"The 36 seats on the Council will be allocated among the different regions in the following manner:

Africa	9
Asia	7
Latin America	6
Eastern Europe	3
Western Europe	11"

34. Finally, he suggested that, in article 161, paragraph 7, the words "three-fourths majority" should be replaced by "two-thirds majority". In that respect, he pointed out that the total number of delegations from Asia, Africa and Latin America would be 22, whereas a two-thirds majority would be 24. The transfer of two seats on the Council to Western Europe would ensure that the former group of delegations would be obliged to negotiate and seek a consensus or to obtain the support of either Western European or Eastern European delegations.

35. Mr. MUELLER (Federal Republic of Germany) said that, despite the excellence of the reports before the Committee, his delegation retained many of its basic reservations concerning the economic and legal approach being adopted by the Committee. Among the most important issues was that of resource policy, and his delegation believed that the proposed text of article 150 had not achieved the proper balance. His delegation still believed that the resources of the sea-bed should not be regarded as a buffer stock which could be opened or closed as needed. With regard to the proposed text of article 151, his delegation was disappointed that a concept had crept in which it thought had been deleted, namely that the Authority was to be authorized to represent all the production from the area in commodity agreements; in the view of his delegation, that was not the correct approach to the question. His delegation still had difficulty with the concept of production limitation in general and felt that the Conference was, in general, adopting the wrong approach to that matter; however, it would, of course, carefully examine the new proposals before the Committee. In the final analysis, the important question would be whether any progress made in securing access to the sea-bed would be rendered meaningless by a production limitation which resulted in too few mine sites for the development of the resources and the technology involved.

36. The transfer of technology itself remained a very thorny issue, and his delegation did not agree that the obligations which companies would have to enter into should be extended to individual countries. It believed that the solution for individual countries lay in bilateral negotiations and should not be incorporated into the convention. He regretted that the proposals made with a view to providing a clearer definition of fair and reasonable commercial conditions had not been reflected in the report.

37. Other very difficult issues remained, especially the question of third-party technology, which had become a prerequisite for obtaining a contract. His delegation still believed that the question of whether the Enterprise had been able to find technology on the open market should either be decided by the Council, rather than by the parties themselves, or be subject to binding commercial arbitration.

38. With regard to the review conference, he welcomed the apparent abandonment of the notion of a moratorium but felt that the new proposal might create serious legal problems and would require very careful study. The Council itself continued to be one of the major problems, and he stressed that any solution must safeguard the vital interests of investors and consumers if it was to be acceptable as part of the over-all package. His delegation believed that the financial burdens were still too high and regretted that some of the proposals it had made to alleviate those burdens had not been incorporated into the text. Financial burdens should not be considered in isolation but should be viewed as a part of the obligations to be borne by States' industries; if issues such as production limitation, the banking system and financial limitations were not viewed as a whole, they might ultimately prevent investments by industries in the sea-bed. The financing of the Enterprise should be kept separate from the question of financial arrangements for companies and industries.

39. His delegation believed there was a need for further informal negotiations in groups and was willing to participate in such negotiations. Despite the considerable problems presented by the report, his delegation recognized that the texts could form a better basis for further discussion. It agreed with the representative of the United States that any changes in the text should be the outcome of negotiations and should not be based on general statements made in the First Committee. Finally, he pointed out that his delegation did see certain difficulties in the proposals made by the Group of 77.

The meeting rose at 1 p.m.

48th meeting

Tuesday, 1 April 1980, at 3.15 p.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon)

Report of the co-ordinators of the working group of 21 (*concluded*)

1. Miss MARTIN-SANÉ (France) observed that the report of the co-ordinators of the working group of 21 (A/CONF.62/C.1/L.27) marked a new stage in the negotiating process and in many respects provided a more interesting basis for negotiation than the revised informal composite negotiating text. It would be useful if a second revision of the text were produced on the basis of the report in time for the summer session at Geneva. However, her delegation was not entirely satisfied with the report, for reasons which obviously differed from those put forward by the Group of 77 at the last meeting.

2. With regard to article 140, her delegation was not convinced by the arguments of the Chairman of negotiating group 1. The failure to specify that the advantages derived from the area were to be shared only among States parties to the convention was due to a very literal interpretation of the reference to the benefit of mankind contained in General Assembly resolution 2749 (XXV). Her delegation was therefore unable to accept the present wording of the article.

3. With respect to the conditions of production, it should be recalled that the wording of article 150 had not been subject to any negotiation during the current session. Several of its provisions raised serious difficulties for the French delegation. The results of the negotiations on production limits for nodules were extremely disappointing. While the new text was an improvement over the wording of the revised negotiating text, the production ceiling now proposed represented only a marginal gain for producers.

4. Her delegation could not support the new wording proposed for article 155, concerning the review conference. It was not acceptable for amendments binding on all States par-

ties to be imposed by a majority of three fourths of the States parties without taking into account the special interests of States directly involved in the production of nodules. The new wording would therefore have to be revised.

5. Article 5 of annex II, concerning the transfer of technology, imposed excessive burdens on contractors. Under paragraph 3 (e), it remained compulsory to transfer technology to developing countries. However, only transfer to the Enterprise could be justified by the principle of the parallel system, and the text did not guarantee that the transfer would not ultimately be to the benefit of a developed country. In articles 6 and 7 the anti-monopoly clause had not been adequately amended because it did not apply to the reserved site, and there was no indication of the priority to be given to a State which had not yet put forward a plan of work.

6. With regard to financial matters, her delegation had always opposed the linking of negotiations on the financing of the Enterprise with the financial clauses of contracts, and did not accept that the Enterprise should be financed by 50 per cent interest-free loans. The sum should not be fixed by the preparatory commission, nor should it be subject to an indexing clause. Under the new proposal, States parties might well find their contributions to the loans increased by 40 per cent. Since no major change had been made in the financial terms of contracts, her delegation maintained strong reservations on that issue. The specific points requiring revision were the heavy production tax and the profit-sharing system, which would prevent sound management during periods of recession. The rates proposed by the French delegation would enable the necessary adjustments to be made without adversely affecting the Authority. If the operator was allowed to increase his cash flow in bad years, progress to the second commercial production stage would be more rapid, and higher returns would result for the Authority.

7. Her delegation would also criticize the fact that the system would forcibly impose integrated operations, and found fault with the ambiguous definition of net receipts in the case of integrated operations involving the processing of the four metals.

8. There were also ambiguities in the text dealing with the statute of the Enterprise, especially the relationship between the Director-General, the Governing Board and the Council of the Authority. The composition of the Governing Board should reflect the financial contributions made to it, as well as the principle of geographical representation.

9. Sufficient attention had not yet been paid to the problems dealt with by negotiating group 3, and a serious effort should be made at the resumed session to deal with the whole spectrum of institutional problems.

10. With regard to the settlement of disputes relating to Part XI, her delegation was not satisfied with the compromise achieved regarding commercial arbitration. The latter provided that a party could request an arbitral tribunal to subject its decision to that of the Sea-Bed Disputes Chamber, but in such disputes the Chamber was likely to rule in favour of the Authority. Her delegation could accept the compromise formulation of paragraph 2 of article 188 with that reservation.

11. Her delegation reserved its position with regard to the composition and powers of *ad hoc* chambers of the Sea-Bed Disputes Chamber, since it believed that such chambers should be composed of members chosen by the parties from among members of the Law of the Sea Tribunal. That would require amendment of article 36 *bis* of the statute of the Tribunal. The *ad hoc* chambers should also be competent to handle disputes between States parties and the Authority, a provision which would require amendment of paragraph 1 of article 188.

12. Mr. BEESLEY (Canada) observed that considerable progress had been made at the current session.

13. With regard to the comments made on behalf of the Group of 77, he wished to recall that Canada had seconded the original Brazilian proposal for a moratorium provision which would press for speedy agreement at the review conference. Although his delegation still preferred the original proposal, it could accept the latest version, whereby the existing system would be maintained as long as two thirds of the States parties did not request that it be altered, provided that it formed part of a package.

14. His delegation was sympathetic to both positions regarding the transfer of technology, for Canada was both an exploiter of the sea-bed and a supporter of the concept of the common heritage of mankind. His delegation had in fact pushed for the inclusion of processing technology in the over-all discussion of transfers of technology.

15. The Group of 77 had contributed greatly towards resolving the difficult issue of production ceilings and a production floor. The concept of parallel access must be the basis for all work in that connexion and all progress must be measured against it. It was gratifying that agreement had at least been reached that one mine site should be set aside for the Enterprise each time a site was set aside for a private company. That provision alone would not suffice, however, as the convention everywhere mentioned the ratio of five private company ventures for each venture by the Enterprise.

16. With regard to the financing of the Enterprise, his delegation could support the provision that no financing should be provided beyond the first generation of projects. He was curious to know, however, which countries had made concessions on that point. Considerable progress had been made regarding both the financial arrangements for contractors and the financing of the Enterprise. While contractors must obviously be allowed some profit margin if they were to have an incentive to exploit the sea-bed, the common heritage of mankind concept should not be sacrificed.

17. Agreement on the transfer of technology would be a vital element in any over-all solution. Moreover, the concept of parallel access must not remain simply a hypothetical right for each party: it must be interpreted as access to tonnage, rather than to actual areas of the sea-bed, and also to markets for such tonnage. His delegation could see why strong views had been expressed on the anti-monopoly provisions, but hoped that any future package would include those provisions together with provisions on unfair practices and non-subsidization.

18. Some measure of agreement was emerging with regard to the composition of the Council and the decision-making process, but that process would work only if it ensured against the tyranny of the majority or the veto of the minority.

19. More specific provisions were required on the effects of sea-bed mining, in particular the effect of the floor, on land-based and potential land-based producers. The present formulation contained in article 151 of the negotiating text had some merit in that it provided initial guarantees for an amount of sea-bed production equivalent to five years' consumption growth. His delegation had agreed to that text reluctantly and only because it formed part of a compromise package. Under its terms sea-bed tonnage would be allowed to produce 60 per cent new growth as opposed to the 50 per cent originally proposed by the Group of 77 and Canada, and production-sharing would be limited to 25 years. His delegation considered that a reasonable compromise and saw no reason to reopen the debate on that provision.

20. Although the revised negotiating text represented a fair compromise between the interests of the sea-bed miner/consumer countries and those of the Enterprise, potential producers and existing producers, he recognized that continuing demands for an additional floor by sea-bed producers who were also the major consumers of sea-bed nodule metals and who wished to become their own suppliers might require a further concession. His delegation would support the floor concept if that would help to reach a compromise, although it

was opposed to the concept in principle. It was, however, curious to know what kind of a floor was envisaged. Negotiating Group 1 had tried admirably to find a fair concept acceptable to all parties, but if it was based on an arbitrary growth rate it would create an imbalance. The potential sea-bed mining countries already accounted, for instance, for 90 per cent of Western consumption of nickel. If the convention gave producers a guaranteed right to overproduce, who would provide the market for the Enterprise and for potential land-based companies if producing companies were their own consumers? The proposal made in that regard by negotiating group 1 was extremely vague and open to different interpretations. Nor did his delegation regard as a compromise the suggestion that, in the event of low growth-rate, sea-bed miners would be able to take up over 100 per cent of market growth. Even the 100 per cent figure was unacceptable, when it was recalled that 50 per cent had been the original compromise proposal. He was curious to know how it was proposed to absorb that overproduction, with all the problems it entailed. Moreover, the level of production by the sea-bed Authority should also be adjusted, so that potential land-based producers, existing producers and the Enterprise all shared in the exploitation of the sea-bed.

21. The difficulties could be alleviated by an effective safeguard clause applicable for the entire interim period. A compromise might be achieved by simplifying the wording of the proposal made by negotiating group 1 and adjusting the level of production, taking into account the position of the Group of 77. Both the 100 per cent and the 3 per cent figures would have to be changed, however.

22. His delegation would support the floor concept if the conditions he had mentioned were met, but that could be done only by combining the two suggestions made by the Group of 77. It was not sufficient to give the Enterprise mine sites in compliance with the principle of parallel access, or to finance its first site. Under the present arrangement, it was doubtful whether the Enterprise would have access to any markets at all if the five producers already working the sea-bed secured all potential markets.

23. His delegation wished to commend the efforts of negotiating group 1 and, although it had difficulties with some of the proposals made, believed that the group's report still provided a basis for compromise.

24. Mr. POWELL-JONES (United Kingdom) observed that the proposals made by the co-ordinators of the working group of 21 should be incorporated in a second revision of the negotiating text in order to improve the prospects of activity for a consensus.

25. With regard to the report on the work of negotiating group 1, no satisfactory solution had been found for article 140. His delegation hoped that the issue would be resolved shortly. No changes had been proposed to article 150, for there had been insufficient time for negotiations on that point. His delegation hoped that the article, in particular subparagraphs (d) and (e), would be improved and would study with interest the proposal made with regard to the final paragraph of article 155.

26. With regard to the transfer of technology, his delegation would give careful consideration to the new article 5 proposed for annex II since it was the result of efforts to achieve a consensus in negotiating group 1. The suggestion by the representatives of Peru and Trinidad and Tobago that consideration of that article should be reopened could destroy the balance achieved. His delegation still objected to paragraph 3 (e) of the article, however. It also had difficulties with regard to paragraph 1 of article 151, as it could not agree that the Authority should represent all producers in commodity agreements. That paragraph should refer instead to the production of the Enterprise. Indeed, as we suggested in paragraph 18 of part II of document A/CONF.62/C.1/L.27, his delegation would prefer that the question of representation should be left to the appropriate commodity conference.

27. His delegation had objections of principle to the idea of imposing limits on production. Nevertheless it had suggested what it considered to be a fair method of calculating a ceiling on sea-bed production. It would, however, give consideration to the proposal contained in part II of the report in order to ascertain whether it was acceptable. The figures proposed were too low, and any reduction in the suggested figures in article 151, paragraph 2 (b) (iii) would rule out the proposals as a serious basis of compromise.

28. With regard to the report of negotiating group 2, his delegation believed that the proposed financial terms of contracts placed a heavy burden on contractors. It would, however, accept the proposal as a means of achieving a consensus. With regard to the statute of the Enterprise, the changes proposed by negotiating group 2 would help to make the Enterprise more effective and warranted careful consideration. His delegation was disappointed, however, that no progress had been made in that group with regard to the Council.

29. His delegation was disappointed that no progress had been made in negotiating group 3 with regard to the Council. It could support the proposals made by the Chairman of negotiating group 3 with regard to the amendment of the articles on the Assembly and the Council.

30. With regard to the report of the group of legal experts, his delegation did not find the solution proposed for contractual disputes completely satisfactory, but could accept it as the basis of a compromise. It regretted that the group had, because of lack of time, been unable to solve the various questions raised by delegations regarding part XI.

31. Mr. GORALCZYK (Poland) observed that the report of the co-ordinators of the working group of 21 showed that progress had been made in virtually all areas. Some issues remained to be resolved, however, such as the question of the decision-making process in the Council. Any compromise formula should take into account the legitimate interests of all groups of countries, regional groups and special interest groups and be aimed at achieving a negotiated solution acceptable to the vast majority of the international community. His delegation supported the analyses made in that regard by the representatives of the Soviet Union and Mongolia at the 47th meeting and could support the Mongolian proposal for the replacement of the first sentence of article 161, paragraph 7.

32. With regard to the financial package, his delegation had some difficulties with the provisions on the financing of the Enterprise. The scale of contributions to the financing of the first mine site was inequitable: contributions should to some extent be proportionate to the benefits which States would derive from the exploitation of the area. The Authority's first contractors and sponsoring States bore a special responsibility for helping the Enterprise to commence operations. Article 10, paragraph 3, of annex III as proposed by negotiating group 2 could also be improved in order to insure against excessive spending by the Enterprise and to limit payments in accordance with subparagraph (b). The Enterprise should be able to obtain interest-free loans as and when required, and not necessarily all at once.

33. With those reservations, his delegation believed that the proposals contained in document A/CONF.62/C.1/L.27 were indicative of real progress towards a consensus.

34. Mr. NAKAGAWA (Japan) said that the report of the co-ordinators of the working group of 21 represented an important step forward in the work of the Committee.

35. With regard to the question of production limits, his delegation welcomed the idea of a minimum production, or floor, but reserved its position with regard to the amount of 3 per cent and with regard to the ceiling.

36. Some improvements had been made in the provisions

regarding the transfer of technology, such as the time-limit of 10 years. However, the statutory obligation to transfer technology should be limited to the Enterprise. The review conference should consider new provisions in that regard. His delegation would study the matter further.

37. Part III of the report, concerning financial matters, contained certain improvements regarding the application of the system, but the substance of the text remained basically the same. His delegation had considerable difficulty with the figures in the report and also felt improvements could be made in provisions regarding the financing of the Enterprise. Those problems were all interrelated and also had a bearing on other issues, such as the composition of the Council and the decision-making mechanism. His delegation wanted to study all those questions as a package.

38. During the informal negotiations, Japan had proposed, in connexion with article 12, paragraph 6 (c), of annex II and the safeguard clause in article 12, paragraph 6 (a), that net proceeds should not be taken out of a floor of 25 per cent but should be based on actual attributable proceeds. Unfortunately, that proposal was not reflected in the report (A/CONF.62/C.1/L.27).

39. He noted that progress had been made in the provisions in annex III and appreciated the improvement with regard to the mechanism for settlement of disputes relating to Part XI. His delegation was very disappointed that, despite the efforts made by the Chairman of the First Committee and many delegations, there had been no breakthrough on the problem of the Council. He hoped that it would be possible to resolve that issue at Geneva.

40. Mr. BRENNAN (Australia) said it was clear that it would not be possible to agree on a formal text during the current session; it was very important, however, to complete a second revision of the informal composite negotiating text. It was to be hoped that whatever scope there was for negotiation would be utilized to the utmost. It might be over-optimistic, however, to expect further negotiations on all aspects, as provided for in document A/CONF.62/62.[1] The second revision of the text should not be delayed pending completion of all negotiations; a third revision might be necessary at Geneva.

41. While the text developed by negotiating group 1 might not provide a solution to all issues involved, it did represent progress and improved the prospects of reaching a consensus. The provision regarding a two-thirds majority and a three-fourths majority in article 155, paragraph 5, represented a major step in that direction. The revised texts on transfer of technology contained a number of valuable new elements.

42. In the discussions on production policy chaired by Mr. Nandan, the Australian delegation had taken the position that trade in minerals and metals including those from the deep sea-bed should be governed by market forces. That position had not been supported. In the interest of promoting consensus, his delegation was prepared to agree that the production control formula should include a floor and a ceiling, but also believed that provisions requiring non-discriminatory market access and non-subsidization were essential elements of the package. He noted that Mr. Nandan had stated that further discussions on the matter would be needed.

43. Turning to part III of the report, on financial matters, he said his delegation welcomed the conclusion that the preparatory commission should determine the total funds necessary for the Enterprise to conduct an integrated mining operation. His delegation also welcomed the provision for a schedule of repayments. It did have difficulties with several elements of the financial package and had not yet had an opportunity to consider fully the new so-called shortfall provisions in article 10, paragraphs 3 (c) and (d), of annex III, and therefore reserved its position on that matter. His delegation would not object to the inclusion of the package made up of article 12 of annex II and article 10 of annex III in the revision of the informal composite negotiating text. Article 12, paragraph 5, of annex III had been substantially improved, but his delegation wondered whether that paragraph was necessary at all. It should at least provide for greater flexibility in negotiations on taxation, which might lead to tax immunity, a tax holiday or preferred taxation treatment.

44. He took note of the report of the Chairman concerning negotiating group 3. The trends which the Chairman had isolated revealed a wider area of common ground than was generally believed to exist. The four points identified by the Chairman, especially the necessity for consensus among interest groups, would open the way for further fruitful negotiations.

45. He wished to express his delegation's appreciation for the contribution made by the group of legal experts to a resolution of a difficult problem. He hoped the report on its work would be included in a revised version of the negotiating text.

46. Mr. VARVESI (Italy) said that his delegation would soon be presenting a written statement explaining in detail his position on the issues which had been the subject of negotiations during the current session. In the meantime, he wished to comment on certain points.

47. Referring to the question of limitation of production, as proposed in section B of part II of document (A/CONF.62/C.1/L.27), he said that beyond the question of principle, the solution proposed was not yet acceptable. Although it contained the idea of a floor, in other words a guaranteed production, the proposal was still restrictive and limited, both because of the percentage proposed and because the floor would not in practice be fully and satisfactorily implemented.

48. The provisions on the financial terms of contracts contained in article 12 of annex II were still unsatisfactory, as had already been pointed out by the delegations of the Federal Republic of Germany and France. Although the text appeared to represent a compromise, its actual implementation would impose an excessive burden on contractors and would hinder the development of the industry.

49. The question of the transfer of technology, dealt with in article 5 of annex II, should be re-examined, at least the section concerning obligations of the operator with regard to technologies over which it did not have ownership.

50. Further changes were still required in article 10 of annex III, concerning financing of the Enterprise, particularly with regard to the amount of contributions to be made by States and the schedule for payment of such contributions.

51. Article 12 of annex III, on privileges and immunities, should be re-examined in order to ensure that the Enterprise would be placed on the same footing, with respect to its operations, as State corporations.

52. His delegation would not oppose a revision, provided negotiations were actively pursued during the next session and that all delegations were given an opportunity to express their views.

53. Mr. NOLARD (Belgium) said that the negotiations on the transfer of technology had proceeded on the assumption that the Enterprise should possess the necessary technology for its activities. The present formula would be a satisfactory basis for future negotiations if it did not contain a provision extending the transfer of technology to developing countries under the same terms as those accorded to the Enterprise. It had already been stated several times that the Enterprise could not be placed on an equal footing with its operators from individual States. Whatever was ultimately conceded to the operational organ of the Authority must not be granted to third parties, as

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E. 79. V.4).

operators would not be willing to transfer their technology to likely competitors. The issue raised in paragraph 3 (e) of article 5 in annex II must therefore be fundamentally rethought.

54. His delegation had always held the view that production limits would be pointless, as no potential operator would take the risk of developing maritime mineral resources if his activities were likely to have an unfavourable effect on the market. His delegation had therefore proposed the replacement of production ceilings by a planned development programme. He regretted that the proposal had not been adopted. However, he was even more disturbed that the proposal now before the Committee placed such severe restrictions on production that it jeopardized the whole of the negotiations in progress. It would be difficult to convince international public opinion of the need to create an Authority which would have hardly anything to control, apart from potential activity in the area. That issue also merited substantial reconsideration at the resumed session.

55. With regard to financial matters, conditions for mining on land and at sea must be substantially the same if normal development of ocean mineral reserves were to be assured. That would not be the case under the financial obligations imposed on contractual operators. Unless the financial obligations contained in article 12, paragraph 6, of annex II were revised to relieve the restrictions on contractors, they would refuse to take part in sea-bed mining.

56. Notwithstanding the criticisms he had made, the texts now before the Committee contained numerous improvements on the revised negotiating text, and he would be glad to see those improvements incorporated in the second revision of the text.

57. Mr. KOSTOV (Bulgaria) said that his delegation was fully satisfied with the decision-making mechanism outlined in article 161, paragraph 7, of the revised negotiating text. He understood the difficulties which that provision presented for certain delegations and, in a spirit of compromise, would be willing to continue efforts to find a mutually acceptable solution. He noted that progress had been made during the current session on the question of a voting mechanism and of transferring the emphasis from mathematical quotas to an analysis of the basic elements of a consensus.

58. With regard to the analysis of elements set forth in paragraph 14 of part IV of document A/CONF.62/C.1/L.27, his delegation agreed with the views that had been expressed by the delegation of Poland. His delegation's attitude would to a large extent be determined by the manner in which the rights of interest groups mentioned in article 161, paragraph 1 (a), were taken into account. His delegation had great difficulty with the proposal concerning protective blocking by geographical regions. If that was to be supplemented by others, it would mean going back to an arbitrary figure, the mythical number "n". The proposal could lead to discriminatory decisions and hinder progress on a generally acceptable text.

59. His delegation supported the proposal made by the representative of Mongolia, at the previous meeting, which should be given serious attention.

60. Mr. PINTO (Portugal) said that his delegation was particularly concerned with the provisions of article 161 of the revised negotiating text and the revisions thereto contained in part IV of document A/CONF.62/C.1/L.27. A balanced and just distribution of authority must be worked out. His delegation welcomed the proposal made by the delegation of Trinidad and Tobago. He also wished to stress, however, that Article 161 openly opposed and contradicted article 157, paragraph 2, which stated that the Authority was based on the principle of the sovereign equality of all of its members. During the first years of negotiations, the interests of the less industrialized countries had never properly been taken into account. That state of affairs should be reversed and article 161 should be revised so as to ensure that it did not contradict article 157.

61. At the next session, priority should be given to discussions on the constitution of the Council. The Trinidad and Tobago proposal and the report of the Chairman provided some encouraging elements in that regard. His delegation reserved the right in the plenary to raise the question of increasing the membership of the Council and including in article 161 a new group of interests, namely, those of the countries that would supply a substantial labour force for operations. The recent tragedy in the North Sea had demonstrated the importance of taking into account the interests of labour-supplying countries by ensuring their representation in the Authority.

62. Mr. GAYAN (Mauritius) said that the report of the co-ordinators of the working group of 21 showed that progress had been made. However, that did not mean that the report should automatically be included in a second revision of the negotiating text. At the previous meeting, the co-ordinator of the group of 77 had made a statement regarding issues of special concern to the countries, including his own, that belonged to the Group of 77.

63. With regard to article 155, paragraph 5, as set forth in part II of the report, his delegation was not happy with the proposed change regarding the moratorium. Paragraph 6 of article 155 of the revised negotiating text already constituted a compromise and should be maintained. If it was not, the new provision regarding majority requirements must be drastically revised.

64. The addition of a new phrase in article 155, paragraph 3 of the negotiating text altered the spirit of the review conference and must be reconsidered.

65. His delegation agreed with the suggestions made at the previous meeting by the representative of Peru with regard to the transfer of technology. The text must be strengthened considerably in order to meet the concerns of the Group of 77.

66. He took note of the comments made by the Chairman of negotiating group 1 in paragraph 22 of part II of document A/CONF.62/C.1/L.27, regarding the definition of the term "viable" as used in article 5, paragraph 8, of annex II. If everyone agreed with that interpretation, it could be included in very clear terms in the revision of the negotiating text.

67. The relationship of the Enterprise to the Authority should be clearly established. Countries belonging to the Group of 77 felt that it was essential to have an effective and viable Enterprise, which must be managed according to sound commercial principles, unfettered by the special considerations of any region. The Council, as planned, would be highly politicized and would make it impossible for the Enterprise to operate for the common benefit of mankind. His delegation reserved its position on article 2, paragraph 1, of annex III, until the composition of the Council and the decision-making process had been determined. There must be a link between the autonomy of the Enterprise and the Council's decision-making process.

68. His delegation did not agree that the Enterprise should be subject to the financial provisions of article 12 of annex II. It did not agree with the idea of providing for a 10-year tax holiday because that period coincided with the period when the Enterprise would no longer have access to the transfer of technology provisions.

69. Mr. EL GHOUAYEZ (Tunisia) said that although there were sufficient elements for a second revision of the negotiating text, there was still a need for the improvements mentioned by the spokesman for the Group of 77. In particular, changes must be made in article 155, paragraph 5, on the review conference, article 5 of annex II, on the transfer of technology, and article 9 of annex III, on the tax holiday for the Enterprise. His delegation hoped that special attention would be given to those issues. The interests of all States must be taken into account, particularly those of the developing countries.

70. His delegation welcomed the proposed text for article 140, paragraph 1, establishing the principle that activities in the Area should be carried out for the benefit of mankind as a whole.

71. Mr. DIOP (Senegal) said that his delegation endorsed the views expressed by the spokesman for the Group of 77 at the previous meeting. His delegation welcomed the common denominator approach, but wished to stress certain points which were of particular concern to his and other African countries.

72. Provisions concerning financial arrangements and settlements of disputes provided a sound basis for discussion and it should be possible, with good will on the part of all, to reach agreement. His delegation still had misgivings regarding the determination of the amount of funds required to enable the Enterprise to undertake an integrated project. Careful study should be given to the question whether the Assembly or the Council or the preparatory commission should determine the amount.

73. With regard to the question of tax immunity for the Enterprise, he felt a solution might be found by combining article 7 and article 12, paragraph 5, of annex III. However, paragraphs 4 (d) and (e) of article 12 nullified the combination of articles 7 and 12. The wording of article 12, paragraph 4 (e), should be revised to ensure that the Enterprise was made as strong as possible. The tax holiday should be given in an explicit way.

74. With regard to the system of exploration and exploitation, article 5 of annex II, regarding transfer of technology, was disappointing to the African countries. As far as Senegal was concerned, and he believed the other African countries would concur, article 5 would not be acceptable unless it was completely revised. Further efforts must be made to revise paragraphs 3 (b) and (c) and paragraph 8, in particular.

75. With regard to the review conference, he realized that the proposed text of article 155 was the result of a serious negotiating effort. However, his delegation would not agree to the article unless it included a provision for a moratorium.

76. With regard to activities in reserved sites, article 8 *bis* needed revision.

77. With regard to the Assembly and the Council, the approach chosen was a negative one. A computer would be needed to sort out the maze of formulas envisaged. A two-thirds majority would be simpler. If further provisions were needed, the Brennan formula would be preferable without defining what x entailed. If x was to be defined, his delegation would prefer the number 8 or 9. The Brennan formula could be negotiated on that basis. That article was very important to the African countries, which would be stepchildren in the Council. The group of African States consisted of more than 50 States and the text as proposed would not guarantee them adequate representation. A more positive approach was required and there should be no veto and no weighted voting.

78. Mr. MAPANGO ma KEMISHANGA (Zaire) said that the text submitted to the Committee by the Chairman of negotiating group 1 gave rise to serious difficulties for his delegation. It appeared that article 151, paragraph 2 (b) (iii) contained an error. When the rate of 3 per cent representing the trend line increase in consumption was taken as a basis for the distribution of excess consumption on the basis of 60 per cent for sea-bed producers and 40 per cent for land producers, close examination showed that a 60/40 distribution could only be based on the 3 per cent rate less the part of the 3 per cent that was absorbed by the five-year period in question. It would be possible to maintain an appropriate balance if the third sentence of the subparagraph were amended to read: "If the annual rate of trend line increase so derived, less the quantity contained in the five-year period running from the beginning of the interim period up to the first year preceding the year in which commercial production starts, is less than 3 per cent". In addition, the words "subject to the above-mentioned deduction" should be inserted following the words "interim period" at the end of the subparagraph.

79. If the situation as represented by the existing text was considered from the point of view of metric tons, it could happen that the sea-bed producer would be entitled to a figure of 560,000 tons, while a land producer would be entitled to only 40,000 tons.

80. He wondered what the convention as a whole had to offer land producers and in particular, what they could expect to gain from article 150, which was apparently intended to protect the developing countries' interests, particularly those of land producers. It was possible that the growth rate might fall below the level of 3 per cent. Moreover, the distribution figure for sea-bed producers could easily reach the level of 100 per cent at some point. It should also be borne in mind that a number of countries which were potential producers of minerals, might become active as land-based producers. The situation with regard to such potential land-based producers was not clear from the text as it stood. His delegation reserved its position with regard to the concept of a floor but was ready to support the statement made by the representative of Canada.

81. Mr. SWETA (Zambia) said that his delegation endorsed the views expressed by the representatives of Canada and Zaire. He felt that the mechanism of a production ceiling should be considered further by the Committee, perhaps during the next session. It was understood that the effect on production of such minerals as copper would be marginal and that the market would be able to absorb the impact of sea-bed mining. There was also the question of such minerals as cobalt and manganese. Once sea-bed mining of cobalt, for example, came on stream the market impact on cobalt mining would be disastrous for countries where cobalt was an important export. The same applied to countries producing manganese. During the next session, he hoped to hear how the representatives of the developed countries envisaged the future development of such situations.

82. Mr. GHELLALI (Libyan Arab Jamahiriya) pointed out that his delegation had not been invited to participate in the special discussions held by the co-ordinators of negotiating groups 1, 2 and 3 the preceding week, despite the fact that it was a member of the working group of 21. The group of 21 had become the only negotiating body inasmuch as the report of the co-ordinators of the group had been issued too late for the members of the Group of 77 to give full consideration to the amendments it contained.

83. The new proposals did not satisfy the requirements of all parties. In agreeing to the parallel system the Group of 77 had accepted a number of basic concepts. The most crucial was that the sites reserved for the Enterprise and for the developing countries should be well-defined areas in which they could conduct their activities. It was hard to see what remained of the basic concepts in the proposals before the Committee. For example, it should be recognized that the transfer of technology had in fact not taken place. His delegation fully supported the proposals put forward by the representative of Trinidad and Tobago in that connexion. It should also be recognized that the Enterprise could only be financed by contributions from all States, whereas only a small number of countries would reap the benefits of its operations. With regard to the question of the review conference, there would be no justification for a moratorium in the event that agreement could not be reached after a period of five years. A moratorium would give the developed countries an opportunity to implement the parallel system *ad infinitum*, while rejecting any new proposals. In the circumstances, his delegation could only support the proposal that the revised negotiating text should be retained as far as article 155 was concerned.

84. The question of access for developed countries to reserved sites through joint ventures under article 8 *bis* should be investigated. His delegation had proposed that articles 8 and 8 *bis* should be amended in such a way as to reserve the sites in question for the Enterprise and to permit the Enterprise to enter into joint ventures only with developing countries. The Assembly should decide in what circumstances access to reserved sites should be permitted. It was as though the parallel

system no longer existed and the unified industrial system had replaced it. If that new system gained momentum in the course of the next session, it would be to the detriment of article 140, and the principle of the common heritage of mankind would be forfeited.

85. With regard to the question of the Council's powers, his delegation rejected the principle of a veto right in any form. Only the principle of equitable geographical representation should be applied.

86. Mr. RAHMAN (Bangladesh) said that the current situation regarding the transfer of technology was not satisfactory to his delegation. The questions of taxation and moratoria also required further consideration. Moreover, further negotiations were necessary on voting procedures and decision-making in the Council, and those procedures should be based on the principle of equitable geographical representation. Where financial matters were concerned, he would encourage the Chairman of negotiating group 2 to hold further negotiations along the lines he had suggested. His delegation felt strongly that on the basis of the revised negotiating text it would be possible to embark upon the final phase of negotiations in Geneva.

87. Mr. ADIO (Nigeria) said that his delegation supported the views expressed by the Chairman of the contact group of the Group of 77 during the preceding meeting and by representatives of African States regarding such questions as the transfer of technology, the review conference, the tax status of the Enterprise, financing of the Authority, composition and decision-making powers of the Council and settlement of disputes relating to Part XI. His delegation supported a revision of the negotiating text, provided that those views were adequately reflected. If it was absolutely necessary, his delegation would elect to retain the existing negotiating text.

88. Mr. GAJENTAAN (Netherlands) said that the results obtained by the various co-ordinators represented a considerable step towards agreement on a workable parallel system of exploitation of the international sea-bed. The report under consideration clearly contained essential elements of a package on outstanding First Committee issues. However, final evaluation would depend very much on matters on which productive negotiations had already started, such as, for example, the important issues of the composition of the Council and its decision-making procedure as well as the financial obligations of States parties. It was gratifying to find that a large measure of flexibility, to which his delegation attached great importance, had been written into the text.

89. With regard to the question of the transfer of technology, his delegation shared the views expressed by a number of representatives of industrialized countries. It maintained its concerns regarding the present wording on the transfer of technology to developing countries, which should be dealt with in the context of ongoing negotiations on the International Code of Conduct for the Transfer of Technology. Similarly, the definition of technology should be in line with deliberations taking place within the framework of the United Nations Conference on Trade and Development.

90. Turning to the issue of production policies, he expressed his delegation's doubts that the goal of elaborating an international commodity policy pursuant to resolution 93 (IV) of the United Nations Conference on Trade and Development could be achieved on the basis of the current text. In particular, his delegation entertained doubts concerning the minimum level of the production ceiling; the inclusion in that level of the production by the Enterprise; and the content of paragraphs 2 (f) and 3 of article 151.

91. In general, his delegation welcomed the new proposals for the statute of the Enterprise, particularly in so far as they related to the character of its operation and its structure. His delegation has always placed emphasis on equality of opportunity for private and State enterprises and the Enterprise. Sound economic and financial policies were a prerequisite for the operation of the Enterprise.

92. There should also be a clear relationship between decision-making and the financial responsibilities of contributors. The modalities of financing should be acceptable to all parties. His delegation was willing to participate in the financing of the exploration and exploitation of the first mine site on the understanding that provision would be made for interest-bearing loans, collective debt guarantees by all States parties and a preferred debt/equity ratio of two to one. It had serious doubts as to the adequacy and practicability of the proposed system of supplementary contributions and subsequent adjustment in case the number of ratifying States fell short of the number required for adequate funding under article 10, paragraph 3, of annex III. The modalities of financing, which was to be made in freely usable and convertible currencies as defined in the relevant provisions of the Articles of Agreement of the International Monetary Fund, should include payments schedules as well as repayment schedules. It was important that when ratifying a convention, States parties should have a precise picture of their financial obligations under that convention. The early determination of an exact amount under article 10, paragraph 3, would be instrumental in clarifying those obligations. With regard to the question of the financial terms of contracts, the preliminary position stated by his delegation at the end of the previous session remained unchanged. However, his delegation felt that the workings of the trigger mechanism, as described in article 12, paragraph 6 (d) of annex II, could be clarified further for auditing purposes.

93. His delegation felt that the question of privileges and immunities of the Authority in articles 177 to 183 deserved further consideration. The Conference should consider the matter in more detail or provide for adequate mechanisms to deal with it within the framework of the preparatory commission, including the preparatory work for a separate protocol.

94. Mr. CHARRY SAMPER (Colombia) said that his delegation agreed with the position of the Group of 77, in whose work it had taken an active part. He also favoured the revision of the negotiating text in accordance with document A/CONF.62/62. The "package deal" was indivisible, and the text should not be dealt with piecemeal.

95. Article 161 (d) had not been negotiated among the members of the Group of 77 concerned, as it referred to the Group's representation in the Council. There would be no consensus unless account was taken of the potential mineral producers who would be directly affected by the decisions of the Council. The potential producers should be taken into account in any discussion of production ceilings and should constitute a category under article 161 (d).

96. According to the article, the Council was to contain six members from among developing countries representing special interests. The special interests to be represented should include those of States with large populations, States which were land-locked or geographically disadvantaged, States which were major importers of the categories of minerals to be derived from the area, and least developed countries.

97. There was an important group of countries in the Group of 77 comprising potential mineral producers: those where deposits had been identified; those already producing small quantities of minerals and others which had made investments in the mining of deposits or were engaged in mineral surveys. The copper producers were Argentina, Botswana, Iran, Malaysia, and Panama. Cobalt producers were Botswana, Brazil, Burma, Colombia, Cuba, Guatemala, Morocco, Papua New Guinea, Indonesia, Philippines, Solomon Islands, Uganda and Venezuela. The manganese producers were Bolivia, Chile, Fiji, Ghana, Ivory Coast, Romania, Thailand and Upper Volta. The nickel producers were Botswana, Brazil, Burundi, Colombia, Dominican Republic, Guatemala, Indonesia, Philippines, Venezuela and Yugoslavia. Angola and other

African, Asian and Latin American countries were also to be included in the list. As those land-based producers would be affected by sea-bed mineral production, they required special protection and consequently representation on the Council. There was no consensus with regard to article 161 (d), and further negotiations would therefore be necessary.

98. Mr. McCARTHY (Ghana) said that his delegation wished to associate itself with the concerns expressed by the co-ordinators of the Group of 77 and the group of African States with regard to the composition of the Council, the voting system, the review conference, the transfer of technology and production policies. He urged the collegium to give serious consideration to those concerns.

99. His delegation also wished to associate itself with the views expressed by the representatives of Canada, Zaire and Zambia. A number of land-based producers of sea-bed minerals, including his own country, were seriously considering exploitation of extensive untapped reserves. That fact should be fully taken into account.

100. The PRESIDENT announced that the Committee had completed consideration of the report of the co-ordinators of the working group of 21 to the Committee.

Other matters

101. Mr. RATTRAY (Jamaica) said that his delegation associated itself with the congratulations due to the co-ordinators of the negotiating groups, and to all who had helped to forge a consensus in the Conference by their positive support for various proposals. The Committee had been working in the framework of the Conference rules, contained in document A/CONF.62/62. The Conference had decided that there should be no modification or revision of the negotiating text, unless such a modification or revision emerged from the negotiations themselves, demonstrably commanded wide support, and offered a substantially improved prospect of consensus. Any modification must relate to a provision of substance, and could not be a mere procedural improvement. That was the approach which had been consistently followed in the Conference and in the First Committee.

102. One provision contained in the negotiating text, based on widespread support from a number of States, named Jamaica as the seat of the Authority (article 156, paragraph 3). It had been included in the light of the positive support of the Group of 77 in the plenary and the strong support also expressed by the group of Latin American, the group of African and the group of Asian States. None of those groups had given any support to any other candidates, and the paragraph was not therefore open to amendment.

103. Mr. ADIO (Nigeria) said that he fully supported the statement made by the representative of Jamaica.

104. Mr. ARIAS SCHREIBER (Peru) said that, although he understood the wishes of the representatives of Fiji and Malta, the agreement of the Group of 77 to support the candidature of Jamaica had been embodied in the official text, and the Conference had taken a decision not to amend the text unless such amendment was broadly supported in the plenary.

105. Mr. NANDAN (Fiji) said that the group of Asian, the group of Arab and the group of Western European and other States intended to raise the matter in the plenary and to submit a resolution. He was therefore surprised that it was being raised in the Committee. It had been said that it was a question to which the provisions of document A/CONF.62/62 applied, but he understood that document to apply to matters negotiated and already considered by the Conference. The seat of the Authority had not previously been considered by the Conference, and should not be included in the same category as other substantive issues under discussion in the Committee. The support of the Group of 77 had been referred to; yet the fact that the group of Asian and the group of Arab States, both important members of the Group of 77, had tabled a resolution on the matter for the plenary was indicative of the position of the Group. He therefore felt that the subject should not be dealt with by the Committee.

106. Mr. VELLA (Malta) said that the plenary had never taken a decision that the First Committee should deal with the matter. As the plenary was itself seized of the item, it would be *ultra vires* for the Committee to discuss it. The so-called consensus announced in Caracas was not under attack; but there were three sovereign States involved, and they should all be given equal treatment in the text.

107. Mr. TORRAS DE LA LUZ (Cuba) said that he supported the remarks made by the representatives of Jamaica and Peru. Support for the candidature of Jamaica had been expressed by the Group of 77 from the beginning and reiterated at the third session in Geneva in 1975. The group of Latin American States had reiterated its support during the current year. It was not appropriate for the matter to be raised in the First Committee.

108. Mr. SAQAT (United Arab Emirates) said that the position of the group of Arab States had been stated on 24 August 1979 in the plenary.[2] The group supported the position of Malta, and was sponsoring a draft resolution for the plenary of the Conference. As the Conference would have to adopt a resolution on it, there should be no discussion in the Committee.

109. The CHAIRMAN said that the views of all speakers would be reflected in his report to the plenary, and expressed his thanks to all who had contributed to the work of the Committee.

The meeting rose at 6.15 p.m.

[2] *Ibid.*, vol. XII (United Nations publication, Sales No. E. 80. V.12), 119th meeting.