.

4. There shall be a General Committee composed of (x) States Parties which shall act as the executive organ of the Initial Authority until the Council is established. The composition of the General Committee shall reflect the major categories of interests.

5. A group of technical experts shall be established by the Assembly of the Initial Authority and it shall perform the relevant functions of an Economic Planning Commission and a Legal and Technical Commission until the need to establish such organs has been determined. The group of technical experts shall be composed in such a way as to reflect the different interests and the geographical regions.

6. The Assembly of the Initial Authority shall decide when a Finance Committee shall be established. When established, it will have a limited membership and shall be composed in such a way that the major categories of interests as well as the major contributors are represented in the Committee.

7. Decision-making in the Assembly, the General Committee, the group of technical experts and the Finance Committee on matters of substance shall be based on consensus.

8. The establishment and the operation of the Initial Authority and its organs shall be based on an evolutionary approach and on cost

effectiveness, taking into account the functional need of these organs in order to discharge effectively their responsibilities at each stage.

9. The meetings of the Initial Authority and its organs shall be streamlined so as to reduce costs. This applies to their structure, size and functions, including the need to phase in the subsidiary bodies and to the frequency and scheduling of meetings of the various organs.

The Secretariat of the Initial Authority

10. The Secretariat of the Initial Authority shall consist of a Secretary-General and professional and general service staff as the Initial Authority may require to perform its functions.

Expenses

11. The administrative expenses of the Initial Authority shall be covered [by the regular budget of the United Nations] or [by assessed contributions of members of the Initial Authority] and shall be subject to its financial regulations.*

The Enterprise†

12. There shall be an Enterprise with a limited structure (Initial Enterprise). The Initial Enterprise shall have its principal office at the seat of the Authority.

13. The functions of the Initial Enterprise shall 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.

14. The substantive staff of the Initial Authority shall also provide secretariat services for the Initial Enterprise.

15. In the interim period, the administrative expenses of the Initial Enterprise shall be subsumed under those of the Initial Authority.‡

[With reference to Part A.3(c):

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* For an estimate of the annual administrative expenses of the initial Authority, see annex.

† At the consultation round of January 1993, the question was raised whether there would be an Enterprise or whether it would be replaced by some royalty system. The majority of participants seemed to favour the establishment of an Enterprise.

‡ For an estimate of the annual administrative expenses of the initial Authority, see annex.

SECTION 2: DETERMINATION OF THE TIME WHEN COMMERCIAL PRODUCTION OF DEEP SEABED MINERALS BECOMES FEASIBLE

16. The Authority shall determine the time when commercial production of deep seabed minerals will become feasible. Such a determination shall be based upon a recommendation made by a group of technical experts that commercial exploitation of deep seabed minerals will become feasible within (x) years. This group of technical experts shall make its recommendation upon a request made by the Initial Authority either on its own initiative or upon receipt of a notification from an operator that he intends to commence commercial exploitation within (x) years.

SECTION 3: CONFERENCE TO ESTABLISH THE DEFINITIVE RÉGIME FOR COMMERCIAL PRODUCTION OF DEEP SEABED MINERALS

17. After the Initial Authority has determined that commercial production of deep seabed minerals will become feasible within (x) years, it shall convene a conference for the purpose of establishing the definitive régime for the commercial production of deep seabed minerals. This Conference shall meet no later than (x) months after such a determination.

18. The Conference shall ensure the maintenance of the principle of the common heritage of mankind as well as the implementation of the results of the consultations. It shall have before it Part XI and the related annexes, as well as the results of the work of the Preparatory Commission and any other proposals which Members States might wish to make.

19. Participation in the Conference shall be open to States Parties and to other States and entities entitled to become parties and to the United Nations Convention on the Law of the Sea.

20. The decision-making procedure applicable at the Conference shall be similar to that applicable at the Third United Nations Conference on the Law of the Sea.

21. States which have not yet ratified or acceded to the United Nations Convention on the Law of the Sea, may, when becoming parties to the Convention, replace their consent to be bound by Part XI and the related annexes by the agreement to participate in the Initial Authority and the Initial Enterprise and in the Conference.]

II. Draft texts concerning the definitive deep seabed mining regime

SECTION 1: DRAFT TEXTS RELATING TO THE INSTITUTIONS WHEN COMMERCIAL PRODUCTION OF DEEP SEABED MINERALS BECOMES FEASIBLE

General rule applicable to all institutions

24. When commercial production of deep seabed minerals becomes feasible, the establishment and operations of the institutions provided for in the United Nations Convention on the Law of the Sea shall continue to be based on cost-effectiveness and on an evolutionary approach. No institution shall be established if its need has not been formally recognized. The régime and the institutions shall evolve on the basis of actual requirements and possibilities of deep seabed mining. Nevertheless, in the process, efficiency shall not be sacrificed. There shall be continuous evaluation of the efficiency of the institutions.

The Authority

25. The seat of the Authority shall continue to be in Jamaica.

Composition of the organs and decision-making

(a) General

26. Decision-making in the organs of the Authority shall be based on consensus. There shall be no voting in the Assembly and the Council and its organs until all efforts to reach agreement by consensus have been exhausted.

(b) The Assembly

(i) Composition

27. All States Members of the Authority shall be members of the Assembly.

(ii) Voting

28. In case voting in the Assembly becomes necessary, all matters of procedure shall be decided by a majority of States present and voting, and all matters of substance shall be decided by a two-thirds majority of States present and voting.

(c) The Council

(i) Composition

29. (a) The Composition of the Council shall reflect the major categories of interests and these categories shall be treated as chambers for the purposes of decision-making. The following categories shall be considered as chambers for this purpose:

(i) four members from among those States Parties which, during the last five years for which statistics are available,

have either consumed more than 2 per cent of the value of total world consumption or have had net imports of more than 2 per cent of the value of total world imports of the commodities produced from the categories of minerals to be derived from the deep seabed, and in any case on State from the Eastern European region, as well as the largest consumer;

(ii) four members from among the States Parties which were certifying States for pioneer investors or are sponsoring States for operators whose plans or work have been approved, including at least one State from the Eastern European region;

(iii) four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the deep seabed, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;

(iv) six members from among developing States Parties representing special interests. The special interests to be represented shall include those of States with large populations, States which are landlocked or geographically disadvantaged, States which are major importers of the categories of minerals to be derived from the deep seabed, States which are potential producers of such minerals and least developed States;

(v) eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this provision. For this purpose, the geographical regions shall be Africa, Asia, Eastern European, Latin America and the Caribbean and Western European and Others.

(b) There shall be rotation among the members of the Council. The question of rotation shall be decided by the members of the relevant chamber of the Council.

(c) A State Party fulfilling the criteria of more than one category shall have the possibility of being listed in the relevant categories. However, that State Party can only be nominated by the States Parties belonging to one category and can represent only that category in the Council.

(ii) Voting

30. (a) In case voting in the Council is necessary, decisions on questions of procedure shall be taken by a majority of members present and voting and decisions on questions of substance shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to in paragraph 29. Decisions within each chamber on matters of substance shall be taken by a simple majority.

(b) A State or group of States shall have the right to table a motion which would have the effect of postponing for (x) a decision and starting a process of negotiation if a major interest of such a State or group of States seemed threatened.

(c) A special procedure for the approval of a plan of work shall apply, as follows:

(i) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within 60 days, the recommendation shall be deemed to have approved by the Council at the end of that period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its normal rules of procedure on matters of substance.

(ii) Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement mechanism contained in the Convention.

(d) Economic Planning Commission and Legal and Technical Commission

(i) Composition

31. Each Commission shall be composed of 15 members elected by the Council from among the candidates nominated by the States Parties. However, if necessary, the Council may decide to increase the size of either Commission having due regard to economy and efficiency.

(ii) Voting

32. In case voting becomes necessary, decisions of a procedural as well as a substantive nature shall be taken by a simple majority of those present and voting.

(e) Finance Committee

(i) Composition

33. The Finance Committee shall be composed of 15 members. In the election of the members of the Finance Committee, due account shall be taken of the need for equitable geographical distribution and the representation of special interests including, until the Authority has sufficient income from sources other than the contributions of States Parties to meet its administrative expenses, the representation of States Parties with the highest contribution to the administrative budget of the Authority. The Finance Committee shall meet as frequently as required for the efficient exercise of its functions. The Finance Committee shall meet at the seat of the Authority.

(ii) Voting

The Finance Committee shall take its decision by consensus.

(f) Renvoi

34. There shall be consistency in the decision-making process between the Assembly and the Council. To this end, a renvoi shall be applied in the sense that if the Assembly wants to disagree with a decision of the Council, it shall send its recommendations back to the Council and the Council shall reconsider the matter in the light of the recommendations made by the Assembly. This shall apply especially in the case of financial and budgetary matters.

The Enterprise

(a) Operations

35. When commercial production of deep seabed minerals becomes feasible, the Enterprise shall begin its operations through joint ventures.

36. 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.

37. 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 operation at any

time thereafter, funds shall be provided pursuant to the provisions of the joint venture arrangements.

(b) Transfer of technology

38. 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.

39. The Authority shall have the power to invite all contractors and their respective sponsoring States to cooperate 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 is 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.

40. 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.

41. As a general rule States Parties should endeavour to promote international technical and scientific cooperation either between the parties concerned in activities relating to the seabed, or by developing training, technical assistance and scientific cooperative programme.

Review conference

42. The Review Conference shall make every effort to reach agreement on any amendments by way of consensus and there should be no voting on such matters until all efforts at achieving consensus have been exhausted.

43. If five years after its commencement, the Review Conference has not reached agreement on an amendment by way of consensus, such amendment may be adopted by a two-thirds majority of the members present voting, provided that it is approved by a majority of members represented in each chamber of the Council at the time of voting.

44. Those amendments which have been adopted by consensus shall enter into force for all States Parties on the thirtieth day following the deposit of instruments of ratification or accession by two-thirds of the States Parties or by 60 States Parties, whichever is greater.

45. Those amendments which have been adopted by a qualified majority shall enter into force for all States Parties, once three-fourths of the States Parties have deposited their instruments of ratification or accession, on the date which the Council shall determine, provided that these amendments were approved by a majority of the members in each chamber of the Council at the time of voting.

46. The decision of the Council to determine the date of entry into force of such amendments shall be adopted by a three-fourths majority of the members present and voting, provided that it is approved by a majority of members in each chamber of the Council at the time of voting.

SECTION 2: DRAFT TEXTS RELATING TO THE PRINCIPLES TO BE APPLIED WHEN COMMERCIAL PRODUCTION OF DEEP SEABED MINERALS BECOMES FEASIBLE

Production limitation

47. When commercial production of deep seabed minerals becomes feasible, the following principles shall apply with respect to a production policy:

(a) There shall be no subsidization of production of minerals from the deep seabed. As far as anti-subsidy provisions are concerned, the application of the GATT rules shall be considered.

(b) There shall be no discrimination between minerals from land and from the deep seabed. There shall be no discrimination between seabed miners and land-based miners, nor between seabed miners. In particular, there shall be no preferential access to markets for minerals derived from the deep seabed by use of tariff or non-tariff barriers or for imports of commodities produced from such minerals, nor shall any preference be given by States to minerals derived from the deep seabed by their nationals.

(c) The plan of work approved by the Authority in respect of each mining area shall indicate a production schedule which shall include the estimated amounts of minerals that would be produced per year under than plan of work.

(d) The rights and obligations relating to unfair economic practices under the relevant multilateral trade agreements shall apply to the exploration and exploitation of minerals from the deep seabed.

(e) States Parties sponsoring the carrying out of activities in the Area by their state enterprises or natural or juridical persons who possess their nationality or are effectively controlled by them or their nationals, shall assure the Authority that they have taken or are taking any necessary steps to ensure that they do not engage in subsidization except as may be permitted under GATT agreements.

(f) The principles contained in sub-paragraphs (a) to (e) shall not affect rights and obligations under GATT agreements in relations between States Parties which are contracting parties of the GATT.

(g) States Parties which are parties to such multilateral trade agreements shall have recourse to the dispute settlement procedures of such agreements. States which are not Parties to such agreements shall have recourse to the dispute-settlement procedures provided for under the Convention.

Compensation fund

48. When commercial production of deep seabed minerals becomes feasible, the following principles shall apply with respect to a system of assistance for adversely affected developing land-based producer States.

(a) Adversely affected developing land-based producer States shall be provided with some economic assistance to facilitate the adjustment of their economies to changed circumstances.

(b) An economic assistance fund shall be established from that portion of the funds of the Authority which exceeds the administrative expenses of the Authority. Only funds from payments received from the contractor in accordance with the financial terms of contracts, funds transferred from the Enterprise and voluntary contributions, shall be used for the establishment of the economic assistance fund.

(c) The Authority shall provide assistance from the fund to adversely affected developing land-based producer States where appropriate in cooperation with existing global or regional development organs which have the infrastructure and expertise to carry out such assistance programmes.

(d) The extent and duration of such assistance shall be determined on a case by case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by adversely affected developing land-based producer States.

Financial terms of contracts

49. When commercial production of deep seabed minerals becomes feasible, the following principles shall apply with respect to a system of payment by an operator to the Authority:

(a) The system of payments to the Authority shall be fair both to the operator and to the Authority.

(b) The rates of payments under the system shall be within the range of those prevailing in comparable systems in respect of land-based mining of the same or similar minerals in order to avoid giving seabed miners an artificial competitive advantage, or imposing on them an artificial competitive disadvantage. The possibility of a review of the system of payments during the lifetime of a contract in view of changing circumstances, should be considered. Such a review may be requested either by the contractor or by the Authority; the review itself shall be conducted through direct negotiations with the Authority on a non-discriminatory basis and any agreement shall be mutually accepted.

(c) While the system should not be complicated and should not impose major administrative costs on the Authority or on the operator, consideration should be given to the adoption of both a production charge system and a mixed system. An operator shall choose to make his payments to the Authority under either or these systems.

(d) States shall cooperate with the Authority in order to review problems which may arise from payments to States by operators from the income of deep seabed exploitation and to solve such problems.

(e) In case there is an annual fixed fee to be paid by an operator during the exploration stage, such a fee shall be adjusted at the time of the approval of the plan of work in order to take account of the anticipated delay in reaching the exploitation stage and the risks involved in establishing an industry in a new and unstable environment.

(f) Consideration shall be given to develop a system of incentives on a uniform and non-discriminatory basis for, *inter alia*, operators to undertake joint arrangements with the Enterprise and developing States or their nationals. The Authority shall ensure that as a result of such financial incentives, operators are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.

(g) Any disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures under the Convention.

ANNEX

PRELIMINARY ESTIMATES OF THE ADMINISTRATIVE EXPENSES OF THE INITIAL AUTHORITY

1. Preliminary estimates of the annual administrative expenses of the Initial Authority in the period following the entry into force of the Convention are presented below, on the basis of certain assumptions. These assumptions pertain to, *inter alia*: (a) institutional arrangement for the Secretariat of the Initial Authority; (b) staffing requirements of the Secretariat; (c) frequency and duration of the sessions of the organs of the Initial Authority; and (d) conference servicing requirements.

Institutional arrangement for the Secretariat of the Initial Authority

2. It is assumed that there could be two options for the institutional arrangement for the Secretariat. One option would be a self-administered Secretariat. Taking into account that considerable economies of scale can be gained by using the services of the United Nations with respect to the related substantive, administrative and conference servicing tasks, the other option would be a Secretariat of the Initial Authority linked to that of the United Nations. (Part B I, section 1, paragraph 11, above.)

Staffing requirements of the Secretariat of the Initial Authority

3. It is assumed that for the first option, the self-administered Secretariat, about 20 Professional staff (10 for substantive tasks, and 10 for administrative tasks) and about 30 General Service staff would be required. It is assumed that for the second option, the United Nations-linked Secretariat, about 10 Professional staff and 15 – 20 General Service staff would be required.

4. In either option, the staff servicing the Initial Enterprise would be part of the staff of the Initial Authority.

Frequency and duration of the sessions of the organs of the Initial Authority

5. It is assumed that the frequency and duration of the sessions of the organs of the Initial Authority would be as follows:

(a) The Assembly shall meet every two years for a two-week session.

(b) The General Committee shall meet every year for a one-week session.

(c) The group of technical experts shall meet every year for a one-week session.* Under Part A 3(d), the number of meetings may have to be increased.

Conference servicing requirements

6. It is a assumed that conference servicing requirements would be costed on a 'full-costs basis', and thus, would be the same for both options.

7. It is further assumed that all six official languages of the United Nations would be used in the sessions of the organs of the Authority, and that no summary records of the meetings will be provided.

Annual administrative expenses of the Initial Authority on the basis of the above assumptions

8. The annual administrative expenses of the Initial Authority (excluding conference servicing costs) under the first option, the self-administered Secretariat, are estimated to be in the range of 2.5 – 3.5 million United States dollars. The annual administrative expenses of the Initial Authority (excluding conference servicing costs) under the second option, the United Nations-linked Secretariat, are estimated to be in the range of 1.5 – 2.0 million United States dollars. The annual conference servicing costs of the Initial Authority, under either of the options, are estimated to be in the range of 0.8 – 1.0 million United States dollars.

9. The above estimates are in terms of 1990 United States dollars; in order to express them in terms of current United States dollars, an upward adjustment at an annual rate of 2-4 per cent may be used.

		1990 dollars U.S. (millions)
A.	Self-administered Secretariat of the Initial Authority	
	Annual administrative expenses	2.5 – 3.5
	Annual conference servicing costs	0.8 – 1.0
	Total annual costs	**3.3 – 4.5**
B.	United Nations-linked Secretariat of	

* Costing of conference-servicing requirements on a full-cost basis is done under the assumption that the required personnel would be recruited internationally and would be paid salary, travel costs and daily susbsistence allowance for the duration of the sessions.

the Initial Authority	
Annual administrative expenses	1.5 – 2.0
Annual conference servicing costs	0.8 – 1.0
Total annual costs	**2.3 –3.0**

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4 June 1993

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, 2-6 August 1993

INTRODUCTORY REMARKS

This is an updated version of the Information Note of 8 April 1993 which served as the basis of the informal consultations held in New York, 27 and 28 April 1993. These consultations began with an examination of Part A of the Information Note which dealt with procedural approaches. Thirty-one interventions were made on this issue. During the course of the second day the meeting turned its attention to Part B (Formulation of the results of the consultations). Part B I (Arrangements following entry into force of the Convention) was discussed. Twenty-nine interventions were made on this issue. Owing to lack of time, Part B II was not addressed. It was envisaged to continue the next round of consultations with the discussion of Part B II.

Consequently, the present Information Note contains an updated version of Part A, taking into account the main trends which emerged from the last consultations. Part B I has similarly been updated to reflect the comments made during the consultations. The changes made to the texts of Parts A and B I are shown in bold letters. In Part B II titles only have been changed in the light of the discussion at the last consultations.

PART A. CONSIDERATION OF PROCEDURAL APPROACHES

1. Participants in the consultations did not dispute the fact that there will be two stages in the life of the Convention after its entry into force. First, there will be a prolonged period after the entry into force of the Convention in which there will be no deep seabed mining – the interim period. The interim period will be followed by a period when the Convention will be in force and the commercial production of deep seabed minerals has commenced. Part XI as well as the results of the consultations

* This Information Note is submitted as an informal background document for the next round of consultations of the Secretary-General which will take place 2-6 August 1993.

would be of relevance not only for the second stage but also for the first one, that is, the interim period before the commencement of commercial production of deep seabed minerals.

2. Part XI foresees that the institutions established by it shall be set up immediately following the entry into force of the Convention. The consultations have shown that the setting up of these institutions should closely adhere to the principle of cost-effectiveness, which was established in the course of the consultations as one of the guiding principles in order to minimize costs for States Parties. No institution should be established which was not required and the establishment and operation of the various institutions should be based on an evolutionary approach, taking into account the need for the institutions concerned. In practical terms, this means that the institutions to be established under the Convention in the interim period have to be set up in minimal form with limited functions in accordance with the need for them. There was general agreement during the consultations that the institutions with limited functions were nevertheless the institutions provided for in the Convention and not legal entities different from them.

3. The Information Note of 8 April 1993 outlined different procedural approaches in which the results of the consultations can be reflected.

(a) The first approach considered a formal protocol amending Part XI and read as follows:

> " The results of the consultations can be included in a contractual instrument (e.g. Protocol) which formally amends Part XI of the Convention, both with respect to the interim period and with respect to the future deep seabed mining régime. Should that approach be chosen, a number of points would have to be kept in mind: (i) the contractual instrument would have to be open to all States and entities entitled to become parties to the Convention under article 305 of the latter; (ii) the amendment of the Convention would be brought about in a procedure different from the amendment procedures provided for in articles 155 and 314 of the Convention. However, multilateral treaties can be amended by agreements between the States concerned as is in fact provided for in articles 39 and 40 of the 1969 Convention on the Law of Treaties. Moreover, the amendment procedures provided for in articles 155 and 314 clearly presuppose the entry into force of the Convention. Before the entry in to force of the Convention, States are therefore not bound by these provisions; (iii) the general international law of treaties as well as the logic of orderly procedures require that the text of a contractual instrument be duly adopted and authenticated before it can be adhered to. Informal consultations, even if conducted by the Secretary-General of the

United Nations, do not lend themselves easily to the adoption and authentication of the texts of contractual documents. This problem can, however, be overcome by the inclusion of the results of the consultations into or their attachment to a document emanating from a competent multilateral body, e.g. the General Assembly, for the purpose of adoption and authentication; (iv) separate from the adoption of the text of the contractual instrument is the expression of consent by States and the other entities mentioned in article 305 of the Convention to be bound by that instrument. A simple procedure can be foreseen for that purpose (e.g. simple notification instead of formal instrument of adherence); (v) finally, the entry into force of the instrument would have to take into account not only the position of States which have ratified or acceded to the Convention, but also the position of States which have signed but not ratified, as well as that of States which have neither ratified nor signed the Convention.

This approach has the advantage of producing a clearly legally binding instrument. It would, however, also have disadvantages. One of these is that it would amount to a partial re-negotiation of Part XI. However, as the Secretary-General stated in his opening statement at the consultation round of 16-17 June 1992, there is no mandate for a re-negotiation of Part XI. While this could be remedied if the text of the contractual instrument is properly adopted as suggested above, this approach would compel those States which have ratified or acceded to go back on their ratifications. It follows, however, from the statements made by the Secretary-General in these consultations that their position should be protected to the extent possible. In addition, even if the instrument were to have a simplified mechanism for its entry into force, a considerable time might elapse before its entry into force. The risk of further delays in the achievement of universality of the United Nations Convention on the Law of the Sea is therefore considerable under this approach."

During the consultations there was support for this approach. It was recognized that it had the advantage of providing legal certainty since it produced a clear and legally binding text. On the other hand, it was also recognized that this approach would entail a formal amendment of the Convention creating legal problems especially for those States which have ratified or acceded to the Convention in the sense that it required those States to go back on their ratifications or accessions which was not a desirable consequence. In order to speed up the entry into force of the protocol and thus reduce the risk of time delay in the achievement of the universality of the Convention, which this approach would entail, it was suggested that it could be combined with a simplified procedure utilizing a mechanism of implied consent modelled upon the procedures contained in

article 313 of the Convention on the Law of the Sea. Provisional application of the protocol was another mode suggested in order to overcome the drawbacks of this solution.

(b) The second approach contemplated an interpretative agreement and read as follows:

> " Many of the results reached so far in the consultations, be they formulated as general principles or in a more precise form, constitute less changes in the actual text of the Convention than understandings on the interpretation or application of particular provisions of the Convention on the Law of the Sea. These results, therefore, could be treated operationally in a simple and yet legally binding form as an agreement containing authoritative interpretations of the provisions concerned. The text of the agreement would still be adopted by a competent multilateral body, but thereafter it would be dealt with in a simplified procedure analogous to the one provided for in article 313 of the Convention. Thus, States which have ratified the Convention would be considered as having accepted the interpretative agreement and being bound by it unless they formally object within a certain period of time after the adoption of the agreement. The interpretative agreement would then become an integral part of the Convention and States not yet parties at that time would be considered bound by it if they ratify or accede after the objection period has expired. This procedure prevents changes to the existing text of the Convention and thus protects, at least to a degree, the States which have ratified or acceded. Inasmuch as the period for objections is kept short, the period of uncertainty is reduced.
>
> The drawback of that approach is that there are certain results of the consultations which amount to full-fledged amendments and go beyond the area of mere interpretation. While it seems that agreement on the establishment, during the interim period, of the Authority with a limited structure and an Enterprise with a limited structure, could take the form of an interpretative agreement, other results, in particular those relating to Decision-making and the Review Conference, could not. The interpretative agreement approach would therefore give only partial satisfaction."

During the consultations this approach attracted interest because indeed many of the results reached so far in the consultations can be regarded as constituting understandings on the interpretation and application of particular provisions of the Convention on the Law of the Sea rather than changes to the text. In this sense this approach, in the opinion of some delegations, dealt with the problem in an adequate and realistic manner. It was felt that while the drawbacks of this approach as suggested in the

Information Note were real, they did not seem to exclude this approach as a means of at least partially achieving a negotiated solution. The possibility of using the procedure of implied consent was considered useful, since it avoided the need for those States which have ratified or acceded to the Convention to go back on their ratifications.

(c) The third approach read as follows:

"A third approach would consist of an interpretative agreement on the establishment of the Initial Authority and the Initial Enterprise for the duration of the interim period accompanied by a procedural arrangement providing for the convening of a Conference to establish the definitive regime for the commercial production of deep seabed minerals to be held when such production becomes feasible. The Conference would be triggered by a decision of the Initial Authority made in the light of a recommendation by a group of technical experts that commercial exploitation of deep seabed minerals will become feasible within (x) years. The group of technical experts would be convened upon a request made by the Initial Authority, either on its own initiative or upon receipt of a notification from an operator that he intends to commence commercial exploitation within (x) years. The Conference would be attended by all States Parties and other States and entities which are entitled to become parties to the Convention. The Conference shall ensure the maintenance of the principle of the common heritage of mankind as well as the implementation of the results of the consultations. It would have before it Part XI and the related annexes, as well as the results of the work of the Preparatory Commission and any other proposals which Member States might wish to make. The decision-making procedure applicable at the Conference shall be similar to that applicable at the Third United Nations Conference on the Law of the Sea.

This approach would have the advantage of leaving ratifications or accessions already completed formally intact; the States which have already ratified or acceded, would have to accept the interpretative agreement relating to the initial establishment of the Authority and Enterprise in a considerably reduced form and to agree to the holding of and participation in the Conference to be convened. For the States which have not yet ratified or acceded, the agreement to participate in the Conference would obviate the necessity – and that could be specifically indicated in the arrangement – to include Part XI and the related annexes in their consent to be bound by the Convention (be it ratification or accession) beyond their agreement to participate in the Initial Authority and the Initial Enterprise as well as in the Conference.

> This third approach would essentially mean postponing the answering of questions which can hardly be answered beyond the results reached to date, while, at the same time, giving clear and binding directions on essential facets of a future deep seabed mining régime. It would come close to a reservation to Part XI, and if seen as such, would run counter to article 309 of the Convention. It would also deviate from the procedures provided for in articles 155 and 314 of he Convention. However, the deviation from a multilateral treaty is legally possible, as mentioned under 3 (a) above, by way of an agreement between the States concerned and can be politically justified in the light of the fundamental change of circumstances which has occurred in respect of Part XI. As this approach does not immediately change or amend substantive provisions of the Convention, once it is the object of general agreement in the consultations it could be adopted in a document of a competent multilateral body to which the agreement on the initial form of the institutions, the arrangements for the Conference and the results emanating from the consultations would be annexed as integral parts."

This approach attracted attention as well as criticism. It was noted that it threw into relief the fact that it was impossible to compose a deep seabed mining regime now in any detail when the possibility of actual mining seems decades in the future. It was pointed out that this approach had the advantage, as was clearly expressed in the Note, of "postponing the answering of questions which can hardly be answered beyond the results reached today, while, at the same time, giving clear and binding directions on essential facets of a deep seabed mining regime." To some delegations it offered a real and, in the light of political and economic realities, an appropriate conceptual point of departure for further discussions in order to arrive at a comprehensive solution. Thus it was thought that this option could serve as a basis to build consensus, using, as appropriate, aspects of the other options.

It was also mentioned that instead of utilizing the procedures of a Conference, the Authority might use its internal procedure in order to finalize the regime for commercial production of deep seabed minerals.

With respect to the trigger mechanism foreseen in this approach, it was felt by some delegations that the operator was best placed to determine whether commercial production of deep seabed minerals will become feasible and not the Authority. It was primarily an economic and not a political decision.

There was strong criticism of the idea that States which have not yet ratified or acceded to the Convention on the Law of the Sea would not be obliged to include Part XI and the related annexes in their consent to be

bound by the Convention but could replace such consent by adhering to the interim regime and undertaking to attend the Conference contemplated under this approach. Some delegations particularly criticized the fact that this approach amounted to making reservations to Part XI and its related annexes, which would run counter to article 309 of the Convention. The danger of creating a dual régime was also emphasized.

With respect to the incorporation of an arrangement for the Conference into a resolution of a multilateral body, it was noted that it was not the resolution which would introduce changes in the procedures foreseen in the Convention, but it was the agreement of the parties concerned."

(d) The fourth approach envisaged the establishment of an Authority in a very streamlined form which would evolve over time as needed. It read as follows:

> "A fourth approach was suggested by one delegation in the consultations on 16 and 17 June 1992 and 28 and 29 January 1993, and supported by two other delegations. That approach foresees the conclusion of an agreement additional to the Convention, which would become an integral part of, and enter into force together with the latter. That agreement would set forth the results of the consultations; they would, in particular, constitute the guiding framework for the action of the Authority, the structure, functions and composition which would also be provided for in the agreement. The Authority would initially be established in a very streamlined form and would evolve over time as needed. The major functions of the Authority would be to put in place the regulations regarding the activities relating to deep seabed mining and to control their application; to take such measures as are required for the exercise of its functions, including the possibility of entering into contracts with investors and other entities and the setting up of subsidiary organs as well as the employment of outside experts as necessary. Finally, the Authority would be mandated to develop solutions for issues still outstanding at the time the Convention enters into force. The Authority would perform its functions through the Assembly. However, there would also be established a general committee with executive functions. The Assembly would take decisions in general by consensus."

While few comments were made on this approach, it was stated that some of the its elements could be combined with other approaches.

4. As the Information Note of 8 April 1993 had mentioned, the fact that the Secretary- General outlined four approaches does not mean that other approaches might not be found. Nor does it mean that it would be impossible to combine elements of one approach with elements of one of more of the other approaches. In this respect, interventions made at the last

consultations both on Parts A and B I seemed to advocate the feasibility of an approach which combines elements of the approaches to be found in (a), (b), (c) and (d) above.

PART B. FORMULATION OF THE RESULTS OF THE CONSULTATIONS

I. Arrangements following the entry into force of the Convention

SECTION 1: INSTITUTIONAL ARRANGEMENTS IN THE INTERIM PERIOD

The International Seabed Authority

1. The entry into force of the Convention will be followed by an interim period which will last until commercial production of deep seabed minerals becomes feasible; during this period, the International Seabed Authority shall be established with limited initial functions and structure.

2. The establishment and the operation of the Authority and its organs shall be based on an evolutionary approach and on cost-effectiveness, taking into account the functional needs of these organs in order to discharge effectively their responsibilities at each stage.

Functions of the Authority in the interim period

3. The functions of the Authority in the interim period shall be:

(a) as far as the registered pioneer investors are concerned, continuing the functions already being carried out by the Preparatory Commission concerning the implementation of their obligations, including reviewing periodic expenditures, receiving periodic reports, monitoring the implementation of the exploration programmes and monitoring the training programmes;

(b) as far as new applicants for the exploration of mine sites are concerned, receiving and processing any new application, monitoring the implementation of their obligations as agreed upon by the Authority, and entering into arrangements similar to those made with the registered pioneer investors in accordance with resolution II and the related understandings;

(c) implementing the decisions of the Preparatory Commission taken pursuant to resolution II;

(d) monitoring and reviewing the trends and developments relating to marine scientific research in the international seabed area and those relating to the protection of the marine environment;

(e) monitoring and reviewing the trends and developments relating to the deep seabed mining activities, including deep seabed mining technology;

(f) studying the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of deep seabed minerals with a view to helping them to make the necessary economic adjustment; and

(g) taking such measures as are required for the exercise of its functions, including those relating to budgetary matters;

Structure and composition of the organs of the Authority in the interim period

4. In the interim period, the Assembly of the Authority shall be composed of all States Parties. Other States and entities entitled to become parties to the United Nations Convention on the Law of the Sea may participate fully in the deliberation of the Assembly as observers but shall not be entitled to participate in the taking of decisions.

5. As long as the composition of States Parties does not permit the full setting of the Council, the Council shall be constituted in a manner which comes as close as possible to an adequate representation of the major categories of interests.

6. In the interim period, when need arises, the Economic Planning Commission and the Legal and Technical Commission shall be established. Pending their establishment, the Authority may establish a group of technical experts. The group of technical experts shall consist of 15 members with the requisite technical qualifications serving in their personal capacity and shall be composed in such a way as to reflect the different interests and the geographical regions.

7. In the interim period a Finance Committee shall be established. The Finance Committee shall be composed of 15 members. In the election of the members of the Finance Committee due account shall be taken of the need for equitable geographical distribution and the representation of special interests, including the representation of States Parties with the highest contribution to the administrative budget of the Authority or the administrative budget of the United Nations.*

8. In the interim period the meetings of the Authority and its organs shall be streamlined so as to reduce costs. This applies to the frequency and scheduling of meetings of the various organs.

Decision-Making

* See paragraph 11.

9. In the interim period, decision-making in the Council and in the other organs of the Authority shall be based on consensus.

The Secretariat of the Authority in the interim period

10. In the interim period, the Secretariat of the Authority shall consist of a Secretary-General and Professional and General Service staff having the necessary qualifications, as the Authority may require to perform its functions.

Expenses in the interim period

11. In the interim period, the administrative expenses of the Authority shall be covered [by the regular budget of the United Nations] or [by assessed contributions of members of the Authority] and shall be subject to its financial regulations.

The Enterprise

12. In the interim period, the Enterprise shall be established with limited initial functions and structure. The establishment and the operations of the Enterprise shall be based on an evolutionary approach and on cost-effectiveness, taking onto account the functional needs in order to discharge effectively its responsibilities at each stage.

13. The initial functions of the Enterprise shall be the monitoring of and reporting on developments in, or affecting the deep seabed mining sector. This will include, *inter alia*,

(a) regular analysis of world market conditions and metal prices, trends and projections therein;

(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 anthropogenic activities thereon;

(d) assessment of criteria and data relating to prospecting and exploration.

14. The substantive staff of the Authority shall also provide secretariat services for the Enterprise in the interim period.

15. In 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 the Enterprise.

SECTION 2: DURATION OF THE INTERIM PERIOD

16. Upon receipt of a notification from an operator that it intends to commence commercial exploitation within (x) years, the Authority shall convene a group of technical experts. The group of experts shall make a determination as to the date when commercial production of deep seabed minerals will become feasible. Having received notification of that determination by the group of experts, the Authority shall give due publicity to the date thus determined which will mark the end of the interim period.

[The following paragraphs from 17 to 21 shall apply only in the context of the approach outlined under A 3 (c).

SECTION 3: CONFERENCE TO FINALIZE THE TEXTS GOVERNING THE REGIME FOR DEEP SEABED MINING.

17. After the establishment of the date on which the interim period shall be terminated, the Authority shall convene a conference to finalize the texts governing the regime for deep seabed mining. This conference shall meet no later than (x) months after this date has been established.

18. The Conference shall ensure the maintenance of the principle of the common heritage of mankind, including also the maintenance of the principles with regard to the exclusion of claims or exercise of sovereignty over any part of the Area, the prevention of monopolization of activities in the Area, the use of the Area exclusively for peaceful purposes, marine scientific research, protection of the marine environment, protection of human life, rights of coastal States, the legal status of the waters superjacent to the Area and that of the air space above those waters and accommodation between activities in the Area and other activities in marine environment. It shall recognize and honour the rights and obligations which have arisen on the basis of resolution II of the Third United Nations Conference on the Law of the Sea and the decisions of the Preparatory Commission taken pursuant to it. It shall ensure the implementation of the results of the consultations. It shall have before it Part XI of the Convention and the related annexes, the results of the work of the Preparatory Commission and any proposals which Member States might wish to make.

19. Participation in the Conference shall be open to States Parties and to other States and entities entitled to become parties to the United Nations Convention on the Law of the Sea.

20. The decision-making procedure applicable at the Conference shall be similar to that applicable at the Third United Nations Conference on the Law of the Sea.

21. States which have not yet ratified or acceded to the United Nations Convention on the Law of the Sea, may, when becoming parties to the Convention, replace their consent to be bound by Part XI and the related

annexes by the agreement to participate in the Authority and the Enterprise as established in the interim period and in the Conference.]

II. Draft texts governing the regime for deep seabed mining

SECTION 1: DRAFT TEXTS RELATING TO THE INSTITUTIONS

General rule applicable to all institutions

22. When commercial production of deep seabed minerals becomes feasible, the establishment and operations of the institutions provided for in the United Nations Convention on the Law of the Sea shall continue to be based on cost-effectiveness and on an evolutionary approach. No institution shall be established if its need has not been formally recognized. The régime and the institutions shall evolve on the basis of actual requirements and possibilities of deep seabed mining. Nevertheless, in the process, efficiency shall not be sacrificed. There shall be continuous evaluation of the efficiency of the institutions.

The Authority

Seat

23. The seat of the Authority shall continue to be in Jamaica.

Composition of the organs and decision-making

(a) General

24. Decision-making in the organs of the Authority shall be based on consensus. There shall be no voting in the Assembly and the Council and its organs until all efforts to reach agreement by consensus have been exhausted.

(b) The Assembly

(i) Composition

25. All States Members of the Authority shall be members of the Assembly.

(ii) Voting

26. In case voting in the Assembly becomes necessary, all matters of procedure shall be decided by a majority of States present and voting, and all matters of substance shall be decided by a two-thirds majority of States present and voting.

(c) The Council

(i) Composition

27. (a) The composition of the Council shall reflect the major categories of interests and these categories shall be treated as chambers for the purposes of decision-making. The following categories shall be considered as chambers for this purpose:

(i) four members from among those States Parties which, during the last five years for which statistics are available, have either consumed more than 2 per cent of the value of total world consumption or have had net imports of more than 2 per cent of the value of total world imports of the commodities produced from the categories of minerals to be derived from the deep seabed, and in any case one State from the Eastern European region, as well as the largest consumer;

(ii) four members from among the States Parties which were certifying States for pioneer investors or are sponsoring States for operators whose plans of work have been approved, including at least one State from the Eastern European region;

(iii) four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the deep seabed, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;

(iv) six members from among developing States Parties, representing special interests. The special interests to be represented shall include those of States with large populations, States which are landlocked or geographically disadvantaged, States which are major importers of the categories of minerals to be derived from the deep seabed, States which are potential producers of such minerals and least developed States;

(v) eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this provision. For this purpose, the geographical regions shall be Africa, Asia, Eastern European, Latin America and Caribbean, and Western European and Others.

(b) There shall be rotation among the members of the Council. The question of rotation shall be decided by the members of the relevant chamber of the Council.

(c) A State Party fulfilling the criteria of more than one category shall have the possibility of being listed in the relevant categories. However, that State Party can only be nominated by the States Parties belonging to one category and can represent only that category in the Council.

(ii) Voting

28. (a) In case voting in the Council is necessary, decisions on questions of procedure shall be taken by a majority of members present and voting and decisions on questions of substance shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to in paragraph 27. Decisions within each chamber on matters of substance shall be taken by a simple majority.

(b) A State or group of States shall have the right to table a motion which would have the effect of postponing for (x) a decision and starting a process of negotiation if a major interest of such a State or group of States seemed threatened.

(c) A special procedure for the approval of a plan of work shall apply as follows:

(i) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers in the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within 60 days, the recommendation shall be deemed to have been approved by the Council at the end of that period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its normal rules of procedure on matters of substance.

(ii) Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement mechanism contained in the Convention.

(d) Economic Planning Commission and Legal and Technical Commission

(i) Composition

29. Each Commission shall be composed of 15 members elected by the Council from among the candidates nominated by the States Parties. However, if necessary the Council may decide to increase the size of either Commission having due regard to economy and efficiency.

(ii) Voting

30. In case voting becomes necessary, decisions of a procedural as well as a substantive nature shall be taken by a simple majority of those present and voting.

(e) Finance Committee

(i) Composition

31. The Finance Committee shall be composed of 15 members. In the election of the members of the Finance Committee, due account shall be taken of the need for equitable geographical distribution and the representation of special interests including, until the Authority has sufficient income from sources other than the contributions of States Parties to meet its administrative expenses, the representation of States Parties with the highest contribution to the administrative budget of the Authority. The Finance Committee shall meet as frequently as required for the efficient exercise of its functions. The Finance Committee shall meet at the seat of the Authority.

(ii) Voting

32. The Finance Committee shall take its decisions by consensus.

(f) Renvoi

33. There shall be consistency in the decision-making process between the Assembly and the Council. To this end, a renvoi shall be applied in the sense that if the Assembly wants to disagree with a decision of the Council, it shall send its recommendations back to the Council and the Council shall reconsider the matter in the light of the recommendations made by the Assembly. This shall apply essentially in the case of financial and budgetary matters.

The Enterprise

(a) Operations

34. When commercial production of deep seabed minerals becomes feasible, the Enterprise shall begin its operations through joint ventures.

35. 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.

36. 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 operation at any time thereafter, funds shall be provided pursuant to the provisions of the joint venture arrangements.

(b) Transfer of technology

37. 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.

38. The Authority shall have the power to invite all contractors and their respective sponsoring States to cooperate 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 is 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.

39. 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.

40. As a general rule, States Parties should endeavour to promote international technical and scientific cooperation either between the parties concerned in activities relating to the seabed, or by developing training, technical assistance and scientific cooperative programmes.

Review Conference

41. The Review Conference shall make every effort to reach agreement on any amendments by way of consensus and there should be no voting on such matters until all efforts at achieving consensus have been exhausted.

42. If five years after its commencement, the Review Conference has not reached agreement on an amendment by way of consensus, such amendment may be adopted by a two-thirds majority of the members present and voting, provided that it is approved by a majority of members represented in each chamber of the Council at the time of voting.

43. Those amendments which have been adopted by consensus shall enter into force for all States Parties on the thirtieth day following the deposit of instruments of ratification or accession by two-thirds of the States Parties or by 60 States Parties, whichever is greater.

44. Those amendments which have been adopted by a qualified majority shall enter into force for all States Parties, once three-fourths of the States Parties have deposited their instruments of ratification or accession, on the date which the Council shall determine, provided that these amendments were approved by a majority of the members in each chamber of the Council at the time of voting.

45. The decision of the Council to determine the date of entry into force of such amendments shall be adopted by a three-fourths majority of the members present and voting, provided that it is approved by a majority of members in each chamber of the Council at the time of voting.

SECTION 2: DRAFT TEXTS RELATING TO PRINCIPLES TO BE APPLIED WHEN COMMERCIAL PRODUCTION OF DEEP SEABED MINERALS BECOMES FEASIBLE

Production limitation

46. When commercial production of deep seabed minerals becomes feasible, the following principles shall apply with respect to a production policy:

(a) There shall be no subsidization of production of minerals from the deep seabed. As far as anti-subsidy provisions are concerned, the application of the GATT rules shall be considered.

(b) There shall be no discrimination between minerals from land and from the deep seabed. There shall be no discrimination between seabed miners and land-based miners, nor between seabed miners. In particular, there shall be no preferential access to markets for minerals derived from the deep seabed by use of tariff or non-tariff barriers or for imports of

commodities produced from such minerals, nor shall any preference be given by States to minerals derived from the deep seabed by their nationals.

(c) The plan of work approved by the Authority in respect of each mining area shall indicate a production schedule which shall include the estimated amounts of minerals that would be produced per year under that plan of work.

(d) The rights and obligations relating to unfair economic practices under the relevant multilateral trade agreements shall apply to the exploration and exploitation of minerals from the deep seabed.

(e) States Parties sponsoring the carrying out of activities in the Area by their state enterprises or natural or juridical persons who possess their nationality or are effectively controlled by them or their nationals, shall assure the Authority that they have taken or are taking any necessary steps to ensure that they do not engage in subsidization except as may be permitted under GATT agreements.

(f) The principles contained in sub-paragraphs (a) to (e) shall not affect rights and obligations under GATT agreements in relations between States Parties which are contracting parties of the GATT.

(g) States Parties which are Parties to such multilateral trade agreements shall have recourse to the dispute settlement procedures of such agreements. States which are not Parties to such agreements shall have recourse to the dispute-settlement procedures provided for under the Convention.

Compensation Fund

47. When commercial production of deep seabed minerals becomes feasible, the following principles shall apply with respect to a system of assistance for adversely affected developing land-based producer States:

(a) Adversely affected developing land-based producer States shall be provided with some economic assistance to facilitate the adjustment of their economies to changed circumstances.

(b) An economic assistance fund shall be established from that portion of the funds of the Authority which exceeds the administrative expenses of the Authority. Only funds from payments received from the contractor in accordance with the financial terms of contracts, funds transferred from the Enterprise and voluntary contributions, shall be used for the establishment of the economic assistance fund.

(c) The Authority shall provide assistance from the fund to adversely affected developing land-based producer States, where appropriate, in cooperation with existing global or regional development

organs which have the infrastructure and expertise to carry out such assistance programmes.

(d) The extent and duration of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by adversely affected developing land-based producer States.

Financial terms of contracts

48. When commercial production of deep seabed minerals becomes feasible, the following principles shall apply with respect to a system of payment by an operator to the Authority:

(a) The system of payments to the Authority shall be fair both to the operator and to the Authority.

(b) The rates of payments under the system shall be within the range of those prevailing in comparable systems in respect of land-based mining of the same or similar minerals in order to avoid giving seabed miners an artificial competitive advantage, or imposing on them an artificial competitive disadvantage. The possibility of a review of the system of payments during the lifetime of a contract in view of changing circumstances, should be considered. Such a review may be requested either by the contractor or by the Authority; the review itself shall be conducted through direct negotiations with the Authority on a non-discriminatory basis and any agreement shall be mutually accepted.

(c) While the system should not be complicated and should not impose major administrative costs on the Authority or on the operator, consideration should be given to the adoption of both a production charge system and a mixed system. An operator shall choose to make his payments to the Authority under either of these systems.

(d) States shall cooperate with the Authority in order to review problems which may arise from payments to States by operators from the income of deep seabed exploitation and to solve such problems.

(e) In case there is an annual fixed fee to be paid by an operator during the exploration stage, such a fee shall be adjusted at the time of the approval of the plan of work in order to take account of the anticipated delay in reaching the exploitation stage and the risks involved in establishing an industry in a new and unstable environment.

(f) Consideration shall be given to develop a system of incentives on a uniform and non-discriminatory basis for, *inter alia*, operators to undertake joint arrangements with the Enterprise and developing States or their nationals. The Authority shall ensure that, as a result of such financial

incentives, operators are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.

(g) Any disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures under the Convention.

ANNEX

PRELIMINARY ESTIMATES OF THE ADMINISTRATIVE EXPENSES OF THE INITIAL AUTHORITY

1. Preliminary estimates of the annual administrative expenses of the Initial Authority in the period following the entry into force of the Convention are presented below, on the basis of certain assumptions. These assumptions pertain to, *inter alia*: (a) institutional arrangement for the Secretariat of the Initial Authority; (b) staffing requirements of the Secretariat; (c) frequency and duration of the sessions of the organs of the Initial Authority; and (d) conference servicing requirements.

Institutional arrangement for the Secretariat of the Initial Authority

2. It is assumed that there could be two options for the institutional arrangement for the Secretariat. One option would be a self-administered Secretariat. Taking into account that considerable economies of scale can be gained by using the services of the United Nations with respect to the related substantive, administrative and conference servicing tasks, the other option would be a Secretariat of the Initial Authority linked to that of the United Nations. (Part B I, section 1, paragraph 11, above.)

Staffing requirements of the Secretariat of the Initial Authority

3. It is assumed that for the first option, the self-administered Secretariat, about 20 Professional staff (10 for substantive tasks and 10 for administrative tasks) and about 30 General Service staff would be required. It is assumed that for the second option, the United Nations-linked Secretariat, about 10 Professional staff and 15-20 General Service staff would be required.

4. In either option, the staff servicing the Initial Enterprise would be part of the staff of the Initial Authority.

Frequency and duration of the sessions of the organs of the Initial Authority

5. It is assumed that the frequency and duration of the sessions of the organs of the Initial Authority would be as follows:

(a) The Assembly shall meet every two years for a two-week session.

(b) The General Committee shall meet every year for a one-week session.

(c) The group of technical experts shall meet every year for a one-week session.

Conference servicing requirements

6. It is a assumed that conference servicing requirements would be costed on a 'full-cost basis', and thus, would be the same for both options.

7. It is further assumed that all six official languages of the United Nations would be used in the sessions of the organs of the Authority, and that no summary records of the meetings will be provided.

Annual administrative expenses of the Initial Authority on the basis of the above assumptions

8. The annual administrative expenses of the Initial Authority (excluding conference servicing costs) under the first option, the self-administered Secretariat, are estimated to be in the range of 2.5 – 3.5 million United States dollars. The annual administrative expenses of the Initial Authority (excluding conference servicing costs) under the second option, the United Nations-linked Secretariat, are estimated to be in the range of 1.5 – 2.0 million United States dollars. The annual conference servicing costs of the Initial Authority, under either of the options, are estimated to be in the range of 0.8 – 1.0 million United States dollars.

9. The above estimates are in terms of 1990 United States dollars; in order to express them in terms of current United States dollars, an upward adjustment at an annual rate of 2-4 per cent may be used.

		1990 dollars U.S. (million)
A.	Self-administered Secretariat of the Initial Authority	
	Annual administrative expenses	2.5 – 3.5
	Annual conference servicing costs	0.8 – 1.0
	Total annual costs	**3.3 – 4.5**

B.	<u>United Nations-linked Secretariat of the Initial Authority</u>	
	Annual administrative expenses	1.5 – 2.0
	Annual conference servicing costs	0.8 – 1.0
	Total annual costs	**2.3 – 3.0**

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November 1993

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 held on 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.

The latest round in the series of 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 was held from 2 to 6 August 1993. Representatives of 96 States informed the Secretariat of their participation.

After a plenary meeting on the afternoon of 2 August, intensive face-to-face discussions took place on 3 August (morning), 4 August (morning), 5 August (morning and part of the afternoon), and 6 August (morning and afternoon). The rest of the time was used for consultations within the various regional and interest groups as requested by them.

The face-to-face discussions dealt with the problems arising out of Part XI and the related annexes of the Convention as they have been identified in the course of the Secretary-General's informal consultations, in the order in which they are presented in Part B.II of the Information Note (latest edition 4 June 1993). They covered the first 14 paragraphs in Part B.II of the Information Note (numbered as paragraphs 22 to 35) dealing with 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, i.e. the Assembly; the Council; the Economic Planning Commission; the Legal and Technical Commission; and the Finance Committee. The Enterprise was specifically addressed. As necessary, the rules applying to each of these subject-matters in the interim period between the entry into force of the Convention and the time when deep seabed mining becomes commercially viable were addressed (Part B.I of the Information Note).

On 4 August, an anonymous paper prepared by representatives of several developed and developing States, but not necessarily reflecting the position of any of the delegations involved, was circulated among delegations as a contribution to the process of consultations. Thereafter, while addressing the substantive issues in the order in which they appear in Part B.II of the Information Note, delegations also made cross references to the relevant portions of this paper which, for the sake of convenience, was

referred to as “the August 1993 Paper”, or, with reference to a boat depicted on its cover page, as “the Boat Paper”.

It was decided that another round of consultations will be held from 8 to 12 November 1993 at Headquarters in lieu of meetings of the Sixth Committee of the General Assembly on these dates. Delegations will continue their deliberations on issues not yet addressed in the face-to-face discussions, which would include: “Transfer of Technology”, “the Review Conference”, “Production Limitation”, “Compensation Fund” and “Financial Terms of Contracts”. During the next round, time will again be set aside for regional and interest groups which may wish to meet.

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14 December 1993

SUMMARY 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 held on 8-12 November 1993

The latest round in the series of 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 was held from 8 to 12 November 1993. Representatives of 100 States informed the Secretariat of their participation.

The Secretary-General opened this round of consultations with a statement urging participants, in view of the imminence of the entry into force of the Convention, to expend maximum efforts in order to resolve the outstanding issues which continue to hinder universal participation in the Convention.

The delegation of Sierra Leone presented a paper entitled "Agreement on the implementation of Part XI and annexes III and IV of the United Nations Convention on the Law of the Sea."

Before this latest round of consultations, "the Boat Paper", which had been circulated during the preceding round as an anonymous paper prepared by representatives of several developed and developing States, but not necessarily reflecting the position of any the delegations involved, had been re-circulated in a consolidated version incorporating three annexes in the original paper into one. The Secretariat also had re-circulated its Information Note dated 4 June 1993.

Intensive face-to-face discussions on outstanding issues relating to the deep seabed mining provisions of the UN Convention on the Law of the Sea that were initiated during the preceding round of consultations, held from 2 to 6 August 1993, were continued on the basis of these papers.

In the preceding round of consultations, the discussions had covered the following topics: 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; and the Enterprise. During the present 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.

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. It was also possible to re-consider the issue of "The Enterprise". Subsequent issues could not be covered due to lack of time.

At the end of this latest round of consultations, the matter of procedural approaches with respect to the use to be made of the results of the consultations was raised and briefly discussed.

During this latest round of consultations, time was also allocated for consultations within the various regional and interest groups as requested by them.

It was decided that another round of consultations will be held from 31 January to 4 February 1994 at Headquarters. Delegations will continue their deliberations on substantive and procedural issues. During the next round, time will again be set aside for regional and interest groups which may wish to meet. The attachment herewith contains a brief summary of the discussions held.

Since the November consultations, an updated version of the consolidated Boat Paper (November 1993) has been prepared by the authors of that paper. This updated version takes into account a number of the views expressed and of the alternative formulations submitted in writing during the present round of consultations. The updated Boat Paper is being circulated together with this summary report which has been prepared by the Secretariat following a decision taken at the last round of consultations.

BRIEF SUMMARY OF THE DISCUSSIONS

A. First part of the November 1993 consultations: Completion of the consideration of outstanding substantive issues, initiated during the August 1993 consultations.

Transfer of technology

1. There seemed to be agreement on the basic matter of the elimination of mandatory transfer of technology to the Enterprise or developing countries.

2. Regarding details, different views were expressed, in particular, on the following: whether mention of article 5 of annex III of the Convention should be retained or not: what should be stated with regard to transfer of technology to developing countries in the absence of joint ventures.

Review Conference

3. Different views were expressed, in particular, on the following: whether the provisions in the Information Note need to be retained; whether provisions in the Information Note could be combined with those in the Boat Paper.

Production limitation/production policy

4. There seemed to be agreement on the general principles with respect to this issue.

5. Regarding details, different views were expressed, in particular, on the following: the sufficiency of the non-subsidization provisions and the clarity of the non-discrimination provision; in subparagraph 1(d) of the Boat Paper, replacing "estimated amount of minerals" by "maximum amount of minerals"; and the need for specifying dispute settlement mechanism for non-GATT members.

Compensation fund/economic assistance

6. There seemed to be agreement on the general principles with respect to this issue.

7. Regarding details, different views were expressed, in particular, on the following: whether the idea of "compensation" should be included or not; and how the provisions of the Convention mentioning "compensation" would be dealt with.

Financial terms of contracts

8. There seemed to be agreement on the general principles with respect to this issue.

9. Regarding details, different views were expressed, in particular, on the following: the annual fixed fee; and the fee for processing applications for the approval of plans of work limited to one phase.

10. Alternative formulations were submitted in writing on the following matters: (a) annual fixed fee; and (b) in paragraph 3 of the Boat Paper, replacing "for exploration or for exploitation" by "for exploitation".

The Finance Committee

11. There seemed to be agreement there should be a Finance Committee.

12. Regarding details, different views were expressed, in particular, on the following: the composition of the members of the Committee, including the reference to the highest contributors; whether other criteria such as equitable geographical distribution, special interests, should be included;

the relationship between the Assembly, the Council and the Finance Committee; and whether provisions should be made in case decisions could not be taken by consensus.

B. Second part of the November 1993 consultations: Renewed consideration of outstanding substantive issues, based essentially on the consolidated Boat Paper

General matters

13. The Boat Paper used words such as "amend", "modify", "replace", etc. in order to indicate where there were changes to be made to the Convention. It was suggested that words such as "supersede", "adapt", "apply", "practically implement" etc. may be more generally acceptable. In any case, there was a general agreement that the use of such words would be harmonized throughout the paper, according to the actual context.

14. Similarly, the Boat Paper enumerated the provisions of the Convention that were to be changed. It was suggested that it might be more appropriate to replace such enumeration by using the term "relevant provisions".

Costs to States Parties and institutional arrangements

15. There seemed to be agreement on the basic principles of cost-effectiveness and evolutionary approach being applied to the institutions.

16. With regard to details, different views were expressed, in particular, on the following: suppression of the Economic Planning Commission (EPC); functions of the Legal and Technical Commission (LTC) being dependent on the Council or the Assembly; how the régime developed for the registered pioneer investors would be integrated into the régime under the Convention; how registered pioneer investors and other applicants would be treated under the Convention; whether the Authority would have the power to borrow funds; the terms and conditions of "provisional membership of the Authority" or "provisional application of the Convention"; and the source of financing of the Authority (assessed contributions of States Parties or United Nations budget).

17. Alternative formulations were submitted in writing on the following matters: (a) approval of a plan of work for exploration of a registered pioneer investor and of other applicants and their treatment; (b) duration for the submission of an approved plan of work for exploration and extension of the period; (c) conditions for provisional membership of the Authority; (d) duration of the period of provisional membership and its extension; and (e) applications for approval of plans of work to be accompanied by environmental impact assessment.

The Enterprise

18. 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 mine site of the Enterprise shall not apply.

19. 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; and 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.

20. 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.

Decision -making

[In the present round of consultations, owing to lack of time this issue was not reconsidered.]

C. Third part of the November 1993 consultations: consideration of procedural

21. Questions were raised with respect to the procedure to be followed for the adoption of the results of the consultations. 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.

22. 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.

PART 2

The Boat Papers and related documents

7 August 1992

NON-PAPER

prepared by the delegation of the Netherlands on the Enterprise

New York, 6-7 August 1992

Purpose

1. During the informal consultations which took place in New York on the Enterprise (16-17 June 1992) the delegation of the Netherlands was asked to give additional precision to and clarify some elements of its proposal to delete the Enterprise and to create an alternative system for the Enterprise. In the light of this request and the questions asked by some delegations, the Netherlands has prepared this non-paper.

Preliminary observations

2. The suggested approach takes account of the fundamental political and economic changes that have taken place in international relations, which directly or indirectly affect the Part XI of the Convention. The fact that a re-evaluation of the deep seabed mining provisions of the Convention is necessary was also recognized in General Assembly resolution 46/78 of 12 December 1991:

> "that political and economic changes, including particularly a growing reliance on market principles, underscore the need to re-evaluate, in light of the issues of concern to some States, matters in the regime to be applied to the Area and its resources and that a productive dialogue on such issues involving all interested parties would facilitate the prospect of universal participation in the Convention, for the benefit for mankind as a whole".

3. It is the position of the Netherlands that the political and economic changes that have taken place since a system of deep seabed mining was first elaborated, should be reflected in a viable contemporary regime in order to achieve universal participation in the 1982 Convention. In this respect, agreement on a regime in its conceptual form will be sufficient for the time being.

4. A second preliminary remark concerns the relation between the alternative approach suggested below and other key issues identified in the Information Note of the Secretary-General on the outstanding issues

concerning Part XI of the United Nations Convention on the Law of the Sea. Although this non-paper is limited to the Enterprise and the current finding of paragraph 11 of the Information Note, it is evident that the approach suggested has significant effects on, and influences the outcome of discussions on other key issues and related findings, like costs to States Parties, decision-making (institutional arrangements), transfer of technology, production limitation, the establishment of a compensation fund and financial terms of contracts.

5. A third observation concerns the future relation between a new and reduced regime and existing national legislation on deep seabed mining - a factor which cannot be ignored when developing a new regime.

6. Finally, one may observe that an elaborated solution with regard to the Enterprise will also be influenced by the solution elaborated for other controversial parts of Part XI. In the end, it will be necessary to seek for an overall solution for all outstanding problems.

1. COMMON HERITAGE OF MANKIND

7. The concept of common heritage of mankind is central to the current provisions of Part XI. Any generally acceptable and simplified deep seabed regime produced by these informal consultations must equally include the acceptance of the common heritage principle, that is, the regime must strike a balance between a deep seabed regime based on sound commercial principles and the interests of the international community.

2. "SOUND COMMERCIAL PRINCIPLES"

8. Since the adoption of the Convention 10 years have elapsed. During the informal consultations conducted by the Secretary-General during the 1990 and 1991, a number of important political and economic changes were recognized and taken into account. From the informal consultations it can be concluded that:

(a) the general economic climate has changed markedly in the last decade and the approaches to economic issues at international and national levels have also undergone a considerable transformation. The prevailing market economy trend (liberalization of markets) in which many States are considering privatization of State-owned companies, should be duly reflected in a system for deep seabed mining;

(b) prospects for commercial production of minerals from the deep seabed have receded well into the next century. The world metal market has been seriously affected to the extent that the premises on which Part XI was based, have changed fundamentally. It is highly unlikely, therefore, that the Enterprise as currently structured, will be able to undertake activities for quite some time;

(c) with respect to the various operational and organizational options for deep seabed mining, it is generally recognized that a more efficient, market-oriented approach must be adopted. Exploitation should be based on sound commercial principles and fair competition.

3. THE "TOUCHSTONE METHOD"

9. In this paragraph the main characteristics of the Enterprise under Part XI will be checked in general terms against the criteria set out in paragraphs 1 and 2.

(a) Single commercial activity

The Enterprise is an institution engaged in a single commercial activity. In economic terms this is an unhealthy and unworkable basis for sound commercial operations, as the following scenario will illustrate.

At a particular moment in time, seabed mining could become economically feasible and profitable. The Enterprise could start its operations, but in order to be able to participate fully in such operations the required industrial infrastructure, know-how and staff must be obtained. Assuming that the Enterprise will be able to generate the enormous investments required (which in itself is highly questionable), it is always possible that a disruption of the world metal markets will occur after the first of subsequent operations. The most logical step for private consortia then, is to discontinue their seabed mining operations and continue with other activities they are able to undertake (most consortia consist of partners engaged in multiple and diversified activities). For the Enterprise this possibility does not exist and activities will come to a complete halt. As a result, valuable investments will be lost and mining equipment runs the risk of being outdated at the time deep seabed mining could be resumed. The Enterprise does not have the possibility, as commercial corporations do, to write off certain operational losses or investments on other activities. There is no economic and financial justification to run such a risk, given the capital expenditure involved. The common heritage of mankind will be transformed into a "common burden". There is no need to create this public industry engaged in a limited activity; the creation of such a financial burden is irresponsible.

(b) Overhead costs

The following paragraph will deal with the overhead costs of the Enterprise as envisaged in the Convention. If the Enterprise comes into existence, it will require an extensive administrative and institutional infrastructure.

According to article 4 of the Statute of the Enterprise, the Enterprise shall have a Governing Board, a Director-General and the staff necessary

for the exercise of its functions. It should be noted, however, that an Enterprise, performing the functions mentioned in article 170 (1) of the Convention and article 1 (1) of its Statute (transporting, processing and marketing of minerals recovered from the Area) would not only require a substantial staff "for the exercise of its functions", but also the necessary infrastructure in order to carry out the aforementioned functions (mining-ships, processing plants, storage facilities, transportation facilities, research and development facilities and marketing tools). Assuming for the moment that the first operation is by means of a joint venture, even then there will be a substantial risk for costly, unnecessary duplication of activities. The overhead costs will be astronomous. Some functions are more likely to form part of a joint venture agreement than others. These would therefore be subject to the financial arrangements provided by article 170 (4) of the Convention and article 11 of the Statute. This will, in principle, imply financing by the States Parties to the Convention. It is questionable whether the above-mentioned scenarios meet the criteria of efficiency and cost-effectiveness.

(c) Financial arrangements

Article 170 (4) of the Convention and article 11 of the Statute of the Enterprise deal with the financial aspects of the Enterprise. In particular, article 11 of the Statute provides for a complex financial structure for the Enterprise, which appears inconsistent with the principles of efficiency and cost-effectiveness outlined above. The same holds true for an Enterprise financed through interest-free loans or loans guaranteed by States Parties. It is highly unlikely that sufficient funds will become available. In addition, article 13 of annex III provides, among others, for a tax holiday of up to 10 years. These competitive advantages violate the principle of fair competition.

(d) Independence

Besides the financial implications, the following should also be taken into account. According to article 2 of the Statute of the Enterprise, the Enterprise shall act in accordance with the general policies of the Assembly and the directives of the Council. Both Assembly and Council are Intergovernmental, and therefore political bodies. Politics are enshrined in the current Statute of the Enterprise. Thus, there exists a potential inconsistency with the principle that has been agreed upon during the informal consultations that the Enterprise should be autonomous and free from political domination.

4. PRELIMINARY CONCLUSION

10. Taking into account the general principles enumerated in paragraphs 1 and 2 and the outcome of the touchstone process in paragraph 3, one may conclude that the Enterprise is a product of the thinking

prevailing during the period that Part XI of the Convention was negotiated. It appears to be no longer in conformity with current economic, commercial and financial practice. The complex financial and institutional arrangements are unnecessary, burdensome and unworkable. The provisions on the Enterprise violate commercial principles and give the Enterprise questionable competitive and financial advantages. It will prohibit universal participation in the 1982 Convention, frustrate the implementation of the principle of common heritage of mankind and will turn out to be a "common burden".

5. THE "ALTERNATIVE APPROACH"

11. The conclusion previously drawn is perhaps a little harsh, but therefore not less valid. Looking at it pragmatically the discussion should concentrate on the very essence: with which system of exploration and exploitation is the common heritage of mankind principle best served? Which regime guarantees the best prospects for profits from deep seabed mining to be transferred to the developing countries, while providing sufficient securities for private consortia? It is submitted that a more efficient and flexible deep seabed regime which takes into account the above-mentioned principles, can do without an Enterprise, which would assume the development risks in this new industry and shoulder the excessive costs of exploration and exploitation. This can best be left to the private sector.

12. The Enterprise could be replaced by a "contracting-out"/partnership system. Such systems are simple in nature, cost-efficient and provide important guarantees for the developing countries on the one hand and the private consortia on the other hand. Private consortia could function as operators and take care of the functions enumerated in article 170. Various modalities and arrangements are possible, but the essence is that the new regime should maximize so-called "contracting-out" to commercial partners/consortia. This will allow for a maximum of flexibility, leaving it to the commercial partner(s) and streamlined Authority to agree upon the exact rules and regulations.

13. Part of these rules and regulations will relate to the costs and distribution of profits among the partners. Here one could think of a system of royalties or taxation on profits or a comparable system. Such a system could consist of a profit-sharing system based on an "earning-power" (in "real" terms and which has been agreed upon in advance), a simple royalty fee or a system of taxation on profits (for example, a so-called tax credit system). The details of such a system could be agreed upon at the moment that the first deep seabed mining operation is due to commence and should take into account the contemporary practice at that time as well as (domestic) taxation systems and earning power distribution, that might influence deep seabed mining operations. Partners, contractors (and/or

subcontractors) should, however, have a relative freedom in working out the details of the contracts.

14. The Authority (or an organ thereof) could register the mine site, issue mining certificates for the areas assigned to the Authority, collect revenues and re-allocate them in the appropriate directions (financing of the Authority and its organs and subsequently the transfer of the funds to the developing countries). In this scenario, the Authority could also be entrusted with the task to monitor the environmental impact assessment studies.

15. Besides a financial interest for the international community, one should also recognize a practical interest - the actual participation of developing countries in deep seabed mining operations, on an equal level with the developed countries or private consortia. Actual participation could be satisfied by incorporation of the participation in arrangements between the private consortia and the Authority. However, the actual participation in deep seabed mining and the specific technological experience subsequently gained will probably be of value only to a limited number of countries (developed or developing), who have an interest in deep seabed mining, especially since the very specific and specialized nature of deep seabed mining technology is of little use for other types of mining. Even within the industrialized countries the interest to participate in deep seabed mining operations or to possess technology is limited.

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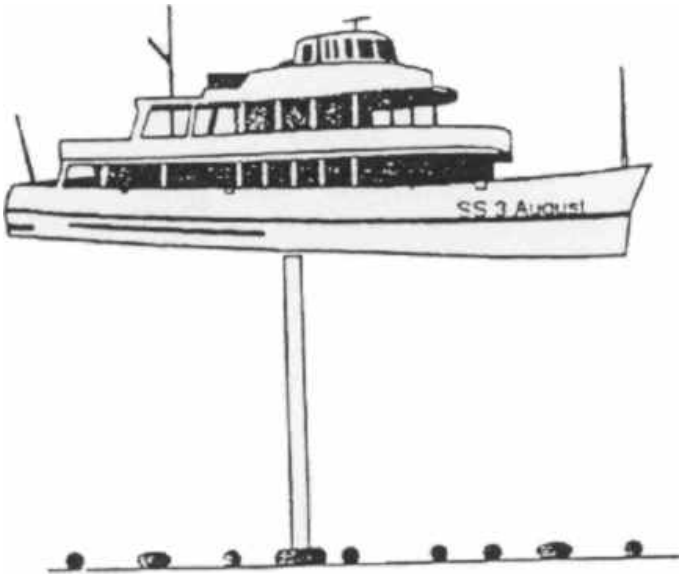
August 1993

This document has been prepared by representatives of several developed and developing States as a contribution to the process of consultations relating to outstanding issues in Part XI of the 1982 United Nations Convention on the Law of the Sea. The paper does not necessarily reflect the position of any of the delegations involved, but they all consider that it provides a useful basis for negotiations.



August 3, 1993

DRAFT RESOLUTION FOR ADOPTION BY THE GENERAL ASSEMBLY

The United Nations Convention on the Law of the Sea

The General Assembly

Recalling resolution (47/65 of 10 December 1992) on the Law of the Sea,

Recalling that Part XI and related provisions of the 1982 United Nations Convention on the Law of the Sea established a regime for the international seabed area ("the Area") and its resources,

Reaffirming that the Area and its resources are the common heritage of mankind,

Recognizing that political and economic changes, including in particular a growing reliance on market principles, show the need to re-evaluate some aspects of the regime,

Noting the initiative of the Secretary-General to promote dialogue aimed at achieving universal participation in the Convention,

Welcoming the report of the Secretary-General prepared in pursuance of General Assembly resolution (47/65) and, in particular, the agreed conclusions set out in paragraph […] of the report,

Taking note of the Provisional Final Report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea,

Considering that the objective of universal participation in the Convention may best be achieved by the adoption of an agreement relating to the implementation of Part XI and related provisions of the Convention and to give effect to the agreed conclusions of the Secretary-General's consultations,

1. *Endorses* the agreed conclusions set out in paragraph […] of the report of the Secretary-General;

2. *Adopts* the Agreement relating to the Implementation of Part XI and related provisions of the Convention ("the Agreement"), the text of which is attached to this resolution;

3. *Considers* that future ratifications of or accessions to the Convention should be taken to relate to the Convention together with the Agreement;

4. *Requests* the Secretary-General to transmit the text of the Agreement to the States and the other entities referred to in Article 3 thereof, with a view to facilitating universal participation in the Convention together with the Agreement.

AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

The States Parties to this Agreement,

Recognizing the significant contribution of the 1982 United Nations Convention on the Law of the Sea ("the Convention") to the maintenance of peace, justice and progress for all peoples of the world;

Having considered the report of the Secretary-General of the United Nations on the conclusions reached in the consultations held from 1990 to (1993) on outstanding issues relating to Part XI and related provisions of the Convention ("Part XI");

Wishing to take account of important political and economic developments affecting the implementation of those provisions, in order to facilitate universal participation in the Convention;

Considering that an Agreement relating to the implementation of the Part XI would best meet that objective;

Have agreed as follows:

Article 1
Implementation of Part XI

The States Parties to the Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea ("the Agreement") undertake to apply and implement Part XI on the basis of the agreed conclusions of the Secretary-General's consultations as set out in Annex I to this Agreement, together with the consequential adjustments and the provisions on the Finance Committee set out in Annex II of this Agreement.

Article 2
Relationship between the Agreement and Part XI

1. The Parties to this Agreement undertake to give effect to the provisions of:

(a) this Agreement, including the Annexes which constitute integral parts of the present Agreement; and

(b) Part XI, subject to the modifications and additions set out in this Agreement.

2. The provisions of Part XI and this Agreement shall be read and interpreted together as one single instrument.

3. Articles 309 to 319 of the Convention shall apply to this Agreement as they apply to the Convention.

4. After the adoption of this Agreement, any instrument of ratification of or accession to the Convention shall represent also an accession to this Agreement.

Article 3
Accession

This Agreement shall be open for accession by those States and other entities referred to in Article 305 of the Convention which have ratified or acceded to the Convention or which are simultaneously ratifying or acceding to the Convention and this Agreement. Accession by the entities referred to in Article 305, paragraph 1 (f) shall be in accordance with Annex IX to the Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 4
Simplified procedure

A State or entity which has deposited before the date of the adoption of this Agreement an instrument of ratification, formal confirmation or accession in respect of the Convention shall be considered to be a party to this Agreement if that state has not notified the Depositary within 12 months of the adoption of this Agreement that it is not having recourse to the simplified procedure set out in this Article. In the event of such a notification being made, accession to this Agreement shall take place in accordance with Article 3.

Article 5
Entry into force

1. This Agreement shall enter into force on the day of deposit of the […] instrument of accession to this Agreement, provided at least […] of those instruments have been deposited by States to which subparagraphs 1 (a) (i) or (ii) of Resolution II adopted by the Third United Nations Convention on the Law of the Sea (“Resolution II”) applies.

2. For each State acceding to the Agreement after its entry into force, the Agreement shall come into force on the date of deposit by such State of its instrument of accession.

3. States which have recourse to the simplified procedure in Article 4 shall be regarded as having acceded upon expiry of the period of 12 months specified in that Article, or upon entry into force of this Agreement in accordance with paragraph 1, whichever is later.

Article 6
Authentic texts and depositary

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the Secretariat of the United Nations.

ANNEX I

AGREED CONCLUSIONS OF THE SECRETARY-GENERAL'S CONSULTATIONS

A. COSTS TO STATES PARTIES AND INSTITUTIONAL ARRANGEMENTS

1. The Authority is the organization through which States Parties to the Convention shall, in accordance with the regime for the international seabed area ("Area") established in Part XI and as modified by this Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area. The powers and functions of the Authority shall be those expressly conferred on it by the Convention. The Authority shall have such incidental powers consistent with the Convention, as are implicit in, and necessary for, the exercise of those powers and functions with respect to the activities of the Area.

2. In order to minimize costs to State Parties, all institutions to be established under the Convention shall be cost-effective. Such institutions shall commence their functioning only upon the decision of the Council and the Assembly, in accordance with their respective responsibilities.

3. The establishment and the operation of the various institutions shall be based on an evolutionary approach, taking into account the functional needs of the institutions concerned in order that they may discharge effectively their respective responsibilities at various stages of the development of activities in the Area.

4. The meetings of the various institutions shall be streamlined so as to reduce costs. This will apply to the size, structure and functions of the institutions, including the need to phase-in the subsidiary bodies and to the frequency and scheduling of meetings of the various organs and subsidiary bodies. The subsidiary bodies of the Authority shall be phased-in in accordance with their functional needs.

5. The early functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Legal and Technical Commission and the Finance Committee (which shall work in accordance with Part I of Annex II to this Agreement).

6. These early functions shall consist of:

(a) the processing of applications for approval of a plan of work for exploration in accordance with Part XI and this Agreement;

(b) the monitoring of compliance with the terms of contracts incorporating approved plans of work;

(c) the implementation of decisions of the Preparatory Commission relating to the registered pioneer investors, including their rights and obligations, in accordance with the provisions of Article 308 (5) of the Convention and Resolution II, paragraph 13;

(d) the study of the potential impact of minerals production from the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;

(e) the promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of the activities in the Area;

(f) the monitoring of the development of marine technology relevant to the activities in the Area;

(g) the adoption of rules, regulations and procedures necessary for the conduct of activities in the Area as they progress. Notwithstanding the provisions of Annex III, Article 17 (2)(b) and (c) of the Convention, such rules and regulations shall take into account the modifications contained in the Agreement, the changed economic circumstances since the Convention was adopted, the prolonged delay in commercial deep seabed mining and the likely pace of activities in the Area;

(h) the 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;

(i) the assessment of available data relating to prospecting and exploration; and

(j) the elaboration of the regime for exploitation.

7. The application for the approval of a plan of work shall be considered by the Council following the receipt of a recommendation on the application from the Legal and Technical Commission. The processing of an application for the approval of a plan of work shall be in accordance with the provisions of the Convention, including its Annex III, and this Agreement, provided that:

(a) a plan of work for exploration submitted by a pioneer investor, duly registered as such by the Preparatory Commission in accordance with Resolution II, shall be approved by the Council, notwithstanding the provisions of Part C, paragraphs 10 and 11 of this Annex, and the provisions of Resolution II, paragraph 8, if such plan of work includes in it the terms and conditions set out in the decisions of the Preparatory Commission relating to such pioneer investor. For the purposes of a plan of work submitted by a registered pioneer investor, it shall be sufficient if the plan of work refers to the documents, reports and decisions of the Preparatory Commission, containing the relevant data and information already submitted to the Commission, with additional information regarding the pioneer activities since the date of registration up to the date of submission of the plan of work, together with an indication of plans for future activities, if any. The fees to be paid by a pioneer investor upon the submission of an application for a plan of work, in accordance with the provisions of Resolution II, paragraph 7 (a), and Annex III, Article 13 (2) of the Convention, shall be deferred until the pioneer investor submit a plan of work for exploitation. The period following entity into force of the Convention within which a registered pioneer investor is required to submit a plan of work pursuant to Resolution II, paragraph 8 (a), shall be extended from six months to twelve months; and

(b) a plan of work submitted on behalf of a State or entity, or any component of such entity, referred to in

Resolution II, subparagraphs 1 (a) (i) and (ii), other than a registered pioneer investor, which had already undertaken substantial activities in the Area prior to entry into force of the Convention and their successors in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work, if the sponsoring state certifies that the applicant has expended an amount equivalent to at least US$ 30 million in research and exploration activities and has expended no less than ten per cent of that amount in the location, survey and evaluation of the area referred to in the plan of work. If the plan of work otherwise satisfies the requirements of the Convention and any rules regulations and procedures adopted pursuant thereto, it shall be approved by the Council, notwithstanding the provisions of section C, paragraphs 10 and 11 hereof.

8. The Authority shall elaborate and adopt, in accordance with Article 162 (2) (o) (ii), rules, regulations and procedures based on the principles contained in Parts, B, E, F, G and H of this Annex, as well as any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploration or exploitation, as follows:

(a) The Council may undertake such elaboration at any time it deems all or any of such rules, regulations or procedures are required for the conduct of activities in the Area, or when it determines that commercial exploitation is imminent, or at the request of a State wishing to sponsor an application for approval of a plan of work for exploitation.

(b) If a request is made by a sponsoring State, the Council shall complete the adoption of such rules, regulations and procedures within two years of such a request, and they shall apply provisionally pending their approval by the Assembly.

(c) If the Council has not completed its work within the prescribed time, and an application for the approval of a plan of work is pending, it shall nonetheless consider and provisionally approve such plan of work for exploitation based on the provisions of the Convention and any rules, regulations and

procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles contained in this Annex, and the principle of non-discrimination among contractors.

9. The Authority shall have its own budget. Expenses of the Authority shall be met by its members or through the budget of the United Nations, until such time as the Authority becomes self-financing.

10. The Authority shall have its own secretariat which shall be linked to the United Nations until such time as the Authority can function independently.

11. There shall be a Finance Committee composed of 15 members which shall be composed and operated in accordance with Part 1 of Annex II to this Agreement.

12. States and entities that have not ratified or acceded to the Convention, and are referred to in Article 305 of the Convention, shall be eligible to become provisional members of the Authority pending their ratification of, or accession to, the Convention and this Agreement on the following basis:

(a) Such membership shall take effect upon notification to the depositary of the Convention by a State of its intention to participate as a provisional member of the Authority and shall terminate after two years or upon ratification of, or accession to, the Convention and this Agreement by such a State.

(b) Provisional members shall be subject to all the rights and obligations of Part XI as modified by this Agreement including the obligation to contribute to the budget of the Authority based on assessed contributions while they remain provisional members, unless the financing is though the United Nations budget.

13. The draft rules, regulations and procedures and any recommendations relating to the provisions of Part XI, as contained in the draft provisional final reports and recommendations of the Preparatory Commission, shall be revised to reflect the terms of this Agreement.

B. THE ENTERPRISE

1. The Enterprise shall conduct its initial operation through joint ventures. The Council shall decide upon the commencement of the functioning of the Enterprise.

2. The obligations 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.

C. DECISION-MAKING

1. Decision-making in the organs of the Authority, as a general rule, should be by consensus and there should be no voting until all efforts to reach a decision by consensus have been exhausted.

2. The general policies of the Authority shall be established by the Assembly in collaboration with the Council.

3. Decisions of the Assembly on any matter for which the Council also has competence or on any administrative, budgetary or financial matter shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council for further consideration. The Council shall reconsider the matter in the light of the views expressed by the Assembly.

4. Decisions by the Council or the Assembly having financial or budgetary implications shall be based on the recommendations of the Finance Committee.

5. If consensus cannot be reached, decisions by voting in the Assembly on all matters of procedure shall be taken by a majority of States present and voting, and decisions on all matters of substance shall be taken by a two-thirds majority of States present and voting, as provided for in Article 159 (8) of the Convention.

6. The provisions of Article 161, paragraph (1) sub-paragraphs (a) to (e) of the Convention shall be modified as set out in paragraph 2 of Part C of Annex II of this Agreement.

7. The major categories of interests identified in Article 161, paragraph (1) (a) to (c) of the Convention, as modified by this Agreement, should be treated as chambers for the purposes of decision-making in the Council. Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the criteria for membership in the interest groups identified in Article 161, paragraph (1) (a) to (c). If a country fulfils the criteria for membership in more than one interest group it may only be proposed by one interest group for election to the Council and it shall represent only that interest group in voting in the Council.

8. Each interest group identified in Article 161, paragraph (1) (a) to (c) of the Convention shall be represented in the Council by those members which are nominated by that interest group. Each interest group shall only nominate as many candidates as the number of seats that are required to be filled by that group. When nominating candidates for election, each interest group shall take due account of the desirability of rotation of membership of the Council. Election to fill the seats according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, shall take place after the election for all other categories of seats have been completed.

9. Decisions by voting in the Council on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance, except when the Convention provides for decisions by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the Chambers referred to above.

10. The Council may decide to postpone the taking of a decision in order to facilitate further negotiations whenever it appears that all efforts at achieving consensus on a question have not been exhausted.

11. The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of he chambers of the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of

that period. The prescribed period shall normally be 60 days unless the Council decides to provide for a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan or work in accordance with its normal rules of procedure on matters of substance.

12. Where a dispute arises relating to the disapproval of a plan of work such dispute shall be submitted to the dispute settlement mechanism contained in the Convention.

13. Decisions by voting in the Legal and Technical Commission shall be by simple majority.

14. Decisions in the Finance Committee on procedural issues shall be by simple majority and on substantive issues by consensus.

D. REVIEW CONFERENCE

In the light of the present Agreement and the changed circumstances in respect of deep seabed mining since the Convention was adopted, and the changes in the approaches to economic issues, the Review Conference, as provided for in Article 155 of the Convention, is no longer considered appropriate. Instead, notwithstanding the provisions of Article 314 (2), the Authority, on the recommendation of the Council, may undertake a review of the matters referred to in Article 155 and adopt any necessary amendments in accordance with the procedure set forth in Article 314 (1) of the Convention. Accordingly, Article 155 of the Convention shall no longer apply.

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:

(a) The Enterprise shall endeavour to obtain the technology required for its operations through its joint venture arrangements.

(b) The provisions of Article 5 of Annex III of the Convention concerning the undertaking for mandatory transfer of technology to the Enterprise or to a developing State or group of such States, shall not apply. Instead, the Authority may invite all,

or any of the contractors and their respective sponsoring State or States, to co-operate with it in the acquisition of technology by the Enterprise or the 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 was not available on the open market. States Parties undertake to cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also fully cooperate with the Authority.

(c) As a general rule, States Parties shall endeavour to promote international technical and scientific cooperation either between the parties concerned on activities relating to the seabed area, or by developing training, technical assistance and scientific cooperation programmes.

F. PRODUCTION POLICY

1. The production policy of the Authority shall be based on the following principles:

(a) The rights and obligations relating to unfair economic practices under the General Agreement on Tariffs and Trade, its relevant codes and successor agreements, shall apply to activities in the Area.

(b) In particular, there shall be no subsidization of activities in the Area except as may be permitted under the agreements referred to in subparagraph (a). Subsidization for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (a).

(c) There shall be no discrimination between minerals derived from the Area and from other sources. There shall be no preferential access to markets for such minerals or for imports of commodities produced from such minerals, in particular:

(i) by use of tariff or non-tariff barriers; and

(ii) given by States Parties to such minerals or commodities produced by their state

enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals;

(d) The plan of work approved by the Authority in respect of each mining area shall indicate a production schedule which shall include the estimated amounts of minerals that would be produced per year under that plan or work;

(e) In the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (a), States Parties which are parties to such agreements shall have recourse to the dispute settlement procedures of such agreements: and

(f) In circumstances where a determination is made under the agreements referred to in subparagraph (a) that a State Party has engaged in subsidization which is prohibited or has resulted in adverse effects to the interests of another State Party and appropriate steps have not been taken by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.

2. The principles contained in paragraph 1 shall not affect rights and obligations under any provision of the agreements referred to in paragraph 1 (a), as well as relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.

3. The acceptance, by a contractor, of subsidies other than those which may be permitted under the agreements referred to in paragraph 1 (a) shall constitute a violation of the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.

4. Any State Party which has reason to believe that there has been a breach of the requirements of paragraphs 1 or 3 may initiate dispute settlement procedures in conformity with paragraph 1 (e) or 1 (f).

5. The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this Part. This shall include relevant rules, regulations and procedures governing the approval of plans of work.

G. ECONOMIC ASSISTANCE

The policy of the Authority to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be as follows:

(a) Developing land-based producer States whose economies have been determined to be seriously affected by production of minerals from the deep seabed should be assisted from the economic assistance fund of the Authority.

(b) The Authority shall establish an economic assistance fund from that portion of funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority, provided that the amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions, shall be used for the establishment of the economic assistance fund.

(c) The Authority shall provide assistance from the fund to affected developing land-based producer states, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes.

(d) The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer states.

H. FINANCIAL TERMS OF CONTRACT

The following principles shall provide the basis for financial arrangements:

(a) The system of financial payments to the Authority shall be fair both to the contractor and to the Authority

(b) The rates of financial payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage.

(c) The system of financial payments may be revised periodically in view of changing circumstances. However, they shall be applied in a non-discriminatory manner and they may apply retroactively to existing contracts only at the election of the contractor. Any subsequent change in the choice of the systems shall, however, be by agreement of the Council.

(d) While the system should not be complicated and should not impose major administrative costs on the Authority or on a contractor, consideration should be given to the adoption of a royalty or a combination of a royalty and profit sharing system. If alternative systems are decided upon the choice of the system applicable to an individual contract shall be at the election of the contractor. However, any subsequent change of system shall be by agreement of the Council.

(e) The annual fixed fee payable by a contractor prior to commercial production of minerals from the deep seabed may be adjusted by the Council to take account of the risks involved in establishing a new industry in an uncertain and potentially unstable environment, and the prolonged delay in the commercial production of minerals from the deep seabed. Diligence should be ensured by monitoring conformance of contractors with approved plans of work. An application fee shall be applied to all plans of work submitted to the Authority.

(f) Any disputes concerning the interpretation or application of the rules and regulations based on these principles should be subject to the dispute settlement procedures under the Convention.

ANNEX II
CONSEQUENTIAL ADJUSTMENTS

A. COSTS TO STATES PARTIES AND INSTITUTIONAL PROVISIONS

1. With respect to the early functions of the Authority, section 4 of Part XI shall be interpreted and applied in accordance with Part A of Annex I to this Agreement.

2. The functions of the Economic Planning Commission provided for in the Convention shall be performed by the Legal and Technical Commission until such time as the Council decides otherwise.

3. Prior to the elaboration of the rules, regulations and procedures for exploitation, the Assembly and the Council shall only meet as frequently as required for the adequate and timely performance of their functions.

4. The Finance Committee referred to in Part I of this Annex shall meet in conjunction with the Assembly and the Council. The Legal and Technical Commission shall meet as necessary to consider applications for approval of plans of work and perform such other functions as the Council may direct. Otherwise, subsidiary organs shall meet as required by the Council.

5. The administrative expenses of the Authority shall be financed by assessed contributions in accordance with Article 173. The Authority shall not have the power to borrow funds to finance its administrative budget.

6. The subsidiary bodies of the Authority shall include a Finance Committee as described in Part I of this is Annex. Article 162, subparagraph 2 (y) of the Convention shall be inoperative.

7. Applications for the approval of plans of work shall be processed in accordance with the procedures set out in Part D of Annex I to this Agreement, subject to the provisions of paragraph 7 of Part A of that Annex, provided that paragraph 6 (d), Article 4 of Annex III of the Convention shall not apply.

8. Article 10 of Annex III of the Convention is modified by the addition of the following at the end of the last sentence:

"that is, the contractor has failed to comply with the requirements of an approved plan of work despite written warning or warnings from the Authority to the contractor to comply therewith."

B. THE ENTERPRISE

1. Subsection E of section 4 of Part XI, Annex IV and other provisions of the Convention relating to the Enterprise shall be modified by Part B of Annex I to this Agreement.

2. The Authority shall draw up the terms of reference of the Enterprise in the light of Annex I of this Agreement. 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 […] of Part A of Annex I to this Agreement.

3. Article 153, paragraph 3 of the Convention is modified by the deletion of the first clause of the second sentence and therefore, obligations applicable to contractors shall be equally applicable to the Enterprise.

C. DECISION-MAKING

1. Subsection C of Section 4 of Part XI shall be interpreted and applied in accordance with Part C of Annex I to this Agreement.

2. The provisions of Article 161, subparagraphs 1(a) to (e) of the Convention shall be modified as follows:

"Composition, procedure and voting

1. The Council shall be composed of 36 members as follows:

(a) four members from among States Parties, each of which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of the total world consumption, or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall

include one State from the Eastern European region and one State from the Group of Western European and Other States having the largest economy in the respective region in terms of gross domestic product;

(b) four members from States Parties which have made investments in preparation for, and in the conduct of, activities in the Area, either directly or through their nationals;

(c) four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies.

(d) twenty-four members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided:

(i) that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern Europe, Latin America and Western Europe and Others.

(ii) that this includes six members from among developing States, including States with large populations, States which are land-locked or geographically disadvantaged, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States."

3. Article 161, paragraph 8(b) and (c) shall be modified as follows:

(a) Decisions on questions of substance, except decisions governed by paragraph (d), shall be taken by a two-thirds majority of members present and voting provided that such decisions

are not opposed by a majority of the members in any one of the categories (a), (b) or (c).

4. The provisions of Article 162, subparagraphs 2 (j) (i) and (ii) of the Convention are replaced by the provisions of paragraph 11 of Part C of Annex I to this Agreement.

D. REVIEW CONFERENCE

Article 155 of the Convention shall not apply and amendments relating to Part XI shall be accomplished pursuant to Article 314, 315 and 316 of the Convention and as provided for in Part D of Annex I to this Agreement.

E. TRANSFER OF TECHNOLOGY

The Authority shall base its policy on transfer of technology on Article 144 of the Convention and the principles contained in Part E of Annex I to this Agreement, which shall replace the provisions in Article 5 of Annex III of the Convention.

F. PRODUCTION POLICY

The provisions of Article 162, subparagraph 2 (q), Article 165, subparagraph 2 (n), Article 151, paragraphs 1-7 and paragraph 9 and Article 7 of Annex III of the Convention shall be replaced by the provisions of Part F of Annex I to this Agreement.

G. ECONOMIC ASSISTANCE TO SERIOUSLY AFFECTED LAND-BASED PRODUCER STATES

1. The Authority shall address the system of economic assistance to developing country land-based producers of minerals to be produced from the deep seabed on the basis of the principles contained in Part G of Annex I to this Agreement.

2. Article 151, paragraph 10 of the Convention is modified by the deletion of the phrase “compensation or take other measures” in the first sentence, and corresponding changes are made in Article 160, subparagraph 2(l), Article 162, subparagraph (2) (n), Article 164, subparagraph 2 (d), Article 171, paragraph (f) and Article 173, subparagraph 2 (c) of the Convention.

H. FINANCIAL TERMS OF CONTRACT

1. Paragraph 2, Article 13 of Annex III of the Convention is modified by including the following after the first sentence:

> "In the case of the applications for the approval of a plan of work limited to one phase, either the exploration phase or the exploitation phase, the fee for processing such application shall be $250,000 for each phase."

2. Paragraph 2, Article 13 of Annex III of the Convention, is modified as follows:

> "A contractor shall pay an annual fixed fee of US$ 1 million from the date of approval of its plan or work for exploration or for exploitation, provided that such fee may be adjusted by the Council from time to time in the light of the circumstances prevailing in the development of deep seabed mining. From the date of commencement of commercial production, the contractor shall pay either the production charge or the annual fixed fee, whichever is greater."

3. The principles contained in Part H of Annex I to this Agreement shall replace the provisions of paragraphs 4-10, Article 13 of Annex III of the Convention. The Authority shall establish rules, regulations and procedures on financial terms of contracts on the basis of these principles.

I. THE FINANCE COMMITTEES

1. The Finance Committee shall be composed of 15 members. Until the Authority is self-financing, the Committee shall include the five largest financial contributors.

2. No two members of the Finance Committee shall be nationals of the same State Party.

3. Members of the Finance Committee shall be elected by the Council.

4. The Finance Committee shall consider and approve all recommendations for expenditure before they can be entertained by the Council or the Assembly.

5. Decisions by the Council and the Assembly on the following issues shall be made based on recommendations by the Finance Committee:

(a) Draft financial rules, regulations and procedures of the various organs of the Authority and the financial management and internal administration of the Authority.

(b) Assessment of contributions of members to the administrative budget of the Authority in accordance with Article 160, paragraph 2(e) of the Convention.

(c) All relevant financial matters including for example the proposed annual budget prepared by the Secretary-General, (Article 172), the financial aspects of the implementation of the programmes of work of the Secretariat.

(d) The administrative budget.

(e) Financial obligations of States Parties arising from the operation of Part XI and its related annexes as well as on the administrative and budgetary implication of proposals and recommendations involving expenditure from the funds of the Authority.

(f) Rules, regulations and procedures on the equitable sharing of financial and other economic benefits and the decisions to be made on that basis.

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November 1993

AMENDMENTS PROPOSED BY THE GROUP OF SIX REGISTERED PIONEER INVESTORS (FRANCE, CHINA, INDIA, JAPAN, RUSSIA, INTEROCEANMETAL) CONCERNING THE DOCUMENT DRAFTED IN AUGUST 1993 ("BOAT-PAPER")

1. The certifying States for the six registered pioneer investors (China, France, India, Interoceanmetal, Japan and the Russian Federation) note that the "boat paper" of August 1993 which has been circulated among the participants to the UN Secretary General's consultation on the Convention on the Law of the Sea (2-6 August 1993) does not reflect the interests of the said registered pioneer investors. Indeed, the "boat-paper" imposes to them more constraints than those requested from future investors whereas it should, on the contrary, recognize to the registered pioneer investors lesser constraints in order to take into account their contribution in the framework of Resolution II and before the adoption of the Convention.

2. This particularly important contribution could be appreciated under several aspects:

(a) the concerned States have signed the Convention and participated actively as full members to the Preparatory Commission. In this respect they clearly showed their support to the Convention and to the Prepcom.

(b) the registered pioneer investors have already undertaken a substantial costly effort which has largely benefited the future Authority. As a matter-of-fact, they have not only carried out investments for research, exploration, survey, evaluation and preliminary activities but also paid for several years the registration fee – which has generated a profit for the future Authority – and given to the Secretariat technical data of high quality. Some operations of general interest have been financed by the funds composed of the registration fee mentioned above.

(c) the registered pioneer investors will have fulfilled their obligations; these obligations generate for them substantial expenses.

(d) on a general point of view, it is important to recall that it is essentially upon the existence, participation and contribution of the registered pioneer investors that the Preparatory Commission has carried out progress in the fulfillment of its mandate. Indeed they helped this Commission to achieve the most important outcome of its 10 years works.

It is also generally assumed that the progress accomplished by the Secretary General's consultations in view of the universal participation in the Convention has been made easier in the light of the cooperation between the Preparatory Commission and the registered pioneer investors, in particular in extending the support to the Convention with its adaptation to the changes which took place since its adoption.

3. Consequently, France, China, India, Japan, the Federation of Russia and the certifying States for Interoceanmetal deem jointly that it would be appropriate to amend certain provisions of the "boat-paper" in order to take into account the above-mentioned registered pioneer investors' contribution. The amendments they jointly propose are contained in the enclosed annex.

This joint proposal of amendments relates to provisions of the "boat-paper" that France, China, India, Japan, the Russian Federation and the certifying States for Interoceanmetal deem as being of common interest as far as the registered pioneer investors are concerned and does not prejudge any position that these States could adopt as for other provisions of the "boat-paper".

Annex

AMENDMENTS
PROPOSED BY THE GROUP OF SIX REGISTERED PIONEER INVESTORS (FRANCE, CHINA, JAPAN, INDIA, RUSSIA, "INTEROCEANMETAL") TO THE DOCUMENT DRAFTED IN AUGUST 1993 ("BOAT PAPER")

1.

page 2

Article 5, line 3: to add "or (iii)" after the words "or (ii)".

2.

page 6

To replace paragraphs 9(a) and 9(b) with the paragraphs 9(a), 9(b), 9(c) as follows:

"9 (a) a plan of work for exploration submitted on behalf of a State or entity, or any component of such entity, referred to in Resolution II, subparagraphs 1(a) (ii) and (iii), which had already undertaken substantial activities in the Area prior to the entry into force of the Convention and their successors in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work for exploration, if the sponsoring State certifies that the applicant has expended an amount equivalent to at least $US30 million for research and exploration activities and has expended no less than ten (10) per cent of that amount for the location, survey and evaluation of the area referred to in the plan of work. If the plan of work otherwise satisfies the requirements of the Convention and any rules, regulations and procedures adopted pursuant thereto, it shall be approved by the Council, notwithstanding the provisions of section C, paragraphs 10 and 11 hereof;

9 (b) a plan of work for exploration of a registered pioneer investor consists of documents, reports and other data submitted by this pioneer investor to the Preparatory Commission before and after its registration together with an indication of plans for future activities,

if any. Consequently, the plan of work for exploration of a registered pioneer investor shall be considered as having been approved by the Council, notwithstanding the provisions of section C, paragraphs 10 and 11 of this Annex, and the provisions of Resolution II, paragraph 8;

9 (c) in accordance with the principle of non-discrimination, the Council shall enter with a State or entity mentioned or any component of such entity in paragraph 9(a) above into arrangements which shall be similar to those agreed upon with the registered pioneer investors mentioned in paragraph 9(b) above. If any of those States, entities or any components of such entities is granted more favorable arrangements, the same shall be granted to registered pioneer investors and other existing contractors".

3.

page 8

In paragraph 15(a), 4th line: to change the words "two years" for the words "four years", and to add at the end of the sentence the words "whichever is earlier".

To add the following sentence in paragraph 15(a): "The provisional membership may be extended by a decision of the Council on the request of such a State".

4.

page 16

In section H, paragraph 3, second line, to delete the words "for exploration or".

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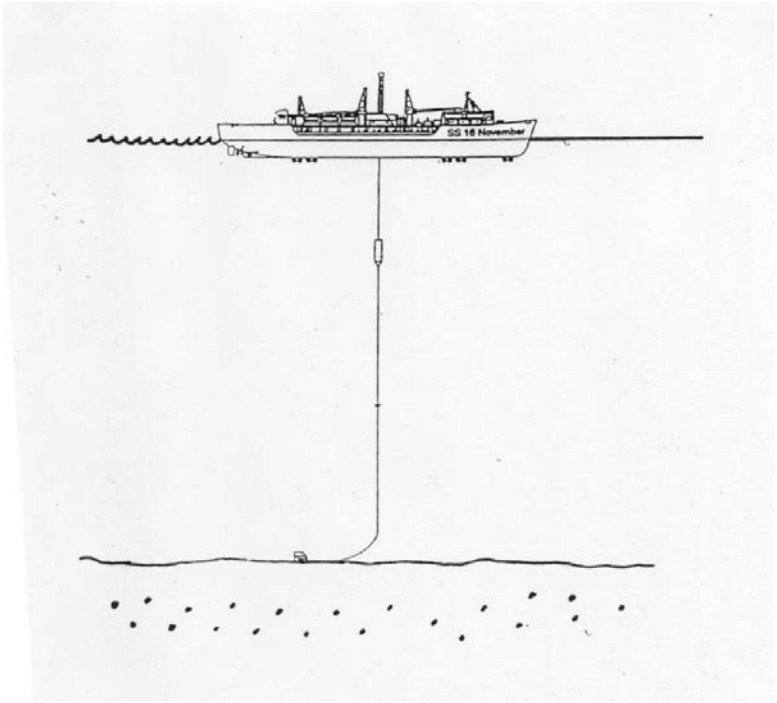
November 1993

This document has been prepared by representatives of several developed and developing States as a contribution to the process of consultations relating to outstanding issues in Part XI of the 1982 United Nations Convention on the Law of the Sea. The document has been revised in the light of discussions during the Secretary-General's informal consultations held in November 1993.



November 1993

DRAFT RESOLUTION FOR ADOPTION BY THE GENERAL ASSEMBLY

The United Nations Convention on the Law of the Sea

The General Assembly

Recalling resolution (48/ ... of ... December 1993) on the Law of the Sea,

Recalling that Part XI and related provisions of the 1982 United Nations Convention on the Law of the Sea (the Convention) established a regime for the international seabed area ("the Area") and its resources,

Reaffirming that the Area and its resources are the common heritage of mankind,

Recognizing that political and economic changes, including in particular a growing reliance on market principles, show the need to re-evaluate some aspects of the regime,

Noting the initiative of the Secretary-General since 1990 to promote dialogue aimed at achieving universal participation in the Convention,

Welcoming the report of the Secretary-General pursuant to General Assembly resolution (48/...) and, in particular, the results of the Secretary-General's informal consultations set out in paragraphs [...] of the report,

Taking note of the report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea,

Considering that the objective of universal participation in the Convention may best be achieved by the adoption of an agreement relating to the implementation of Part XI and related provisions of the Convention and to give effect to the results of the Secretary-General's informal consultations,

1. *Endorses* the results of the Secretary-General's informal consultations set out in paragraphs [...] of the report of the Secretary-General;

2. *Adopts* the Agreement relating to the Implementation of Part XI and related provisions of the Convention ("the Agreement"), the text of which is attached to this resolution;

3. *Considers* that future ratifications or formal confirmations of or accessions to the Convention should be taken to relate to the Convention together with the Agreement;

4. *Calls* on States and other entities referred to in Article 3 of the Agreement to act in accordance with the object and purpose of the Agreement pending its entry into force;

5. *Requests* the Secretary-General to transmit certified copies of the Agreement to the States and other entities referred to in Article 3 thereof, with a view to facilitating universal participation in the Convention together with the Agreement.

AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

The States Parties to this Agreement,

Recognizing the significant contribution of the 1982 United Nations Convention on the Law of the Sea ("the Convention") to the maintenance of peace, justice and progress for all peoples of the world;

Having considered the report of the Secretary-General of the United Nations on the results of the informal consultations held from 1990 to 1994 on outstanding issues relating to Part XI and related provisions of the Convention ("Part XI");

Wishing to take account of important political and economic developments affecting the implementation of those provisions, in order to facilitate universal participation in the Convention;

Considering that an Agreement relating to the implementation of Part XI would best meet that objective;

Have agreed as follows:

Article 1
Implementation of Part XI

1. The States Parties to this Agreement undertake to implement Part XI in accordance with this Agreement.

2. The Annex forms an integral part this Agreement.

Article 2
Relationship between this Agreement and Part XI

1. The provisions of Part XI and this Agreement shall be interpreted and applied together as one single instrument. In the event of any inconsistency, the provisions of this Agreement shall prevail.

2. Articles 309 to 319 of the Convention shall apply to this Agreement as they apply to the Convention.

3. After the adoption of this Agreement, any instrument of ratification or formal confirmation of or accession to the Convention shall represent also an accession to this Agreement.

Article 3
Accession

This Agreement shall be open for accession by those States and other entities referred to in Article 305 of the Convention which have ratified, formally confirmed or acceded to the Convention or which are simultaneously ratifying, formally confirming or acceding to the Convention and this Agreement. Accession by the entities referred to in Article 305, paragraph 1 (f) of the Convention shall be in accordance with Annex IX of the Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 4
Simplified procedure

A State or entity which has deposited before the date of the adoption of this Agreement an instrument of ratification, formal confirmation or accession in respect of the Convention shall be considered to be a party to this Agreement if that State has not notified the Depositary within [...] months of the adoption of this Agreement that it is not having recourse to the simplified procedure set out in this Article. In the event of such a notification being made, accession to this Agreement shall take place in accordance with Article 3.

Article 5
Entry into force

1. This Agreement shall enter into force on the day of deposit of the [...] instrument of accession to this Agreement, provided that at least [...] of those instruments have been deposited by States to which paragraph 1 (a) (i), (ii) or (iii) of Resolution II of the Third United Nations Convention on the Law of the Sea (“Resolution II”) applies.

2. For each State acceding to the Agreement after its entry into force, the Agreement shall come into force on the date of deposit by such State of its instrument of accession.

3. States which have recourse to the simplified procedure in Article 4 shall be regarded as having acceded upon expiry of the period of [...] months specified in that Article, or upon entry into force of this Agreement in accordance with paragraph 1, whichever is later.[*]

[*] The issue of simultaneous entry into force of the Convention and the Agreement requires further discussion.

Article 6
States Parties

For the purpose of this Agreement, “States Parties” means States and entities which have consented to be bound by this Agreement and for which it has entered into force.

Article 7
Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement.

Article 8
Authentic texts and depositary

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the Secretariat of the United Nations.

ANNEX

SECTION 1. COSTS TO STATES PARTIES AND INSTITUTIONAL ARRANGEMENTS

1. The Authority is the organization through which States Parties to the Convention shall, in accordance with the regime for the international seabed area ("Area") established in Part XI and this Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area. The powers and functions of the Authority shall be those expressly conferred upon it by the Convention. The Authority shall have such incidental powers consistent with the Convention, as are implicit in, and necessary for, the exercise of those powers and functions with respect to the activities of the Area.

2. In order to minimize costs to State Parties, all organs and subsidiary bodies to be established under the Convention and this Agreement shall be cost-effective. This principle shall also apply to the frequency, length and scheduling of meetings.

3. The setting up and the operation of the various organs and subsidiary bodies shall be based on an evolutionary approach, taking into account the functional needs of the organs and subsidiary bodies concerned in order that they may discharge effectively their respective responsibilities at various stages of the development of activities in the Area.

4. The functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Legal and Technical Commission and the Finance Committee, which shall work in accordance with Section 9 of this Annex. The functions of the Economic Planning Commission shall be performed by the Legal and Technical Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation.

5. The Assembly and the Council, as well as their respective subsidiary bodies, shall meet only as frequently as required for the adequate and timely performance of their functions.

6. Between the entry into force of the Convention and the approval of the first plan of work for exploitation, the Authority shall concentrate on:

(a) processing of applications for approval of plans of work for exploration in accordance with Part XI and this Agreement;

(b) monitoring of compliance with plans of work for exploration approved in the form of contracts;

(c) implementation of decisions of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea ("Preparatory Commission") relating to the registered pioneer investors and their certifying States, including their rights and obligations, in accordance with the provisions of Article 308, paragraph 5 of the Convention and Resolution II, paragraph 13;

(d) study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;

(e) promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of the activities in the Area;

(f) acquisition of scientific knowledge and the monitoring of the development of marine technology relevant to the activities in the Area;

(g) adoption of rules, regulations and procedures, including those relating to the protection and preservation of the marine environment, necessary for the conduct of activities in the Area as they progress. Notwithstanding the provisions of Annex III, Article 17 (2) (b) and (c) of the Convention, such rules, regulations and procedures shall take into account the terms of this Agreement, the changed economic circumstances since the Convention was adopted, the prolonged delay in commercial deep

seabed mining and the likely pace of activities in the Area;

(h) 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;

(i) assessment of available data relating to prospecting and exploration; and

(j) timely elaboration of rules, regulations and procedures for exploitation.

7. (a) The application for the approval of a plan of work for exploration shall be considered by the Council following the receipt of a recommendation on the application from the Legal and Technical Commission. The processing of an application for the approval of a plan of work for exploration shall be in accordance with the provisions of the Convention, including its Annex III, and this Agreement, provided that:

(i) a plan of work for exploration submitted on behalf of a State or entity, or any component of such entity, referred to in Resolution II, paragraph I (a) (ii) and (iii), other than a registered pioneer investor, which had already undertaken substantial activities in the Area prior to entry into force of the Convention or their successors in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work, if the sponsoring State certifies that the applicant has expended an amount equivalent to at least $US30 million in research and exploration activities and has expended no less than ten (10) per cent of that amount in the location, survey and evaluation of the area referred to in the plan of work. If the plan of work otherwise satisfies the requirements of the Convention and any rules, regulations and procedures adopted pursuant thereto, it shall be approved by the Council in the form of a contract, notwithstanding the provisions of Section 3, paragraph 10 of this Annex.

(ii) upon the request of a registered investor investor, its plan of work for exploration consisting of documents, reports and other data submitted to the Preparatory Commission before and after registration together with an indication of plans for future activities, if any, shall be approved in the form of a contract by the Council in accordance with Part XI and this Agreement, notwithstanding the provisions of section 3, paragraph 10 of this Annex. Resolution II, paragraph 8 (c) shall not apply and a request for approval of a plan of work for exploration of a registered pioneer investor may be made by a sponsoring State as a State Party or as a provisional member of the Authority pursuant to paragraph 14. The fee to be paid by a pioneer investor upon application for a plan of work, in accordance with the provisions of Resolution II, paragraph 7 (a), and Annex III, Article 13, paragraph 2 of the Convention, shall be deferred until the pioneer investor submits a plan of work for exploitation, taking into account the $250,000 fee paid pursuant to Resolution II, paragraph 7 (a), which shall be deemed to be the fee relating to the exploration phase pursuant to Section 8, paragraph 3 of this Annex. The period following entry into force of the Convention within which a registered pioneer investor may request approval of a plan of work pursuant to Resolution II, paragraph 8 (a) shall be extended from 6 months to 24 months; and

(iii) in accordance with the principle of non-discrimination a contract with a State or entity or any component of such entity referred to in (i) above, shall include arrangements which shall be similar to and no less favourable than those agreed with any State or entity or any component of such entity referred to in (ii) above. In the case of contracts with the States or entities, or any components of such States or entities referred to in (ii) above, the Council shall

make such adjustments, as are equitable, to the rights and obligations assumed by them under Resolution II and the decisions of the Preparatory Commission.

(b) The approval of a plan of work for exploration shall be in accordance with Article 153, paragraph 3 of the Convention.

8. Applications for approval of plans of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities in accordance with the rules, regulations and procedures adopted by the Authority.

9. Applications for the approval of plans of work for exploration other than those referred to in paragraph 7 shall be processed in accordance with the procedure set out in section 3, paragraph 10 of this Annex.

10. A plan of work for exploration shall be approved for a period of 10 years. Upon the expiration of a plan of work for exploration the contractor shall apply for a plan of work for exploitation unless the contractor has received an extension for the plan of work for exploration. Contractors may apply for such extensions for periods of not more than five years each. Such extensions shall be approved if the contractor has made good faith efforts to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or the prevailing economic circumstances have not justified proceeding to the exploitation stage.

11. The reference in the last sentence of Annex III, Article 10 of the Convention to performance which has not been satisfactory shall be interpreted to mean that the contractor has failed to comply with the requirements of an approved plan of work despite written warning or warnings from the Authority to the contractor to comply therewith.

12. The Authority shall elaborate and adopt, in accordance with Article 162, paragraph 2 (o) (ii) of the Convention, rules, regulations and procedures based on the principles contained in sections 2, 5, 7 and 8 of this Annex, as well as any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploration or exploitation, as follows:

(a) The Council may undertake such elaboration at any time it deems all or any of such rules, regulations or

procedures are required for the conduct of activities in the Area, or when it determines that commercial exploitation is imminent, or at the request of a State whose national is in a position to apply for approval of a plan of work for exploitation.

(b) If a request is made by a State referred to in subparagraph (a) the Council shall, in accordance with Article 162, paragraph 2 (o) of the Convention, complete the adoption of such rules, regulations and procedures within two years of such a request.

(c) If the Council has not completed rules, regulations and procedures relating to exploitation within the prescribed time, and an application for the approval of a plan of work for exploitation is pending, it shall nonetheless consider and provisionally approve such plan of work based on the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles contained in this Annex as well as the principle of non-discrimination among contractors.

13. The Authority shall have its own budget. The administrative expenses of the Authority shall be met [by assessed contributions of its members, including its provisional members, in accordance with Article 173 of the Convention and this Agreement] [through the budget of the United Nations] until such time as the Authority becomes self-financing. The Authority shall not exercise the power referred in Article 174, paragraph 1 of the Convention to borrow funds to finance its administrative budget.

14. States and entities referred to in Article 305 of the Convention which have not established their consent to be bound by it shall be eligible to become provisional members of the Authority on the following basis:

(a) Such membership shall take effect upon notification to the depositary of the Convention by a State or entity of its intention to participate as a provisional member of the Authority and shall terminate two years after the date of entry into force of the Convention or upon ratification or formal confirmation of, or accession to, the Convention and this Agreement by such a State. The Council may, upon request of the State or entity concerned,

extend provisional membership by up to two years if the Council is satisfied that the State or entity has been making efforts in good faith to become a party, provided that provisional membership shall not extend beyond four years after the date of entry into force of the Convention.

(b) Provisional members shall apply the terms of Part XI and this Agreement provisionally and shall have the same rights and obligations as other members, including:

(i) The obligation to contribute to the budget of the Authority is based on assessed contributions in accordance with their national laws, regulations and annual budgetary appropriations; and

(ii) The right to sponsor an application for the approval of a plan of work for exploration. In the case of entities whose components are natural or juridical persons possessing the nationality of more than one State, a plan of work for exploration shall not be approved unless all the States whose natural or juridical person comprise those entities are provisional members or States Parties.

(c) Notwithstanding the provisions of paragraph 10, an approved plan of work for exploration which is sponsored by a provisional member in accordance with subparagraph b (ii) shall terminate if such member ceases to be a provisional member and has not become a State Party.

(d) If the Assembly decides that a provisional member has failed to comply with its obligations in accordance with this paragraph, its provisional membership shall be terminated.

15. The draft rules, regulations and procedures and any recommendations relating to the provisions of Part XI, as contained in the reports and recommendations of the Preparatory Commission, shall be taken into account by the Authority in the adoption of rules, regulations and procedures in accordance with Part XI and this Agreement.

16. The relevant provisions of Part XI, section 4 shall be interpreted and applied in accordance with this Agreement.

SECTION 2. THE ENTERPRISE

1. The Enterprise shall conduct its initial operation through joint ventures. It shall commence its functioning upon the issuance of a directive by the Council pursuant to Article 170, paragraph 2 of the Convention.

2. The obligations 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 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 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.

5. A contractor which has contributed a particular area to the Authority as a reserved area shall have priority to enter into 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 10 years of the commencement of its functioning or within 10 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.

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 Part.

SECTION 3. DECISION-MAKING

1. The general policies of the Authority shall be established by the Assembly in collaboration with the Council.

2. Decision-making in the organs of the Authority, as a general rule, should be by consensus and there should be no voting until all efforts to reach a decision by consensus have been exhausted.

3. If consensus cannot be reached, decisions by voting in the Assembly on matters of procedure shall be taken by a majority of States present and voting, and decisions on matters of substance shall be taken by a two-thirds majority of States present and voting, as provided for in Article 159, paragraph 8 of the Convention.

4. Decisions of the Assembly on any matter for which the council also has competence or on any administrative, budgetary or financial matter shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council for further consideration. The Council shall reconsider the matter in the light of the views expressed by the Assembly.

5. Decisions by the Council or the Assembly having financial or budgetary implications shall be based on the recommendations of the Finance Committee.

6. The major categories of interests identified in paragraph 14 (a) to (c) shall be treated as chambers for the purposes of decision-making in the Council. Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the criteria for the membership in the interest groups identified in subparagraphs 14 (a) to (d). If a country fulfils the criteria for membership in more than one interest group, it may only be proposed by one interest group for election to the Council and it shall represent only that interest group in voting in the Council.

7. Each interest group identified in paragraph 14 (a) to (d) shall be represented in the Council by those members nominated by that interest group. Each interest group shall only nominate as many candidates as the number of seats that are required to be filled by that group. When the number of potential candidates in each of the categories referred to in paragraph 14 (a) to (e) exceeds the number of seats available in each of those respective categories, as a general rule, the principle of rotation shall apply. States members of each of those categories shall determine how this principle shall

apply in those categories. This principle, however, shall not apply to the two States specifically referred to in paragraph 14 (a).

8. Decisions by voting in the Council on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance, except where the Convention provides for decisions by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to above.

9. The Council may decide to postpone the taking of a decision in order to facilitate further negotiation whenever it appears that all efforts at achieving consensus on a question have not been exhausted.

10. (a) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. The prescribed period shall normally be 60 days unless the Council decides to provide for a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its normal rules of procedure on matter of substance.

(b) The provisions of Article 162, paragraph 2 (j) of the Convention shall not apply.

11. Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement mechanism contained in the Convention.

12. Decisions by voting in the Legal and Technical Commission shall be by a majority of members present and voting.

13. Part XI, section 4, subsections B and C shall be interpreted and applied in accordance with this Part.

14. The Council shall consist of 36 members of the Authority elected by the Assembly in the following order:*

(a) four members from States Parties, each of which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of the total world consumption, or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and the State, at the time of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this category;

(b) four members from the eight States Parties which have made the largest investments in preparation for, and in the conduct of, activities in the Area, either directly or through their nationals;

(c) four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;

(d) six members from developing States, representing special interests. The special interests to be represented shall consist of States with large populations, States which are land-locked or geographically disadvantaged, island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States; and

(e) eighteen members elected according to the principle of ensuring an equitable geographical distribution of

* The issue of whether the system of chambered voting in the Council should extend to the category in sub-paragraph (d) in addition to the categories in sub-paragraphs (a) to (c) requires further discussion.

seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern European, Latin America and the Caribbean and Western European and Others.

15. The provisions of Article 161, paragraph 1 of the Convention shall not apply.

16 (a) Decisions on questions of substance in the Council, except decisions governed by Article 161, paragraph 8 (d) of the Convention, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority of the members in any one of the categories mentioned in paragraph 14 (a), (b) or (c).

(b) The provisions of Article 161, paragraph 8 (b) and (c) of the Convention shall not apply.

SECTION 4. REVIEW CONFERENCE

In the light of the present Agreement and the changed circumstances in respect of deep seabed mining since the Convention was adopted, and the changes in the approaches to economic issues, the provisions relating to the Review Conference in Article 155, paragraphs 1, 3 and 4 of the Convention shall not apply. Notwithstanding the provisions of Article 314, paragraph 2 of the Convention, the Authority may undertake at any time a review of the matters referred to in Article 155, paragraph 1 of the Convention. Amendments relating to Part XI shall be subject to the procedures contained in Articles 314, 315 and 316 of the Convention, provided that:

(a) the principles, regime and other terms of Article 155, paragraph 2 of the Convention shall be maintained and the rights referred to in paragraph 5 of that Article shall not be affected; and

(b) amendments shall enter into force on a date determined by the Council by a three-fourths majority of the members present and voting, including a majority of members of each chamber of the Council at that time.

SECTION 5. TRANSFER OF TECHNOLOGY

1. Transfer of technology, for the purposes of Part XI, shall be governed by the provisions of Article 144 of the Convention and the following principles:

(a) The Enterprise shall take measures to obtain the technology required for its operations on the open market or through its joint venture arrangements.

(b) If the technology in question is not available on the open market, the Authority may invite all or any of the contractors and their respective sponsoring State or States to cooperate with it in facilitating 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, including effective protection of intellectual property rights. States Parties undertake to cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also fully cooperate with the Authority.

(c) States Parties shall promote international technical and scientific cooperation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific cooperation programmes.

2. The provisions of Annex III, Article 5 of the Convention shall not apply.

SECTION 6. PRODUCTION POLICY

1. The production policy of the Authority shall be based on the following principles:

(a) The rights and obligations relating to unfair economic practices under the General Agreement on Tariffs and Trade, its relevant codes and successor agreements, shall apply to activities in the Area.

(b) In particular, there shall be no subsidisation of activities in the Area except as may be permitted under the agreements referred to in subparagraph

(a). Subsidisation for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (a).

(c) There shall be no discrimination between minerals derived from the Area and from other sources. There shall be no preferential access to markets for such minerals or for imports of commodities produced from such minerals, in particular:

(i) by use of tariff or non-tariff barriers; and

(ii) given by States Parties to such minerals or commodities produced by their state enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals;

(d) The plan of work for exploitation approved by the Authority in respect of each mining area shall indicate an anticipated production schedule which shall include the estimated maximum amounts of minerals that would be produced per year under that plan of work.

(e) In the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (a), States Parties which are parties to such agreements shall have recourse to the dispute settlement procedures of such agreements; and

(f) In circumstances where a determination is made under the agreements referred to in subparagraph (a) that a State Party has engaged in subsidisation which is prohibited or has resulted in adverse effects to the interests of another State Party and appropriate steps have not been taken by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.

2. The principles contained in paragraph 1 shall not affect rights and obligations under any provision of the agreements referred to in paragraph 1 (a), as well as relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.

3. The acceptance, by a contractor, of subsidies other than those which may be permitted under the agreements referred to in paragraph 1 (a) shall constitute a violation of the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.

4. Any State Party which has reason to believe that there has been a breach of the requirements of paragraph 1 (a) to (d) may initiate dispute settlement procedures in conformity with paragraph 1 (e) or (f).

5. The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this Part. This shall include relevant rules, regulations and procedures governing the approval of plans of work.

6. The provisions of Article 162, paragraph 2 (q), Article 165, paragraph 2 (n), Article 151, paragraphs 1 to 7 and paragraph 9 and Annex III, Article 7 of the Convention shall not apply.

SECTION 7. ECONOMIC ASSISTANCE

1. The policy of the Authority to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be based on the following principles:

(a) Developing land-based producer States whose economies have been determined to be seriously affected by production of minerals from the deep seabed shall be assisted from the economic assistance fund of the Authority.

(b) The Authority shall establish an economic assistance fund from a portion of the funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority, provided that the amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions, shall be used for the establishment of the economic assistance fund.

(c) The Authority shall provide assistance from the fund to affected developing land-based producer States, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes.

(d) The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer states.

2. Article 151, paragraph 10 of the Convention shall be implemented by means of measures of economic assistance referred to in paragraph 1. Article 160, paragraph 2 (l), Article 162, paragraph 2 (n), Article 164, paragraph 2 (d), Article 171, paragraph (f) and Article 173, paragraph 2 (c) of the Convention shall be interpreted accordingly.

SECTION 8. FINANCIAL TERMS OF CONTRACT

1. The following principles shall provide the basis for establishing rules, regulations and procedures for financial terms of contract:

(a) The system of financial payments to the Authority shall be fair both to the contractor and to the Authority.

(b) The rates of financial payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage.

(c) The system of financial payments may be revised periodically in view of changing circumstances, however, they shall be applied in a non-discriminatory manner and they may apply retroactively to existing contracts only at the election of the contractor. Any subsequent change in the choice of the systems shall, however, be by agreement of the Council.

(d) While the system should not be complicated and should not impose major administrative costs on the Authority or on a contractor, consideration should be given to the adoption of a royalty system or a combination of a royalty and profit sharing system. If alternative systems are decided upon the choice of the system applicable to an individual contract shall be at the election of the contractor. However, any subsequent change of system shall be by agreement of the Council.

(e) An annual fixed fee shall be payable from the date of commencement of commercial production. However such fee may be credited against other payments due under the system adopted in accordance with subparagraph (d). The amount of such fee shall be established by the Council.

(f) Any disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures under the Convention.

2. The provisions of Annex III, Article 13, paragraphs 3 to 10 of the Convention shall not apply.

3. With regard to the implementation of Annex III, Article 13, paragraph 2 of the Convention, the fee for processing applications for the approval of a plan of work limited to one phase, either the exploration phase or the exploitation phase, shall be $250,000.

SECTION 9. THE FINANCE COMMITTEE

1. There is hereby established a Finance Committee. The Finance Committee shall be composed of 15 members with appropriate qualifications relevant to financial matters. States Parties shall nominate candidates of the highest standards of competence and integrity. In the election of members of the Finance Committee, due account shall be taken of the need for equitable geographical distribution and the representation of special interests. Until the Authority is self-financing, the membership of the Committee shall include the five largest financial contributors to the administrative budget of the Authority.

2. No two members of the Finance Committee shall be nationals of the same State Party.

3. Members of the Finance Committee shall be elected by the Assembly. Each category referred to in section 3, paragraph 14 (a), (b), (c) and (d) of this Annex shall be represented on the Finance Committee by at least one member. After the Authority becomes self-financing, the election of one member from each category shall be on the basis of nomination by the members of the respective category, without prejudice to the possibility of further members being elected from each such category.

4. Members of the Committee shall hold office for a term of five years. They shall be eligible for re-election for a further term.

5. In the event of death, incapacity or resignation of a member of the Committee prior to the expiration of the term of office, the Assembly shall elect for the remainder of the term a member from the same geographical region or interest group.

6. Members of the Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after the termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Authority.

7. Decisions by the Council and the Assembly on the following issues shall take into account recommendations by the Finance Committee:

(a) Draft financial rules, regulations and procedures of the various organs of the Authority and the financial management and internal financial administration of the Authority.

(b) Assessment of contributions of members to the administrative budget of the Authority in accordance with Article 160, paragraph 2 (e) of the Convention.

(c) All relevant financial matters including the proposed annual budget prepared by the Secretary-General (Article 172 of the Convention), the financial aspects of the implementation of the programmes of work of the Secretariat.

(d) The administrative budget

(e) Financial obligations of States Parties arising from the operation of Part XI and its related annexes as well as on the administrative and budgetary

implications of proposals and recommendations involving expenditure from the funds of the Authority.

(f) Rules, regulations and procedures on the equitable sharing of financial and other economic benefits and the decisions to be made on that basis.

8. Recommendations of the Committee shall, where necessary, be accompanied by a summary of the range of opinions in the Committee.

9. Decisions in the Finance Committee on questions of procedure shall be taken by a majority of members present and voting. Decisions on questions of substance shall be taken by consensus.

10. The requirement of Article 162, paragraph 2 (y) of the Convention to establish a subsidiary organ to deal with financial matters shall be deemed to have been fulfilled by the establishment of the Finance Committee in accordance with this section.

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(Paper submitted by Sierra Leone)

NON-PAPER

AGREEMENT ON THE IMPLEMENTATION OF PART XI AND ANNEXES III AND IV OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

The General Assembly

Recognizing the historic significance of the United Nations Convention on the Law of the Sea, 1982, (hereinafter referred to as "the Convention") as a unique contribution to the maintenance of peace, justice and progress for all peoples of the world;

Reaffirming the principle of the common heritage of mankind codified in that Convention;

Convinced, therefore, that the implementation and progressive development of the Law of the Sea as embodied in the Convention is essential for the attainment of sustainable development envisaged by the United Nations Conference on Environment and Development and its follow-up activities;

Aware that the problems of ocean space are closely interrelated and must be considered as a whole, and that this requires the full participation of all States whatever their stage of economic development;

Bearing in mind that the prospects of commercial exploitation of deep seabed mineral resources have receded into the future, generating an interim period between the coming into force of the Convention and the beginning of commercial seabed mining;

To this end, desiring to embody the results of the consultations and negotiations organized by the Secretary-General of the United Nations in order to promote the universal acceptance of the Convention in accordance with the mandate given by the General Assembly of the United Nations;

Expresses its consent by the present resolution to adopt the Agreement contained in the Annex attached to the present resolution.

AGREEMENT ON THE ESTABLISHMENT OF AN INTERIM REGIME FROM THE COMING INTO FORCE OF THE CONVENTION TO THE TIME WHEN SEABED MINING BECOMES FEASIBLE

The General Assembly has agreed as follows:

to extend the mandate of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (hereinafter referred to as "the Commission") for the interim period from the coming into force of the Convention to the time when commercial seabed mining becomes feasible;

to authorize the Commission to exercise all the initial functions of the Authority and the Enterprise in accordance with the Convention, in an evolutionary manner, during this interim period;

to convene a review conference at the time when commercial seabed mining is about to begin.

Ratifying States may make a declaration, in accordance with Article 310 of the Convention, that they reserve their right to denounce the Convention in accordance with Article 317, should their rights not be properly protected when seabed exploitation will commence.

A. OBJECTIVES

Article 1

1. The present Agreement shall be based for the functioning of the operations by the Commission on cost-effectiveness, taking into account the need to discharge effectively its responsibilities.

2. The present Agreement shall apply to the Area as defined in the Convention and shall translate into operational terms the principle of common heritage of mankind.

3. The present Agreement shall form an integral part of the Convention and is concluded in order to facilitate the implementation of Part XI and Annexes III and IV of the Convention. Subject to this agreement the provisions of Part XI and Annexes III and IV shall apply as appropriate.

4. The present Agreement and the provisions of the Convention shall be read and interpreted together as one single instrument.

B. INSTITUTIONAL ARRANGEMENTS

Article 2
Participation

1. In order to give time to States and entities entitled to become parties to the Convention, such States and entities may, upon notification to the depository of the Convention, become parties to the Convention on a provisional basis for a period not exceeding three years. After three years, such States and entities shall ratify or accede to the Convention.

2. During this period, States and entities which have become parties on a provisional basis shall fulfil all duties and obligations, and enjoy all rights of Parties to the Convention, subject to the limitations inherent to the interim nature of the regime

Article 3
Powers and functions

In accordance with Paragraph 6 of Resolution I, the Commission shall continue to have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes as adjusted to this interim regime

Article 4
Organs

1. For the duration of the interim period, the Plenary of the Commission shall perform the functions of the Assembly of the Authority. Each Party shall have one vote. The Rules of Procedure of the Commission shall continue to apply.

2. For the duration of the interim period, the General Committee of the Commission shall perform the functions of the Council of the Authority. Each party shall have one vote. The Rules of Procedure of the Commission shall continue to apply. Upon the coming into force of the Convention, the General Committee shall be renewed through election by the Assembly.

3. For the duration of the interim period, the Secretariat may be drawn initially from staff members of the Secretariat of the United Nations.

4. For the duration of the interim period, the Group of Technical Experts and the Training Panel established by the Commission, shall perform the functions of the Economic Planning Commission

and the Legal and Technical Commission, with such adjustments as may be considered necessary.

5. For the duration of the interim period, 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 the activities in the Area.

6. As far as pioneer investors are concerned, their rights and obligations shall be governed by the provisions of Resolution II and the related understandings.

7. As far as the applicants referred to in Resolution II, paragraph 1(a)(ii), are concerned, approval of an application for pioneer activities shall be facilitated provided that they assume the same obligations as those of the applicants referred to in the understanding on the implementation of Resolution II contained in LOS/PCN/L.41/Rev.1 (Annex of 11 September 1986).

8. The requirements contained in Resolution II, paragraph 7 (b) and 8, shall be waived with respect of any applicant for pioneer activities.

Article 5
Financial arrangements

1. In accordance with paragraph 14 of Resolution I, the expenses of the Commission shall continue to be met from the regular budget of the United Nations, subject to the approval of the General Assembly of the United Nations.

2. The Commission may raise additional funds for specified activities as they may evolve.

Article 6
Review conference

1. Upon notification to the Commission from a pioneer investor of his intention to commence commercial exploitation within three years, a Review Conference shall be convened.

2. The Review Conference shall review those provisions of Part XI and the relevant Annexes which govern the system of exploration and exploitation of the resources of the Area in the light of the scientific, technological and economic reality of that future time

and in consideration of the experience, the methodologies developed and the activities conducted in an evolutionary manner during the interim regime.

Article 7
Dispute settlement

The question of adjustment of the Seabed Dispute Chamber of the International Tribunal for the Law of the Sea, during the interim regime, pending the feasibility of commercial seabed mining, should be determined by the States Parties at the Meeting to be convened pursuant to Article 4 of Annex VI to the Convention.

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PART 3

Official documents

15 April 1994

DRAFT RESOLUTION AND DRAFT AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

DRAFT RESOLUTION FOR ADOPTION BY THE GENERAL ASSEMBLY

The General Assembly,

Prompted by the desire to achieve universal participation in the United Nations Convention on the Law of the Sea of 1982[1] ("the Convention"),

Reaffirming that the Area and its resources are the common heritage of mankind[2],

Recalling also that the Convention in its Part XI and related provisions ("Part IX") established a regime for the international seabed area ("the Area") and its resources,

Taking note of the Consolidated Provisional Final Report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea[3],

Recalling its resolution 48/28 of 9 December 1993 on the Law of the Sea,

Recognizing that political and economic changes, including in particular a growing reliance on market principles, show the need to re-evaluate some aspects of the regime for the Area and its resources,

Noting the initiative of the Secretary-General which began in 1990 to promote dialogue aimed at achieving universal participation in the Convention,

Welcoming the report of the Secretary-General on the outcome of his informal consultations[4], including the draft of an agreement relating to the implementation of Part XI,

Considering that the objective of universal participation in the Convention may best be achieved by the adoption of an "Agreement relating to the

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[1] 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), document A/CONF.62/122.
[2] Article 136 of the United Nations Convention on the Law of the Sea. General Assembly resolution 2749 (XXV) of 17 December 1970.
[3] Documents LOS/PCN/130 of 17 November 1993 and LOS/PCN/130/Add.1 of 19 January 1994.
[4] Not yet issued.

implementation of Part XI of the United Nations Convention on the Law of the Sea of 1982,"

Recognising the need to provide for provisional application of the Agreement from the date of entry into force of the Convention on 16 November 1994,

1. *Expresses* its appreciation to the Secretary-General for his report on the informal consultations;

2. *Reaffirms* the unified character of the Convention;

3. *Adopts* the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 1982 ("the Agreement"), the text of which is appended to this resolution;

4. *Affirms* that the Agreement shall be interpreted and applied together with Part XI as a single instrument;

5. *Considers* that future ratifications or formal confirmations of or accessions to the Convention shall represent also consent to be bound by the Agreement and that no State or entity may establish its consent to be bound by the Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention;

6. *Calls on* States which consent to the adoption of the Agreement to refrain from any act which would defeat its object and purpose;

7. *Decides* to fund the administrative expenses of the International Seabed Authority in accordance with section 1, paragraph 14, of the Annex to the Agreement;

8. *Requests* the Secretary-General to transmit immediately certified copies of the Agreement to the States and entities referred to in its article 3, with a view to facilitating universal participation in the Convention and the Agreement, and to draw attention to articles 4 and 5 of the Agreement;

9. *Requests further* the Secretary-General to open the Agreement for signature in accordance with its article 3 immediately after its adoption;

10. *Urges* all States and entities referred to in article 3 of the Agreement to consent to its provisional application from 16 November 1994 and to establish their consent to be bound by the Agreement at the earliest possible date;

11. *Urges* further all such States and entities which have not already done so to consider ratifying, formally confirming or acceding to the Convention at the earliest possible date;

12. *Calls upon* the Preparatory Commission to take account of the terms of this Agreement when drawing up its final report.

AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 1982

The States Parties to this Agreement,

Recognising the important contribution of the United Nations Convention on the Law of the Sea of 1982 ("the Convention") to the maintenance of peace, justice and progress for all peoples of the world;

Reaffirming that the international seabed area ("the Area") and its resources are the common heritage of mankind;

Mindful of the importance of the Convention for the protection and preservation of the marine environment and of the growing concerning for the global environment;

Having considered the report of the Secretary-General of the United Nations on the results of the informal consultations among States held from 1990 to 1994 on outstanding issues relating to Part XI and related provisions of the Convention ("Part XI");

Noting the important political and economic changes which affect the implementation of Part XI;

Wishing to facilitate universal participation in the Convention;

Considering that an Agreement relating to the implementation of Part XI would best meet that objective;

Have agreed as follows:

Article 1
Implementation of Part XI

1. The States Parties to this Agreement undertake to implement Part XI in accordance with this Agreement.

2. The Annex forms an integral part of this Agreement.

Article 2
Relationship between this Agreement and Part XI

1. The provisions of this Agreement and Part XI shall be interpreted and applied together as a single instrument. In the event of any inconsistency between this Agreement and Part XI, the provisions of this Agreement shall prevail.

2. Articles 309 to 319 of the Convention shall apply to this Agreement as they apply to the Convention.

Article 3
Signature

This Agreement shall remain open for signature at United Nations Headquarters by the States and entities referred to in article 305, paragraph 1(a), (c), (d), (e) and (f), of the Convention for 12 months from the date of its adoption.

Article 4
Consent to be bound

1. After the adoption of this Agreement, any instrument of ratification or formal confirmation of or accession to the Convention shall represent also consent to be bound by this Agreement.

2. No State or entity may establish its consent to be bound by this Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention.

3. A State or entity referred to in article 3 may establish its consent to be bound by this Agreement by:

(a) signature not subject to ratification, formal confirmation or the procedure set out in article 5;

(b) signature subject to ratification or formal confirmation, followed by ratification or formal confirmation;

(c) signature subject to the procedure set out in article 5; or

(d) accession.

4. Formal confirmation by the entities referred to in article 305, paragraph 1 (f), of the Convention shall be in accordance with Annex IX of the Convention.

5. The instruments of ratification, formal confirmation or accession shall be deposited with the Secretary-General of the United Nations.

Article 5
Simplified procedure

1. A State or entity which has deposited before the date of the adoption of this Agreement an instrument of ratification, formal confirmation or accession in respect of the Convention and which has signed this Agreement in accordance with article 4, paragraph 3 (c), shall be considered to have established its consent to be bound by this Agreement twelve months after the date of its adoption, unless that State or entity notifies the depositary in writing before that date that it is not availing itself of the simplified procedure set out in this article.

2. In the event of such notification being made, consent to be bound by this Agreement shall be established in accordance with article 4, paragraph 3 (b).

Article 6
Entry into force

1. This Agreement shall enter into force 30 days after the date when 40 States have established their consent to be bound in accordance with articles 4 and 5, provided such States include at least seven States referred to in paragraph 1 (a) of resolution II of the Third United Nations Conference on the Law of the Sea (“resolution II”), of which at least five must be developed States. Provided that, this Agreement shall enter into force on 16 November 1994, if the conditions for its entry into force are fulfilled before that date.

2. For each State or entity establishing its consent to be bound by this Agreement after the requirements set out in paragraph 1 have been fulfilled, this Agreement shall enter into force on the thirtieth day following the date of establishment of its consent to be bound.

Article 7
Provisional application

1. If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force by:

(a) States which have consented to its adoption, except any such State which before that date notifies the depositary in writing either that it will not so apply the Agreement or that it will consent to such application only upon subsequent signature or notification in writing;

(b) States and entities which sign this Agreement;

(c) States and entities which consent to its provisional application by so notifying the depositary in writing; and

(d) States which accede to this Agreement.

2. All such States and entities shall apply this Agreement provisionally in accordance with their national or internal laws and regulations, with effect from 16 November 1994 or the date of signature, notification of consent or accession, if later.

3. Provisional application shall terminate upon the date of entry into force of this Agreement. Provided that, provisional application shall terminate on 16 November 1998 if at that date the requirement in article 6, paragraph 1, of consent to be bound by this Agreement by at least seven States (of which at least five must be developed States) referred to in paragraph 1 (a) of resolution II, has not been fulfilled.

Article 8
States Parties

1. For the purposes of this Agreement, "States Parties" means States which have consented to be bound by this Agreement and for which this Agreement is in force.

2. This Agreement applies *mutatis mutandis* to the entities referred to in article 305, paragraph 1 (c), (d), (e) and (f), of the Convention, which become Parties to this Agreement in accordance with the conditions relevant to each, and to that extent "States Parties" refers to those entities.

Article 9
Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement.

Article 10
Authentic texts

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

ANNEX

SECTION 1. COSTS TO STATES PARTIES AND INSTITUTIONAL ARRANGEMENTS

1. The International Seabed Authority (the "Authority") is the organization through which States Parties to the Convention shall, in accordance with the regime for the international seabed area ("Area") established in Part XI and this Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area. The powers and functions of the Authority shall be those expressly conferred upon it by the Convention. The Authority shall have such incidental powers, consistent with the Convention, as are implicit in, and necessary for, the exercise of those powers and functions with respect to activities in the Area.

2. In order to minimize costs to States Parties, all organs and subsidiary bodies to be established under the Convention and this Agreement shall be cost-effective. This principle shall also apply to the frequency, length and scheduling of meetings.

3. The setting up and the functioning of the organs and subsidiary bodies of the Authority shall be based on an evolutionary approach, taking into account the functional needs of the organs and subsidiary bodies concerned in order that they may discharge effectively their respective responsibilities at various stages of the development of activities in the Area.

4. The early functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Legal and Technical Commission and the Finance Committee. The functions of the Economic Planning Commission shall be performed by the Legal and Technical Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation.

5. Between the entry into force of the Convention and the approval of the first plan of work for exploitation, the Authority shall concentrate on:

(a) processing of applications for approval of plans of work for exploration in accordance with Part XI and this Agreement;

(b) implementation of decisions of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea ("Preparatory Commission") relating to the registered pioneer investors and their certifying States, including their rights

and obligations, in accordance with article 308, paragraph 5, of the Convention and resolution II, paragraph 13;

(c) monitoring of compliance with plans of work for exploration approved in the form of contracts;

(d) 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;

(e) study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;

(f) adoption of rules, regulations and procedures necessary for the conduct of activities in the Area as they progress. Notwithstanding the provisions of Annex III, article 17 (2) (b) and (c), of the Convention, such rules, regulations and procedures shall take into account the terms of this Agreement, the prolonged delay in commercial deep seabed mining and the likely pace of activities in the Area;

(g) adoption of rules, regulations and procedures incorporating generally applicable standards for the protection and preservation of the marine environment;

(h) promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of activities in the Area;

(i) acquisition of scientific knowledge and monitoring of the development of marine technology relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;

(j) assessment of available data relating to prospecting and exploration; and

(k) timely elaboration of rules, regulations and procedures for exploitation, including those relating to the protection and preservation of the marine environment.

6. (a) An application for the approval of a plan of work for exploration shall be considered by the Council following the receipt of a recommendation on the application for the Legal and Technical Commission. The processing of an application for the approval of a plan of work for exploration shall be in accordance with the provisions of the Convention, including its Annex III and this Agreement, and subject to the following sub-paragraphs.

(i) A plan of work for exploration submitted on behalf of a State or entity, or any component of such entity, referred to in resolution II, paragraph 1 (a) (ii) or (iii), other than a registered pioneer investor, which had already undertaken substantial activities in the Area prior to entry into force of the Convention, or their successors in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work, if the sponsoring State or States certify that the applicant has expended an amount equivalent to at least US$ 30 million in research and exploration activities and has expended no less than ten per cent of that amount in the location, survey and evaluation of the area referred to in the plan of work. If the plan of work otherwise satisfies the requirements of the Convention and any rules, regulations and procedures adopted pursuant thereto, it shall be approved by the Council in the form of a contract. The provisions of section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly.

(ii) Notwithstanding the provisions of resolution II, paragraph 8(a), a registered pioneer investor may request approval of a plan of work for exploration within 24 months of entry into force of the Convention. The plan of work for exploration shall consist of documents, reports and other data submitted to the Preparatory Commission before and after registration, and shall be accompanied by a certificate of compliance, consisting of a factual report describing the status of fulfillment of obligations under the pioneer investor regime, issued by the Preparatory Commission in accordance with resolution II, paragraph 11 (a). Such a plan of work shall be considered to be approved. Such an approved plan of work shall be in the form of a contract concluded between the Authority and the registered pioneer investor in accordance with Part XI and this Agreement. The fee of US$250,000 paid pursuant to resolution II, paragraph 7(a), shall be deemed to be the fee relating to the exploration phase pursuant to section 8, paragraph 3, of this Annex. Section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly.

(iii) In accordance with the principle of non-discrimination a contract with a State or entity or any component of such entity referred to in (i), shall include arrangements which shall be similar to and no less favourable than those agreed with any State or entity or any component of such entity referred to in (ii). If any of the States, entities or any

components of such entities referred to in (i) are granted more favourable arrangements, the Council shall make similar and no less favourable arrangements with regard to the rights and obligations assumed by the States, entities or any components of such entities referred to in (ii), provided that such arrangements do no affect or prejudice the interests of the Authority.

(iv) A State sponsoring an application for a plan of work pursuant to the provisions of (i) or (ii) may be a State Party or a State which is a member of the Authority on a provisional basis, in accordance with paragraph 12.

(v) Resolution II, paragraph 8(c), shall be interpreted and applied in accordance with (iv).

(b) The approval of a plan of work for exploration shall be in accordance with article 153, paragraph 3, of the Convention.

7. An application for approval of a plan of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities and by a description of a programme for oceanographic and baseline environmental studies in accordance with the rules, regulations and procedures adopted by the Authority.

8. An application for the approval of a plan of work for exploration, subject to paragraph 6 (a) (i) or (ii), shall be processed in accordance with the procedures set out in section 3, paragraph 11, of this Annex.

9. A plan of work for exploration shall be approved for a period of ten years. Upon the expiration of a plan of work for exploration, the contractor shall apply for a plan of work for exploitation unless the contractor has already done so or has obtained an extension for the plan of work for exploration. Contractors may apply for such extensions for periods of not more than five years each. Such extensions shall be approved if the contractor has made efforts in good faith to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or the prevailing economic circumstances do not justify proceeding to the exploitation stage.

10. Designation of a reserved area for the Authority in accordance with Annex III, article 8, of the Convention shall take place in connection with approval of an application for a plan of work for exploration or approval of an application for a plan of work for exploration and exploitation.

11. Notwithstanding the provisions of paragraph 9, an approved plan of work for exploration which is sponsored by at least one State provisionally applying this Agreement shall terminate if such a State ceases to apply this Agreement provisionally and has not become a member on a provisional basis in accordance with paragraph 12 or has not become a State Party.

12. Upon entry into force of this Agreement, States and entities referred to in article 3 of this Agreement which have been applying it provisionally in accordance with article 7 and for which it is not in force may continue to be members of the Authority on a provisional basis pending its entry into force for such States and entities, in accordance with the following subparagraphs.

(a) If this Agreement enters into force before 16 November 1996, such States and entities shall be entitled to continue to be members of the Authority on a provisional basis upon notification to the depositary of the Agreement by such a State or entity of its intention to participate as a member on a provisional basis. Such membership shall terminate on 16 November 1996 or upon earlier entry into force of this Agreement and the Convention for such member. The Council may, upon the request of the State or entity concerned, extend such membership beyond 16 November 1996 for a further period or periods not exceeding a total of two years provided that the Council is satisfied that the State or entity concerned has been making efforts in good faith to become a party to the Agreement and the Convention.

(b) If this Agreement enters into force after 15 November 1996, States and entities may request the Council to grant continued membership in the Authority on a provisional basis for a period or periods not extending beyond 16 November 1998. The Council shall grant such membership with effect from the date of the request if it is satisfied that the State or entity has been making efforts in good faith to become a party to the Agreement and the Convention.

(c) States and entities which are members of the Authority on a provisional basis in accordance with subparagraph (a) or (b) shall apply the terms of Part XI and this Agreement in accordance with their national or internal laws, regulations and annual budgetary appropriations and shall have the same rights and obligations as other members, including:

(i) the obligation to contribute to the administrative budget of the Authority in accordance with the scale of assessed contribution;

(ii) the right to sponsor an application for the approval of a plan of work for exploration. In the case of entities whose components are

natural or juridical persons possessing the nationality of more than one State, a plan of work for exploration shall not be approved unless all the States whose natural or juridical persons comprise those entities are States Parties or members on a provisional basis.

(d) Notwithstanding the provisions of paragraph 9, an approved plan of work in the form of a contract for exploration which was sponsored pursuant to sub-paragraph (c) (ii) by a State which was a member on a provisional basis, shall terminate if such membership ceases and the State or entity has not become a State Party.

(e) If such a member has failed to make its assessed contributions or otherwise failed to comply with its obligations in accordance with this paragraph, its membership on a provisional basis shall be terminated.

13. The reference in Annex III, article 10, of the Convention to performance which has not been satisfactory shall be interpreted to mean that the contractor has failed to comply with the requirements of an approved plan of work in spite of written warning or warnings from the Authority to the contractor to comply therewith.

14. The Authority shall have its own budget. Until the end of the year following the year during which this Agreement enters into force the administrative expenses of the Authority shall be met through the budget of the United Nations, subject to a decision of the General Assembly. Thereafter, the administrative expenses of the Authority shall be met by assessed contributions of its members, including any members on a provisional basis, in accordance with article 173 of the Convention and this Agreement until the Authority has sufficient funds from other sources to meet those expenses. The Authority shall not exercise the power referred to in article 174, paragraph 1, of the Convention to borrow funds to finance its administrative budget.

15. The Authority shall elaborate and adopt, in accordance with article 162, paragraph 2(o)(ii), of the Convention, rules, regulations and procedures based on the principles contained in sections 2, 5, 6 , 7 and 8 of this Annex, as well as any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploration or exploitation, in accordance with the following sub-paragraphs.

(a) The Council may undertake such elaboration at any time it deems all or any of such rules, regulations or procedures are required for the conduct of activities in the Area, or when it determines that commercial exploitation is imminent, or at the request of a State whose national intends to apply for approval of a plan of work for exploitation.

(b) If a request is made by a State referred to in subparagraph (a) the Council shall, in accordance with article 162, paragraph 2 (o), of the Convention, complete the adoption of such rules, regulations and procedures within two years of the request.

(c) It the Council has not completed rules, regulations and procedures relating to exploitation within the prescribed time, and an application for the approval of a plan of work for exploitation is pending, it shall nonetheless consider and provisionally approve such plan of work based on the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and the principles contained in this Annex as well as the principle of non-discrimination among contractors.

16. The draft rules, regulations and procedures and any recommendations relating to the provisions of Part XI, as contained in the reports and recommendations of the Preparatory Commission, shall be taken into account by the Authority in the adoption of rules, regulations and procedures in accordance with Part XI and this Agreement.

17. The relevant provisions of Part XI, section 4 shall be interpreted and applied in accordance with this Agreement.

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 shall appoint within his staff 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 man-power;

(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 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 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 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.

5. A contractor which has contributed a particular area to the Authority as a reserved area shall have 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 fifteen years of the commencement of its functions independent of the Secretariat of the Authority or within fifteen 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 be interpreted and applied in accordance with this section.

SECTION 3. DECISION – MAKING

1. The general policies of the Authority shall be established by the Assembly in collaboration with the Council.

2. As a general rule decision-making in the organs of the Authority should be by consensus.

3. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Assembly on matters of procedure shall be taken by a majority of States present and voting, and decisions on matters of substance shall be taken by a two-thirds majority of States present and voting, as provided for in article 159, paragraph 8, of the Convention.

4. Decisions of the Assembly on any matter for which the Council also has competence or on any administrative, budgetary or financial matter shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council for further consideration. The Council shall reconsider the matter in the light of the views expressed by the Assembly.

5. If all efforts to reach a decision by consensus have been exhausted, decision by voting in the Council on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance, except where the Convention provides for decisions by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to in paragraph 9. In taking decisions the Council shall seek to promote the interests of all the members of the Authority.

6. The Council may defer the taking of a decision in order to facilitate further negotiation whenever it appears that all efforts at achieving consensus on a question have not been exhausted.

7. Decisions by the Assembly or the Council, having financial or budgetary implications, shall be based on the recommendations of the Finance Committee.

8. The provisions of article 161, paragraph 8 (b) and (c), of the Convention shall not apply.

9. (a) Each group of States elected under paragraph 15(a) to (c) shall be treated as a chamber for the purposes of voting in the Council; The developing States elected under paragraph 15 (d) and (e) shall be treated as a single chamber for the purposes of voting in the Council.

(b) Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the criteria for membership in the groups of States in paragraph 15 (a) to (d). If a State fulfils the criteria for membership in more than one group, it may only be proposed by one group for election to the Council and its shall represent only that group in voting in the Council.

10. Each group of States in paragraph 15 (a) to (d) shall be represented in the Council by those members nominated by that group. Each group shall nominate only as many candidates as the number of seats that are required to be filled by that group. When the number of potential candidates in each of the groups referred to in paragraph 15 (a) to (e) exceeds the number of seats available in each of those respective groups, as a general rule, the principle of rotation shall apply. States members of each of those groups shall determine how this principle shall apply in those groups.

11. (a) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. The prescribed period shall normally be 60 days unless the Council decides to provide for a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its rules of procedure for decision-making on matters of substance.

(b) The provisions of article 162, paragraph 2 (j), of the Convention shall not apply.

12. Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement procedures set out in the Convention.

13. Decisions by voting in the Legal and Technical Commission shall be by a majority of members present and voting.

14. Part XI, section 4, subsections B and C shall be interpreted and applied in accordance with this section.

15. The Council shall consist of 36 members of the Authority elected by the Assembly in the following order:

(a) four members from among States Parties, each of which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of the total world consumption, or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this category;

(b) four members from among the eight States Parties which have made the largest investments in preparation for, and in conduct of, activities in the Area, either directly or through their nationals;

(c) four members from among State Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;

(d) six members from among developing States Parties, representing special interests. The special interests to be represented shall consist of States with large populations, States which are land-locked or geographically disadvantaged, island States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States.

(e) eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern Europe, Latin America and the Caribbean and Western Europe and Others.

16. The provisions of article 161, paragraph 1, of the Convention shall not apply.

SECTION 4. REVIEW CONFERENCE

The provisions relating to the Review Conference in article 155, paragraphs 1, 3 and 4, of the Convention shall not apply. Notwithstanding the provisions of article 314, paragraph 2, of the Convention, the Assembly, on the recommendation of the Council, may undertake at any time a review of the matters referred to in article 155, paragraph 1, of the Convention. Amendments relating to this Agreement and Part XI shall be subject to the procedures contained in articles 314, 315 and 316 of the Convention, provided that the principles, regime and other terms referred to in article 155, paragraph 2, of the Convention shall be maintained and the rights referred to in paragraph 5 of that article shall not be affected.

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 invite all or any of the contractors and their respective sponsoring State or States to cooperate with it in facilitating acquisition of deep seabed mining 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, consistent with effective protection of intellectual property rights. States Parties undertake to cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also fully cooperate with the Authority;

(c) As a general rule, States Parties shall promote international technical and scientific cooperation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific cooperation 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.

SECTION 6. PRODUCTION POLICY

1. The production policy of the Authority shall be based on the following principles:

(a) Development of the resources of the Area shall take place in accordance with sound commercial principles.

(b) The provisions of the General Agreement on Tariffs and Trade, its relevant codes and successor or superseding agreements, shall apply to States Parties to this Agreement with respect to activities in the Area.

(c) In particular, there shall be no subsidization of activities in the Area except as may be permitted under the agreements referred to in subparagraph (b). Subsidisation for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (b).

(d) There shall be no discrimination between minerals derived from the Area and from other sources. There shall be no preferential access to markets for such minerals or for imports of commodities produced from such minerals. In particular, there shall be no preferential access to markets:

(i) by the use of tariff or non-tariff barriers; and

(ii) States Parties shall not give preferential access to markets to such minerals or commodities produced by their state enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals.

(e) The plan of work for exploitation approved by the Authority in respect of each mining area shall indicate an anticipated production schedule which shall include the estimated maximum amounts of minerals that would be produced per year under that plan of work.

(f) The following shall apply to the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (b):

(i) Where States Parties are parties to such agreements, they shall have recourse to the dispute settlement procedures of such agreements;

(ii) Where one or more States Parties are not parties to such agreements, they shall have recourse to the dispute settlement procedures set out in the Convention.

(g) In circumstances where a determination is made under the agreements referred to in subparagraph (b) that a State Party has engaged in subsidisation which is prohibited or has resulted in adverse effects to the interests of another State Party and appropriate steps have not been taken by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.

2. The principles contained in paragraph 1 shall not affect rights and obligations under any provision of the agreements referred to in paragraph 1 (b), as well as relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.

3. The acceptance by a contractor of subsidies other than those which may be permitted under the agreements referred to in paragraph 1(b) shall constitute a violation of the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.

4. Any State Party which has reason to believe that there has been a breach of the requirements of paragraphs 1(b) to (d) or 3 may initiate dispute settlement procedures in conformity with paragraph 1 (f) or (g).

5. A State Party may at any time bring to the attention of the Council activities which in its view are inconsistent with the requirements of paragraph 1 (b) to (d).

6. The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this section. This shall include relevant rules, regulations and procedures governing the approval of plans of work.

7. The provisions of article 162, paragraph 2(q), article 165, paragraph 2(n), article 151, paragraphs 1 to 7 and paragraph 9, Annex III, article 6 (5) and Annex III, article 7 of the Convention shall not apply.

SECTION 7. ECONOMIC ASSISTANCE

1. The policy of the Authority to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be based on the following principles:

(a) The Authority shall establish an economic assistance fund from a portion of funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority. The amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions shall be used for the establishment of the economic assistance fund;

(b) Developing land-based producer States whose economies have been determined to be seriously affected by production of minerals from the deep seabed shall be assisted from the economic assistance fund of the Authority.

(c) The Authority shall provide assistance from the fund to affected developing land-based producer States, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes;

(d) The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer states.

2. Article 151, paragraph 10, of the Convention shall be implemented by means of measures of economic assistance referred to in paragraph 1. Article 160, paragraph 2(l), article 162, paragraph 2(n), article 164, paragraph 2(d), article 171, sub-paragraph (f), and article 173, paragraph 2(c), of the Convention sha1l be interpreted accordingly.

SECTION 8. FINANCIAL TERMS OF CONTRACT

1. The following principles shall provide the basis for establishing rules, regulations and procedures for financial terms of contract:

(a) The system of financial payments to the Authority shall be fair both to the contractor and to the Authority and shall provide adequate means of determining compliance by the contractor with such system;

(b) The rates of financial payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage;

(c) The system should not be complicated and should not impose major administrative costs on the Authority or on a contractor. Consideration should be given to the adoption of a royalty system or a combination of a royalty and profit-sharing system. If alternative systems are decided upon the choice of the system applicable to an individual contract shall be at the election of the contractor. Any subsequent change in the choice of the system shall be by agreement between the Authority and the contractor;

(d) An annual fixed fee shall be payable from the date of commencement of commercial production. Such fee may be credited against other payments due under the system adopted in accordance with subparagraph (c). The amount of such fee shall be established by the Council;

(e) The system of financial payments may be revised periodically in light of changing circumstances. Any changes shall be applied in a non-discriminatory manner. Such changes may apply to existing contracts only at the election of the contractor. Any subsequent change in choice between alternative systems shall be made by agreement between the Authority and the contractor;

(f) Disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures set out in the Convention.

2. The provisions of Annex III, article 13, paragraphs 3 to 10, of the Convention shall not apply.

3. With regard to the implementation of Annex III, article 13, paragraph 2, of the Convention, the fee for processing applications for the approval of a plan of work limited to one phase, either the exploration phase or the exploitation phase, shall be US$250,000 for each phase.

SECTION 9. THE FINANCE COMMITTEE

1. There is hereby established a Finance Committee. The Finance Committee shall be composed of 15 members with appropriate qualifications relevant to financial matters. States Parties shall nominate candidates of the highest standards of competence and integrity.

2. No two members of the Finance Committee Shall be nationals of the same State Party.

3. Members of the Finance Committee shall be elected by the Assembly and due account shall be taken of the need for equitable geographical distribution and the representation of special interests. Each group of States referred to in section 3, paragraph 15(a), (b), (c) and (d), of this Annex shall be represented on the Finance Committee by at least one member. Until the Authority has sufficient funds other than assessed contributions to meet its administrative expenses, the membership of the Committee shall include the five largest financial contributors to the administrative budget of the Authority. Thereafter, the election of one member from each group shall be on the basis of nomination by the member of the respective group, without prejudice to the possibility of further members being elected from each such group.

4. Members of the Committee shall hold office for a term of five years. They shall be eligible for re-election for a further term.

5. In the event of death, incapacity or resignation of a member of the Committee prior to the expiration of the term of office, the Assembly shall elect for the remainder of the term a member from the same geographical region or group of States.

6. Members of the Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after the termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Authority.

7. Decisions by the Assembly and the Council on the following issues shall take into account recommendations of the Finance Committee:

(a) draft financial rules, regulations and procedures of the organs of the Authority and the financial management and internal financial administration of the Authority;

(b) assessment of contributions of members to the administrative budget of the Authority in accordance with article 160, paragraph 2(e), of the Convention.

(c) all relevant financial matters including the proposed annual budget prepared by the Secretary-General in accordance with article 172 of the Convention and the financial aspects of the implementation of the programmes of work of the Secretariat;

(d) the administrative budget;

(e) financial obligations of States Parties arising from the implementation of this Agreement and Part XI as well as the administrative and budgetary implications of proposals and recommendation involving expenditure from the funds of the Authority;

(f) rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon.

8. Decisions in the Finance Committee on questions of procedure shall be taken by a majority of members present and voting. Decisions on questions of substance shall be taken by consensus. If consensus cannot be reached, a summary of the range of views in the Committee on the question shall be forwarded to the relevant organ of the Authority.

9. The requirement of article 162, paragraph 2(y), of the Convention to establish a subsidiary organ to deal with financial matters shall be deemed to have been fulfilled by the establishment of the Finance Committee in accordance with this section.

SG/LOS/CRP.1
26 May 1994
Original: English

DRAFT RESOLUTION AND DRAFT AGREEMENT

RELATING TO THE IMPLEMENTATION OF PART XI

THE UNITED NATIONS CONVENTION ON

THE LAW OF THE SEA OF **1982***

* In order to facilitate the process of harmonizing the various language versions of the text, the Secretariat has commenced an initial review of the text. The editorial changes made to the Draft Resolution and Draft Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea of 15 April 1994 are indicated in **bold**.

DRAFT RESOLUTION FOR ADOPTION BY THE GENERAL ASSEMBLY

The General Assembly,

Prompted by the desire to achieve universal participation in the United Nations Convention on the Law of the Sea of 1982, [1]

Reaffirming that the seabed and ocean floor, and subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the "Area"), as well as the resources of the Area, are the common heritage of mankind, [2]

Recalling that the Convention in its Part XI and related provisions (**hereinafter referred to as "Part XI")** established a regime for the Area and its resources,

Taking note of the Consolidated Provisional Final Report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea, [3]

Recalling its resolution 48/28 of 9 December 1993 on the law of the sea,

Recognizing that political and economic changes, including in particular a growing reliance on market principles, **have** shown the need to re-evaluate some aspects of the regime for the Area and its resources,

Noting the initiative of the Secretary-General which began in 1990 to promote dialogue aimed at achieving universal participation in the Convention,

Welcoming the report of the Secretary-General on the outcome of his informal consultations,[4] including the draft of an agreement relating to the Implementation of Part XI,

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[1] 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), document A/CONF/62/122.

[2] General Assembly resolution 2749 (XXV) of 17 December 1970; Article 136 of the United Nations Convention on the Law of the Sea.

[3] Documents LOS/PCN/130 and Add.1

[4] To be issued.

Considering that the objective of universal participation in the Convention may best be achieved by the adoption of an Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 1982 (**hereinafter referred to as the "Agreement"**),

Recognizing the need to provide for the provisional application of the Agreement from the date of entry into force of the Convention on 16 November 1994,

1. Expresses its appreciation to the Secretary-General for his report on the informal consultations;

2. Reaffirms the unified character of the United Nations Convention on the Law of the Sea of 1982;

3. Adopts the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 1982, the text of which is annexed to the present resolution;

4. Affirms that the Agreement shall be interpreted and applied together with Part XI as a single instrument;

5. Considers that future ratifications or formal confirmations of or accessions to the Convention shall represents also consent to be bound by the Agreement and that no State or entity may establish its consent to be bound by the Agreement unless it has previously established or establishes at the same time its consent bound by the Convention.

6. Calls upon States which consent to the adoption of the Agreement to refrain from any act which would defeat its object and purpose;

7. Decides to fund the administrative expenses of the International Seabed Authority in accordance with section 1, paragraph 14, of the Annex to the Agreement;

8. Requests the Secretary-General to transmit immediately certified copies of the Agreement to the States and entities referred to in article 3 thereof, with a view to facilitating universal participation in the Convention and the Agreement, and to draw attention to articles 4 and 5 of the Agreement;

9. Further requests the Secretary-General to open the Agreement for signature in accordance with article 3 thereof immediately after its adoption;

10. Urges all States and entities referred to in article 3 of the Agreement to consent to its provisional application as from 16 November 1994 and to establish their consent to be bound by the Agreement at the earliest possible date;

11. Further urges all such States and entities which have not already done so to consider ratifying, formally confirming or acceding to the Convention at the earliest possible date;

12. Calls upon the Preparatory Commission **for the International Seabed Authority** and for the **International Tribunal for the Law of the Sea** to take into account the terms of the Agreement when drawing up its final report.

AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 1982

The States Parties to this Agreement,

Recognizing the important contribution of the United Nations Convention on the Law of the Sea of 1982 (**hereinafter referred to as the "Convention"**) to the maintenance of peace, justice and progress for all peoples of the world,

Reaffirming that the **seabed and ocean floor, and subsoil thereof, beyond the limits of national jurisdiction** (**hereinafter referred to as the "Area"**), **as well as the resources of the Area, are the common heritage of mankind**,

Mindful of the importance of the Convention for the protection and preservation of the marine environment and of the growing concern for the global environment,

Having considered the report of the Secretary-General of the United Nations on the results of the informal consultations among States held from 1990 to 1994 on outstanding issues relating to Part XI and related provisions of the Convention (**hereinafter referred to as "Part XI"),**

Noting the important political and economic changes which **have affected** the implementation of Part XI,

Wishing to facilitate universal participation in the Convention,

Considering that an Agreement relating to the implementation of Part XI would best meet that objective,

Have agreed as follows:

Article 1
Implementation of Part XI

1. The States Parties to this Agreement undertake to implement Part XI in accordance with this Agreement.

2. The Annex forms an integral part of this Agreement.

Article 2

Relationship between this Agreement and Part XI

1. The provisions of this Agreement and Part XI shall be interpreted and applied together as a single instrument. In the event of any inconsistency between this Agreement and Part XI, the provisions of this Agreement shall prevail.

2. Articles 309 and 319 of the Convention shall apply to this Agreement as they apply to the Convention.

Article 3
Signature

This Agreement shall remain open for signature at United Nations Headquarters by the States and entities referred to in article 305, paragraph 1 (a), (c), (d), (e) and (f), of the Convention for 12 months from the date of its adoption.

Article 4
Consent to be bound

1. After the adoption of this Agreement, any instrument of ratification or formal confirmation of or accession to the Convention shall also represent consent to be bound by this Agreement.

2. No State or entity may establish its consent to be bound by this Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention.

3. A State or entity referred to in article 3 may **express** its consent to be bound by this Agreement by:

(a) signature not subject to ratification, formal confirmation or the procedure set out in article 5;

(b) signature subject to ratification or formal confirmation, followed by ratification or formal confirmation;

(c) signature subject to the procedure set out in article 5; or

(d) accession.

4. Formal confirmation by the entities referred to in article 305, paragraph 1(f), of the Convention shall be in accordance with Annex IX of the Convention.

5. The instruments of ratification, formal confirmation or accession shall be deposited with the Secretary-General of the United Nations.

Article 5
Simplified Procedure

1. A State or entity which has deposited before the date of the adoption of this Agreement an instrument of ratification or formal confirmation of or accession to the Convention and which has signed this Agreement in accordance with article 4, paragraph 3(c), shall be considered to have established its consent to be bound by this Agreement twelve months after the date of its adoption, unless that State or entity notifies the depositary in writing before that date that it is not availing itself of the simplified procedure set out in this article.

2. In the event of such notification, consent to be bound by this Agreement shall be established in accordance with article 4, paragraph 3 (b).

Article 6
Entry into force

1. This Agreement shall enter into force 30 days after the date on which 40 States have established their consent to be bound in accordance with articles 4 and 5, provided that such States include at least seven of the States referred to in paragraph 1(a) of resolution II of the Third United Nations Convention on the Law of the Sea (**hereinafter referred to as "resolution II") and that at least five of those States are developed States. If these conditions for entry into force are fulfilled before 16 November 1994, this Agreement shall enter into force on 16 November 1994**.

2. For each State or entity establishing its consent to be bound by this Agreement after the requirements set out in paragraph 1 have been fulfilled, this Agreement shall enter into force on the thirtieth day following the date of establishment of its consent to be bound.

Article 7
Provisional application

1. If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force by:

(a) States which have consented to its adoption, except any such State which before that date notifies the depositary in writing either

that it will not so apply the Agreement or that it will consent to such application only upon subsequent signature or notification in writing;

(b) States and entities which sign this Agreement.

(c) States and entities which consent to its provisional application by so notifying the depositary in writing;

(d) States which accede to this Agreement.

2. All such States and entities shall apply this Agreement provisionally in accordance with their national or internal laws and regulations, which effect from 16 November 1994 or the date of signature, notification of consent or accession, if later.

3. Provisional application shall terminate upon the date of entry into force of this Agreement. **In any event,** provisional application shall terminate on 16 November 1998 if at that date the requirement in article 6, paragraph 1, of consent to be bound by this Agreement by at least seven of the States (of which at least five must be developed States) referred to in paragraph 1 (a) of resolution II has not been fulfilled.

Article 8
States Parties

1. For the purposes of this Agreement, "States parties" means States which have consented to be bound by this Agreement and for which this Agreement is in force.

2. This Agreement applies *mutatis mutandis* to the entities referred to in article 305, paragraph 1 (c), (d), (e) and (f), of the Convention, which become Parties to the Agreement in accordance with the conditions relevant to each, and to that extent "States Parties" refers to those entities.

Article 9
Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement.

Article 10
Authentic texts

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

ANNEX

SECTION 1.
COSTS TO STATES PARTIES AND INSTITUTIONAL ARRANGEMENTS

1. The International Seabed Authority (the "Authority") is the organization through which States Parties to the Convention shall, in accordance with the regime for the Area established in Part XI and this Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area. The powers and functions of the Authority shall be those expressly conferred upon it by the Convention. The Authority shall have such incidental powers, consistent with the Convention, as are implicit in, and necessary for, the exercise of those powers and functions with respect to activities in the Area.

2. In order to minimize costs to States Parties, all organs and subsidiary bodies to be established under the Convention and this Agreement shall be cost-effective. This principle shall also apply to the frequency, length and scheduling of meetings.

3. The setting up and the functioning of the organs and subsidiary bodies of the Authority shall be based on an evolutionary approach, taking into account the functional needs of the organs and subsidiary bodies concerned in order that they may discharge effectively their respective responsibilities at various stages of the development of activities in the Area.

4. The early functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Legal and Technical Commission and the Finance Committee. The functions of the Economic Planning Commission shall be performed by the Legal and Technical Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation.

5. Between the entry into force of the Convention and the approval of the first plan of work for exploitation, the Authority shall concentrate on:

(a) processing of applications for approval of plans of work for exploration in accordance with Part XI and this Agreement;

(b) implementation of decisions of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (the "Preparatory Commission") relating to the registered pioneer investors and their certifying States, including their

rights and obligations, in accordance with article 308, paragraph 5, of the Convention and resolution II, paragraph 13;

(c) monitoring of compliance with plans of work for exploration approved in the form of contracts;

(d) 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;

(e) study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;

(f) adoption of rules, regulations and procedures necessary for the conduct of activities in the Area as they progress. Notwithstanding the provisions of Annex III, article 17 (2)(b) and (c), of the Convention, such rules, regulations and procedures shall take into account the terms of this Agreement, the prolonged delay in commercial deep seabed mining and the likely pace of activities in the Area;

(g) adoption of rules, regulations and procedures incorporating generally applicable standards for the protection and preservation of the marine environment;

(h) promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of activities in the Area;

(i) acquisition of scientific knowledge and monitoring of the development of marine technology relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;

(j) assessment of available data relating to prospecting and exploration;

(k) timely elaboration of rules, regulations and procedures for exploitation, including those relating to the protection and preservation of the marine environment.

6. (a) An application for approval of a plan of work for exploration shall be considered by the Council following the receipt of a recommendation on the application from the Legal and Technical Commission. The processing of an application for approval of a plan of work for exploration shall be in accordance with the provisions of the Convention, including Annex III thereof and this Agreement, and subject to the following:

(i) A plan of work for exploration submitted on behalf of a State or entity, or any component of such entity, referred to in resolution II, paragraph 1(a)(ii) or (iii), other than a registered pioneer investor, which had already undertaken substantial activities in the Area prior to the entry into force of the Convention, or its successor in the interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work, if the sponsoring State or States certify that the applicant has expended an amount equivalent to at least US$ 30 million in research and exploration activities and has expended no less than ten per cent of that amount in the location, survey and evaluation of the area referred to in the plan of work. If the plan or work otherwise satisfies the requirements of the Convention and any rules, regulations and procedures adopted pursuant thereto, it shall be approved by the Council in the form of a contract. The provisions of section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;

(ii) Notwithstanding the provisions of resolution II, paragraph 8(a), a registered pioneer investor may request approval of a plan of work for exploration within 24 months of the entry into force of the Convention. The plan of work for exploration shall consist of documents, reports and other data submitted to the Preparatory Commission both before and after registration and shall be accompanied by a certificate of compliance, consisting of a factual report describing the status of fulfillment of obligations under the pioneer investor regime, issued by the Preparatory Commission in accordance with resolution II, paragraph 11(a). Such a plan of work shall be considered to be approved. Such an approved plan of work shall be in the form of a contract concluded between the Authority and the registered pioneer investor in accordance with Part XI and this Agreement. The fee of US $ 250,000 paid pursuant to resolution II, paragraph 7 (a), shall be deemed to be the fee relating to the exploration phase pursuant to

section 8, paragraph 3, of this Annex. Section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;

(iii) In accordance with the principle of non-discrimination, a contract with a State or entity or any component of such entity referred to in subparagraph (a)(i) shall include arrangements which shall be similar to and no less favourable than those agreed with any State or entity or any component of such entity referred to in **subparagraph (a)**(ii). If any of the States, entities or any components of such entities referred to in **subparagraph (a)**(i) are granted more favourable arrangements, the Council shall make similar and no less favourable arrangements with regard to the rights and obligations assumed by the States, entities or any components or such entities referred to in **subparagraph (a)**(ii), provided that such arrangements do not affect or prejudice the interests of the Authority;

(iv) A State sponsoring an application for a plan of work pursuant to the provisions of **subparagraph (a)**(i) or (ii) may be a State Party or a State which is a member of the Authority on a provisional basis, in accordance with paragraph 12;

(v) Resolution II, paragraph 8(c), shall be interpreted and applied in accordance with **subparagraph (a)**(iv);

(b) The approval of a plan of work for exploration shall be in accordance with article 153, paragraph 3, of the Convention.

7. An application for approval of a plan or work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities and by a description of a programme for oceanographic and baseline environmental studies in accordance with the rules, regulations and procedures adopted by the Authority.

8. An application for approval of a plan for exploration, subject to paragraph 6(a)(i) or (ii), shall be processed in accordance with the procedures set out in section 3, paragraph 11, of this Annex.

9. A plan of work for exploration shall be approved for a period of ten years. Upon the expiration of a plan of work for exploration, the contractor shall apply for a plan or work for exploitation unless the contractor has already done so or has obtained an extension for the plan or

work for exploration. Contractors may apply for such extensions for periods of not more than five years each. Such extensions shall be approved if the contractor has made efforts in good faith to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or if the prevailing economic circumstances do not justify proceeding to the exploitation stage.

10. Designation of a reserved area for the Authority in accordance with Annex III, article 8, of the Convention shall take place in connection with approval of an application for a plan of work for exploration or approval of an application for a plan or work for exploration and exploitation.

11. Notwithstanding the provisions of paragraph 9, an approved plan or work for exploration which is sponsored by at least one State provisionally applying this Agreement shall terminate if such a State ceases to apply this Agreement provisionally and has not become a member on a provisional basis in accordance with paragraph 12 or has not become a State Party.

12. Upon the entry into force of this Agreement, States and entities referred to in article 3 of this Agreement which have been applying it provisionally in accordance with article 7 and for which it is not in force may continue to be members of the Authority on a provisional basis pending its entry into force for such States and entities, in accordance with the following subparagraphs:

(a) If this Agreement enters into force before 16 November 1996, such States and entities shall be entitled to continue to **participate as** members of the Authority on a provisional basis upon notification to the depositary of the Agreement by such a State or entity of its intention to participate as a member on a provisional basis. Such membership shall terminate **either** on 16 November 1996 or upon the entry into force of this Agreement and the Convention for such member, **whichever is earlier**. The Council may upon the request of the State or entity concerned, extend such membership beyond 16 November 1996 for a further period or periods not exceeding a total of two years provided that the Council is satisfied that the State or entity concerned has been making efforts in good faith to become a party to the Agreement and the Convention;

(b) If this Agreement enters into force after 15 November 1996, such States and entities may request the Council to grant continued membership in the Authority on a provisional basis for a period or periods not extending beyond 16 November 1998. The Council shall grant such membership with effect from the date of the request if it is satisfied that the

State or entity has been making efforts in good faith to become a party to the Agreement and the Convention;

(c) States and entities which are members of the Authority on a provisional basis in accordance with subparagraph (a) or (b) shall apply the terms of Part XI and this Agreement in accordance with their national or internal laws, regulations and annual budgetary appropriations and shall have the same rights and obligations as other members, including;

(i) the obligation to contribute to the administrative budget of the Authority in accordance with the scale of assessed contributions;

(ii) the right to sponsor an application for approval of a plan of work for exploration. In the case of entities whose components are natural or juridical persons possessing the nationality of more than one State, a plan of work for exploration shall not be approved unless all the States whose natural or juridical persons comprise those entities are States Parties or members on a provisional basis;

(d) Notwithstanding the provisions of paragraph 9, an approved plan of work in the form of a contract for exploration which was sponsored pursuant to subparagraph c (ii) by a State which was a member on a provisional basis shall terminate if such membership ceases and the State or entity has not become a State Party;

(e) If such a member has failed to make its assessed contributions or otherwise failed to comply with its obligations in accordance with this paragraph, its membership on a provisional basis shall be terminated.

13. The reference in Annex III, article 10, of the Convention to performance which has not been satisfactory shall be interpreted to mean that the contractor has failed to comply with the requirements of an approved plan of work in spite of a written warning or warnings from the Authority to the contractor to comply therewith.

14. The Authority shall have its own budget. Until the end of the year following the year during which this Agreement enters into force, the administrative expenses of the Authority shall be met through the budget of the United Nations, subject to a decision of the General Assembly. Thereafter, the administrative expenses of the Authority shall be met by assessed contributions of its members, including any members on a provisional basis, in accordance with article 173 of the Convention and this Agreement, until the Authority has sufficient funds from other sources to

meet those expenses. The Authority shall not exercise the power referred to in article 174, paragraph 1, of the Convention to borrow funds to finance its administrative budget.

15. The Authority shall elaborate and adopt, in accordance with article 162, paragraph 2 (o)(ii), of the Convention, rules, regulations and procedures based on the principles contained in sections 2, 5, 6, 7 and 8 of this Annex, as well as any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploration or exploitation, in accordance with the following subparagraphs:

(a) The Council may undertake such elaboration any time it deems that all or any of such rules, regulations or procedures are required for the conduct of activities in the Area, or when it determines that commercial exploitation is imminent, or at the request of a State whose national intends to apply for approval of a plan of work for exploitation;

(b) If a request is made by a State referred to in subparagraph (a) the Council shall, in accordance with article 162, paragraph 2 (o), of the Convention, complete the adoption of such rules, regulations and procedures within two years of the request;

(c) If the Council has not completed **the elaboration of the** rules, regulations and procedures relating to exploitation within the prescribed time and an application for approval of a plan of work for exploitation is pending, it shall **none the less** consider and provisionally approve such plan of work based on the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles contained in this Annex as well as the principle of non-discrimination among contractors.

16. The draft rules, regulations and procedures and any recommendations relating to the provisions of Part XI, as contained in the reports and recommendations of the Preparatory Commission, shall be taken into account by the Authority in the adoption of rules, regulations and procedures in accordance with Part XI and this Agreement.

17. The relevant provisions of Part XI, section 4, **of the Convention** shall be interpreted and applied in accordance with this Agreement.

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 his staff 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 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 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 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 shall have 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 fifteen years of the commencement of its functions independent of the Secretariat of the Authority or within fifteen 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 be interpreted and applied in accordance with this section.

SECTION 3. DECISION-MAKING

1. The general policies of the Authority shall be established by the Assembly in collaboration with the Council.

2. As a general rule, decision-making in the organs of the Authority should be by consensus.

3. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Assembly on matters of procedure shall be taken by a majority of States present and voting, and decisions on matters of substance shall be taken by a two-thirds majority of States present and voting, as provided for in article 159, paragraph 8, of the Convention.

4. Decisions of the Assembly on any matter for which the Council also has competence or on any administrative, budgetary or financial matter shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council for further consideration. The Council shall reconsider the matter in the light of the views expressed by the Assembly.

5. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Council on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance, except where the Convention provides for decisions by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to in paragraph 9. In taking decisions the Council shall seek to promote the interests of all the members of the Authority.

6. The Council may defer the taking of a decision in order to facilitate further negotiation whenever it appears that all efforts at achieving consensus on a question have not been exhausted.

7. Decisions by the Assembly or the Council having financial or budgetary implications shall be based on the recommendations of the Finance Committee.

8. The provisions of article 161, paragraph 8(b) and (c), of the Convention shall not apply.

9. (a) Each group of States elected under paragraph 15(a) to (c) shall be treated as a chamber for the purposes of voting in the Council. The developing States elected under paragraph 15(d) and (e) shall be treated as a single chamber for the purposes of voting in the Council.

(b) Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the criteria for membership in the groups of States in paragraph 15(a) and (d). If a State fulfils the criteria for membership in more than one group, it may only be proposed by one group for election to the Council and it shall represent only that group in voting in the Council.

10. Each group of States in paragraph 15(a) to (d) shall be represented in the Council by those members nominated by that group. Each group shall nominate only as many candidates as the number of seats required to be filled by that group. When the number of potential candidates in each of the groups referred to in paragraph 15(a) to (e) exceeds the number of seats available in each of those respective groups, as a general rule, the principle of rotation shall apply. States members of each of those groups shall determine how this principle shall apply in those groups.

11. (a) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the

Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. The prescribed period shall normally be 60 days unless the Council decides to provide for a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its rules of procedure for decision-making on matters of substance.

(b) The provisions of article 162, paragraph 2 (j), of the Convention shall not apply.

12. Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement procedures set out in the Convention.

13. Decisions by voting in the Legal and Technical Commission shall be by a majority of members present and voting.

14. Part XI, section 4, subsections B and C, of the Convention shall be interpreted and applied in accordance with this section.

15. The Council shall consist of 36 members of the Authority elected by the Assembly in the following order:

(a) four members from among those States Parties which, during the last five years for which statistics are available, have either consumed more than 2 percent in value terms of total world consumption or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this category;

(b) four members from among the eight States Parties which have made the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their national;

(c) four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least

two developing States whose exports of such minerals have a substantial bearing upon their economies;

(d) six members from among developing States Parties, representing special interests. The special interests to be represented shall include those of States with large populations, States which are land-locked or geographically disadvantaged, island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States;

(e) eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern Europe, Latin America and the Caribbean and Western European and Others.

16. The provisions of article 161, paragraph 1, of the Convention shall not apply.

SECTION 4. REVIEW CONFERENCE

The provisions relating to the Review Conference in article 155, paragraphs 1, 3 and 4, of the Convention shall not apply. Notwithstanding the provisions of article 314, paragraph 2, of the Convention, the Assembly, on the recommendation of the Council, may undertake at any time a review of the matters referred to in article 155, paragraph 1, of the Convention. Amendments relating to this Agreement and Part XI shall be subject to the procedures contained in articles 314, 315 and 316 of the Convention, provided that the principles, regime and other terms referred to in article 155, paragraph 2, of the Convention shall be maintained and the rights referred to in paragraph 5 of that article shall not be affected.

SECTION 5. TRANSFER OF TECHNOLOGY

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 invite all or any of the

contractors and their respective sponsoring State or States to cooperate 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 cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also cooperate fully with the Authority;

(c) As a general rule, States Parties shall promote international technical and scientific cooperation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific cooperation programme 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.

SECTION 6. PRODUCTION POLICY

1. The production policy of the Authority shall be based on the following principles:

(a) Development of the resources of the Area shall take place in accordance with sound commercial principles;

(b) The provisions of the General Agreement on Tariffs and Trade, its relevant codes and successor or superseding agreements shall apply to States Parties to this Agreement with respect to activities in the Area;

(c) In particular, there shall be no subsidization of activities in the Area except as may be permitted under the agreements referred to in subparagraph (b). Subsidization for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (b);

(d) There shall be no discrimination between minerals derived from the Area and those derived from other sources. There shall be no preferential access to markets for the former minerals or for imports of commodities produced from them. In particular:

(i) **There shall be no preferential access to markets of such minerals or commodities** by the use of tariff or non-tariff barriers; and

(ii) States Parties shall not give preferential access to markets to minerals **derived from the Area** or commodities produced **from such minerals** by their state enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals;

(e) The plan of work for exploitation approved by the Authority in respect of each mining area shall indicate an anticipated production schedule which shall include the estimated maximum amounts of minerals that would be produced per year under the plan of work;

(f) The following shall apply to the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (b):

(i) Where States parties are parties to such agreements, they shall have recourse to the dispute settlement procedures of those agreements;

(ii) Where one or more States Parties are not parties to such agreements, they shall have recourse to the dispute settlement procedures set out in the Convention.

(g) In circumstances where a determination is made in the agreements referred to in subparagraph (b) that a State Party has engaged in subsidization which is prohibited or has resulted in adverse effects on the interests of another State Party and appropriate steps have not been take by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.

2. The principles contained in paragraph 1 shall not affect the rights and obligations under any provision of the agreements referred to in paragraph 1 (b), as well as the relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.

3. The acceptance by a contractor of subsidies other than those which may be permitted under the agreements referred to in paragraph 1 (b) shall constitute a violation of the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.

4. Any State Party which has reason to believe that there has been a breach of the requirements of paragraphs 1(b) to (d) or 3 may initiate dispute settlement procedures in conformity with paragraph 1 (f) or (g).

5. A State Party may at any time bring to the attention of the Council activities which in its view are inconsistent with the requirements of paragraph 1 (b) to (d).

6. The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this section, **including** relevant rules, regulations and procedures governing the approval of plans of work.

7. The provisions of **article 151, paragraphs 1 to 7 and 9, article 162, paragraph 2(q), article 165, paragraph 2(n), Annex III, article 6, paragraph 5, and article 7**, of the Convention shall not apply.

SECTION 7. ECONOMIC ASSISTANCE

1. The policy of the Authority of assisting developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be based on the following principles:

(a) The Authority shall establish an economic assistance fund from a portion of the funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority. The amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions shall be used for the establishment of the economic assistance fund;

(b) Developing land-based producer States whose economies have been determined to be seriously affected by the production of minerals from the deep seabed shall be assisted from the economic assistance fund of the Authority;

(c) The Authority shall provide assistance from the fund to affected developing land-based producer States, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes;

(d) The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer States.

2. Article151, paragraph 10, of the Convention shall be implemented by means of measures of economic assistance referred to in paragraph 1. Article 160, paragraph 2(l), article 162, paragraph 2 (n), article 164,

paragraph 2 (d), article 171, subparagraph (f), and article 173, paragraph 2 (c), of the Convention shall be interpreted accordingly.

SECTION 8. FINANCIAL TERMS OF CONTRACTS

1. The following principles shall provide the basis for establishing rules, regulations and procedures for financial terms of contract:

(a) The system of financial payments to the Authority shall be fair both to the contractor and to the Authority and shall provide adequate means of determining compliance by the contractor by with such system;

(b) The rates of financial payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage;

(c) The system should not be complicated and should not impose major administrative costs on the Authority or on a contractor. Consideration should be given to the adoption of a royalty system or a combination of a royalty and profit-sharing system. If alternative systems are decided upon, **the contractor has the right to choose the system applicable to its contract**. Any subsequent change in the choice of the system **however** shall be by agreement between the Authority and the contractor;

(d) An annual fixed fee shall be payable from the date of commencement of commercial production. **This** fee may be credited against other payments due under the system adopted in accordance with subparagraph (c). The amount of the fee shall be established by the Council;

(e) The system of financial payments may be revised periodically in **the** light of changing circumstances. Any changes shall be applied to a non-discriminatory manner. Such changes may apply to existing contracts only at the election of the contractor. Any subsequent change in choice between alternative systems shall be made by agreement between the Authority and the contractor;

(f) Disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures set out in the Convention.

2. The provisions of Annex III, article 13, paragraphs 3 to 10, of the Convention shall not apply.

3. With regard to the implementation of Annex III, article 13, paragraph 2, of the Convention, the fee for processing applications for approval of a plan of work limited to one phase, either the exploration phase or the exploitation phase, shall be US$ 250,000 for each phase.

SECTION 9. THE FINANCE COMMITTEE

1. There is hereby established a Finance Committee. The Finance Committee shall be composed of 15 members with appropriate qualifications relevant to financial matters. States Parties shall nominate candidates of the highest standards of competence and integrity.

2. No two members of the Finance Committee shall be nationals of the same State Party.

3. Members of the Finance Committee shall be elected by the Assembly and due account shall be taken to the need for equitable geographical distribution and the representation of special interests. Each group of States referred to in Section 3, paragraph 15(a), (b), (c) and (d), of this Annex shall be represented on the Finance Committee by at least one member. Until the Authority has sufficient funds other than assessed contributions to meet its administrative expenses, the membership of the Committee shall include the five largest financial contributors to the administrative budget of the Authority. Thereafter, the election of one member from each group shall be on the basis of nomination by the members of the respective group, with out prejudice to the possibility of further members being elected from each group.

4. Members of the Committee shall hold office for a term of five years. They shall be eligible for re-election for a further term.

5. In the event of the death, incapacity or resignation of a member of the Committee prior to the expiration of the term of office, the Assembly shall elect for the remainder of the term a member from the same geographical region or group of States.

6. Members of the Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after the termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Authority.

7. Decisions by the Assembly and the Council on the following issues shall take into account recommendations of the Finance Committee:

(a) draft financial rules, regulations and procedures of the organs of the Authority and the financial management and internal financial administration of the Authority;

(b) assessment of contributions of members to the administrative budget of the Authority in accordance with article 160, paragraph 2(e), of the Convention;

(c) all relevant financial matters, including the proposed annual budget prepared by the Secretary-General in accordance with article 172 of the Convention and the financial aspects of the implementation of the programmes of work of the Secretariat;

(d) the administrative budget;

(e) financial obligations of States arising from the implementation of this Agreement and Part XI as well as the administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority;

(f) rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon.

8. Decisions in the Finance Committee on questions of procedure shall be taken by a majority of members present and voting. Decisions on questions of substance shall be taken by consensus. If consensus cannot be reached, a summary of the range of views in the Committee on the question shall be forwarded to the relevant organ of the Authority.

9. The requirement of article 162, paragraph 2(y), of the Convention to establish a subsidiary organ to deal with financial matters shall be deemed to have been fulfilled by the establishment of the Finance Committee in accordance with this section.

SG/LOS/CRP.2
26 May 1994
Original: English

DRAFT RESOLUTION AND DRAFT AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF **1982***

* In order to facilitate the process of harmonizing the various language versions of the text, the Secretariat has commenced an initial review of the text. The editorial changes made to the Draft Resolution and Draft Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea of 15 April 1984 are indicated in **bold**.

The General Assembly,

Prompted by the desire to achieve universal participation in the United Nations Convention on the Law of the Sea of 1982,[1]

Reaffirming that the seabed and ocean floor, and subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the "Area"), as well as the resources of the Area, are the common heritage of mankind,[2]

Recalling that the Convention in its Part XI and related provisions (hereinafter referred to as "Part XI") established a regime for the Area and its resources,

Taking note of the Consolidated Provisional Final Report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea,[3]

Recalling its resolution 48/28 of 9 December 1993 on the law of the sea,

Recognizing that political and economic changes, including in particular a growing reliance on market principles, shown the need to re-evaluate some aspects of the regime for the Area and its resources,

Noting the initiative of the Secretary-General which began in 1990 to promote dialogue aimed at achieving universal participation in the Convention,

Welcoming the report of the Secretary-General on the outcome of his informal consultation,[4] including the draft of an agreement relating to the implementation of Part XI,

Considering that the objective of universal participation in the Convention may best be achieved by the adoption of an Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 1982, (hereinafter referred to as the "Agreement"),

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[1] 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) document A/CONF.62/122.

[2] General Assembly resolution 2749 (XXV) of 17 December 1970, Article 136 of the United Nations Convention on the Law of the Sea,

[3] Documents LOS/PCN/130/Add.1

[4] To be issued

Recognizing the need to provide for the provisional application of the Agreement from the date of entry into force of the Convention, on 16 November 1994,

1. Expresses its appreciation to the Secretary-General for his report on the informal consultations;

2. Reaffirms the unified character of the United Nations Convention on the Law of the Sea of 1982;

3. Adopts the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 1982, the text of which is annexed to the present resolution;

4. Affirms that the Agreement shall be interpreted and applied together with Part XI as a single instrument;

5. Considers that future ratifications or formal confirmations of or accessions to the Convention shall represent also consent to be bound by the Agreement and that no State or entity may establish its consent to be bound by the Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention;

6. Calls upon States which consent to the adoption of the Agreement to refrain from any act which would defeat its object and purpose;

7. Decides to fund the administrative expenses of the International Seabed Authority in accordance with section 1, paragraph 14, of the Annex to the Agreement;

8. Requests the Secretary-General to transmit immediately certified copies of the Agreement to the States and entities referred to in article 3 thereof with a view to facilitating universal participation in the Convention and the Agreement, and to draw attention to articles 4 and 5 of the Agreement;

9. Further requests the Secretary-General to open the Agreement for signature in accordance with article 3 thereof immediately after its adoption;

10. Urges all States and entities referred to in article 3 of the Agreement to consent to its provisional application as from 16 November 1994 and to establish their consent to be bound by the Agreement at the earliest possible date;

11. Further urges all States and entities which have not already done so to consider ratifying, formally confirming or acceding to the Convention at the earliest possible date;

12. Calls upon the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea to take into account the terms of the Agreement when drawing up its final report.

AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 1982

The States Parties to this Agreement,

Recognizing the important contribution of the United Nations Convention on the Law of the Sea of 1982 (hereinafter referred to as the "Convention") to the maintenance of peace, justice and progress for all peoples of the world,

Reaffirming that the seabed and ocean floor, and subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the "Area"), as well as the resources of the Area, are the common heritage of mankind,

Mindful of the importance of the Convention for the protection and preservation of the marine environment and of the growing concern for the global environment,

Having considered the report of the Secretary-General of the United Nations on the results of the informal consultations among States held from 1990 to 1994 on outstanding issues relating to Part XI and related provisions of the Convention (hereinafter referred to as "Part XI"),

Noting the important political and economic changes which have affected the implementation of Part XI,

Wishing to facilitate universal participation in the Convention,

Considering that an Agreement relating to the implementation of Part XI would best meet that objective,

Have agreed as follows:

Article 1
Implementation of Part XI

1. The States Parties to this Agreement undertake to implement Part XI in accordance with this Agreement.

2. The Annex forms an integral part of this Agreement.

Article 2
Relationship between this Agreement and Part XI

1. The provisions of this Agreement and Part XI shall be interpreted and applied together as a single instrument. In the event of any inconsistency between this Agreement and Part XI, the provisions of this Agreement shall prevail.

2. Articles 309 to 319 of the Convention shall apply to this Agreement as they apply to the Convention.

Article 3
Signature

This Agreement shall remain open for signature at United Nations Headquarters by the States and entities referred to in article 305, paragraph 1 (a), (c), (d), (e) and (f), of the Convention for 12 months from the date of its adoption.

Article 4
Consent to be bound

1. After the adoption of this Agreement, any instrument of ratification or formal confirmation of or accession to the Convention shall also represent consent to be bound by this Agreement.

2. No State or entity may establish its consent to be bound by this Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention.

3. A State or entity referred to in article 3 may express its consent to be bound by this Agreement by:

(a) signature not subject to ratification, formal confirmation or the procedure set out in article 5;

(b) signature subject to ratification or formal confirmation, followed by ratification or formal confirmation;

(c) signature subject to the procedure set out in article 5; or

(d) accession.

4. Formal confirmation by the entities referred to in article 305, paragraph 1 (f), of the Convention shall be in accordance with Annex IX of the Convention.

5. The instruments of ratification, formal confirmation or accession shall be deposited with the Secretary-General of the United Nations.

Article 5
Simplified procedure

1. A State or entity which has deposited before the date of the adoption of this Agreement an instrument of ratification or formal confirmation of or accession to the Convention and which has signed this Agreement in accordance with article 4, paragraph 3(c), shall be considered to have established its consent to be bound by this Agreement twelve months after the date of its adoption, unless that State or entity notifies the depositary in writing before that date that it is not availing itself of the simplified procedure set out in this article.

2. In the event of such notification, consent to be bound by this Agreement shall be established in accordance with article 4, paragraph 3 (b).

Article 6
Entry into force

1. This Agreement shall enter into force 30 days after the date on which 40 States have established their consent to be bound in accordance with article 4 and 5, provided that such States include at least seven of the States referred to in paragraph 1 (a) of resolution II of the Third United Nations Conference on the Law of the Sea (hereinafter referred to as "resolution II") and that at least five of those States are developed States. If these conditions for entry into force are fulfilled before 16 November 1994, this agreement shall enter into force on 16 November 1994.

2. For each State or entity establishing its consent to be bound by this Agreement after the requirements set out in paragraph 1 have been fulfilled, this Agreement shall enter force on the thirtieth day following the date of establishment of its consent to be bound.

Article 7
Provisional application

1. If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force by:

(a) States which have consented to its adoption, except any such State which before that date notifies the depositary in writing either

that it will not so apply the Agreement or that it will consent to such application only upon subsequent signature or notification in writing;

(b) States and entities which sign this Agreement;

(c) States and entities which consent to its provisional application by so notifying the depositary in writing;

(d) States which accede to this Agreement.

2. All such States and entities shall apply this Agreement provisionally in accordance with their national or internal laws and regulations, with effect from 16 November 1994 or the date of signature, notification of consent or accession, if later.

3. Provisional application shall terminate upon the date of entry into force of this Agreement. In any event, provisional application shall terminate on 16 November 1998 if at that date the requirement in article 6, paragraph 1, of consent to be bound by this Agreement by at least seven States (of which at least five must be developed States) referred to in paragraph 1 (a) of resolution II has not been fulfilled.

Article 8
States Parties

1. For the purposes of this Agreement, "States Parties" means States which have consented to be bound by this Agreement and for which this Agreement is in force.

2. This Agreement applies *mutatis mutandis* to the entities referred to in article 305, paragraph 1 (c), (d), (e) and (f), of the Convention, which become parties to this Agreement in accordance with the conditions relevant to each, and to that extent "States Parties" refers to those entities.

Article 9
Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement.

Article 10
Authentic texts

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

ANNEX

SECTION 1. COSTS TO STATES PARTIES AND INSTITUTIONAL ARRANGEMENTS

1. The International Seabed Authority (the "Authority") is the organization through which States Parties to the Convention shall, in accordance with the regime for the Area established in Part XI and this Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area. The powers and functions of the Authority shall be those expressly conferred upon it by the Convention. The Authority shall have such incidental powers, consistent with the Convention, as are implicit in, and necessary for, the exercise of those powers and functions with respect to activities in the Area.

2. In order to minimize costs to States Parties, all organs and subsidiary bodies to be established under the Convention and this Agreement shall be cost-effective. This principle shall also apply to the frequency, length and scheduling of meetings.

3. The setting up and the functioning of the organs and subsidiary bodies of the Authority shall be based on an evolutionary approach, taking into account the functional needs of the organs and subsidiary bodies concerned in order that they may discharge effectively their respective responsibilities at various stages of the development of activities in the Area.

4. The early functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Legal and Technical Commission and the Finance Committee. The functions of the Economic Planning Commission shall be performed by the Legal and Technical Commission until such time as the Council decided otherwise or until the approval of the first plan of work for exploitation.

5. Between the entry into force of the Convention and the approval of the first plan of work for exploitation, the Authority shall concentrate on:

(a) processing of applications for approval of plans of work for exploration in accordance with Part XI and this Agreement;

(b) implementation of decisions of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea ("the Preparatory Commission") relating to the registered pioneer investors and their certifying States, including their

rights and obligations, in accordance with article 308, paragraph 5, of the Convention and resolution II, paragraph 13;

(c) monitoring of compliance with plans of work for exploration approved in the form of contracts;

(d) 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;

(e) study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;

(f) adoption of rules, regulations and procedures necessary for the conduct of activities in the Area as they progress. Notwithstanding the provisions of Annex III, article 17 (2)(b) and (c), of the Convention, such rules, regulations and procedures shall take into account the terms of this Agreement, the prolonged delay in commercial deep seabed mining and the likely pace of activities in the Area;

(g) adoption of rules, regulations and procedures incorporating generally applicable standards for the protection and preservation of the marine environment;

(h) promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of activities in the Area;

(i) acquisition of scientific knowledge and monitoring of the development of marine technology relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;

(j) assessment of available data relating to prospecting and exploration;

(k) timely elaboration of rules, regulations and procedures for exploitation, including those relating to the protection and preservation of the marine environment;

6. (a) An application for approval of a plan of work for exploration shall be considered by the Council following the receipt of a recommendation on the application from the Legal and Technical Commission. The processing of an application for approval of a plan of work for exploration shall be in accordance with the provisions of the Convention, including Annex III thereof and this Agreement, and subject to the following:

(i) A plan of work for explorations submitted on behalf of a State or entity, or any component of such entity, referred to in resolution II, paragraph 1 (a) (ii) or (iii), other than a registered pioneer investor, which had already undertaken substantial activities in the Area prior to the entry into force of the Convention, or its successor in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work, if the sponsoring State or States certify that the applicant has expended an amount equivalent to at least US$ 30 million in research and exploration activities and has expended no less than ten per cent of that amount in the location, survey and evaluation of the area referred to in the plan of work. If the plan of work otherwise satisfies the requirements of the Convention and any rules, regulations and procedures adopted pursuant thereto, it shall be approved by the Council in the form of a contract. The provisions of section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;

(ii) Notwithstanding the provisions of resolution II, paragraph 8(a), a registered pioneer investor may request approval of a plan of work, for exploration within 24 months of the entry into force of the Convention. The plan of work for exploration shall consist of documents, reports and other data submitted to the Preparatory Commission both before and after registration and shall be accompanied by a certificate of compliance, consisting of a factual report describing the status of fulfillment of obligations under the pioneer investor regime, issued by the Preparatory Commission in accordance with resolution II, paragraph 11(a). Such a plan of work shall be considered to be approved. Such an approved plan of work shall be in the form of a contract concluded between the Authority and the registered pioneer investor in accordance with Part XI and this Agreement. The fee of US$ 250,000 paid pursuant to resolution II, paragraph 7 (a), shall be deemed to be the fee relating to the exploration phase pursuant to

section 8, paragraph 3, of this Annex. Section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;

(iii) In accordance with principle of non-discrimination a contract with a State or entity or any component of such entity referred to in subparagraph (a)(i) shall include arrangements which shall be similar to and no less favourable than those agreed with any State or entity or any component of such entity referred to in subparagraph (a)(ii). If any of the State, entities or any components of such entities referred to in subparagraph (a)(i) are granted more favourable arrangements, the Council shall make similar and no less favaourable arrangements with regard to the rights and obligations assumed by the States, entities or any components of such entities referred to in subparagraph (a)(ii) provided that such arrangements do not affect or prejudice the interests of the Authority.

(iv) A State sponsoring an application for a plan of work pursuant to the provisions of subparagraph (a) (i) or (ii) may be a State Party or a State which is a member of the Authority on a provisional basis, in accordance with paragraph 12;

(v) Resolution II, paragraph 8 (c), shall be interpreted and applied in accordance with subparagraph (a) (iv);

(b) The approval of a plan of work for exploration shall be in accordance with article 153, paragraph 3, of the Convention.

7. An application for approval of a plan of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities and by a description of a programme for oceanographic and baseline environmental studies in accordance with the rules, regulations and procedures adopted by the Authority.

8. An application for approval of a plan of work for exploration, subject to paragraph 6 (a)(i) or (ii), shall be processed in accordance with the procedures set out in section 3, paragraph 11, of this Annex.

9. A plan of work for exploration shall be approved for a period of ten years. Upon the expiration of a plan of work for exploration, the contractor shall apply for a plan of work for exploitation, unless the contractor has already done so or has obtained an extension for the plan of work for exploration. Contractors may apply for such extensions for periods

of not more than five years each. Such extensions shall be approved if the contractor has made efforts in good faith to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or if the prevailing economic circumstances do not justify proceeding to the exploitation stage.

10. Designation of a reserved area for the Authority in accordance with Annex III, article 8, of the Convention shall take place in connection with approval of an application for a plan of work for exploration or approval of an application for a plan of work for exploration and exploitation.

11. Notwithstanding the provisions of paragraph 9, an approved plan of work for exploration which is sponsored by at least one State provisionally applying this Agreement shall terminate if such a State ceases to apply this Agreement provisionally and has not become a member on a provisional basis in accordance with paragraph 12 or has not become a State Party.

12. Upon the entry into force of this Agreement, States and entities referred to in article 3 of this Agreement which have been applying it provisionally in accordance with article 7 and for which it is not in force may continue to be members of the Authority on a provisional basis pending its entry into force for such States and entities, in accordance with the following subparagraphs:

(a) If this Agreement enters into force before 16 November 1996, such States and entities shall be entitled to continue to participate as members of the Authority on a provisional basis upon notification to the depositary of the Agreement by such a State or entity of its intention to participate as a member on a provisional basis. Such membership shall terminate either on 16 November 1996 or upon the entry into force of this Agreement and the Convention for such member, whichever is earlier. The Council may, upon the request of the State or entity concerned, extend such membership beyond 16 November 1996 for a further period or periods not exceeding a total of two years provided that the Council is satisfied that the State or entity concerned has been making efforts in good faith to become a party to the Agreement and the Convention;

(b) If this Agreement enters into force after 15 November 1996, such States and entities may request the Council to grant continued membership in the Authority on a provisional basis for a period or periods not extending beyond 16 November 1998. The Council shall grant such membership with effect from the date of the request if it is satisfied that the State or entity has been making efforts in good faith to become a party to the Agreement and the Convention;

(c) States and entities which are members of the Authority on a provisional basis in accordance with subparagraph (a) or (b) shall apply the terms of Part XI and this Agreement in accordance with their national or internal laws, regulations and annual budgetary appropriations and shall have the same rights and obligations as other members, including:

(i) the obligation to contribute to the administrative budget to the Authority in accordance with the scale of assessed contributions;

(ii) the right to sponsor an application for approval of a plan of work for exploration. In the case of entities whose components are natural or juridical persons possessing the nationality of more than one State, a plan or work for exploration shall not be approved unless all the States whose natural or juridical persons comprise those entities are States Parties or members on a provisional basis;

(d) Notwithstanding the provisions of paragraph 9, an approved plan of work in the form of a contract for exploration which was sponsored pursuant to sub-paragraph c (ii) by a State which was a member on a provisional basis shall terminate if such membership ceases and the State or entity has not become a State Party;

(e) If such a member has failed to make its assessed contributions or otherwise failed to comply with its obligations in accordance with this paragraph, its membership on a provisional basis shall be terminated.

13. The reference in Annex III, article 10, of the Convention to performance which has not been satisfactory shall be interpreted to mean that the contractor has failed to comply with the requirements of an approved plan of work in spite of a written warning or warnings from the Authority to the contractor to comply therewith.

14. The Authority shall have its own budget. Until the end of the year following the year during which this Agreement enters into force, the administrative expenses of the Authority shall be met through the budget of the United Nations, subject to a decision of the General Assembly. Thereafter, the administrative expenses of the Authority shall be met by assessed contributions of its members, including any members on a provisional basis, in accordance with article 173 of the Convention and this Agreement, until the Authority has sufficient funds from other sources to meet those expenses. The Authority shall not exercise the power referred to in article 174, paragraph 1, of the Convention to borrow funds to finance its administrative budget.

15. The Authority shall elaborate and adopt, in accordance with article 162, paragraph 2(o) (ii), of the Convention, rules, regulations and procedures based on the principles contained in sections 2, 5, 6, 7 and 8 of this Annex, as well as any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploration or exploitation, in accordance with the following subparagraphs:

(a) The Council may undertake such elaboration any time it deems that all or any of such rules, regulations or procedures are required for the conduct of activities in the Area, or when it determines that commercial exploitation is imminent, or at the request of a State whose national intends to apply for approval of a plan of work for exploitation;

(b) If a request is made by a State referred to in subparagraph (a) the Council shall, in accordance with article 162, paragraph 2(o), of the Convention, complete the adoption of such rules, regulations and procedures within two years of the request;

(c) If the Council has not completed the elaboration of the rules, regulations and procedures relating to exploitation within the prescribed time and an application for approval of a plan of work for exploitation is pending, it shall none the less consider and provisionally approve such plan of work based on the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles contained in the Annex as well as the principle of non-discrimination among contractors.

16. The draft rules, regulations and procedures and any recommendations relating to the provisions of Part XI, as contained in the reports and recommendations of the Preparatory Commission, shall be taken into account by the Authority in the adoption of rules, regulations and procedures in accordance with Part XI and this Agreement.

17. The relevant provisions of Part XI, section 4, of the Convention shall be interpreted and applied in accordance with this Agreement.

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 his staff 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 development 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 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 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 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 shall have the priority 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 fifteen years of the commencement of its functions independent of the Secretariat of the Authority or within fifteen 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 be interpreted and applied in accordance with this sector.

SECTION 3. DECISION-MAKING

1. The general policies of the Authority shall be established by the Assembly in collaboration with the Council.

2. As a general rule decision-making in the organs of the Authority should be by consensus.

3. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Assembly on matters of procedure shall be taken by a majority of States present and voting, and decisions on matters of substances shall be taken by a two-thirds majority of States present and voting, as provided for in article 159, paragraph 8, of the Convention.

4. Decisions of the Assembly on any matter for which the Council also has competence or on any administrative, budgetary or financial matter shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council for further consideration. The Council shall reconsider the matter in the light of the views expressed by the Assembly.

5. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Council on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of

substance, except where the Convention provides for decisions by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to in paragraph 9. In taking decisions the Council shall seek to promote the interests of all the members of the Authority.

6. The Council may defer the taking of a decision in order to facilitate further negotiation whenever it appears that all efforts at achieving consensus on a question have not been exhausted.

7. Decisions by the Assembly or the Council having financial or budgetary implications shall be based on the recommendations of the Finance Committee.

8. The provisions of article 161, paragraph 8(b) and (c), of the Convention shall not apply.

9. (a) Each group of States elected under paragraph 15 (a) to (c) shall be treated as a chamber for the purposes of voting in the Council. The developing States elected under paragraph 15(d) and (e) shall be treated as a single chamber for the purposes of voting in the Council.

(b) Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the criteria for membership in the groups of States in paragraph 15(a) to (d). If a State fulfils the criteria for membership in more than one group, it may only be proposed by one group for election to the Council and it shall represent only that group in voting in the Council.

10. Each group of States in paragraph 15(a) to (d) shall be represented in the Council by those members nominated by the group. Each group shall nominate only as many candidates as the number of seats required to be filled by that group. When the number of potential candidates in each of the groups referred to in paragraph 15(a) to (e) exceeds the number of seats available in each of those respective groups, as a general rule, the principle of rotation shall apply. States members of each of those groups shall determine how this principle shall apply in those groups.

11. (a) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove a plan or work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been

approved by the Council at the end of that period. The prescribed period shall normally be 60 days unless the Council decided to provide for a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its rules of procedure for decision-making on matters of substance.

(b) The provisions of article 162, paragraph 2 (j), of the Convention shall not apply.

12. Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement procedures set out in the Convention.

13. Decisions by voting in the Legal and Technical Commission shall be by a majority of members present and voting.

14. Part XI, section 4, subsections B and C, of the Convention shall be interpreted and applied in accordance with this section.

15. The Council shall consist of 36 members of the Authority elected by the Assembly in the following order:

(a) four members from among those States Parties which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of total world consumption or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this category;

(b) four members from among the eight States Parties which have made the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals;

(c) four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies.

(d) six members from among developing States Parties representing special interests. The special interests to be represented shall include those States with large populations, States which are land-locked or geographically disadvantaged, island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States;

(e) eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern Europe, Latin America and the Caribbean and Western European and Others.

16. The provisions of article 161, paragraph 1, of the Convention shall not apply.

SECTION 4. REVIEW CONFERENCE

The provisions relating to the Review Conference in article 155, paragraphs 1, 3 and 4, of the Convention shall not apply. Notwithstanding the provisions of article 314, paragraph 2, of the Convention, the Assembly, on the recommendation of the Council, may undertake at any time a review of the matters referred to in article 155, paragraph 1, of the Convention. Amendments relating to this Agreement and Part XI shall be subject to the procedures contained in article 314, 315 and 316 of the Convention, provided that the principles, regime and other terms referred to in article 155, paragraph 2, of the Convention shall be maintained and the rights referred to in paragraph 5 of that article shall not be affected.

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 invite all or any of the contractors and their respective sponsoring State or States to cooperate 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 technology on fair and reasonable commercial terms and conditions, consistent with the effective protection of intellectual property rights. States Parties undertake to cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also cooperate fully with the Authority;

(c) As a general rule, States Parties promote international technical and scientific cooperation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific cooperation programme 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.

SECTION 6. PRODUCTION POLICY

1. The production policy of the Authority shall be based on the following principles:

(a) Development of the resources of the Area shall take place in accordance with sound commercial principles;

(b) The provisions of the General Agreement on Tariffs and Trade, its relevant codes and successor or superseding agreements shall apply to States Parties to this Agreement with respect to activities in Area;

(c) In particular, there shall be no subsidization of activities in the Area except as may be permitted under the agreements referred to in subparagraph (b). Subsidization for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (b);

(d) There shall be no discrimination between minerals derived from the Area and those derived from other sources. There shall be no preferential access to markets for the former minerals or for imports of commodities produced from them. In particular:

(i) there shall be no preferential access to markets of such minerals or commodities by the use of tariff or non-tariff barriers; and

(ii) States Parties shall not give preferential access to markets to minerals derived from the Area or commodities produced from such minerals by their state enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals;

(e) The plan of work for exploitation approved by the Authority in respect of each mining area shall indicate an anticipated production schedule which shall include the estimated maximum amounts of minerals that would be produced per year under the plan of work;

(f) The following shall apply to the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (b).

(i) Where States Parties concerned are parties to such agreements, they shall have recourse to the dispute settlement procedures of those agreements;

(ii) Where one or more States Parties concerned are not parties to such agreements, they shall have recourse to the dispute settlement procedures set out in the Convention;

(g) In circumstances where a determination is made under the agreements referred to in subparagraph (b) that a State Party has engaged in subsidization which is prohibited or has resulted in adverse effects on the interests of another State Party and appropriate steps have not been taken by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.

2. The principles contained in paragraph 1 shall not affect the rights and obligations under any provision of the agreements referred to in paragraph 1(b), as well as the relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.

3. The acceptance by a contractor of subsidies other than those which may be permitted under the agreements referred to in paragraph 1(b) shall constitute a violation of the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.

4. Any State Party which has reason to believe that there has been a breach of the requirements of paragraphs 1(b) to (d) or 3 may initiate dispute settlement procedures in conformity with paragraph 1(f) or (g).

5. A State Party may at any time bring to the attention of the Council activities which in its view are inconsistent with the requirements of paragraph 1(b) to (d).

6. The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this section, including

relevant rules, regulations and procedures governing the approval of plans of work.

7. The provisions of article 151, paragraphs 1 to 7 and 9, article 162, paragraph 2(q), article 165, paragraph 2(n) Annex III, article 6, paragraph 5, article 7, of the Convention shall not apply.

SECTION 7. ECONOMIC ASSISTANCE

1. The policy of the Authority of assisting developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be based on the following principles:

(a) The Authority shall establish an economic assistance fund from a portion of the funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority. The amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions shall be used for the establishment of the economic assistance fund;

(b) Developing land-based producer States whose economies have been determined to be seriously affected by the production of minerals from the deep seabed shall be assisted from the economic assistance fund of the Authority.

(c) The Authority shall provide assistance from the fund to affected developing landbased producer States, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes;

(d) The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer States.

2. Article 151, paragraph 10, of the Convention shall be implemented by means of measures of economic assistance referred to in paragraph 1. Article 160, paragraph 2(l), article 162, paragraph 2(n), article 164, paragraph 2(d), article 171, subparagraph (f), and article 173, paragraph 2(c), of the Convention shall be interpreted accordingly.

SECTION 8. FINANCIAL TERMS OF CONTRACTS

1. The following principles shall provide the basis for establishing rules, regulations and procedures for financial terms of contract:

(a) The system of financial payments to the Authority shall be fair both to the contractor and to the Authority and shall provide adequate means of determining compliance by the contractor with such system;

(b) The rates of financial payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage;

(c) The system should not be complicated and should not impose major administrative costs on the Authority or on a contractor. Consideration should be given to the adoption of a royalty system or a combination of a royalty and profit sharing system. If alternative systems are decided upon, the contractor has the right to choose the system applicable to its contract. Any subsequent change in the choice of the system however, shall be by agreement between the Authority and the contractor;

(d) An annual fixed fee shall be payable from the date of commencement of commercial production. This fee may be credited against other payments due under the system adopted in accordance with subparagraph (c). The amount of the fee shall be established by the Council.

(e) The system of financial payment may be revised periodically in the light of changing circumstances. Any changes shall be applied in a non-discriminatory manner. Such changes may apply to existing contracts only at the election of the contractor. Any subsequent change in choice between alternative systems shall be made by agreement between the Authority and the contractor;

(f) Disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures set out in the Convention.

2. The provisions of Annex III, article 13, paragraphs 3 to 10, of the Convention shall not apply.

3. With regard to the implementation of Annex III, article 13, paragraph 2, of the Convention, the fee for processing applications for approval of a plan of work limited to one phase, either the exploration phase or the exploitation phase, shall be US $ 250,000 for each phase.

SECTION 9. THE FINANCE COMMITTEE

1. There is hereby established a Finance Committee. The Finance Committee shall be composed of 15 members with appropriate qualifications relevant to financial matters. States Parties shall nominate candidates of the highest standards of competence and integrity.

2. No two members of the Finance Committee shall be nationals of the same State Party.

3. Members of the Finance Committee shall be elected by the Assembly and due account shall be taken to the need for equitable geographical distribution and the representation of special interests. Each group of States referred to in section 3, paragraph 15(a), (b), (c) and (d), of this Annex shall be represented on the Finance Committee by at least one member. Until the Authority has sufficient funds other than assessed contributions to meet its administrative expenses, the membership of the Committee shall include the five largest financial contributors to the administrative budget of the Authority. Thereafter, the election of one member from each group shall be on the basis of nomination by the member of the respective group, without prejudice to the possibility of further members being elected from each group.

4. Members of the Committee shall hold office for a term of five years. They shall be eligible for re-election for a further term.

5. In the event of the death, incapacity or resignation of a member of the Committee prior to the expiration of the term of office, the Assembly shall elect for the remainder of the term a member from the same geographical region or group of States.

6. Members of the Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after the termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Authority.

7. Decisions by the Assembly and the Council on the following issues shall take into account recommendations of the Finance Committee:

(a) draft financial rules, regulations and procedures of the organs of the Authority and the financial management and internal administration of the Authority;

(b) assessment of contributions of members to the administrative budget of the Authority in accordance with article 160, paragraph 2(e), of the Convention;

(c) all relevant financial matters, including the proposed annual budget prepared by the Secretary-General in accordance with article 172 of the Convention and the financial aspects of the implementation of the programmes of work of the Secretariat;

(d) the administrative budget;

(e) financial obligations of States Parties arising from the implementation of this Agreement and Part XI as well as the administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority;

(f) rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon.

8. Decisions in the Finance Committee on questions of procedure shall be taken by a majority of members present and voting. Decisions on questions of substance shall be taken by consensus. If consensus cannot be reached, a summary of the range of views in the Committee on the question shall be forwarded to the relevant organ of the Authority.

9. The requirement of article 162, paragraph 2(y), of the Convention to establish a subsidiary organ to deal with financial matters shall be deemed to have been fulfilled by the establishment of the Finance Committee in accordance with this sector.

SG/LOS/CRP.1/Rev.1*
3 June 1994

ORIGINAL: ARABIC/CHINESE/ENGLISH/
FRENCH/RUSSIAN/SPANISH

DRAFT RESOLUTION AND DRAFT AGREEMENT

RELATING TO THE IMPLEMENTATION OF PART XI OF

THE UNITED NATIONS CONVENTION ON

THE LAW OF THE SEA OF 10 DECEMBER 1982

* Reissued for technical reasons.

DRAFT RESOLUTION FOR ADOPTION BY THE GENERAL ASSEMBLY

The General Assembly,

Prompted by the desire to achieve universal participation in the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as the "Convention"),[1] and to promote appropriate representation in the institutions established by it,

Reaffirming that the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the "Area"), as well as the resources of the Area, are the common heritage of mankind,[2]

Recalling that the Convention in its Part XI and related provisions (hereinafter referred to as "Part XI") established a regime for the Area and its resources,

Taking note of the Consolidated Provisional Final Report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea,[3]

Recalling its resolution 48/28 of 9 December 1993 on the law of the sea,

Recognizing that political and economic changes, including in particular a growing reliance on market principles, have necessitated the re-evaluation of some aspects of the regime for the Area and its resources,

Noting the initiative of the Secretary-General which began in 1990 to promote dialogue aimed at achieving universal participation in the Convention,

Welcoming the report of the Secretary-General on the outcome of his informal consultations,[4] including the draft of an agreement relating to the implementation of part XI,

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[1] 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), document A/CONF.62/122.
[2] General Assembly resolution 2749(XXV) of 17 December 1970; Article 136 of the United Nations Convention on the Law of the Sea.
[3] Documents LOS/PCN/130 and Add.1.
[4] To be issued.

Considering that the objective of universal participation in the Convention may best be achieved by the adoption of an agreement relating to the implementation of Part XI,

Recognizing the need to provide for the provisional application of such an agreement from the date of entry into force of the Convention on 16 November 1994,

1. Expresses its appreciation to the Secretary-General for his report on the informal consultations;

2. Reaffirms the unified character of the United Nations Convention on the Law of the Sea of 10 December 1982;

3. Adopts the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea (hereinafter referred to as the "Agreement"), the text of which is annexed to the present resolution;

4. Affirms that the Agreement shall be interpreted and applied together with Part XI as a single instrument;

5. Considers that future ratifications of formal confirmations of or accessions to the Convention shall represent also consent to be bound by the Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention;

6. Calls upon States which consent to the adoption of the Agreement to refrain from any act which would defeat its object and purpose;

7. Expresses its satisfaction at the entry into force of the Convention on 16 November 1994;

8. Decides to fund the administrative expenses of the International Seabed Authority in accordance with section 1, paragraph 14, of the Annex to the Agreement;

9. Requests the Secretary-General to transmit immediately certified copies of the Agreement to the States and entities referred to in article 3 thereof, with a view to facilitating universal participation in the Convention and the Agreement, and to draw attention to articles 4 and 5 of the Agreement;

10. Further requests the Secretary-General to open the Agreement for signature in accordance with article 3 thereof immediately after its adoption;

11. Urges all States and entities referred to in article 3 of the Agreement to consent to its provisional application as from 16 November 1994 and to establish their consent to be bound by the Agreement at the earliest possible date;

12. Further urges all such States and entities which have not already done so to take all appropriate steps to ratify, formally confirm or accede to the Convention at the earliest possible date in order to ensure universal participation in the Convention;

13. Calls upon the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea to take into account the terms of the Agreement when drawing up its final report.

AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982

The States Parties to this Agreement,

Recognizing the important contribution of the United Nations Convention on the Law of the Sea of 10 December 1982, (hereinafter referred to as the "Convention"), to the maintenance of peace, justice and progress for all peoples of the world,

Reaffirms that the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the "Area"), as well as the resources of the Area, are the common heritage of mankind,

Mindful of the importance of the Convention for the protection and preservation of the marine environment and of the growing concern for the global environment,

Having considered the report of the Secretary-General of the United Nations on the results of the informal consultations among States held from 1990 to 1994 on outstanding issues relating to Part XI and related provisions of the Convention (hereinafter referred to as "Part XI"),

Noting the political and economic changes, including market-oriented approaches, affecting the implementation of Part XI,

Wishing to facilitate universal participation in the Convention,

Considering that an agreement relating to the implementation of Part XI would best meet that objective,

Have agreed as follows:

Article 1
Implementation of Part XI

1. The States Parties to this Agreement undertake to implement Part XI in accordance with this Agreement.

2. The Annex forms an integral part of this Agreement.

Article 2
Relationship between this Agreement and Part XI

1. The provisions of this Agreement and Part XI shall be interpreted and applied together as a single instrument. In the event of any inconsistency between this Agreement and Part XI, the provisions of this Agreement shall prevail.

2. Articles 309 to 319 of the Convention shall apply to this Agreement as they apply to the Convention.

Article 3
Signature

This Agreement shall remain open for signature at United Nations Headquarters by the States and entities referred to in article 305, paragraph 1(a), (c), (d), (e) and (f), of the Convention for 12 months from the date of its adoption.

Article 4
Consent to be bound

1. After the adoption of this Agreement, any instrument of ratification or formal confirmation of or accession to the Convention shall also represent consent to be bound by this Agreement.

2. No State or entity may establish its consent to be bound by this Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention.

3. A State or entity referred to in article 3 may express its consent to be bound by this Agreement by:

(a) signature not subject to ratification, formal confirmation or the procedure set out in article 5;

(b) signature subject to ratification or formal confirmation, followed by ratification or formal confirmation;

(c) signature subject to the procedure set out in article 5; or

(d) accession.

4. Formal confirmation by the entities referred to in article 305, paragraph 1(f), of the Convention shall be in accordance with Annex IX of the Convention.

5. The instruments of ratification, formal confirmation or accession shall be deposited with the Secretary-General of the United Nations.

Article 5
Simplified procedure

1. A State or entity which has deposited before the date of the adoption of this Agreement an instrument of ratification or formal confirmation of or accession to the Convention and which has signed this Agreement in accordance with article 4, paragraph 3 (c), shall be considered to have established its consent to be bound by this Agreement 12 months after the date of its adoption, unless that State or entity notifies the depositary in writing before that date that it is not availing itself of the simplified procedure set out in this article.

2. In the event of such notification, consent to be bound by this Agreement shall be established in accordance with article 4, paragraph 3(b).

Article 6
Entry into force

1. This Agreement shall enter into force 30 days after the date on which 40 States have established their consent to be bound in accordance with articles 4 and 5, provided that such States include at least seven of the States referred to in paragraph 1(a) of resolution II of the Third United Nations Conference on the Law of the Sea (hereinafter referred to as "resolution II") and that at least five of those States are developed States. If these conditions for entry into force are fulfilled before 16 November 1994, this Agreement shall enter into force on 16 November 1994.

2. For each State or entity establishing its consent to be bound by this Agreement after the requirements set out in paragraph 1 have been fulfilled, this Agreement shall enter into force on the thirtieth day following the date of establishment of its consent to be bound.

Article 7
Provisional application

1. If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force by:

(a) States which have consented to its adoption in the General Assembly of the United Nations, except any such State which before 16 November 1994 notifies the depositary in writing either that it will not so apply this Agreement or that it will consent to such application only upon subsequent signature or notification in writing;

(b) States and entities which sign this Agreement, except any such State or entity which notifies the depositary in writing at the time of signature that it will not so apply this Agreement;

(c) States and entities which consent to its provisional application by so notifying the depositary in writing;

(d) States which accede to this Agreement.

2. All such States and entities shall apply this Agreement provisionally in accordance with their national or internal laws and regulations, with effect from 16 November 1994 or the date of signature, notification of consent or accession, if later.

3. Provisional application shall terminate upon the date of entry into force of this Agreement. In any event, provisional application shall terminate on 16 November 1998 if at that date the requirement in article 6, paragraph 1, of consent to be bound by this Agreement by at least seven of the States (of which at least five must be developed States) referred to in paragraph 1(a) of resolution II has not been fulfilled.

Article 8
States Parties

1. For the purposes of this Agreement, "States Parties" means States which have consented to be bound by this Agreement and for which this Agreement is in force.

2. This Agreement applies *mutatis mutandis* to the entities referred to in article 305, paragraph 1(c), (d), (e) and (f), of the Convention which become Parties to this Agreement in accordance with the conditions relevant to each, and to that extent "States Parties" refers to those entities.

Article 9
Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement.

Article 10
Authentic texts

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

ANNEX

SECTION 1. COSTS TO STATES PARTIES AND INSTITUTIONAL ARRANGEMENTS

1. The International Seabed Authority (hereinafter referred to as the "Authority") is the organization through which States Parties to the Convention shall, in accordance with the regime for the Area established in Part XI and this Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area. The powers and functions of the Authority shall be those expressly conferred upon it by the Convention, as are implicit in, and necessary for, the exercise of those powers and functions with respect to activities in the Area.

2. In order to minimize costs to States Parties, all organs and subsidiary bodies to be established under the Convention and this Agreement shall be cost-effective. This principle shall also apply to the frequency, duration and scheduling of meetings.

3. The setting up and the functioning of the organs and subsidiary bodies of the Authority shall be based on an evolutionary approach, taking into account the functional needs of the organs and subsidiary bodies concerned in order that they may discharge effectively their respective responsibilities at various stages of the development of activities in the Area.

4. The early functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Secretariat, the Legal and Technical Commission and the Finance Committee. The functions of the Economic Planning Commission shall be performed by the Legal and Technical Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation.

5. Between the entry into force of the Convention and the approval of the first plan of work for exploitation, the Authority shall concentrate on:

(a) processing of applications for approval of plans of work for exploration in accordance with Part XI and this Agreement;

(b) implementation of decisions of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (hereinafter referred to as the "Preparatory Commission") relating to the registered pioneer investors and their

certifying States, including their rights and obligations, in accordance with article 308, paragraph 5, of the Convention and resolution II, paragraph 13;

(c) monitoring of compliance with plans of work for exploration approved in the form of contracts;

(d) 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;

(e) study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;

(f) adoption of rules, regulations and procedures necessary for the conduct of activities in the Area as they progress. Notwithstanding the provisions of Annex III, article 17(2) (b) and (c), of the Convention, such rules, regulations and procedures shall take into account the terms of this Agreement, the prolonged delay in commercial deep seabed mining and the likely pace of activities in the Area;

(g) adoption of rules, regulations and procedures incorporating applicable standards for the protection and preservation of the marine environment;

(h) promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of activities in the Area;

(i) acquisition of scientific knowledge and monitoring of the development of marine technology relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;

(j) assessment of available data relating to prospecting and exploration;

(k) timely elaboration of rules, regulations and procedures for exploitation, including those relating to the protection and preservation of the marine environment;

6. (a) An application for approval of a plan of work for exploration shall be considered by the Council following the receipt of a recommendation on the application from the Legal and Technical Commission. The processing of an application for approval of a plan of work for exploration shall be in accordance with the provisions of the Convention, including Annex III thereof and this Agreement, and subject to the following:

(i) A plan of work for exploration submitted on behalf of a State or entity, or any component of such entity, referred to in resolution II, paragraph 1(a) (ii) or (iii), other than a registered pioneer investor, which had already undertaken substantial activities in the Area prior to the entry into force of the Convention, or its successor in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work, if the sponsoring State or States certify that the applicant has expended an amount equivalent to at least US$ 30 million in research and exploration activities and has expended no less that ten per cent of that amount in the location, survey and evaluation of the area referred to in the plan of work. If the plan of work otherwise satisfies the requirements of the Convention and any rules, regulations and procedures adopted pursuant thereto, it shall be approved by the Council in the form of a contract. The provisions of section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;

(ii) Notwithstanding the provisions of resolution II, paragraph 8(a), a registered pioneer investor may request approval of a plan of work for exploration within 36 months of the entry into force of the Convention. The plan of work for exploration shall consist of documents, reports and other data submitted to the Preparatory Commission both before and after registration and shall be accompanied by a certificate of compliance, consisting of a factual report describing the status of fulfillment of obligations under the pioneer investor regime, issued by the Preparatory Commission in accordance with resolution II, paragraph 11(a). Such a plan of work shall be considered to be approved. Such an approved plan of work shall be in the form of a contract concluded between the Authority and the registered pioneer investor in accordance with Part XI and this Agreement. The fee of US $ 250,000 paid pursuant to resolution II, paragraph 7(a), shall be deemed

to be the fee relating to the exploration phase pursuant to section 8, paragraph 3, of this Annex. Section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;

(iii) In accordance with the principle of non-discrimination, a contract with a State or entity or any component of such entity referred to in subparagraph (a) (i) shall include arrangements which shall be similar to and no less favourable than those agreed with any registered pioneer investor referred to in subparagraph (a) (ii). If any of the States or entities or any components of such entities referred to in subparagraph (a) (i) are granted more favourable arrangements with regard to the rights and obligations assumed by the registered pioneer investors referred to in subparagraph (a) (ii), provided that such arrangements do not affect or prejudice the interests of the Authority;

(iv) A State sponsoring an application for a plan of work pursuant to the provisions of subparagraph (i) or (ii) may be a State Party or a State which is applying this Agreement provisionally in accordance with article 7, or a State which is a member of the Authority on a provisional basis in accordance with paragraph 12;

(v) Resolution II, paragraph 8(c), shall be interpreted and applied in accordance with subparagraph (a) (iv).

(b) The approval of a plan of work for exploration shall be in accordance with article 153, paragraph 3, of the Convention.

7. An application for approval of a plan of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities and by a description of a programme for oceanographic and baseline environmental studies in accordance with the rules, regulations and procedures adopted by the Authority.

8. An application for approval of a plan of work for exploration, subject to paragraph 6 (a) (i) or (ii), shall be processed in accordance with the procedures set out in section 3, paragraph 11, of this Annex.

9. A plan of work for exploration shall be approved for a period of 15 years. Upon the expiration of a plan of work for exploration, the contractor shall apply for a plan of work for exploitation unless the contractor has already done so or has obtained an extension for the plan of work for

exploration. Contractors may apply for such extensions for periods of not more that five years each. Such extensions shall be approved if the contractor has made efforts in good faith to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or if the prevailing economic circumstances do not justify proceeding to the exploitation stage.

10. Designation of a reserved area for the Authority in accordance with Annex III, article 8, of the Convention shall take place in connection with approval of an application for a plan of work for exploration or approval of an application for a plan of work for exploration and exploitation.

11. Notwithstanding the provisions of paragraph 9, an approved plan of work for exploration which is sponsored by at least one State provisionally applying this Agreement shall terminate if such a State ceases to apply this Agreement provisionally and has not become a member on a provisional basis in accordance with paragraph 12 or has not become a State Party.

12. Upon the entry into force of this Agreement, States and entities referred to in article 3 of this Agreement which have been applying it provisionally in accordance with article 7 and for which it is not in force may continue to be members of the Authority on a provisional basis pending its entry into force for such States and entities, in accordance with the following subparagraphs:

(a) If this Agreement enters into force before 16 November 1996, such States and entities shall be entitled to continue to participate as members of the Authority on a provisional basis upon notification to the depositary of the Agreement by such a State or entity of its intention to participate as a member on a provisional basis. Such membership shall terminate either on 16 November 1996 or upon the entry into force of this Agreement and the Convention for such member, whichever is earlier. The Council may, upon the request of the State or entity concerned, extend such membership beyond 16 November 1996 for a further period or periods not exceeding a total of two years provided that the Council is satisfied that the State or entity concerned has been making efforts in good faith to become a party to the Agreement and the Convention;

(b) If this Agreement enters into force after 15 November 1996, such States and entities may request the Council to grant continued membership in the Authority on a provisional basis for a period or periods not extending beyond 16 November 1998. The Council shall grant such membership with effect from the date of the request if it is satisfied that the

State or entity has been making efforts in good faith to become a party to the Agreement and the Convention;

(c) States and entities which are members of the Authority on a provisional basis in accordance with subparagraph (a) or (b) shall apply the terms of Part XI and this Agreement in accordance with their national or internal laws, regulations and annual budgetary appropriations and shall have the same rights and obligations as other members, including;

(i) the obligation to contribute to the administrative budget of the Authority in accordance with the scale of assessed contributions;

(ii) the right to sponsor an application for approval of a plan of work for exploration. In the case of entities whose components are natural or juridical persons possessing the nationality of more than one State, a plan or work for exploration shall not be approved unless all the States whose natural or juridical persons comprise those entities are States Parties or members on a provisional basis;

(d) Notwithstanding the provisions of paragraph 9, an approved plan of work in the form of a contract for exploration which was sponsored pursuant to subparagraph (c)(ii) by a State which was a member on a provisional basis shall terminate if such membership ceases and the State or entity has not become a State Party;

(e) If such a member has failed to make its assessed contributions or otherwise failed to comply with its obligations in accordance with this paragraph, its membership on a provisional basis shall be terminated.

13. The reference in Annex III, article 10, of the Convention to performance which has not been satisfactory shall be interpreted to mean that the contractor has failed to comply with the requirements of an approved plan of work in spite of a written warning or warnings from the Authority to the contractor to comply therewith.

14. The Authority shall have its own budget. Until the end of the year following the year during which this Agreement enters into force, the administrative expenses of the Authority shall be met through the budget of the United Nations. Thereafter, the administrative expenses of the Authority shall be met by assessed contributions of its members, including any members on a provisional basis, in accordance with articles 171(a) and 173 of the Convention and this Agreement, until the Authority has sufficient funds from other sources to meet those expenses. The Authority

shall not exercise the power referred to in article 174, paragraph 1, of the Convention to borrow funds to finance its administrative budget.

15. The Authority shall elaborate and adopt, in accordance with article 162, paragraph 2 (o) (ii), of the Convention, rules, regulations and procedures based on the principles contained in sections 2, 5, 6, 7 and 8 of this Annex, as well as any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploration or exploitation, in accordance with the following subparagraphs:

(a) The Council may undertake such elaboration any time it deems that all or any of such rules, regulations and procedures are required for the conduct of activities in the Area, or when it determines that commercial exploitation is imminent, or at the request of a State whose national intends to apply for approval of a plan of work for exploitation;

(b) If a request is made by a State referred to in subparagraph (a) the Council shall, in accordance with article 162, paragraph 2(o), of the Convention, complete the adoption of such rules, regulations and procedures within two years of the request;

(c) If the Council has not completed the elaboration of the rules, regulations and procedures relating to exploitation within the prescribed time and an application for approval of a plan of work for exploitation is pending, it shall nonetheless consider and provisionally approve such plan of work based on the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles contained in this Annex as well as the principle of non-discrimination among contractors.

16. The draft rules, regulations and procedures and any recommendations relating to the provisions of Part XI, as contained in the reports and recommendations of the Preparatory Commission, shall be taken into account by the Authority in the adoption of rules, regulations and procedures in accordance with Part XI and this Agreement.

17. The relevant provisions of Part XI, section 4, of the Convention shall be interpreted and applied in accordance with this Agreement.

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 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 obligations 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 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 fifteen years of the commencement of its functions independent of the Secretariat of the Authority or within fifteen 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 be interpreted and applied in accordance with this section.

SECTION 3. DECISION-MAKING

1. The general policies of the Authority shall be established by the Assembly in collaboration with the Council.

2. As a general rule, decision-making in the organs of the Authority should be by consensus.

3. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Assembly on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance shall be taken by a two-thirds majority of members present and voting, as provided for in article 159, paragraph 8, of the Convention.

4. Decisions of the Assembly on any matter for which the Council also has competence or on any administrative, budgetary or financial matter shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council for further consideration. The Council shall reconsider the matter in the light of the views expressed by the Assembly.

5. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Council on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance, except where the Convention provides for decisions by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to in paragraph 9. In taking decisions the Council shall seek to promote the interests of all the members of the Authority.

6. The Council may defer the taking of a decision in order to facilitate further negotiation whenever it appears that all efforts at achieving consensus on a question have not been exhausted.

7. Decisions by the Assembly or the Council having financial or budgetary implications shall be based on the recommendations of the Finance Committee.

8. The provisions of article 161, paragraph 8(b) and (c), of the Convention shall not apply.

9. (a) Each group of States elected under paragraph 15 (a) to (c) shall be treated as a chamber for the purposes of voting in the Council. The developing States elected under paragraph 15 (d) and (e) shall be treated as a single chamber for the purposes of voting in the Council.

(b) Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the criteria for membership in the groups of States in paragraph 15 (a) to (d). If a State fulfills the criteria for membership in more than one group, it may only be proposed by one group for election to the Council and it shall represent only that group in voting in the Council.

10. Each group of States in paragraph 15 (a) to (d) shall be represented in the Council by those members nominated by that group. Each group shall nominate only as many candidates as the number of seats required to be filled by that group. When the number of potential candidates in each of the groups referred to in paragraph 15 (a) to (d) exceeds the number of seats available in each of those respective groups, as a general rule, the principle of rotation shall apply. States members of each of those groups shall determine how this principle shall apply in those groups.

11. (a) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the

Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. The prescribed period shall normally be 60 days unless the Council decides to provide for a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its rules of procedure for decision-making on questions of substance.

(b) The provisions of article 162, paragraph 2 (j), of the Convention shall not apply.

12. Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement procedures set out in the Convention.

13. Decisions by voting in the Legal and Technical Commission shall be by a majority of members present and voting.

14. Part XI, section 4, subsections B and C, of the Convention shall be interpreted and applied in accordance with this section.

15. The Council shall consist of 36 members of the Authority elected by the Assembly in the following order:

(a) four members from among those States Parties which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of total world consumption or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this group;

(b) four members from among the eight States Parties which have made the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals;

(c) four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;

(d) six members from among developing States Parties, representing special interests. The special interests to be represented shall include those of States with large populations, States which are land-locked or geographically disadvantaged, island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States;

(e) eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern Europe, Latin America and the Caribbean and Western Europe and Others.

16. The provisions of article 161, paragraph 1, of the Convention shall not apply.

SECTION 4. REVIEW CONFERENCE

The provisions relating to the Review Conference in article 155, paragraphs 1, 3 and 4, of the Convention shall not apply. Notwithstanding the provisions of article 314, paragraph 2, of the Convention, the Assembly, on the recommendation of the Council, may undertake at any time a review of the matters referred to in article 155, paragraph 1, of the Convention. Amendments relating to this Agreement and Part XI shall be subject to the procedures contained in articles 314, 315 and 316 of the Convention, provided that the principles, regimes and other terms referred to in article 155, paragraph 2, of the Convention shall be maintained and the rights referred to in paragraph 5 of that article shall not be affected.

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 cooperate 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 cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also cooperate fully with the Authority;

(c) As a general rule, States Parties shall promote international technical and scientific cooperation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific cooperation 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.

SECTION 6. PRODUCTION POLICY

1. The production policy of the Authority shall be based on the following principles:

(a) Development of the resources of the Area shall take place in accordance with sound commercial principles;

(b) The provisions of the General Agreement on Tariffs and Trade, its relevant codes and successor or superseding agreements, shall apply with respect to activities in the Area;

(c) In particular, there shall be no subsidization of activities in the Area except as may be permitted under the agreements referred to in subparagraph (b). Subsidization for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (b);

(d) There shall be no discrimination between minerals derived from the Area and those derived from other sources. There shall be no preferential access to markets for such minerals or for imports of commodities produced from such minerals, in particular;

(i) by the use of tariff or non-tariff barriers; and

(ii) given by States Parties to markets to such minerals or commodities produced by their state enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals;

(e) The plan of work for exploitation approved by the Authority in respect of each mining area shall indicate an anticipated production schedule which shall include the estimated maximum amounts of minerals that would be produced per year under the plan of work;

(f) The following shall apply to the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (b):

(i) Where the States Parties concerned are parties to such agreements, they shall have recourse to the dispute settlement procedures of those agreements;

(ii) Where one or more of the States Parties concerned are not parties to such agreements, they shall have recourse to the dispute settlement procedures set out in the Convention;

(g) In circumstances where a determination is made under the agreements referred to in subparagraph (b) that a State Party has engaged in subsidization which is prohibited or has resulted in adverse effects on the interests of another State Party and appropriate steps have not been taken by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.

2. The principles contained in paragraph 1 shall not affect the rights and obligations under any provision of the agreements referred to in paragraph 1(b), as well as the relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.

3. The acceptance by a contractor of subsidies other than those which may be permitted under the agreements referred to in paragraph 1(b) shall constitute a violation of the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.

4. Any State Party which has reason to believe that there has been a breach of the requirements of paragraphs 1(b) to (d) or 3 may initiate dispute settlement procedures in conformity with paragraph 1(f) or (g).

5. A State Party may at any time bring to the attention of the Council activities which in its view are inconsistent with the requirements of paragraph 1(b) to (d).

6. The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this section, including relevant rules, regulations and procedures governing the approval of plans of work.

7. The provisions of article 151, paragraphs 1 to 7 and 9, article 162, paragraph 2(q), article 165, paragraph 2(n), and Annex III, article 6, paragraph 5, and article 7, of the Convention shall not apply.

SECTION 7. ECONOMIC ASSISTANCE

1. The policy of the Authority of assisting developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be based on the following principles:

(a) The Authority shall establish an economic assistance fund from a portion of the funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority. The amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions shall be used for the establishment of the economic assistance fund;

(b) Developing land-based producer States whose economies have been determined to be seriously affected by the production of minerals from the deep seabed shall be assisted from the economic assistance fund of the Authority;

(c) The Authority shall provide assistance from the fund to affected developing land-based producer States, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes;

(d) The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer States.

2. Article 151, paragraph 10, of the Convention shall be implemented by means of measures of economic assistance referred to in paragraph 1. Article 160, paragraph 2(l), article 162, paragraph 2 (n), article 164, paragraph 2 (d), article 171, subparagraph (f), and article 173, paragraph 2 (c), of the Convention shall be interpreted accordingly.

SECTION 8. FINANCIAL TERMS OF CONTRACTS

1. The following principles shall provide the basis for establishing rules, regulations and procedures for financial terms of contractors:

(a) The system of payments to the Authority shall be fair both to the contractor and to the Authority and shall provide adequate means of determining compliance by the contractor with such system;

(b) The rates of payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage;

(c) The system should not be complicated and should not impose major administrative costs on the Authority or on a contractor. Consideration should be given to the adoption of a royalty system or a combination of a royalty and profit-sharing system. If alternative systems are decided upon, the contractor has the right to choose the system applicable to its contract. Any subsequent change in choice between alternative systems, however, shall be made by agreement between the Authority and the contractor;

(d) An annual fixed fee shall be payable from the date of commencement of commercial production. This fee may be credited against other payments due under the system adopted in accordance with subparagraph (c). The amount of the fee shall be established by the Council;

(e) The system of financial payments may be revised periodically in the light of changing circumstances. Any changes shall be applied in a non-discriminatory manner. Such changes may apply to existing contracts only at the election of the contractor. Any subsequent change in choice between alternative systems shall be made by agreement between the Authority and the Contractor;

(f) Disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures set out in the Convention.

2. The provisions of Annex III, article 13, paragraphs 3 to 10, of the Convention shall not apply.

3. With regard to the implementation of Annex III, article 13, paragraph 2, or the Convention, the fee for processing applications for

approval of a plan of work limited to one phase, either the exploration phase or the exploitation phase, shall be US$ 250,000 for each phase.

SECTION 9. THE FINACE COMMITTEE

1. There is hereby established a Finance Committee. The Committee shall be composed of 15 members with appropriate qualifications relevant to financial matters. States Parties shall nominate candidates of the highest standards of competence and integrity.

2. No two members of the Finance Committee shall be nationals of the same State Party.

3. Members of the Finance Committee shall be elected by the Assembly and due account shall be taken of the need for equitable geographical distribution and the representation of special interests. Each group of States referred to in section 3, paragraph 15(a), (b), (c) and (d), of this Annex shall be represented on the Committee by at least one member. Until the Authority has sufficient funds other than assessed contributions to meet its administrative expenses, the membership of the Committee shall include representatives of the five largest financial contributors to the administrative budget of the Authority. Thereafter, the election of one member from each group shall be on the basis of nomination by the members of the respective group, without prejudice to the possibility of further members being elected from each group.

4. Members of the Finance Committee shall hold office for a term of five years. They shall be eligible for re-election for a further term.

5. In the event of the death, incapacity or resignation of a member of the Finance Committee prior to the expiration of the term of office, the Assembly shall elect for the remainder of the term a member from the same geographical region or group of States.

6. Members of the Finance Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after the termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Authority.

7. Decisions by the Assembly and the Council on the following issues shall take into account recommendations of the Finance Committee:

(a) draft financial rules, regulations and procedures of the organs of the Authority and the financial management and internal financial administration of the Authority;

(b) assessment of contributions of members to the administrative budget of the Authority in accordance with article 160, paragraph 2 (e), of the Convention;

(c) all relevant financial matters, including the proposed annual budget prepared by the Secretary-General of the Authority in accordance with article 172 of the Convention and the financial aspects of the implementation of the programmes of work of the Secretariat;

(d) the administrative budget;

(e) financial obligations of States Parties arising from the implementation of this Agreement and Part XI as well as the administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority;

(f) rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon.

8. Decisions in the Finance Committee on questions of procedure shall be taken by a majority of members present and voting. Decisions on questions of substance shall be taken by consensus.

9. The requirement of article 162, paragraph 2 (y), of the Convention to establish a subsidiary organ to deal with financial matters shall be deemed to have been fulfilled by the establishment of the Finance Committee in accordance with this section.

General Assembly

A/48/950
9 June 1994

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

1. In July 1990 the Secretary-General, Mr. Javier Pérez de Cuéllar, took the initiative to convene informal consultations aimed at achieving universal participation in the United Nations Convention on the Law of the Sea. The Secretary-General stressed the importance of securing general acceptance of the United Nations Convention on the Law of the Sea, an instrument which represented many years of negotiations and which had already made a significant contribution to the international legal maritime order. He pointed out that though he would continue to encourage all States which had not done so to ratify or accede to the Convention, it had to be acknowledged that there were problems with some aspects of the deep seabed mining provisions of the Convention which had prevented some States from ratifying or acceding to the Convention.

2. He noted that in the eight years that had elapsed since the Convention was adopted certain significant political and economic changes had occurred which had had a marked effect on the regime for deep seabed mining contained in the Convention. Prospects for commercial mining of deep seabed minerals had receded into the next century, which was not what was envisaged during the negotiations at the Third United Nations Conference on the Law of the Sea. The general economic climate had been transformed as a result of the changing perception with respect to the roles of the public and private sectors. There was a discernible shift towards a more market-oriented economy. In addition, the Secretary-General made mention of the emergence of a new spirit of international cooperation in resolving outstanding problems of regional and global concern. These factors were to be taken into account in considering the problems with respect to deep seabed mining.[*]

[*] See A/45/721 and A/46/724.

3. Thus began a series of informal consultations under the aegis 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.

4. These informal consultations took place in the years 1990 to 1994, during which 15 meetings were convened.* They can 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 to an examination of consolidated texts embodying these solutions and on the procedure whereby they might be adopted.

The first phase

5. During the initial part of this 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; and environmental considerations. After examining the various approaches that might be taken in the examination of these issues, there was general agreement on an approach which enabled participants to examine all the outstanding issues with a view to resolving them and to decide how to deal with those that might remain unresolved.

6. Participants then began to review all of these issues seriatim. This review was based on information notes compiled by the Secretariat containing background information, questions that needed to be addressed and possible approaches for the resolution of these issues.

7. In the course of six informal consultations held during the years 1990 and 1991, participants completed the consideration of all the outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea. It can fairly be said that a certain measure of general agreement was emerging on these issues.

8. The results of the Secretary-General's informal consultations held in 1990 and 1991 were set out in the summary of informal consultations conducted by the Secretary-General on the law of the sea during 1990 and 1991, dated 31 January 1992, and in an information note dated 26 May

* 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 to 6 August 1993; 8 to 12 November 1993; 31 January to 4 February 1994; 4 to 8 April 1994 and 31 May to 3 June 1994.

1992. These results fell under two categories. First, general agreement seemed to have been reached on relatively detailed solutions on: costs to States Parties, the Enterprise, decision-making, Review Conference and transfer of technology. Secondly, with respect to production limitation, the compensation fund and financial terms of contract it was generally agreed that it was neither necessary nor prudent to formulate a new set of detailed rules for these items. Accordingly, for those items the information note set out general principles to be applied when commercial production of deep seabed minerals was imminent.

The second phase

9. In 1992 I continued the informal consultations initiated by my predecessor. During this phase the consultations were open to all delegations. Some 75 to 90 delegations attended these meetings. In the first three rounds of this phase, consideration was given to the nine issues in order to give more precision to the results reached so far in the consultations. Additional points were submitted for consideration on the following issues: costs to States Parties; the Enterprise; decision-making; Review Conference; and transfer of technology. During these consultations it was decided to remove the issue of environmental considerations from the list of issues, since it was no longer considered to be a controversial issue in the context of deep seabed mining.

10. At the informal consultations held on 28 and 29 January 1993, 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.

11. In accordance with this request, an information note dated 8 April 1993 was prepared. This information note contained two parts:

(a) Part A dealt with various procedural approaches with respect to the use to be made of the results of the consultations. The four approaches could be summarized as follows:

(i) A contractual instrument such as a protocol amending the Convention;

(ii) An interpretative agreement consisting of understandings on the interpretation and application of the Convention;

(iii) An interpretative agreement on the establishment of an initial Authority and an initial Enterprise during an interim regime accompanied by a procedural arrangement for the convening of a conference to establish the definitive regime for

the commercial production of deep seabed minerals when such production became feasible;

(iv) An agreement additional to the Convention providing for the transition between the initial phase and the definitive regime, in particular, the Authority would be mandated to develop solutions for issues still outstanding on the entry into force of the Convention;

(b) Part B set out an operationally directed formulation of the results reached so far in the consultations. It was divided into two sections:

(i) Arrangements following the entry into force of the Convention;

(ii) Draft texts concerning the definitive deep seabed mining regime.

12. The procedural approaches were reviewed during consultations held on 27 and 28 April 1993. Certain basic elements emerged from the review of these approaches. 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. Finally, 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.

13. For the next round of consultations, held from 2 to 6 August 1993, an information note dated 4 June 1993 was circulated which updated parts A and B (i) of the information note of 8 April 1993 to reflect the observations made during the previous round of consultations. During the course of this round of consultations a paper dated 3 August 1993 prepared by representatives of several developed and developing States was circulated among delegations as a contribution to the process of the consultations. It was understood that the paper, which was commonly known as 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.

14. Thereafter, while addressing the substantive issues contained in the information note dated 4 June 1993, delegations also made cross-references to the relevant portions of the "boat paper". 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 United Nations Convention on the Law of the Sea; and (iii) two annexes. Annex I contained the agreed conclusions of the Secretary-General's consultations and annex II was entitled "Consequential adjustments".

15. At the last round of consultations held in 1993 (8-12 November), participants had before them three documents: the information note dated 4 June 1993; a new version of the "boat paper" consolidating the two annexes to the original paper into one; and a paper entitled "Agreement on the Implementation of Part XI and Annexes III and IV of the United Nations Convention on the Law of the Sea", submitted by the delegation of Sierra Leone. At this November meeting participants completed the review of all the items contained in the information note dated 4 June 1993. After having completed consideration of those issues, delegations embarked upon a renewed examination of the issue of "Costs to States Parties and institutional arrangements", but this time based essentially on the "boat paper".

16. On 16 November 1993, the Convention on the Law of the Sea received its sixtieth instrument of ratification or accession, which means that, in accordance with its terms (article 308), it will enter into force on 16 November 1994. The General Assembly itself invited all States to participate in the consultations and to increase efforts to achieve universal participation in the Convention as early as possible.* The imminent entry into force of the Convention introduced a sense of urgency to the informal consultations.

17. During the first round held in 1994 (31 January-4 February), the consultations examined a revised version of the "boat paper", dated November 1993. This revision took into account the discussions which had taken place during the Secretary-General's informal consultations held in November 1993. The work of the current round of consultations focused on some crucial issues:

(a) Decision-making, in particular the question of the relationship between the Authority and the Council, and the question as to which group of States in the Council should be considered chambers for the purposes of decision-making in the Council;

(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;

(c) The issue of provisional application of the Agreement and of provisional membership in the Authority.

During this round of consultations progress was made on the latter two issues. A revised version of the document submitted by the delegation of Sierra Leone was submitted to this round of consultations.

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* General Assembly resolution 48/28.

18. The second round of the Secretary-General's informal consultations in 1994 was held from 4 to 8 April. The meeting had before it a further updated version of the "boat paper" entitled "Draft resolution and draft Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea", dated 14 February 1994.

19. Participants undertook an article-by-article review of the draft Agreement. Attention was then focused on the two most important issues facing the consultations: decision-making in the Council, and the Enterprise. These issues, which lay at the heart of the consultations, proved most difficult to resolve. From the outset of the consultations it was evident that these issues could only be resolved in the final stages of this process, when a clearer picture of the results of the consultations had emerged. With respect to decision-making the debate was directed at the system of chambered voting, in particular whether the categories or groups of States, mainly developing States, should be treated as chambers for the purposes of decision-making in the Council. The discussion on the Enterprise centred on the type of mechanism which would trigger the commencement of its operations as well as its functions.

20. Revisions were made to the draft Agreement in the light of the debates on the various issues. This in fact was a unique feature of this round of consultations, reflecting the urgency of the situation. The revisions related to provisional application of the Agreement; provisional membership in the Authority; the treatment of the registered pioneer investors; and production policy.

21. Based on these revisions, the draft resolution and draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea were revised in their entirety and a revised text was issued on 8 April 1994, the last day of the meeting.

22. During this round of consultations, according to many delegations, significant progress was achieved. It appeared that solutions were found to several important issues, including decision-making, the Enterprise and the treatment of the registered pioneer investors. However, not all the issues were resolved in this round of consultations.

23. The last meeting of the Secretary-General's consultations was held from 31 May to 3 June 1994. The primary purpose of this final round of consultations was the harmonization of the text in the various language versions of the draft resolution and draft Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea. The meeting had before it the draft resolution and draft Agreement dated 15 April 1994 which was revised on the basis of discussions in the previous round of consultations and a corrigendum to the document dated 23 May 1994. Two documents (SG/LOS/CRP.1 and

SG/LOS/CRP.2), containing suggested amendments of a drafting nature prepared by the Secretariat, were also submitted to the meeting in order to facilitate the process of harmonizing the language versions of the text.

24. The first part of the meeting addressed the substantive issues that were still pending, and solutions were found for some of those issues. Delegations, however, 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 language 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.

25. At the close of the meeting, delegations were presented with a revised text (SG/LOS/CRP.1/Rev.1), dated 3 June 1994. That document elicited a few drafting comments which are reflected in the text of the draft resolution and draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, contained in annex I to the present report. A proposed solution to the question of the issue of representation in the Council is to be found in the informal understanding contained in annex II.

26. At the conclusion of the informal consultations 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.

27. The consultations 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. They further wished that, after the adoption of the resolution, the Agreement would be immediately opened for signature.

28. I wish to recall that the objective of the consultations was to achieve wider participation in the Convention from the major industrialized States in order to reach the goal of universality. Accordingly, it is with satisfaction that I report to the General Assembly that these consultations, initiated by my predecessor and continued by me, have led to a result which in my view could form the basis of a general agreement on the issues that were the subject of the consultations. In the light of the outcome, I consider that I have fulfilled my mandate.

ANNEX I

Draft resolution and draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982

[Omitted]

ANNEX II

Informal Understanding to be read by the President of the General Assembly at the time of the adoption of the resolution

Once there is a widespread participation in the International Seabed Authority and the number of members of each regional group participating in the Authority is substantially similar to its membership in the United Nations, it is understood that each regional group would be represented in the Council of the Authority as a whole by at least three members.

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GENERAL ASSEMBLY RESOLUTION ON THE AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982

(RESOLUTION 48/263)*

The General Assembly,

Prompted by the desire to achieve universal participation in the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as "the Convention") [1] and to promote appropriate representation in the institutions established by it,

Reaffirming that the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the "Area"), as well as the resources of the Area, are the common heritage of mankind,[2]

Recalling that the Convention in its Part XI and related provisions (hereinafter referred to as "Part XI") established a regime for the Area and its resources,

Taking note of the consolidated provisional final report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea,[3]

Recalling its resolution 48/28 of 9 December 1993 on the law of the sea,

Recognizing that political and economic changes, including in particular a growing reliance on market principles, have necessitated the re-evaluation of some aspects of the regime for the Area and its resources,

Noting the initiative of the Secretary-General which began in 1990 to promote dialogue aimed at achieving universal participation in the Convention,

Welcoming the report of the Secretary-General on the outcome of his informal consultations,[4] including the draft of an agreement relating to the implementation of Part XI,

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* Sponsors: Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Belgium, Benin, Botswana, Brazil, Cameroon, Canada, Chile, China, Denmark, Fiji, Finland, France, Germany, Greece, Grenada, Guinea-Bissau, Guyana, Iceland, India, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, Luxembourg, Malta, Marshall Islands, Micronesia (Federated States of), Myanmar, Namibia, Netherlands, New Zealand, Norway, Papua New Guinea, Portugal, Republic of Korea, Samoa, Senegal, Seychelles, Singapore, Solomon Islands, Spain, Sri Lanka, Sweden, Trinidad and Tobago, United Kingdom, United Republic of Tanzania, United States of America, Uruguay and Vanuatu. (A/48/L.60 and Add.1).

Considering that the objective of universal participation in the Convention may best be achieved by the adoption of an agreement relating to the implementation of Part XI,

Recognizing the need to provide for the provisional application of such an agreement from the date of entry into force of the Convention on 16 November 1994,

1. *Expresses* its appreciation to the Secretary-General for his report on the informal consultations;

2. *Reaffirms* the unified character of the United Nations Convention on the Law of the Sea of 10 December 1982;

3. *Adopts* the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as "the Agreement"), the text of which is annexed to the present resolution;

4. *Affirms* that the Agreement shall be interpreted and applied together with Part XI as a single instrument;

5. *Considers* that future ratifications or formal confirmations of or accessions to the Convention shall represent also consent to be bound by the Agreement and that no State or entity may establish its consent to be bound by the Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention;

6. *Calls upon* States which consent to the adoption of the Agreement to refrain from any act which would defeat its object and purpose;

7. *Expresses* its satisfaction at the entry into force of the Convention on 16 November 1994;

8. *Decides* to fund the administrative expenses of the International Seabed Authority in accordance with section 1, paragraph 14, of the annex to the Agreement;

9. *Requests* the Secretary-General to transmit immediately certified copies of the Agreement to the States and entities referred to in article 3 thereof, with a view to facilitating universal participation in the Convention and the Agreement, and to draw attention to articles 4 and 5 of the Agreement;

10. *Also requests* the Secretary-General to open the Agreement for signature in accordance with article 3 thereof immediately after its adoption;

11. *Urges* all States and entities referred to in article 3 of the Agreement to consent to its provisional application as from 16 November 1994 and to establish their consent to be bound by the Agreement at the earliest possible date;

12. *Also urges* all such States and entities that have not already done so to take all appropriate steps to ratify, formally confirm or accede to the Convention at the earliest possible date in order to ensure universal participation in the Convention;

13. *Calls upon* the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea to take into account the terms of the Agreement when drawing up its final report.

101st plenary meeting
28 July 1994

Notes

[1] *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), document A/CONF.62/122.

[2] General Assembly resolution 2749 (XXV); article 136 of the United Nations Convention on the Law of the Sea.

[3] LOS/PCN/130 and Add.1.

[4] A/48/950.

ANNEX

AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982

The States Parties to this Agreement,

Recognizing the important contribution of the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as "the Convention") to the maintenance of peace, justice and progress for all peoples of the world,

Reaffirming that the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as "the Area"), as well as the resources of the Area, are the common heritage of mankind,

Mindful of the importance of the Convention for the protection and preservation of the marine environment and of the growing concern for the global environment,

Having considered the report of the Secretary-General of the United Nations on the results of the informal consultations among States held from 1990 to 1994 on outstanding issues relating to Part XI and related provisions of the Convention (hereinafter referred to as "Part XI"),

Noting the political and economic changes, including market-oriented approaches, affecting the implementation of Part XI,

Wishing to facilitate universal participation in the Convention,

Considering that an agreement relating to the implementation of Part XI would best meet that objective,

Have agreed as follows:

Article 1
Implementation of Part XI

1. The States Parties to this Agreement undertake to implement Part XI in accordance with this Agreement.

2. The Annex forms an integral part of this Agreement.

Article 2
Relationship between this Agreement and Part XI

1. The provisions of this Agreement and Part XI shall be interpreted and applied together as a single instrument. In the event of any

inconsistency between this Agreement and Part XI, the provisions of this Agreement shall prevail.

2. Articles 309 to 319 of the Convention shall apply to this Agreement as they apply to the Convention.

Article 3
Signature

This Agreement shall remain open for signature at United Nations Headquarters by the States and entities referred to in article 305, paragraph 1 (a), (c) , (d), (e) and (f), of the Convention for 12 months from the date of its adoption.

Article 4
Consent to be bound

1. After the adoption of this Agreement, any instrument of ratification or formal confirmation of or accession to the Convention shall also represent consent to be bound by this Agreement.

2. No State or entity may establish its consent to be bound by this Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention.

3. A State or entity referred to in article 3 may express its consent to be bound by this Agreement by:

(a) Signature not subject to ratification, formal confirmation or the procedure set out in article 5;

(b) Signature subject to ratification or formal confirmation, followed by ratification or formal confirmation;

(c) Signature subject to the procedure set out in article 5; or

(d) Accession.

4. Formal confirmation by the entities referred to in article 305, paragraph 1 (f), of the Convention shall be in accordance with Annex IX of the Convention.

5. The instruments of ratification, formal confirmation or accession shall be deposited with the Secretary-General of the United Nations.

Article 5
Simplified procedure

1. A State or entity which has deposited before the date of the adoption of this Agreement an instrument of ratification or formal confirmation of or accession to the Convention and which has signed this Agreement in accordance with article 4, paragraph 3 (c), shall be considered to have established its consent to be bound by this Agreement 12 months

after the date of its adoption, unless that State or entity notifies the depositary in writing before that date that it is not availing itself of the simplified procedure set out in this article.

2. In the event of such notification, consent to be bound by this Agreement shall be established in accordance with article 4, paragraph 3 (b).

Article 6
Entry into force

1. This Agreement shall enter into force 30 days after the date on which 40 States have established their consent to be bound in accordance with articles 4 and 5, provided that such States include at least seven of the States referred to in paragraph 1 (a) of resolution II of the Third United Nations Conference on the Law of the Sea (hereinafter referred to as "resolution II") and that at least five of those States are developed States. If these conditions for entry into force are fulfilled before 16 November 1994, this Agreement shall enter into force on 16 November 1994.

2. For each State or entity establishing its consent to be bound by this Agreement after the requirements set out in paragraph 1 have been fulfilled, this Agreement shall enter into force on the thirtieth day following the date of establishment of its consent to be bound.

Article 7
Provisional application

1. If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force by:

(a) States which have consented to its adoption in the General Assembly of the United Nations, except any such State which before 16 November 1994 notifies the depositary in writing either that it will not so apply this Agreement or that it will consent to such application only upon subsequent signature or notification in writing;

(b) States and entities which sign this Agreement, except any such State or entity which notifies the depositary in writing at the time of signature that it will not so apply this Agreement;

(c) States and entities which consent to its provisional application by so notifying the depositary in writing;

(d) States which accede to this Agreement.

2. All such States and entities shall apply this Agreement provisionally in accordance with their national or internal laws and regulations, with effect form 16 November 1994 or the date of signature, notification of consent or accession, if later.

3. Provisional application shall terminate upon the date of entry into force of this Agreement. In any event, provisional application shall terminate on 16 November 1998 if at that date the requirement in article 6, paragraph 1, of consent to be bound by this Agreement by at least seven of the States (of which at least five must be developed States) referred to in paragraph 1 (a) of resolution II has not been fulfilled.

Article 8
States Parties

1. For the purposes of this Agreement, "States Parties" means States which have consented to be bound by this Agreement and for which this Agreement is in force.

2. This Agreement applies *mutatis mutandis* to the entities referred to in article 305, paragraph 1 (c), (d), (e) and (f), of the Convention which become Parties to this Agreement in accordance with the conditions relevant to each, and to that extent "States Parties" refers to those entities.

Article 9
Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement.

Article 10
Authentic texts

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Agreement.

DONE AT NEW YORK, this 28th day of July, one thousand nine hundred and ninety-four.

ANNEX

SECTION 1. COSTS TO STATES PARTIES AND INSTITUTIONAL ARRANGEMENTS

1. The International Seabed Authority (hereinafter referred to as "the Authority") is the organization through which States Parties to the Convention shall, in accordance with the regime for the Area established in Part XI and this Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area. The powers and functions of the Authority shall be those expressly conferred upon it by the Convention. The Authority shall have such incidental powers, consistent with the Convention, as are implicit in, and necessary for, the exercise of those powers and functions with respect to activities in the Area.

2. In order to minimize costs to States Parties, all organs and subsidiary bodies to be established under the Convention and this Agreement shall be cost-effective. This principle shall also apply to the frequency, duration and scheduling of meetings.

3. The setting up and the functioning of the organs and subsidiary bodies of the Authority shall be based on an evolutionary approach, taking into account the functional needs of the organs and subsidiary bodies concerned in order that they may discharge effectively their respective responsibilities at various stages of the development of activities in the Area.

4. The early functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Secretariat, the Legal and Technical Commission and the Finance Committee. The functions of the Economic Planning Commission shall be performed by the Legal and Technical Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation.

5. Between the entry into force of the Convention and the approval of the first plan of work for exploitation, the Authority shall concentrate on:

(a) Processing of applications for approval of plans of work for exploration in accordance with Part XI of this Agreement;

(b) Implementation of decisions of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (hereinafter referred to as "the Preparatory Commission") relating to the registered pioneer investors and their certifying States, including their rights and obligations, in accordance with article 308, paragraph 5, of the Convention and resolution II, paragraph 13;

(c) Monitoring of compliance with plans of work for exploration approved in the form of contracts;

(d) 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;

(e) Study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;

(f) Adoption of rules, regulations and procedures necessary for the conduct of activities in the Area as they progress. Notwithstanding the provisions of Annex III, article 17, paragraph 2 (b) and (c), of the Convention, such rules, regulations and procedures shall take into account the terms of this Agreement, the prolonged delay in commercial deep seabed mining and the likely pace of activities in the Area;

(g) Adoption of rules, regulations and procedures incorporating applicable standards for the protection and preservation of the marine environment;

(h) Promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of activities in the Area;

(i) Acquisition of scientific knowledge and monitoring of the development of marine technology relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;

(j) Assessment of available data relating to prospecting and exploration;

(k) Timely elaboration of rules, regulations and procedures for exploitation, including those relating to the protection and preservation of the marine environment.

6. (a) An application for approval of a plan of work for exploration shall be considered by the Council following the receipt of a recommendation on the application from the Legal and Technical Commission. The processing of an application for approval of a plan of work for exploration shall be in accordance with the provisions of the Convention, including Annex III thereof, and this Agreement, and subject to the following:

(i) A plan of work for exploration submitted on behalf of a State or entity, or any component of such entity, referred to in resolution II, paragraph 1 (a) (ii) or (iii), other than a registered pioneer investor, which had already undertaken

substantial activities in the Area prior to the entry into force of the Convention, or its successor in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work if the sponsoring State or States certify that the applicant has expended an amount equivalent to at least US$30 million in research and exploration 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 the plan of work. If the plan of work otherwise satisfies the requirements of the Convention and any rules, regulations and procedures adopted pursuant thereto, it shall be approved by the Council in the form of a contract. The provisions of section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;

(ii) Notwithstanding the provisions of resolution II, paragraph 8 (a), a registered pioneer investor may request approval of a plan of work for exploration within 36 months of the entry into force of the Convention. The plan of work for exploration shall consist of documents, reports and other data submitted to the Preparatory Commission both before and after registration and shall be accompanied by a certificate of compliance, consisting of a factual report describing the status of fulfilment of obligations under the pioneer investor regime, issued by the Preparatory Commission in accordance with resolution II, paragraph 11 (a). Such a plan of work shall be considered to be approved. Such an approved plan of work shall be in the form of a contract concluded between the Authority and the registered pioneer investor in accordance with Part XI and this Agreement. The fee of US$ 250,000 paid pursuant to resolution II, paragraph 7 (a), shall be deemed to be the fee relating to the exploration phase pursuant to section 8, paragraph 3, of this Annex. Section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;

(iii) In accordance with the principle of non-discrimination, a contract with a State or entity or any component of such entity referred to in subparagraph (a) (i) shall include arrangements which shall be similar to and no less favorable than those agreed with any registered pioneer investor referred to in subparagraph (a) (ii). If any of the States or entities or any components of such entities referred to in subparagraph (a) (i) are granted more favorable arrangements, the Council shall make similar and no less favorable arrangements with regard to the rights and obligations assumed by the registered pioneer investors referred to in subparagraph (a) (ii), provided that such arrangements do not affect or prejudice the interests of the Authority;

(iv) A State sponsoring an application for a plan of work pursuant to the provisions of subparagraph (a) (i) or (ii) may be a State Party or a State which is applying this Agreement provisionally in accordance with article 7, or a State which is a member of the Authority on a provisional basis in accordance with paragraph 12;

(v) Resolution II, paragraph 8 (c), shall be interpreted and applied in accordance with subparagraph (a) (iv).

(b) The approval of a plan of work for exploration shall be in accordance with article 153, paragraph 3, of the Convention.

7. An application for approval of a plan of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities and by a description of a programme for oceanographic and baseline environmental studies in accordance with the rules, regulations and procedures adopted by the Authority.

8. An application for approval of a plan of work for exploration, subject to paragraph 6 (a) (i) or (ii), shall be processed in accordance with the procedures set out in section 3, paragraph 11, of this annex.

9. A plan of work for exploration shall be approved for a period of 15 years. Upon the expiration of a plan of work for exploration, the contractor shall apply for a plan of work for exploitation unless the contractor has already done so or has obtained an extension for the plan of work for exploration. Contractors may apply for such extensions for periods of not more than five years each. Such extensions shall be approved if the contractor has made efforts in good faith to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or if the prevailing economic circumstances do not justify proceeding to the exploitation stage.

10. Designation of a reserved area for the Authority in accordance with Annex III, article 8, of the Convention shall take place in connection with approval of an application for a plan of work for exploration or approval of an application for a plan of work for exploration and exploitation.

11. Notwithstanding the provisions of paragraph 9, an approved plan of work for exploration which is sponsored by at least one State provisionally applying this Agreement shall terminate if such a State ceases to apply this Agreement provisionally and has not become a member on a provisional basis in accordance with paragraph 12 or has not become a State Party.

12. Upon the entry into force of this Agreement, States and entities referred to in article 3 of this Agreement which have been applying it provisionally in accordance with article 7 and for which it is not in force may continue to be members of the Authority on a provisional basis

pending its entry into force for such States and entities, in accordance with the following subparagraphs:

(a) If this Agreement enters into force before 16 November 1996, such States and entities shall be entitled to continue to participate as members of the Authority on a provisional basis upon notification to the depositary of the Agreement by such a State or entity of its intention to participate as a member on a provisional basis. Such membership shall terminate either on 16 November 1996 or upon the entry into force of this Agreement and the Convention for such member, whichever is earlier. The Council may, upon the request of the State or entity concerned, extend such membership beyond 16 November 1996 for a further period or periods not exceeding a total of two years provided that the Council is satisfied that the State or entity concerned has been making efforts in good faith to become a party to the Agreement and the Convention;

(b) If this Agreement enters into force after 15 November 1996, such States and entities may request the Council to grant continued membership in the Authority on a provisional basis for a period or periods not extending beyond 16 November 1998. The Council shall grant such membership with effect from the date of the request if it is satisfied that the State or entity has been making efforts in good faith to become a party to the Agreement and the Convention;

(c) States and entities which are members of the Authority on a provisional basis in accordance with subparagraph (a) or (b) shall apply the terms of Part XI and this Agreement in accordance with their national or internal laws, regulations and annual budgetary appropriations and shall have the same rights and obligations as other members, including:

(i) The obligation to contribute to the administrative budget of the Authority in accordance with the scale of assessed contributions;

(ii) The right to sponsor an application for approval of a plan of work for exploration. In the case of entities whose components are natural or juridical persons possessing the nationality of more than one State, a plan of work for exploration shall not be approved unless all the States whose natural or juridical persons comprise those entities are States Parties or members on a provisional basis;

(d) Notwithstanding the provisions of paragraph 9, an approved plan of work in the form of a contract for exploration which was sponsored pursuant to subparagraph (c) (ii) by a State which was a member on a provisional basis shall terminate if such membership ceases and the State or entity has not become a State Party;

(e) If such a member has failed to make its assessed contributions or otherwise failed to comply with its obligations in accordance with this paragraph, its membership on a provisional basis shall be terminated.

13. The reference in Annex III, article 10, of the Convention to performance which has not been satisfactory shall be interpreted to mean that the contractor has failed to comply with the requirements of an approved plan of work in spite of a written warning or warnings from the Authority to the contractor to comply therewith.

14. The Authority shall have its own budget. Until the end of the year following the year during which this Agreement enters into force, the administrative expenses of the Authority shall be met through the budget of the United Nations. Thereafter, the administrative expenses of the Authority shall be met by assessed contributions of its members, including any members on a provisional basis, in accordance with articles 171, subparagraph (a), and 173 of the Convention and this Agreement, until the Authority has sufficient funds from other sources to meet those expenses. The Authority shall not exercise the power referred to in article 174, paragraph 1, of the Convention to borrow funds to finance its administrative budget.

15. The Authority shall elaborate and adopt, in accordance with article 162, paragraph 2 (o) (ii), of the Convention, rules, regulations and procedures based on the principles contained in sections 2, 5, 6, 7 and 8 of this Annex, as well as any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploration or exploitation, in accordance with the following subparagraphs:

(a) The Council may undertake such elaboration any time it deems that all or any of such rules, regulations or procedures are required for the conduct of activities in the Area, or when it determines that commercial exploitation is imminent, or at the request of a State whose national intends to apply for approval of a plan of work for exploitation;

(b) If a request is made by a State referred to in subparagraph (a) the Council shall, in accordance with article 162, paragraph 2 (o), of the Convention, complete the adoption of such rules, regulations and procedures within two years of the request;

(c) If the Council has not completed the elaboration of the rules, regulations and procedures relating to exploitation within the prescribed time and an application for approval of a plan of work for exploitation is pending, it shall none the less consider and provisionally approve such plan of work based on the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles

contained in this Annex as well as the principle of non-discrimination among contractors.

16. The draft rules, regulations and procedures and any recommendations relating to the provisions of Part XI, as contained in the reports and recommendations of the Preparatory Commission, shall be taken into account by the Authority in the adoption of rules, regulations and procedures in accordance with Part XI and this Agreement.

17. The relevant provisions of Part XI, section 4, of the Convention shall be interpreted and applied in accordance with this Agreement.

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 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 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 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 be interpreted and applied in accordance with this section.

SECTION 3. DECISION-MAKING

1. The general policies of the Authority shall be established by the Assembly in collaboration with the Council.

2. As a general rule, decision-making in the organs of the Authority should be by consensus.

3. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Assembly on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance shall be taken by a two-thirds majority of members present and voting, as provided for in article 159, paragraph 8, of the Convention.

4. Decisions of the Assembly on any matter for which the Council also has competence or on any administrative, budgetary or financial matter shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council for further consideration. The Council shall reconsider the matter in the light of the views expressed by the Assembly.

5. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Council on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance, except where the Convention provides for decisions by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the Chambers referred to in paragraph 9. In taking decisions the Council shall seek to promote the interests of all the members of the Authority.

6. The Council may defer the taking of a decision in order to facilitate further negotiation whenever it appears that all efforts at achieving consensus on a question have not been exhausted.

7. Decisions by the Assembly or the Council having financial or budgetary implications shall be based on the recommendations of the Finance Committee.

8. The provisions of article 161, paragraph 8 (b) and (c), of the Convention shall not apply.

9. (a) Each group of States elected under paragraph 15 (a) to (c) shall be treated as a chamber for the purposes of voting in the Council. The developing States elected under paragraph 15 (d) and (e) shall be treated as a single chamber for the purposes of voting in the Council.

(b) Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the criteria for membership in the groups of States in paragraph 15 (a) to (d). If a State fulfils the criteria for membership in more than one group, it may only be proposed by one group for election to the Council and it shall represent only that group in voting in the Council.

10. Each group of States in paragraph 15 (a) to (d) shall be represented in the Council by those members nominated by that group. Each group shall nominate only as many candidates as the number of seats required to be filled by that group. When the number of potential candidates in each of the groups referred to in paragraph 15 (a) to (e) exceeds the number of seats available in each of those respective groups, as a general rule, the principle of rotation shall apply. States members of each of those groups shall determine how this principle shall apply in those groups.

11. (a) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. The prescribed

period shall normally be 60 days unless the Council decides to provide for a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its rules of procedure for decision-making on questions of substance.

(b) The provisions of article 162, paragraph 2 (j), of the Convention shall not apply.

12. Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement procedures set out in the Convention.

13. Decisions by voting in the Legal and Technical Commission shall be by a majority of members present and voting.

14. Part XI, section 4, subsections B and C, of the Convention shall be interpreted and applied in accordance with this section.

15. The Council shall consist of 36 members of the Authority elected by the Assembly in the following order:

(a) Four members from among those States Parties which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of total world consumption or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this group;

(b) Four members from among the eight States Parties which have made the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals;

(c) Four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;

(d) Six members from among developing States Parties, representing special interests. The special interests to be represented shall include those of States with large populations, States which are land-locked or geographically disadvantaged, island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States;

(e) Eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern Europe, Latin America and the Caribbean and Western Europe and Others.

16. The provisions of article 161, paragraph 1, of the Convention shall not apply.

SECTION 4. REVIEW CONFERENCE

The provisions relating to the Review Conference in article 155, paragraphs 1, 3 and 4, of the Convention shall not apply. Notwithstanding the provisions of article 314, paragraph 2, of the Convention, the Assembly, on the recommendation of the Council, may undertake at any time a review of the matters referred to in article 155, paragraph 1, of the Convention. Amendments relating to this Agreement and Part XI shall be subject to the procedures contained in articles 314, 315 and 316 of the Convention, provided that the principles, regime and other terms referred to in article 155, paragraph 2, of the Convention shall be maintained and the rights referred to in paragraph 5 of that article shall not be affected.

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 cooperate 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 cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also cooperate fully with the Authority;

(c) As a general rule, States Parties shall promote international technical and scientific cooperation with regard to activities in the

Area either between the parties concerned or by developing training, technical assistance and scientific cooperation 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.

SECTION 6. PRODUCTION POLICY

1. The production policy of the Authority shall be based on the following principles:

(a) Development of the resources of the Area shall take place in accordance with sound commercial principles;

(b) The provisions of the General Agreement on Tariffs and Trade, its relevant codes and successor or superseding agreements shall apply with respect to activities in the Area;

(c) In particular, there shall be no subsidization of activities in the Area except as may be permitted under the agreements referred to in subparagraph (b). Subsidization for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (b);

(d) There shall be no discrimination between minerals derived from the Area and from other sources. There shall be no preferential access to markets for such minerals or for imports of commodities produced from such minerals, in particular:

(i) By the use of tariff or non-tariff barriers; and

(ii) Given by States Parties to such minerals or commodities produced by their state enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals;

(e) The plan of work for exploitation approved by the Authority in respect of each mining area shall indicate an anticipated production schedule which shall include the estimated maximum amounts of minerals that would be produced per year under the plan of work;

(f) The following shall apply to the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (b):

(i) Where the States Parties concerned are parties to such agreements, they shall have recourse to the dispute settlement procedures of those agreements;

(ii) Where one or more of the States Parties concerned are not parties to such agreements, they shall have recourse to the dispute settlement procedures set out in the Convention;

(g) In circumstances where a determination is made under the agreements referred to in subparagraph (b) that a State Party has engaged in subsidization which is prohibited or has resulted in adverse effects on the interests of another State Party and appropriate steps have not been taken by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.

2. The principles contained in paragraph 1 shall not affect the rights and obligations under any provision of the agreements referred to in paragraph 1 (b), as well as the relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.

3. The acceptance by a contractor of subsidies other than those which may be permitted under the agreements referred to in paragraph 1 (b) shall constitute a violation of the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.

4. Any State Party which has reason to believe that there has been a breach of the requirements of paragraphs 1 (b) to (d) or 3 may initiate dispute settlement procedures in conformity with paragraph 1 (f) or (g).

5. A State Party may at any time bring to the attention of the Council activities which in its view are inconsistent with the requirements of paragraph 1 (b) to (d).

6. The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this section, including relevant rules, regulations and procedures governing the approval of plans of work.

7. The provisions of article 151, paragraphs 1 to 7 and 9, article 162, paragraph 2 (q), article 165, paragraph 2 (n), and Annex III, article 6, paragraph 5, and article 7, of the Convention shall not apply.

SECTION 7. ECONOMIC ASSISTANCE

1. The policy of the Authority of assisting developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be based on the following principles:

(a) The Authority shall establish an economic assistance fund from a portion of the funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority. The amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions

shall be used for the establishment of the economic assistance fund;

(b) Developing land-based producer States whose economies have been determined to be seriously affected by the production of minerals from the deep seabed shall be assisted from the economic assistance fund of the Authority;

(c) The Authority shall provide assistance from the fund to affected developing land-based producer States, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes;

(d) The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer States.

2. Article 151, paragraph 10, of the Convention shall be implemented by means of measures of economic assistance referred to in paragraph 1. Article 160, paragraph 2 (l), article 162, paragraph 2 (n), article 164, paragraph 2 (d), article 171, subparagraph (f), and article 173, paragraph 2 (c), of the Convention shall be interpreted accordingly.

SECTION 8. FINANCIAL TERMS OF CONTRACTS

1. The following principles shall provide the basis for establishing rules, regulations and procedures for financial terms of contracts:

(a) The system of payments to the Authority shall be fair both to the contractor and to the Authority and shall provide adequate means of determining compliance by the contractor with such system;

(b) The rates of payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage;

(c) The system should not be complicated and should not impose major administrative costs on the Authority or on a contractor. Consideration should be given to the adoption of a royalty system or a combination of a royalty and profit-sharing system. If alternative systems are decided upon, the contractor has the right to choose the system applicable to its contract. Any subsequent change in choice between alternative systems, however, shall be made by agreement between the Authority and the contractor;

(d) An annual fixed fee shall be payable from the date of commencement of commercial production. This fee may be credited against other payments due under the system adopted in

accordance with subparagraph (c). The amount of the fee shall be established by the Council;

(e) The system of payments may be revised periodically in the light of changing circumstances. Any changes shall be applied in a non-discriminatory manner. Such changes may apply to existing contracts only at the election of the contractor. Any subsequent change in choice between alternative systems shall be made by agreement between the Authority and the contractor;

(f) Disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures set out in the Convention.

2. The provisions of Annex III, article 13, paragraph 3 to 10, of the Convention shall not apply.

3. With regard to the implementation of Annex III, article 13, paragraph 2, of the Convention, the fee for processing applications for approval of a plan of work limited to one phase, either the exploration phase or the exploitation phase, shall be US$ 250,000.

SECTION 9. THE FINANCE COMMITTEE

1. There is hereby established a Finance Committee. The Committee shall be composed of 15 members with appropriate qualifications relevant to financial matters. States Parties shall nominate candidates of the highest standards of competence and integrity.

2. No two members of the Finance Committee shall be nationals of the same State Party.

3. Members of the Finance Committee shall be elected by the Assembly and due account shall be taken of the need for equitable geographical distribution and the representation of special interests. Each group of States referred to in section 3, paragraph 15 (a), (b), (c) and (d), of this Annex shall be represented on the Committee by at least one member. Until the Authority has sufficient funds other than assessed contributions to meet its administrative expenses, the membership of the Committee shall include representatives of the five largest financial contributors to the administrative budget of the Authority. Thereafter, the election of one member from each group shall be on the basis of nomination by the members of the respective group, without prejudice to the possibility of further members being elected from each group.

4. Members of the Finance Committee shall hold office for a term of five years. They shall be eligible for re-election for a further term.

5. In the event of the death, incapacity or resignation of a member of the Finance Committee prior to the expiration of the term of office, the Assembly shall elect for the remainder of the term a member from the same geographical region or group of States.

6. Members of the Finance Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after the termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Authority.

7. Decisions by the Assembly and the Council on the following issues shall take into account recommendations of the Finance Committee:

(a) Draft financial rules, regulations and procedures of the organs of the Authority and the financial management and internal financial administration of the Authority;

(b) Assessment of contributions of members to the administrative budget of the Authority in accordance with article 160, paragraph 2 (e), of the Convention;

(c) All relevant financial matters, including the proposed annual budget prepared by the Secretary-General of the Authority in accordance with article 172 of the Convention and the financial aspects of the implementation of the programmes of work of the Secretariat;

(d) The administrative budget;

(e) Financial obligations of States Parties arising from the implementation of this Agreement and Part XI as well as the administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority;

(f) Rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon.

8. Decisions in the Finance Committee on questions of procedure shall be taken by a majority of members present and voting. Decisions on questions of substance shall be taken by consensus.

9. The requirement of article 162, paragraph 2 (y), of the Convention to establish a subsidiary organ to deal with financial matters shall be deemed to have been fulfilled by the establishment of the Finance Committee in accordance with this section.

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PART 4

Select bibliography

SELECT BIBLIOGRAPHY

Anderson, David H. Efforts to Ensure Universal Participation in the United Nations Convention on the Law of the Sea. *International and Comparative Law Quarterly* 42 (3) July 1993: 654-664.

Anderson, David H. Further Efforts to Ensure Universal Participation in the United Nations Convention on the Law of the Sea. *International and Comparative Law Quarterly* 43 (4) October 1994: 886-893.

Anderson, David H. Legal Implications of the Entry Into Force of the United Nations Convention on the Law of the Sea. *International and Comparative Law Quarterly* 44 (2) April 1995: 313-326.

Anderson, David H. Resolution and Agreement Relating to the Implementation of Part XI of the UN Convention the Law of the Sea: A General Assessment. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 55 (2) 1995: 275-289.

Anderson, David H. The Mechanisms for Adjusting Part XI and their Relation to the Implementation Agreement. In: *1994 Rhodes Papers: Entry into Force of the Law of the Sea Convention,* edited by Myron H. Nordquist and John N. Moore. The Hague and Boston: Martinus Nijhoff Publishers, 1995: 89- 97.

Anderson, David H. Law-Making Processes in the UN System - Some Impressions. *Max Planck Yearbook of United Nations Law,* vol. 2, 1998: 23-50.

Ballah, Lennox F. The Universality of the 1982 UN Convention on the Law of the Sea: Common Heritage or Common Burden? In: *International Legal Issues Arising under the United Nations Decade of International Law, edited by Najeeb Al-Nauimi and Richard Meese.* The Hague and London: Martinus Nijhoff Publishers, 1995: 339-365.

Belhaj, Férid. Reflexions sur la Convention des Nations Unies sur le droit de la mer, dix ans après son ouverture a la signature: la question du regime d'exploitation des fonds marins. *African Yearbook of International Law,* vol. 1, 1993: 123-146.

Brown, Edward D. *Seabed Energy and Minerals: The International Legal Regime.* Dordrecht and Boston: Martinus Nijhoff Publishers, 1992.

Brown, Edward D. Neither Necessary Nor Prudent at This Stage: The Regime of Seabed Mining and Its Impact on the Universality of the United

Nations Convention on the Law of the Sea. *Marine Policy* 17(2) March 1993: 81-107.

Brown, Edward D. The UN Secretary-General's Informal Consultations and the New York Agreement of 28 July 1994. In: *The International Law of the Sea* by Edward D. Brown. Vol. 1. Aldershot, England: Dartmouth Publishing, 1994: 462-473.

Brown, Edward D. The 1994 Agreement on the Implementation of Part XI of the UN Convention on the Law of the Sea: breakthrough to universality? *Marine Policy* 19 (1) January 1995: 5-20

Beurier, Jean-Pierre and Patrick Cadenat. L'entrée en vigueur de la Convention de Montego-Bay: approche statistique des Etats Tatificateurs. *Collection espaces et ressources maritimes* 8 (1994): 22-36.

Charney, Jonathan I. The United States and the Revision of the 1982 Convention on the Law of the Sea. *Ocean Development and International Law* 23 (4) 1992: 279-303.

Charney, Jonathan I. U.S. Provisional Application of the 1994 Deep Seabed Agreement. A*merican Journal of International Law* 88 (4) 1994: 705-714.

Charney, Jonathan I. Entry into Force of the 1982 Convention on the Law of the Sea. V*irginia Journal of International Law* 35 (2) Winter 1995: 381-404.

Cicin-Sain, Biliana and Katherine A. Leccese, editors. Implications of entry into force of the Law of the Sea Convention for U.S. Ocean governance, Ocean Governance Study Group. Honolulu, Hawaii, 9-11 January 1995. Newark, Del.: University of Delaware, 1995.

Colson, David A. United States Accession to the United Nations Convention on the Law of the Sea. *Georgetown International Environmental Law Review* 7 (3) Summer 1995: 651-658.

Davison, Bruce B. The Interests of the U.S. Department of Defense in the United Nations Law of the Sea Convention. In: *1994 Rhodes Papers: Entry into Force of the Law of the Sea Convention*, edited by Myron H. Nordquist and John N. Moore. The Hague and Boston: Martinus Nijhoff Publishers, 1995: 155-158.

Davidson, Karen. Law of the Sea and Deep Seabed Mining: the Agreement modifying Part XI of the UN Law of the Sea Convention. In: *Proceedings of the Nineteenth Annual Seminar of the Center for Oceans Law and Policy,*

University of Virginia School of Law, 29-30 June 1995 **:** *Toward Senate Consideration of the 1982 Law of the Sea Convention: A Tribute to the Honorable John R. Stevenson, 29-30 June 1995*, edited by Myron H. Nordquist. Washington, D.C.: COLP, 1995: 303-318.

Davidson, Karen. Resolution and Agreement Relating to the Implementation of Part XI of the UN Convention on the Law of the Sea: A General Assessment – Comment. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 55 (2) 1995: 290-297.

De Marffy-Mantuano, Annick. Droit de la mer: pari juridique jusqu'à l'an 2014. *Collection espaces et ressources maritimes*, no. 7, 1993: 20-31.

De Marffy-Mantuano, Annick. Le cadre juridique de l'accord relatif à l'application de la Convention des Nations Unies sur le droit de la mer et ses ambiguities. *Collection espaces et ressources maritimes, no.* 8, 1994: 37-50.

De Marffy-Mantuano, Annick. The procedural framework of the Agreement implementing the 1982 United Nations Convention on the Law of the Sea. *American Journal of International Law* 89 (4) 1995: 814-824.

French, Gregory. Joint Ventures for Deep Seabed Mining Operations – Comment. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 55 (2) 1995: 339-347.

French, Gregory. Proposed Revision of Part XI: Current Changes and Future Considerations. In: *1994 Rhodes Papers: Entry into Force of the Law of the Sea Convention*, edited by Myron H. Nordquist and John N. Moore. The Hague and Boston: Martinus Nijhoff Publishers, 1995: 145-150.

Galdorisi, George, Doug Bandow and M. Casey Jarman. *The United States and the 1982 Law of the Sea Convention: the cases Pro and Con.* Honolulu: The Law of the Sea Institute, University of Hawaii, 1994, 87 p. (The Law of the Sea Institute Occasional Paper, no. 38).

Gautier, Philippe. De 1982 à 1994: les étapes d'une modification "singulière" - De la partie XI de la Convention des Nations Unies sur le droit se la mer de 1982. *Revue belge de droit international* 28 (1) 1995: 56-77.

Godefroid, Alain. Commentaire de la contribution de: Vignes, Daniel, La fin du schisme des fonds marins. *Revue belge de droit international* 28 (1) 1995: 164-166.

Gromoll, L. Geochemical Types of Pacific Polymetallic Nodules: An application of Multivariate Analysis. *Marine Georesources and* Geotechnology 14 (4) October-December 1996: 361-379.

Greenwald, Richard J. Issues in Amending Part XI of the LOS Convention: An Industry Perspective. In: *Proceedings of the Fifteenth Annual Seminar of the Center for Oceans Law and Policy, University of Virginia School of Law, 19-20 April, 1991: Issues in Amending Part XI of the LOS Convention,* edited by Myron H. Nordquist. Washington, D.C.: COLP, 1991: 91-96.

Hayashi, Moritaka. Activities linked to the entry into force of the United Nations Convention on the Law of the Sea. *International Journal of Marine and Coastal Law* 9 (2) May 1994: 261-267.

Hayashi, Moritaka. UNCLOS Part XI Agreement: with Particular Reference to the Status of Registered Pioneer Investors. In: *International Advisory Conference on Deep Seabed Mining Policy, Seoul, Korea, 5-6 September 1994.* Korea Ocean Research and Development Institute, 28 p.

Hayashi, Moritaka. Prospects for Universal Acceptance of the Part XI Agreement. *Georgetown International Environmental Law Review* 7 (3) Summer 1995: 687-695.

Hayashi, Moritaka. The Role of the Secretary-General under the Law of the Sea Convention and the Part XI Agreement. *The International Journal of Marine and Coastal Law* 10 (2) 1995: 157-164.

Hayashi, Moritaka. The 1994 Agreement for the Universalization of the Law of the Sea Convention. *Ocean Development and International Law* 27 (1-2) 1996: 31-39.

Iguchi, Takeo. Perspectives on Proposed Revisions in Part XI. In: *1994 Rhodes Papers: Entry into Force of the Law of the Sea Convention,* edited by Myron H. Nordquist and John N. Moore. The Hague and Boston: Martinus Nijhoff Publishers, 1995: 133-143.

Jaenicke, Günther. The United Nations Convention on the Law of the Sea and the Agreement relating to the implementation of Part XI of the Convention: Treaty Law Problems in the Process of Revising the Deep Seabed Mining Regime of the Convention. In: *Recht zwischen Umbruch und Bewahrung,* edited by U. Beyerlin, et al. Heidelberg, Germany: Springer-Verlag, 1995: 121-134.

Jaenicke, Günther. Joint Ventures for Deep Seabed Mining Operations. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 55 (2) 1995: 329-338.

Jagota, S.P. The Seabed Outside the Limits of national Jurisdiction. In*: International Law: Achievements and Prospects.* Martinus Nijhoff Publishers, 1991: 915-945.

Jarmarche, Elie and Jean-Pierre Lenoble. Les dispositions techniques et financières dans l'accord relatif à l'application de la Partie XI de la Convention des Nations Unies sur le Droit de la Mer. *Collection espaces et ressources maritimes,* no. 8, 1994: 51-57.

Jesus, José Luis. Recent Developments in the Law of the Sea and the Accomplishments of the Preparatory Commission. *International Challenges* 13 (1) 1993: 9-16.

Jin, Jiancai. Deep Seabed Mining in China. *International Challenges* 13 (1) 1993: 46-49.

Jin, Jiancai. The Policy for Deep Seabed Mining. In: *International Advisory Conference on Deep Seabed Mining Policy, Seoul, Korea, 5-6 September 1994.* Korea Ocean Research and Development Institute, 24 p.

Joyner, Christopher C. The United States and the new Law of the Sea. *Ocean Development and International Law* 27 (1-2) 1996: 41-58.

Kang, Jung-Keuk and Seoung-Young Hong. Current Status of Deep-Seabed Exploration Activities in the Republic of Korea. *International Challenges* 13 (1) 1993: 50-53.

Koch, Joachim. Kommentar: Die Europäische Gemeinschaft als Partie seerechtlicher Verträge. *Archiv des völkerrechts,* 32, 1994: 336-341.

Koch, Joachim. Revisions in Part XI: A Necessary Compromise. In: *1994 Rhodes Papers: Entry into Force of the Law of the Sea Convention,* edited by Myron H. Nordquist and John N. Moore. The Hague and Boston: Martinus Nijhoff Publishers, 1995, 151-154.

Kolossovskiy, Igor K. Prospects for Universality of the United nations Convention on the Law of the Sea. *Marine Policy* 17 (1) January 1993: 4-10.

Kirsch, Philippe. The Right to Property in International Law: The Legal Regime of the Seabed. *Hague Yearbook of International Law,* vol. 4, 1991: 215-222.

Korea Ocean Research and Development Institute: *Proceedings of the International Advisory Conferences on Deep Seabed Mining Policy, Seoul, Korea, 5-6 September,* 1994.

Leissner, Anders. *The New Deep Sea-bed Management: A Study in Law and Economics.* Master's thesis, University of Lund, Sweden, 1996.

Lenoble, Jean-Pierre. The Future of Deep Seabed Mining: A Changing Economic and Legal Contingency. In: *International Advisory Conferences on Deep Seabed Mining Policy, Seoul, Korea, 5-6 September, 1994,* Korea Ocean Research and Development Institute, 17 p.

Lévy, Jean-Pierre. La onzième session de la Commission Préparatoire de l'Autorité internationale des Fonds Marins et du Tribunal International du droit de la mer. *Collection espaces et ressources maritimes*, no. 7, 1993: 10-19.

Lévy, Jean-Pierre. La douzième et ultime session de la Commission préparatoire de l'Autorité internationale des Fonds Marins et du Tribunal internationale du droit de la mer. *Collection espaces et ressources maritimes*, no. 8, 1994: 6-21.

Lévy, Jean-Pierre. Les bons offices du Secrétaire Général des Nations Unies en faveur de l'universalité de la Convention sur le droit de la mer: la préparation de l'Accord adopté par l'Assemblée générale du 28 juillet 1994. *Revue générale de droit international public* 98 (4) 1994: 871-898.

Lévy, Jean-Pierre. Les Nations Unies et la Convention de 1982 sur le droit de la mer. *Revue belge de droit international* 28 (1) 1995: 11-35.

Li, Yuwen. *Transfer of Technology for Deep Sea-Bed Mining: The 1982 Law of the Sea Convention and Beyond*. Dordrecht and Boston: Martinus Nijhoff, 1994, 332 p.

Lucchini, Laurent. La Convention des Nations Unies sur le droit de la mer du 10 décembre 1982: une entrée en vigueur, pour quelle Convention? *Collection espaces et ressources maritimes*, no. 7, 1993: 1-9.

Mangone, Gerard J. Negotiations on the 1982 LOSC (Law of the Sea Convention): given extra urgency by the 60th Ratification. *The International Journal of Marine and Coastal Law* 9 (1) March 1994: 57-71.

Markussen, Jan Magne. Environmental Aspects of Deep Seabed Mining: From Non-Theme to Central Issues? *International Challenges* 10 (3) 1990: 18-26.

Markussen, Jan Magne. Polymetallic Nodules: A Brief Status Report. *International Challenges* 13 (1) 1993: 37-45.

Markussen, Jan Magne. *International Cooperation in Deep Seabed Mining.* In: *Proceedings of the Twenty-ninth Annual Conference of the Law of the Sea Institute, Bali, Indonesia, 19-22 June 1995: Sustainable Development and Preservation of the Oceans: The Challenge of UNCLOS and Agenda 2,* edited by Mochtar Kusuma-Atmadja, Thomas A. Mensah, Bernard H. Oxman. Honolulu, Hawaii: Law of the Sea Institute, University of Hawaii, 1997: 625-628.

Matsumoto, Koichi. The Present State of Japanese Deep Seabed Activities and Problems Concerning Part XI of the LOS Convention. In: *Proceedings of the Fifteenth Annual Seminar of the Center for Oceans Law and Policy, University of Virginia School of Law, 19-20 April, 1991: Issues in Amending Part XI of the LOS Convention,* edited by Myron H. Nordquist. Washington, D.C.: COLP, 1991: 97-103.

Mahmoudi, Said. Modification of Part XI and the Balance of Interests. In: *Proceedings of the Fifteenth Annual Seminar of the Center for Oceans Law and Policy, University of Virginia School of Law, 19-20 April, 1991: Issues in Amending Part XI of the LOS Convention,* edited by Myron H. Nordquist. Washington, D.C.: COLP, 1991: 185-193.

Moore, John Norton. Renegotiating Part XI: Ensuring an Effective Seabed Mining Regime. In: *Proceedings of the Fifteenth Annual Seminar of the Center for Oceans Law and Policy, University of Virginia School of Law, 19-20 April, 1991: Issues in Amending Part XI of the LOS Convention,* edited by Myron H. Nordquist. Washington, D.C.: COLP, 1991: 239-246.

Morgan, A.L. The new law of the sea: Rethinking the implications for sovereign jurisdiction and freedom of action. *Ocean Development and International Law* 27 (1-2) 1996: 5-29.

Nandan, Satya N. Efforts to Make the 1982 United Nations Convention on the Law of the Sea a Universal Instrument. In: *Proceedings of the Fifteenth Annual Seminar of the Center for Oceans Law and Policy, University of Virginia School of Law, 19-20 April, 1991: Issues in Amending Part XI of the LOS Convention,* edited by Myron H. Nordquist. Washington, D.C.: COLP, 1991: 235-238.

Nandan, Satya N. The Efforts Undertaken by the United Nations to Ensure Universality of the Convention, In: *Proceedings of the Twenty-sixth Annual Conference of the Law of the Sea Institute, Genoa, Italy, 22-25 June, 1992: The Law of the Sea: New Worlds, New Discoveries,* edited by Edward L.

Miles and Tullio Treves. Honolulu, Hawaii: Law of the Sea Institute, University of Hawaii, 1993: 349-378.

Nandan, Satya N. The United Nations Convention on the Law of the Sea: Resolving the Problems of Part XI (The Deep Seabed Mining Regime. In: *Proceedings of the Seventeenth Annual Seminar of the Center for Oceans Law and Policy, University of Virginia School of Law, 19 March 1993: New National Perspectives on the Law of the Sea Convention,* edited by Myron H. Nordquist. Washington, D.C.: COLP, 1993: 57-77.

Nandan, Satya N. A Report on the Consultations of the Secretary-General. In: *1994 Rhodes Papers: Entry into Force of the Law of the Sea Convention,* edited by Myron H. Nordquist and John N. Moore. The Hague and Boston: Martinus Nijhoff Publishers, 1995: 119-129.

Nandan, Satya N. Statement to the United Nations General Assembly on 27 July 1994, Introducing Draft Resolution A/48/L.60 entitled "Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982". In: *The Law of the Sea: Compendium of Basic Documents.* Kingston, Jamaica: International Seabed Authority in collaboration with the Caribbean Law Publishing Company, 2001: lxxii-lxxix.

Nelson. L.D.M. Issues in Amending Part XI of the LOS Convention: Renewing the Dialogue In: *Proceedings of the Fifteenth Annual Seminar of the Center for Oceans Law and Policy, University of Virginia School of Law, 19-20 April, 1991: Issues in Amending Part XI of the LOS Convention,* edited by Myron H. Nordquist. Washington, D.C.: COLP, 1991: 51-59.

Nelson. L.D.M. The New Deep Sea-bed Mining Regime. *The International Journal of Marine and Coastal Law* 10 (2) 1995: 189-203.

Nelson, L.D.M. Some observations on the Agreement implementing part XI of the 1982 Convention on the Law of the Sea. In: *Proceedings of the Twenty-eight Annual Conference of the Law of the Sea Institute, Honolulu, Hawaii, 11-14 July 1994: Ocean Governance: Strategies and approaches for the 21st Century,* edited by Thomas A. Mensah. Honolulu, Hawaii: Law of the Sea Institute, University of Hawaii, 1996: 203-218.

Nordquist, Myron H. and John N. Moore, eds. *1994 Rhodes Papers: Entry into Force of the Law of the Sea Convention.* The Hague and Boston: Martinus Nijhoff Publishers, 1995, 398 p.

Oxman, Bernard. The 1994 Agreement and the Convention. *American Journal of International Law* 88 (4) 1994: 687-696.

Oxman, Bernard. United States interests in the Law of the Sea Convention. *American Journal of International Law* 88 (1) 1994: 167-178.

Payoyo, Peter B. The 1994 Implementation Agreement: Universality and Sacrifice in the Law of the Sea. In: *Cries of the Sea: World Inequality, Sustainable Development and the Common Heritage of Humanity by Peter B. Payoyo.* The Hague and London: Martinus Nijhoff Publisher, 1997: 421-451.

Platzöder, Renate. PrepCom Update. In: *Proceedings of the Twenty-fifth Annual Conference of the Law of the Sea Institute, Malmö, Sweden, 6-9 August, 1991: The Marine Environment and Sustainable Development: Law, Policy, and Science*, edited by Alastair Couper and Edgar Gold. Honolulu, Hawaii: Law of the Sea Institute, University of Hawaii, 1991: 293-299.

Platzöder, Renate. Substantive changes in a Multilateral Treaty before its entry into force: The case of the 1982 United Nations Convention on the Law of the Sea. *European Journal of International Law* 4 (3) 1993: 390-417.

Politakis, George P. Updating the International Seafarers' Code: Recent Developments. *The International Journal of Marine and Coastal Law* 12 (3) August 1997: 341-363.

Rattray, Kenneth. Resolution and Agreement Relating to the Implementation of Part XI of the UN Convention on the Law of the Sea: A General Assessment – Comment. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 55 (2) 1995: 298-309.

Rattray, Kenneth. Assuring University: Balancing the Views of the Industrialized and Developing Worlds. In: *1994 Rhodes Papers: Entry into Force of the Law of the Sea Convention*, edited by Myron H. Nordquist and John N. Moore. The Hague and Boston: Martinus Nijhoff Publishers, 1995: 55-67.

Röben, Volker. A case study on a joint venture project. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 55 (2) 1995: 348 – 390.

Rosenne, Shabtai. The United Nations Convention on the Law of the Sea, 1982: The application of Part XI: an element of background. *Israel Law Review* 29 (3) 1995: 491-505.

Saguirian, Artemy A. The 1982 Law of the Sea Convention's Entry into Force: Pendent Problems and New Legal Options of Eluding Them. In: *Proceedings of the Fifteenth Annual Seminar of the Center for Oceans Law*

and Policy, University of Virginia School of Law, 19-20 April, 1991: Issues in Amending Part XI of the LOS Convention, edited by Myron H. Nordquist. Washington, D.C.: COLP, 1991: 60-70.

Shaw, John L. Nodule mining - Three miles deep. *Marine Georesources and Geotechnology* 11 (2) 1993: 181-197.

Scholz, Wesley S. The Consistent United States Policy for Acceptable Seabed Mining Provisions in a Universally Accepted Law of the Sea Convention. In: *Proceedings of the Seventeenth Annual Seminar of the Center for Oceans Law and Policy, University of Virginia School of Law, 19 March 1993: New National Perspectives on the Law of the Sea Convention*, edited by Myron H. Nordquist. Washington, D.C.: COLP, 1993: 51-56.

Scholz, Wesley S. Observations on the Draft Agreement Reforming the Deep Seabed Mining Provisions of the Law of the Sea Convention. In: *1994 Rhodes Papers: Entry into Force of the Law of the Sea Convention,* edited by Myron H. Nordquist and John N. Moore. The Hague and Boston: Martinus Nijhoff Publishers, 1995: 69-84.

Singh, T.R.P. *Perspective on Deep Seabed Mining*, in: *International Advisory Conference on Deep Seabed Mining Policy, Seoul, Korea, 5-6 September 1994.* Korea Ocean Resources and Development, 31 p.

Sohn, Louis B. Procedural Options for amending Part XI of the United Nations Convention on the Law of the Sea. In: *Proceedings of the Fifteenth Annual Seminar of the Center for Oceans Law and Policy, University of Virginia School of Law, 19-20 April, 1991: Issues in Amending Part XI of the LOS Convention,* edited by Myron H. Nordquist. Washington, D.C.: COLP, 1991: 71-76.

Sohn, Louis B. International law implications of the 1994 Agreement. *American Journal of International Law* 88 (4) 1994: 696-705.

Soutello-Alives, Lauro Eduardo. Bringing the Convention into Force: the Question of Stability and the Future Status of the Draft Mining Code. In: *Proceedings of the Fifteenth Annual Seminar of the Center for Oceans Law and Policy, University of Virginia School of Law, 19-20 April, 1991: Issues in Amending Part XI of the LOS Convention,* edited by Myron H. Nordquist. Washington, D.C.: COLP, 1991: 217-224.

Standard, P. Judson. The Changing of the Guard: The U.S. Signing of the Agreement Relating to the Implementation of the 1982 Convention on the Law Of The Sea. *Ocean Yearbook* (University of Chicago), vol. 12, 1996: 52-60.

Stoll, Peter-Tobias. The entry into force of the Convention on the Law of the sea: A redistribution of competencies in relation to the Management of the International Commons? The transfer of technology under the Implementation Agreement. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 55 (2) 1995: 391-420.

Thiel, Hjalmar and Foell, Eric J. Environmental Risk Assessment for Manganese Nodule Mining and Application of the Precautionary Principle. In: *Proceedings of the Twenty-fifth Annual Conference of the Law of the Sea Institute, Malmö, Sweden, 6-9 August, 1991: The Marine Environment and Sustainable Development: Law, Policy, and Science*, edited by Alastair Couper and Edgar Gold. Honolulu, Hawaii: Law of the Sea Institute, University of Hawaii, 1991: 226-233.

Thiel, Hjalmar and Gerd Schriever. Environmental consequences of Deep-Sea Mining. *International Challenges* 13 (1) 1993: 54-70.

Taft, George. Amending the 1982 Law of the Sea Convention Part XI - Treaty Law and Practice. In: *Proceedings of the Fifteenth Annual Seminar of the Center for Oceans Law and Policy, University of Virginia School of Law, 19-20 April, 1991: Issues in Amending Part XI of the LOS Convention*, edited by Myron H. Nordquist. Washington, D.C.: COLP, 1991: 167-173.

Treves, Tullio. The Agreement Completing the UN Law of the Sea Convention: Formal and Procedural Aspects. In: *1994 Rhodes Papers: Entry into Force of the Law of the Sea Convention*, edited by Myron H. Nordquist and John N. Moore. The Hague and Boston: Martinus Nijhoff Publishers, 1995: 99-118.

Tsurusaki, Katsuya. Current Deep Ocean Mining Technology Research in Japan, in: *International Advisory Conference on Deep Seabed Mining Policy, Seoul, Korea, 5-6 September 1994.* Korea Ocean Resources and Development, 28 p.

Tushnet, Mark V., Eric M. Fersht and Edith Brown Weiss. Introductory Remarks. In: Implementing the United Nations Convention on the Law of the Sea: an International Symposium, Georgetown University Law Center, 27 January 1995. *Georgetown International Environmental Law Review* 7 (3) Summer 1995: 631-638.

U.S. Congress. Senate. Committee on Foreign Relations. *Current Status of the Convention on the Law of the Sea: Hearing Before the Committee on Foreign Relations.* 103rd Congress, 2nd Session, 11 August 1994.

Valle, Henrique R. Adjustments to Part XI: United Nations Efforts **(**The Negotiation Process). In: *1994 Rhodes Papers: Entry into Force of the Law of the Sea Convention,* edited by Myron H. Nordquist and John N. Moore. The Hague and Boston: Martinus Nijhoff Publishers, 1995: 47-53.

Vigerust, Gudmund. A Reliability Approach to deep Seabed Mining Technology. *International Challenges* 10 (3) 1990: 34-41.

Vignes, D. La fin du schisme des fonds marines. *Revue belge de droit international* 28, 1995: 153-163.

Vrancken, P.H.G. Southern Limit of the International Seabed Area. *African Yearbook of International Law*, vol. 20, 1995: 144-181.

Welling, Conrad. Manganese Nodule Miner Design Concepts, in: *International Advisory Conference on Deep Seabed Mining Policy, Seoul, Korea, 5-6 September 1994,* Korea Ocean Resources and Development, 28 p.

Wolfrum, Rüdiger. The Decision-Making Process of the Council Reconsidered: A Suggestion to Make the Deep Seabed Regime More Responsive to Vested Interests. In: *Proceedings of the Fifteenth Annual Seminar of the Center for Oceans Law and Policy, University of Virginia School of Law, 19-20 April, 1991: Issues in Amending Part XI of the LOS Convention,* edited by Myron H. Nordquist. Washington, D.C.: COLP, 1991: 110-124.

Wolfrum, Rüdiger. Common Heritage of Mankind. *Encyclopedia of Public International Law*, vol. I, 1992: 692-695.

Wolfrum, Rüdiger. International Seabed Authority. In: *United Nations: Law, Policies and Practice,* edited by Rüdiger Wolfrum. Dordrecht: Martinus Nijhoff Publishers, 1995: 789-796.

Wolfrum, Rüdiger. The Decision-Making Process according to Sec.3 of the Annex to the Implementation Agreement: A model to be followed for other International Economic Organisations? *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 55 (2) 1995: 310-328.

Wood, Michael C. International Seabed Authority: The First Four Years. *Max Planck Yearbook of United Nations Law*, vol. 3, 1999: 173-241.