DOCUMENTS OF THE FIRST COMMITTEE

DOCUMENTS A/CONF. 62/C.1/L.28 and Add.1*

Report of the co-ordinators of the working group of 21 to the First Committee

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Introduction

During the resumed ninth session of the Conference held in Geneva, the working group of 21 commenced its negotiating endeavours with a broad over-view of the current situation regarding the hard core issues still outstanding as of the end of the first part of the session held in New York in the spring. It then proceeded to intensive consultations with a view to seeking the best accommodation on these issues.

The working group of 21 was as usual chaired over-all by the Chairman of the First Committee, Mr. P. B. Engo, of the United Republic of Cameroon, who also co-ordinated the negotiations on issues involving the Assembly and the Council. Mr. T. Koh, of Singapore, co-ordinated those concerning financial arrangements. At the request of the Chairman of the First Committee, Mr. H. Wuensche, of the German Democratic Republic, a vice-chairman of the First Committee, carried out consultations on matters relating to the system of exploration and exploitation and Mr. S. Nandan, of Fiji, continued consultations on the production policies of the Authority.

The Chairman of the First Committee, as principal co-ordinator, received reports on the negotiations and consultations and submits these results to the First Committee. This report contains the explanatory memoranda submitted under the specific headings, mentioned above by the co-ordinators of the negotiations and consultations in the annex containing the consequential suggestions made by them (A/CONF.62/C.1/L.28/Add.1). The report is submitted to the First Committee for consideration after opportunity had been given to interest and regional groups as well as to the working group of 21 to examine them.

The Chairman of the First Committee, as principal co-ordinator, considers it appropriate to record his special appreciation for the spirit of co-operation, sense of duty and personal sacrifices demonstrated by all those who co-ordinated the negotiations and carried out consultations. He expresses similar sentiments to the membership of the working group of 21 whose sense of the moment and political will made possible the suggestions submitted herein. The facilities and assistance made available by the excellent secretariat teams were as usual at their most characteristic and best. For this reason, unreserved gratitude must go to the Special Representative of the Secretary-General and through him to them.

I. System of exploration and exploitation[24]

Since I was entrusted by the Chairman of the First Committee to carry on negotiations on matters of negotiating group 1, I have pursued intensive consultations in search of a satisfactory solution to the issues still pending in relation to the system of exploration and exploitation of the resources of the Area. In spite of the tremendous progress accomplished during the previous sessions, under the chairmanship of Mr. Njenga, disagreement persisted on some questions. Some of them proved to be considerably more difficult to solve. In the scarce time available, we have been able, in my opinion, to overcome most of the remaining difficulties thanks to the tireless efforts and goodwill of the delegates. But there are still a few points on which delegations maintain different points of view. I suggested that the outstanding issues be dealt with in the following sequence: transfer of technology (annex III, art. 5); anti-monopoly clause (annex III, art. 6 and 7); review conference (art. 155, para. 5); qualification of applicants (annex III, art. 4, para. 2); amendments concerning rules, regulations and procedures (art. 160, 162, 167, 168, annex II, art. 4, 6, 7 and 16); and other non-controversial changes.

In article 5 of annex III, on transfer of technology, some slight amendments were introduced in paragraph 3 (*a*), (*b*), (*c*) and (*e*). In paragraph 3 (*a*) the expression "technology which is to be used" has been replaced by the expression "technology which he uses". This change was made not only to make the language of paragraph 3 (*a*) consistent with the one used in paragraph 3 (*b*) and 3 (*c*) but also to clarify that the undertaking of the contractor refers to the technology that he actually uses in carrying out activities under a contract. To the same end, the words "under a contract" were added after the expression "activities in the Area" in the three subparagraphs above mentioned.

There was agreement to the effect that the last sentence of paragraph 3 (*a*) would imply that the Enterprise has to make good faith efforts in order to obtain the technology on the open market.

In paragraph 3 (*b*), the last sentence was deleted. It was felt that while the first part of paragraph 3 (*b*) refers to the general obligation of the contractor to do whatever is necessary to make available to the Enterprise any technology not covered under paragraph 3 (*a*), the last sentence refers to a different obligation consisting in the specific duty to obtain a legally binding and en-

* Incorporating documents A/CONF.62/C.1/L.28/Corr.1 to 3 and A/CONF.62/C.1/L.28/Add.1/Corr.1 and 2; document A/CONF.62/C.1/L.28/Add.1 contained the annex to this report.

[24] Report submitted by Mr. Wuensche.

forceable assurance for the transfer of technology that he is not entitled to transfer. It was felt that it served no useful purpose to change the general assurance of doing business with the Enterprise contemplated in paragraph 3 (*b*) into a more specific, legally enforceable assurance containing terms of sale, since the Enterprise would not at that stage have even made a request for the technology. Paragraphs 3 (*c*) and (*d*) take care of this more concrete obligation and that is why the last sentence of subparagraph (*b*) was deleted and its wording transferred to the first part of subparagraph (*c*). This sentence reads as follows: "To acquire, if and when requested to do so by the Enterprise and whenever it is possible to do so without substantial cost to the contractor, a legally binding and enforceable right" etc. etc. During the discussions it was made clear that where the acquisition of a legal right to transfer technology entails substantial cost to the contractor, the Enterprise still has the option of paying for these additional costs.

In subparagraph (*e*) the phrase "the reserved part of the area proposed by the applicant" has been changed to "the part of the Area proposed by the contractor which has been reserved pursuant to article 8". Despite continuing opposition to this subparagraph by some countries and continuing support for it by the developing countries, this drafting change appeared to both groups to be a useful clarification in the text concerning the description of the reserved area. The previous text contained the misleading word "applicant" which is outmoded now that the obligations are to be included in the contract.

In paragraph 4 the addition of the words "by the contractor" after the word "offers" has been made only for clarification. Also in paragraph 4 I decided to add a last sentence providing for a period of time to be given to the contractor in order to allow him to revise his offer. This addition constitutes a development of what is implicit in article 18 of annex III, which provides for sanctions only if the contractor has failed to comply with a final binding decision of a dispute settlement body. It was considered that a period of forty-five days would be reasonable.

Paragraph 7 establishes a time limit to cover the undertakings concerning transfer of technology in the contracts and to invoke them. Delegations had different views on this matter. Some of them advocated the deletion of any reference to a time period while others proposed that the time period be reduced. After having thoroughly discussed this point with both sides, I decided to change the manner according to which the time limit would be calculated and applied. I think that a compromise can be found in establishing the same period of 10 years for both the inclusion of the undertaking in the contract and its invocation, and in calculating this period from the moment when the Enterprise begins commercial production. I am hopeful that, although this may not be entirely satisfactory to either party, it may prove acceptable to all.

Concerning paragraph 8, developing countries have insisted on a more explicit definition of technology which would cover the technology for processing minerals extracted from the Area. Other delegations opposed this idea. I thought that any change in this provision made at this time would create serious difficulties for some delegations; I, therefore, decided to keep it unchanged.

The delegation of the Federal Republic of Germany, with the support of some other delegations, expressed the view that a definition of the expression "fair and reasonable commercial terms and conditions" used in article 5 was necessary. To this end, that delegation proposed the following text:

> "Fair and reasonable commercial terms and conditions are conditions of the kind actually agreed in practice in comparable cases. In the absence of any comparable case, the price agreed should be such as to make an adequate contribution towards recouping development costs. This includes the cost of development work which has not been successful as well as the cost of work necessary to establish a basis of knowledge for carrying out a given project.
>
> "The other terms should be such that they provide an incentive to further development effort."

The sponsors of this proposal are of the view that it is not necessary to include this definition in the text, but they would like to include it in the records as an authentic interpretation of the expression.

Concerning the anti-monopoly clause, the French delegation submitted an informal paper proposing some amendments to article 6, paragraphs 3 and 4, and article 7, paragraph 4 of annex III. These amendments are intended to extend the application of the anti-monopoly provisions to the reserved sites, to make clear that when an applicant is sponsored by more than one State Party the plan of work is counted to all sponsoring State Parties, and to give priority to State Parties that do not have a plan of work approved by the Authority over State Parties that have submitted or sponsored two or more approved plans of work. This proposal was strongly supported by the U.S.S.R. but the positions of delegations on this matter were clearly divergent. Unfortunately, I cannot report any progress on this question in the framework of the consultations I have conducted.

Paragraph 2 of article 4 on sponsorship of applicants presented problems for the delegations of some developed countries. For them, the provision related to the effective control of an application by a State Party gave rise to problems of implementation. For other delegations the maintenance of the rule contained in this paragraph was essential. After prolonged discussions we finally found a solution that I hope is acceptable to all. I decided to keep the rule of the multiple sponsorship as it appears in document A/CONF.62/WP.10/Rev.2 and add a new sentence establishing that the "criteria and procedures for implementation of the sponsorship requirements shall be set forth in the rules, regulations and procedures of the Authority".

Another issue that we have discussed at length is the question of the consequences of the failure of the review conference to reach an agreement. Some delegates from developing countries expressed their dissatisfaction with the solution provided for in the present version of paragraph 5 of article 155. They insist on reincorporating the idea of a moratorium in the case where the review conference does not reach an agreement within five years from its commencement. This moratorium would not affect the rights acquired under existing contracts. It would not apply either to the plans of work of the Enterprise. On the other hand, several delegations strongly opposed the idea of the moratorium and objected to the majorities required in the negotiating text for the entry into force for all States Parties of the amendments adopted by the Conference. Since on this point no common understanding was reached, I decided to introduce only the following changes which do not relate to the essential concept embodied in this paragraph: First, the addition of the words "changing or modifying" after the words "such amendments". This addition was made in order to make it clear that the amendments adopted by the review conference after the fifth year of its commencement may entail not only partial modification but also a complete change of the system. Secondly, I extended the period for the entry into force of the amendments from 30 days to 12 months after the date of the deposit of the instruments of ratification, accession or acceptance by two thirds of the States. This change was made in response to the preoccupation of many delegations that a longer time than 30 days would be required in order to adjust their national laws to the requirements of the new system. I have also reversed the order of paragraphs 4 and 5 in this article because I think that the sequence I am proposing is more logical. In paragraph 5 of the text I am submitting now (formerly paragraph 4), the word "decision" has been replaced by "amendments" because it is more appropriate in the view of the delegations consulted.

A number of other provisions in Part XI have been examined. Following an exchange of ideas, I decided to introduce some amendments that, in my opinion, may be acceptable to all. Most of these amendments have been introduced in order to improve

the drafting or to clarify the meaning of the provisions. Only a few entail changes of substance.

In article 147, paragraph 2 (*b*), the words "in the Area" referring to the installations for the conduct of activities in the Area, have been deleted in order to clarify that no installation, irrespective of its location, can obstruct passage through sea lanes of importance or in areas of intense fishing activities.

It was suggested that in article 156, paragraph 4, concerning the powers of the Authority to establish regional centres or offices, a sentence should be added making reference to considerations of efficiency and economy. Although no opposition to this suggestion was clearly expressed, it was felt that such an amendment was not necessary since it is the common understanding that considerations of efficiency and economy are implicit in the establishment of new international bodies.

With reference to article 158, paragraph 4, the rule according to which all the organs of the Authority shall be responsible for exercising the powers and functions conferred upon them, is considered applicable also to the Enterprise. This is the reason why a reference to the Enterprise was added at the beginning of the paragraph.

It was understood that a provision should be added to article 163, concerning the need to ensure the impartiality and objectivity of the members of the Legal and Technical Commission and of the Economic Planning Commission. Such a provision now appears in paragraph 8 of that article and I hope that it will invite the support of all delegations.

Article 165, paragraph 2, enumerates the functions of the Legal and Technical Commission. Since paragraph 2 (*d*) does not describe a specific competence of that commission but a modality for carrying out its function of supervision and inspection, I decided to make a new paragraph 3 out of it.

Article 166, paragraph 2, on the duties of the Secretary-General, has been redrafted for the sake of clarity. I would like to point out that the word "administrative" had been introduced to qualify the functions of the Secretary-General.

Amendments introduced in article 167, paragraph 3, and article 168, paragraphs 1 and 3, do not change the substance of these provisions and are self-explanatory.

The introductory sentence of article 17 of annex III contains a reference to articles 160, paragraph 2 (*f*) and 162, paragraph 2 (*n*). The introduction of the words "*inter alia*" was done to indicate that the list of matters on which the Authority may issue rules, regulations and procedures is not inclusive.

II. Production policies[25]

The group, which had been assigned the tasks of reviewing the production policy for and the provisions of article 151 in particular, reconvened on 28 July and a number of meetings were held. In addition, I have consulted with the two main interest groups, the land-based producers and the consumers of metals from the Area with individual delegates and also with smaller interest groups. I specifically mention these smaller groups because it is apparent that the interests of all members of the land-based producer group are not necessarily the same in every respect; there are the nickel producers, the copper producers, the cobalt producers and the manganese producers; there are the large, established mining countries and there are the developing mining countries and the potential producers. Likewise in the consumer group, a number of different interests are involved, e.g., countries which have plans to go into sea-bed mineral production at an early date and others who do not have such immediate time schedules. It is inevitable that the differences of these various groups would become more accentuated as the discussions dealt with the details of the operations of the system rather than just with the matters of broad principle. We have to accept that these differences would play an important part in the discussions. It does, of course, make it more difficult to reach complete agreement and calls for more flexibility and an understanding attitude from all delegations. I am happy to say that this has not been lacking.

The group did not spend any time on arranging an agenda as the matters which still remained to be considered were well known and did not need recapitulation. However, for ease of reference in this report, I list the matters which were raised during the discussion: anti-subsidization or protection against unfair trading practice; access to markets for land-based minerals; article 151, paragraph 2 (*b*)—the minimum tonnage allocation and safeguard clauses; article 151, paragraph 2—production authorization and consequential changes in other articles; article 151, paragraph 4—provision dealing with adverse effects on economies of land-based producers due to sea-bed mining; article 151, paragraph 1—problem concerning the Authority's representation in commodity agreements; marketing problems for land-based mineral producers at the start of commercial production were sea-bed mining to start up on a tonnage scale equivalent to the 5 year increment of world nickel consumption; article 150—policies relating to activities in the Area; drafting changes.

Delegations are all aware of the substance of the problems which I have listed above, so in this report I only briefly touch on the substance and go on to explain what solutions I propose and the reasons for proposing those solutions.

Anti-subsidization or protection against unfair trading practices

The anti-subsidization principle deals with a problem which the land-based producers of the metals anticipate to arise if a State Party desiring to develop a sea-bed mining industry for reasons other than purely commercial were to give the project some aid, financial or otherwise, which was not available to commercially operated land-based projects. This could give those sea-bed producers an advantage in the market and enable them to undercut prices.

The matter was discussed at great length and it was apparent that there was a very broad but divergent understanding of what could be included under the term subsidy. It was noted that the practice of granting aid to certain growth industries by way of tax relief, investment credits, etc., was widespread. This could make it difficult to establish that aid to sea-bed mining could be construed as a discrimination. At the same time, there was agreement that aid to an industry, if misapplied, could give that industry a substantial advantage in the market place over an industry which was working on a purely commercial basis.

The term "unfair practices" was less contentious and could have been some basis for an agreement, except for a significant difference of opinion on one particular aspect. Certain delegations, mainly the landbased producers, feel that this Convention which is intended to deal with deep sea-bed mining has a responsibility only to ensure that deep sea-bed mining does not engage in unfair practice and it is not appropriate that it extend its application outside of that field. Other delegations however feel that any constraints on trading practice would have to apply equally to the mineral industry as a whole, both to the land-based and to the sea-bed mining sectors.

I have not found it possible to propose a text which would take account of all the points of view—a text which gives a meaningful protection from unfair practice within the industry and at the same time not run the danger of intruding into the trade policies and domestic affairs of States. It is chiefly on account of this latter problem, and the questions relating to obligations under trade treaties such as General Agreement on Tariffs and Trade that some delegations were hesitant to enter into specific commitments. Although there was much discussion I regret to say that no conclusion was reached.

[25] Report submitted by Mr. Nandan.

ACCESS TO MARKETS FOR LAND-BASED MINERALS

Some land-based mineral producers have expressed confidence that, under normal conditions, they will be quite competitive with deep sea-bed mining. They are concerned, nevertheless, that some countries who are now their customers for the metals will become sea-bed producers and will be suppliers of their own domestic market. This could, as a result, upset the present pattern of producer-consumer relationship and the producers could thereby be deprived of traditional markets. This problem must be viewed in conjunction with that of "unfair practices" which I have referred to earlier.

One can point out that, if sea-bed production is confined within the amount of the increment in world consumption of nickel, the expanding demand must inevitably make markets available somewhere for all of the nickel produced. This, however, is not a very satisfactory answer to a producer who may have built up export markets over many years and has to seek new and possibly less profitable markets. Therefore the land-based producers of the metals feel that some reference to this problem should be embodied in the text.

I have included a text which will reflect these concerns in spite of reservations expressed by certain industrialized countries because of their fear that such a provision will impinge on their domestic trade policy. I hope, however, that the text which is now incorporated as subparagraph (*i*) of article 150 will satisfy the concerns of the land-based producers.

GUARANTEED MINIMUM TONNAGE ALLOCATION AND SAFEGUARD CLAUSES

Article 151, paragraph 2 (*b*) deals with the method of allocating the tonnage of nickel production available for sea-bed mining. At the last session I proposed an amendment to this system which would establish a minimum allocation based on a 3 per cent growth rate in world nickel consumption if real growth rate fell below that amount. At the same time, I introduced a safeguard clause which limited the tonnage guaranteed under this clause so that it would never exceed the actual annual growth tonnage as calculated by a 15 year trend line. I explained the rationale of this scheme at some length in my report and I will not repeat it here. There was not much time available towards the end of last session for full consideration of the proposal. The group has now been able to review these clauses in detail and from the discussions I have arrived at the following conclusions.

First, it seems that there has been some misunderstanding of the intent of the amendment, mainly with respect to the last part of it which is the safeguard clause. We all know that the production control scheme is a complicated system involving mathematical and statistical principles and when these are translated into legal language they are even more puzzling. I realized that this problem existed and hoped that the notes in my report[26] would explain any ambiguity in that text, but apparently some misunderstanding has persisted. The discussions within the group during this session have been exhaustive and I am sure that they have cleared up the doubts that delegations may have had concerning the intention of this amendment and how it will operate in practice. I believe, however, that a more detailed explanation of the working of the whole of the production control scheme together with examples of calculations would be helpful to many delegations. I hope that in due time I may be able to annex such a paper to this report.

The discussions continued on the question of whether the inclusion of the "floor" clause with the safeguard element was necessary and whether it contributed in any way to a general acceptance of the production control system as a whole. During the discussions, many figures, statistics and diagrams were produced on hypothetical basis to show what could happen in the nickel industry under certain conditions. Some of these were helpful in the better understanding of the production control formula. But none of them could really answer the basic question as to what will be the future of world demand for nickel? In this respect I can only say that very little new evidence has come forward since the last session of the Conference which would change the estimate of the future trends in the nickel industry as we then saw it. Therefore, I feel justified in retaining the scheme in principle as I had proposed and as was incorporated in the negotiating text last session.

The problems that arose from misunderstanding of the text and which I have mentioned above have, however, made it advisable for me to look at the drafting of the text with a view to improving it in order to ensure that the meaning and intent of the paragraph is clearly understood. This has been done and is reflected in the revision. No points of substance have in fact been changed. However, I would like to mention an inadvertent error in my previous text which provided for the real growth trend line tonnage to be calculated from the beginning of the interim period. In the new text, this error in the date from which the real growth tonnage is calculated is corrected by reference to the year prior to the interim period. This change makes the calculations of the safeguard provision consistent in time scale, with the method generally used in the production control calculation in paragraph 2 (*b*) (i) which also commences at the year prior to the interim period.

PRODUCTION AUTHORIZATION

In the informal composite negotiating text, I proposed the concept of production authorization. The reasons for this suggestion were fully explained in my previous report and the idea seems to have been generally accepted. However, to implement this scheme, certain consequential changes are needed in the text of other articles because many of the processes that had been applicable to the application for and approval of plans of work would now have to be applied to the application for and issue of production authorizations. These changes have been incorporated in articles 162 and 165 and in annex III, articles 6 and 7.

In article 162 which deals with the powers and function of the Council, a new paragraph 2 (*p*) has been added. This empowers the Council to make selection amongst the applicants for a production authorization. The process of selection would be applicable only when qualified applicants have applied for production authorizations which, in aggregate, exceed the total production tonnage allowed to sea-bed mining calculated in accordance with paragraph 2 (*b*) of article 151.

In article 165, which deals with The Legal and Technical Commission, a new subparagraph has been added. This subparagraph places the responsibility on the Commission for calculating the production ceiling in accordance with paragraph 2 of article 151 and for issuing the production authorizations as decided, when necessary, by the Council.

In article 6 of annex III, subparagraph 3 (*c*) has been deleted. The approval of a plan of work will no longer entail the automatic right to go into sea-bed production so the problem of selection amongst applicants for plans of work when the production ceiling would be exceeded no longer arises. The selection process is now transferred to the issue of production authorizations.

In article 6, a new paragraph 5 has been added. The purpose of this paragraph is to ensure that the anti-monopoly provisions continued to apply beyond the interim period.

In article 7 entitled "Selection of Applicants", several changes have had to be made. This article was intended to prescribe the criteria for selection amongst applicants for a plan of work when a selection became necessary where the aggregate of production tonnages requested in the plans of work exceeded the total allowed under the formula in paragraph 2 (*b*) of article 151. The approval of a plan of work is still subject to conditions and criteria laid down in article 6 and elsewhere in the text but there

[26] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XIII, document A/CONF./C.1/L.27, section II B.

is no longer any need for selection amongst applicants for allocation of a production tonnage at this stage. The purpose of article 7 has therefore changed to "Selection of applicants for production authorization". It now prescribes the criteria for selection amongst applicants for a production authorization at any time when such selection becomes necessary. That is, in fact, when the qualified applicants for a production authorization are requesting production tonnages in excess of that allowed for under paragraph 2 (*b*) of article 151. The criteria for selection amongst applicants for production authorization remain the same as those which previously applied for selection amongst applicants for approval of plans of work. Therefore most of the changes in article 7 consist of replacing the term "production authorization" for the term "plan of work".

Article 7, paragraph 4, which now becomes paragraph 5, has been redrafted to clarify its intent and purpose. A further change has been made in the old paragraph 5 which now becomes paragraph 6. This has been altered to simplify the text but the intention and the purpose of this paragraph remains unchanged.

Provision dealing with adverse effects on economies of land-based producers due to sea-bed mining

I next come to paragraph 4 of article 151 and I wish to explain the concerns which have been raised. During the discussions on the provisions of article 151, paragraph 2, the point was raised that the production ceiling, as proposed, is designed to protect nickel producers but does little for the protection of land-based producers of the other metals. This is a problem that arises because of the ratio of metals contained in the nodules and therefore the production of metals from nodules has a very different ratio from that of world consumption of these metals. Using the production figures in the Massachusetts Institute of Technology model as an example, if one project produced 39,000 tons of nickel, 34,000 tons of copper and 4,000 tons of cobalt per annum, it would represent roughly (I emphasize very roughly because we are only talking about the order of magnitude) 1/20 of annual world nickel consumption, 1/200 of annual world copper consumption and 1/7 of annual world cobalt consumption and potentially, a very high proportion of world manganese consumption. Thus, a scheme which limits the production of nickel from sea-bed to some amount which is a proportion of world increase in demand for nickel will allow production of cobalt and manganese far in excess of that proportion of world increment in demand for these metals.

It was anticipated that the problem could be handled by monetary schemes and this was the basis of the previous texts which referred only to compensation. However, when the financial figures which may be involved are examined, it is apparent that simple cash compensation may not be a generally accepted or practical solution and some other approach must be made. We must recognize that this is a very real problem, and it is also a very complex one. Any system of compensation would involve an investigation of how much funds would be required. Whether the payment would be once and for all or for a duration or in perpetuity. All this has to be balanced against the equitable sharing of the benefits from the resources of the common heritage of mankind as a whole.

I am of the opinion that this problem can only be approached after a detailed study of the mining industry which will be affected and the part that it plays in the economies of countries concerned. Such an investigation is, of course, beyond the scope of this Conference but should undoubtedly receive a high priority in the work of the Economic Planning Commission. The outcome of such investigation may well require assistance or participation of other international agencies which are involved in financial and technical assistance to developing countries.

The countries which will be adversely affected by sea-bed mining feel that they should have the right to take the initiative in this matter and not wait until they are overtaken by adverse events. I have therefore made some significant changes in the text. First, I have broadened the scope of assistance that may be invoked. Secondly, I have added the concept that other international agencies may be called upon to participate. Thirdly, I have added a sentence at the end which establishes the right of a country to take action and request that a study be initiated when it appears that it is likely to be adversely affected and not wait until after the event.

Authority's representation in commodity agreements

One of the aspects of resource policy on which I think that we do have a large measure of understanding is that commodity agreements or arrangements may be one of the most effective long-term answers to the problems which may arise. This understanding is incorporated in paragraph 1 of article 151 in which the Authority is given the right to participate in such agreements or arrangements. The differences arise, however, in trying to detail into the text exactly how the Authority should participate. Some delegations consider that it is not for the Conference to decide the precise nature of the Authority's participation, or that in any event the Authority should participate in such commodity conferences only in respect of the production of the Enterprise. Others feel that the Authority should participate in respect of all production from the deep sea-bed.

To try to accommodate these different opinions I have made one very small change by removing the article "the" in the fifth sentence where it refers to "the production in the Area". The implication of this deletion in the languages other than English seems somewhat uncertain, but my intention is to leave as much freedom of action in this matter as possible. I believe, however, that these commodity conferences will establish their own rules of representation and it would be unfortunate if the Authority was constrained in its role because of some inflexibility in the provision.

I have also added a phrase to the end of the third sentence which clarifies the text as regards the type of commodity conference in which the Authority may participate.

Marketing problems for land-based mines at the start of commercial production from the sea-bed

A matter which was raised for discussion during this session was the impact on the nickel market that would occur at the start of commercial production of metals from the sea-bed. At this time, a maximum tonnage equivalent to a 5-year increase in world nickel demand could potentially come onto the market which presumably would be in a reasonably balanced condition between consumption and land-based production. The implication is that some land-based capacity may become redundant. This is a possible short-term problem of which we have always been aware but it is in-built into the system of production limitation that was accepted a considerable time ago. It would not be possible now to introduce any significant change that would affect this situation without having to practically restructure the whole scheme.

The problem should, however, be reviewed in the context of what actually happens in the mineral industry and not in the rather unreal way that the text, if taken literally as a forecast of events, might suggest. The provisions of the production control scheme permit deep sea-bed mining to compete for something between one and two hundred thousand tons at the start of commercial production. If this tonnage were to be dumped on the nickel market at one time, it would indeed create some disarray. However, we are all aware that this is most unlikely to happen: the various sea-bed contractors would have different production plans, maybe phasing their tonnage production in steps, have different time schedules and the outcome would be the result of a number of unrelated and random events. The probability, in fact, almost certainly is that this initial tonnage would be taken up over some prolonged period of time and not as an instantaneous occurrence as the production ceiling diagram would suggest. An-

other point to remembe. is that there will be some time gap, a construction period, between the date of application for a production authorization and actual production. There will be no secret about these planned exploration projects and existing producers will be able to adjust their own plans accordingly just as they would if they knew that another big land-based producer was coming into production.

It may seem that we are evading this problem and are dismissing it on the grounds that it will be self-correcting, but I believe that the mineral industry itself is more competent to tackle and solve it than this Conference. Wide fluctuation in demand and prices is something that seems only too common in the mineral industry and, as a result, it has, I believe, built up a resilient structure which is responsive to this situation. To illustrate the point I might mention that the world consumption of nickel dropped from a figure of 710,000 tons in 1974 to 577,000 in 1975 and rose again to 670,000 in 1976, but in the meantime, production carried on at a fairly steady rate at 737,000 in 1974, 755,000 in 1975 and 767,000 in 1977. Such a problem creates anything but an ideal situation for those in the industry and one hopes that ways may be found through commodity agreements or arrangements to correct it. I can only reiterate, then, that the evidence suggests that a solution to those fluctuations in the market will be found by the mining industry itself, both the land-based and the sea-based sectors, because it is just as much a problem to one side as to the other. I do not see any way in which the provisions of this text could be amended to anticipate these problems or to alleviate them without making fundamental changes in the whole scheme.

Policies relating to activities in the Area

Article 150, which is a general statement of policies, has been drafted to reflect the interests of all groups. I am well aware that any proposed changes must be considered with caution. Nevertheless, it is difficult to discuss the substance of article 151 on production policies without also discussing article 150 and, therefore, this article has been referred to continuously during the discussion.

A number of delegations, particularly those from the consumer countries, feel that insufficient emphasis has been placed on a role for the Authority to promote deep sea-bed mining and that there should be some reflection of this in the text. On the other hand, many delegations are of the opinion that this article is well balanced and reflects the many interests involved, and that any changes would upset this balance. They feel that several references within the text already adequately express a policy of development of the deep sea-bed mining industry. Nevertheless, I could not ignore the over-all tenor of the complaints of the industrialized countries that the lack of reference to development of deep sea-bed mining in this article or elsewhere in the convention did give some measure of imbalance. I have therefore added an additional subparagraph (*h*) which specifically reflects their concern. Other changes in the text of article 150 were discussed, and those which were found generally acceptable have been incorporated.

The addition of subparagraph (*i*) concerning the access to markets has been dealt with elsewhere in this report.

Drafting changes

Certain drafting changes have been made in the text of article 151. The purpose was to improve the arrangement and the grammar and they were not discussed at any length. In paragraph 2, second line, the word "previously" has been deleted as being redundant. The inclusion in the context of the sentence would imply that a plan of work would always have to be adopted prior to the application for a production authorization. This is not so. There can be circumstances when the two applications and approvals can be simultaneous. In paragraph 2 (*a*) at the end of the penultimate sentence the word "earlier" has been changed to "earliest" for grammatical reasons. In paragraph 2 (*c*) it may not have been clearly stated that the reservation of 38,000 tons for the Enterprise was for its initial project and that its priority position is then as prescribed in article 7 of annex III. I have therefore added the words "for its initial use". In paragraph 2 (*e*) the sentence "The authority shall not authorize...nickel per year" was rather misplaced and I have moved it to the end of the paragraph. In paragraph 2 (*f*), I have just reversed the context of the wording in order to put the intent of the clause first, and the means of implementing that intent, i.e. by regulation, in the second place.

As I mentioned at the beginning of this report, many matters of important detail as well as matters of principle were raised during this session and I think that it is a fair assessment to say that more progress was made on more subjects than the group has been able to achieve at any other session. The exchanges have been frank and informative. Delegates have eloquently put the case for their interests before the group and I can assure them that in arriving at conclusions from the discussion, the points that have been raised have not been ignored. However, as they will willingly agree, no one interest can be paramount or exclusive and the outcome must be a compromise.

I have as a result of the discussions and negotiations, been able to draft texts on the various articles which I believe reflect a fair balance of the many interests involved. I think that they are a fair compromise and that they will be generally acceptable.

Finally, I wish to record my thanks to the members of the group on production policies for their generous assistance and co-operation in seeking solutions to the many problems. I also wish to thank the Chairman of the First Committee for his advice, encouragement and unstinted support. My report, however, would remain incomplete if I were not to express a word of thanks to the Secretariat for their assistance. I would wish to single out Mr. E. Langevad with whom I have now worked for several sessions. His expertise and knowledge in the area of resource policy have been invaluable to me. I have come to admire his dedication and objectivity and I am indeed very indebted to him for his unreserved assistance.

III. Financial arrangements and the Statute of the Enterprise[27]

Mr. Chairman, permit me to begin by thanking you for the strong political support and moral encouragement which you have always given to me in my work.

Secondly, I would like to express my profound gratitude to the members of the team who have worked so closely with me during the past several years. They are Mr. John Bailey, Rapporteur of the First Committee, Mr. M. Pal and Mr. S. Yoshida of the United Nations Secretariat, Mr. P. Kirthisingha of the United Nations Conference on Trade and Development and Mr. J. Sebenius of Harvard University. These colleagues and I have a cohesion and 'esprit de corps' which is perhaps unique in the Conference. I should also like to thank Miss G. Parry, Miss S. Smith and Mrs. E. Druz for their invaluable secretarial assistance.

Concerning the principles on which my proposals are based, the criteria which have guided me are those set out in A/CONF.62/62.[28] First, the modifications proposed by the Chairman should be the results of consultations and negotiations and not the products of his own imagination and invention. Secondly, the proposed modifications should enjoy widespread and substantial support. Thirdly, they should substantially improve the prospects of achieving a consensus on any particular point or matter.

[27] Report submitted by Mr. Koh.

[28] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X.

A. Financial terms of contracts

At the end of the eighth session, I put forward a compromise proposal on the financial terms of contracts. This proposal, with only minor modifications, is now contained in article 13 of Annex III of document A/CONF.62/W.P.10/Rev.2. Although no delegation or group of delegations views this compromise proposal with pleasure, various important delegations and groups of delegations have indicated their willingness to accept it as a compromise. The Group of 77, the socialist countries of Eastern Europe, the United States, the United Kingdom and several other industrialized countries have expressed their ability to live with this proposal.

Annual fixed fee

The Federal Republic of Germany and Italy re-introduced their proposal that the annual fixed fee should be payable only from the commencement of commercial production and not from the time a contract is signed. France proposed that the annual fixed fee should be payable from the fourth year of a contract. For the reasons which I have explained repeatedly in the past I could not include any of these proposals.

The production charge

Under both the single and the mixed systems of financial payments, France proposed that the production charge should be levied on the market value of nodules and not, as provided for in the second revision, on the basis of the value of the processed metals derived from the nodules. This demand was also rejected by the Group of 77. The grounds on which the Group of 77 rejected this proposal have been set out in my earlier reports.

The mixed system of financial payments

The mixed system of financial payment consists of a production charge and a share of the attributable net proceeds. Belgium, the Federal Republic of Germany and Japan requested the reduction of the production charge rates from 2 per cent in the first period to 1.5 per cent, and from 4 per cent in the second period to 2.5 per cent. The delegations of Belgium, France and the Federal Republic of Germany also proposed that the trigger mechanism should be based on 25 per cent return on investment and not 15 per cent. In the case of a contract for mining only, Belgium, France, the Federal Republic of Germany and Italy proposed that the production charge rates should be 3 per cent and 8 per cent in the first and second periods, respectively, of the market value of nodules.

Turning to the second element of the mixed system, Belgium, France, the Federal Republic of Germany and Italy have requested the extension of the three incremental steps so that they would be from 0 to 15 per cent in the first step, from 15 to 30 per cent in the second step and 30 per cent and above in the third step. The four delegations have also proposed drastic reductions in the rates of the Authority's shares of the attributable net proceeds. According to their proposal the rates should be reduced to 10 per cent in the first step, 20 per cent in the second step and 40 per cent in the third step in the first period and 30 per cent in the first step in the second period.

The Group of 77 regards the production charge rates, the steps in the incremental schedule, and the rates of the Authority's shares of the attributable net proceeds, contained in the negotiating text, as their absolute bottom line. For this reason they were therefore unable to concede to the demand of Belgium, France, the Federal Republic of Germany and Italy for the drastic reductions of these rates.

Definition of the term "contractor's development costs"

France, Japan, the United Kingdom and the United States requested that the costs of prospecting the reserved site should be included in the contractor's development costs. Members of the Group of 77 pointed out that the representatives of the industrialized countries had agreed, some years ago, that the costs of prospecting the reserved site would not be included in the contractor's development costs. I have accepted two drafting changes proposed by Japan. The first is to insert in paragraph 6 (*h*), the phrase "in all cases other than that specified in subparagraph (*n*)" after the words "operations under the contract". I have also inserted the term "processing plant" in the definition of the contractor's development costs.

Carrying forward or backward of losses

Under paragraph 6 (*k*) a contractor may carry forward his net operating losses for two consecutive years. He may also carry backward such losses to the two preceding years provided that these are incurred in the last two years of the contract. The United Kingdom and the United States proposed that losses should be capable of being carried backward to the two preceding years without the proviso that such losses must be incurred in the last two years of the contract. The Group of 77 was unable to accept this proposal.

Calculation of "return on investment"

Japan, the United Kingdom and the United States proposed that the calculation of the "return on investment" in paragraph 6 (*m*) should be amended to use the contractor's net proceeds in the mining sector based upon actual cost ratio rather than the attributable net proceeds. The Group of 77 rejected this proposal on the grounds that the present method of calculation was part of the package which was negotiated at the eighth session.

Interest rates

I have made a drafting change to paragraph 6 (*o*). I have deleted the phrase "may only be allowed if" and substituted therefor the phrase "shall be allowed to the extent that".

B. The Statute of the Enterprise

Article 1 of annex IV—Purpose

France wanted to amend paragraph 1 of article 1 to make it clear that the Enterprise can only transport, process and market minerals which it recovers from the Area and not minerals recovered by other entities. The Group of 77 was unable to accept this amendment. They argued that if the Enterprise were, one day, to develop the capacity to process not only the nodules it recovers from the Area but also to process for others, there was no reason why the convention should prohibit the Enterprise from doing so. Since there was no agreement on this amendment, I am therefore unable to include it.

Article 5—Governing Board

France also suggested an amendment to paragraph 1 of article 5 to the effect that in the election of the members of the Governing Board due regard shall be paid to the principle of equitable geographical distribution and to the importance of the financial contributions of States Parties to the initial financing of the Enterprise. The French amendment is a weaker version of an amendment which it had proposed in New York. The Group of 77 objected to the French proposal on the ground that it would give undue importance to the major contributors to the finances of the Enterprise. The delegation of the Soviet Union pointed out that the French amendment was unnecessary because under the present formulation due regard may also be paid to principles and factors other than the principle of equitable geographical distribution. Since there was also no agreement on this amendment, I have not included it in my proposed changes. I have also not included a proposal by the Netherlands that until the loans of States Parties have been repaid, the Governing Board shall be assisted by a committee of governmental experts on matters of financing and investment policy related to the first operation of the Enterprise. The said committee, according to the Dutch proposal, should be constituted with due regard to the financial contributions to the first operation of the Enterprise. The Group of 77 could not accept this proposal.

The delegation of Belgium proposed that in submitting nominations of candidates for election to the Board, members of the Authority should bear in mind the need to avoid nominating candidates with conflicting interests. Most of the members of the

group of financial experts thought it was unnecessary to include this although there was an agreement to strengthen the rule in paragraph 3 of article 5. I have therefore deleted the word "direct" from paragraph 3. The other change I have made in article 5 is in paragraph 6 which I have redrafted in order to ensure that the procedure for filling a vacancy is the same as the procedure for electing members to the Board.

Article 6—Powers and functions

Apart from minor drafting changes I have made two substantive changes to this article. The first is to add a new subparagraph (*c*) giving the Governing Board the power to prepare and submit applications for production authorization to the Council. This new paragraph is required in the light of the changes which have been proposed to article 151, paragraph 2, and article 7 of annex III. The other change which I have made is to add the word "non-discretionary" to subparagraph (*o*) which deals with the question of the delegation of powers. The consequence of the amendment is that the Governing Board may delegate non-discretionary powers to the Director-General and to committees constituted by the Governing Board. The Governing Board may not, however, delegate discretionary powers. This is in accordance with the generally accepted principles of corporate and administrative law.

Article 7—Director-General and Staff

The Netherlands suggested that the Governing Board should be given the power to dismiss the Director-General. I do not feel able to accept this proposal because a body with the power to dismiss an appointee is usually the body which has the power to appoint him in the first instance. In this case it is the Assembly, acting upon the recommendation of the Council and the nomination of the Governing Board, which elects the Director-General. For this reason I do not think it would be appropriate to give the Governing Board the power of dismissal.

C. Finance of the Enterprise

Article 11, paragraph 3 (*a*) has been slightly amended. In the negotiating text the last sentence of this paragraph states that the amount of the funds to be provided to the Enterprise shall be recommended by the preparatory commission. I have redrafted this sentence to say that the preparatory commission shall include in the draft rules, regulations and procedures of the Authority the amount of the funds to be provided to the Enterprise together with the criteria and factors for its adjustment. The redraft contains two elements missing in the old text. First, the preparatory commission shall not only fix the amount of the funds to be provided to the Enterprise but also the criteria and factors by which the said amount may be adjusted. It may be necessary to adjust the amount because of inflation and because of cost over-runs. The second feature which is new is that the recommendations of the preparatory commission shall be embodied in the form of draft rules, regulations and procedures of the Authority. Under this formula we do not prejudge the answer to the question of the status of the rules, regulations and procedures drawn up by the preparatory commission. This formulation of the last sentence was negotiated with various delegations and appears to satisfy the three criteria contained in document A/CONF.62/62.

I am proposing a modification to paragraph 3 (*b*) of article 11. The text of this paragraph in the negotiating text refers to the scale in article 160, paragraph 2 (*e*). That scale is intended to raise assessed contributions from the States Parties to meet the administrative expenses of the Authority. The assumption underlying that scale is that the whole of the administrative expenses shall be borne by the States Parties, whatever their number may be. It may not be appropriate to use that scale for the purpose of providing the Enterprise with the funds referred to in paragraph 3 (*a*) because the administrative expenses of the Authority would be relatively small compared with the amount of the funds required to carry out one fully integrated, four-metal project. Instead of the scale referred to in article 160, I propose using the scale of assessment for the United Nations regular budget, adjusted to take account of the States which are not members of the United Nations. After the necessary adjustments, the percentage by which each State Party shall contribute towards the financing of the Enterprise would be very slightly less than its percentage on the scale of assessment for the United Nations regular budget. I have asked the United Nations Secretariat to compile such a scale which would then be annexed to the convention. Owing to the shortness of time and for other reasons, the United Nations Secretariat has replied that it is unable to comply with our request. The job, however, is not a difficult one and such a reference scale can be very easily constructed.

Concerning paragraph 3 (*c*), it is unlikely that all the States participating in this Conference will become parties to the convention at the same time. In consequence, if those States which become parties to the convention contribute their shares toward the financing of the Enterprise in accordancewith the reference scale, there would be a shortfall. The question is how should the shortfall be covered. In the negotiating text, I proposed that the shortfall should be covered by way of supplementary interest-free loans and supplementary debt-guarantees by the States Parties up to a ceiling of 25 per cent of the amount of the funds to be provided to the Enterprise. My proposal was objected to by both the Group of 77 and the industrialized countries of the West and of the East. The Group of 77 pointed out that if we impose a ceiling of 25 per cent and if the shortfall is greater than 25 per cent, then, in spite of the supplementary contributions, the Enterprise would still face the problem of a shortfall. On the other hand, the developed countries did not like the manner in which paragraphs 3 (*c*) and 3 (*d*) had tried to deal with the problem. On the basis of consultations I held with representatives of the various interest groups, I was able to offer a compromise proposal acceptable to them. The proposal is that, if the sum of the financial contributions of States Parties ratifying or acceding to the convention is less than the funds to be provided to the Enterprise, the Assembly shall, at its first meeting, examine the extent of the shortfall and, taking into account the obligation of the States Parties under paragraphs 3 (*a*) and 3 (*b*) and the recommendations of the preparatory commission, adopt measures for dealing with the shortfall. It was agreed that the Assembly shall decide this question by consensus.

In dealing with paragraph 3 (*d*), the next problem concerned the modality for implementing the obligation of the States Parties under paragraphs 3 (*a*) and 3 (*b*). The first question is when should the States Parties be required to make their payments. The second question is in what form should the payments be made. The third question is should the payments be made in one lump sum or in stages. The answer to the first question is that the obligation of the States Parties shall be met within 60 days after the entry into force of the convention or within 30 days after the date of deposit of their instruments of ratification, acceptance or approval, whichever is later. The answer to the second question is that the States Parties shall deposit with the Enterprise irrevocable, non-negotiable, non-interest-bearing promissory notes in the amounts of the shares of such States Parties of interest-free loans under paragraph 3 (*b*). The answer to the third question is that the promissory notes can be cashed by the Enterprise in accordance with the following procedure. First, as soon as possible after the entry into force of the convention and thereafter, at annual or other appropriate intervals, the Governing Board of the Enterprise shall prepare a schedule of the magnitude and timing of its requirements for the funding of its administrative expenses and for carrying out its operations. Secondly, the States Parties shall be notified by the Enterprise, through the Authority, of the magnitude and timing of the Enterprise's financial requirements. After notifying the States Parties, the Enterprise shall cash such amounts of the promissory notes as are required to meet its expenses in accordance with the schedule.

Some members of the Group of 77 have asked whether under this proposal the Enterprise would encounter difficulties in obtaining the funds which it will need in order to establish itself.

My answer is no. This is because the commitment in paragraph 3 (*a*) is not only to provide the Enterprise with an amount of funds equivalent to the capital required in undertaking one fully-integrated, four-metal project but also to meet its initial administrative expenses. The seed money that the Enterprise will need in order to organize itself, to employ its staff, to lease its premises, etc., comes under the umbrella of the term "initial administrative expenses". Therefore, the Enterprise would be able to cash a portion of the promissory notes deposited by the States Parties in order to meet those initial expenses.

Some colleagues from industrialized countries have asked whether this proposal derogates from article 162, paragraph 2 (*i*) and article 170, paragraph 2. My answer would be in the negative. As is made clear in article 1, paragraphs 1 and 2 and in the introduction to article 6 of annex IV, no attempt has been made in this annex to alter the distribution of powers and functions among the organs of the Authority or to upset the hierarchical relationship between them.

During the negotiations on article 11, paragraph 3 (*f*) the industrialized countries of the East and the West pressed the Group of 77 very hard for agreement on their proposal that a schedule or programme of repayment of the interest-free loans should be included in the draft rules, regulations and procedures of the Authority. The Group of 77 was unable to make this concession. It argued that it was not reasonable to demand that a repayment schedule or programme should be included in the draft rules, regulations and procedures which would be formulated even before the Enterprise is established and is functioning. The Group of 77 argued that it is only possible to establish such a schedule after the Enterprise is a reality, operating in the Area and has become economically viable and successful. As a result of consultations I have undertaken on this question, it has been agreed to add two new sentences to paragraph 3 (*f*). The first sentence would say that when the Governing Board of the Enterprise gives its advice on the question of a repayment schedule, it shall be guided by the relevant provisions of the rules, regulations and procedures of the Authority. The second sentence proposes that the rules, regulations and procedures dealing with this question shall take into account the paramount importance of ensuring the successful performance of the Enterprise and, in particular, ensuring its financial independence. The guidelines contained in the rules, regulations and procedures may, for example, ensure that the Enterprise will be provided with an adequate working capital, fix the date of commencement of repayments not earlier than after the tenth year of the commencement of commercial production by the Enterprise and graduate such payments so that the annual payments in the first five years of the schedule are less than in the subsequent years.

Paragraph 3 (*g*) specifies the currencies in which the States Parties shall make their payments. My attention was drawn to the fact that in the recently concluded Common Fund agreement a formula was negotiated which has met with general acceptance. I have asked the various interest groups whether I could adopt the language from the Common Fund and was informed that I could do so. Paragraph 3 (*g*) has therefore been redrafted along the lines of the equivalent provision in the Common Fund agreement.

Paragraph 3 (*h*) defines the term "debt guarantee". It was pointed out that it would be desirable to expand the definition by including a new sentence stating that the procedures for the payment of the debts guaranteed by States Parties in the event of default by the Enterprise shall be in conformity with the rules, regulations and procedures of the Authority. As the suggestion met with no objection from any quarter I have included such a sentence.

IV. The Assembly and the Council[29]

Of the hard-core issues in the First Committee, perhaps the most difficult and certainly the most important is the question of decision-making in the Council. The question is important because the Council is the principal executive organ of the International Sea-bed Authority. As such, its decisions will directly and significantly affect the rational management of the common heritage of mankind, the successful implementation of the system of exploration and exploitation and the security of investments in sea-bed mining. From the point of view of the developing countries, the convention will have a precedent-setting effect underlying the changing mood for greater and more effective participation of all sections of the international community in all important decisions reflected by future international agreements and conventions. The developing countries are aware that whatever concessions they make on this question are likely to be quoted against them in other negotiations between North and South. The developed countries, while feeling comfortable with the nature of inter-action between on-going forces in the contemporary international society, and having regard to what they hold dear as vital interests, they had to adjust to the new realities in order to secure legality that is universally recognized. This is of crucial importance to them with regard to the chaos that would exist in the sea-bed Area, involving tremendous risks of an economic and security nature, in the absence of a convention. National legislation alone could present no lasting guarantees.

In order to ascertain current reactions to broad conclusions reached during the first part of the ninth session, the working group of 21 held two meetings on the subject of the Council and related issues. Thereafter, I held a series of consultations with various delegations, individually and collectively. In the process I enlisted the help of a dedicated colleague and fraternal friend, Mr. T. Koh of Singapore.

I drew a number of conclusions from these consultations. It appeared to me that the developing countries proceeded from the foundation that the resources of the international Area constitute the common heritage of mankind. They felt that the rational management of these resources should consequently be based upon the generally accepted democratic principle of "one-State-one vote". The developing countries were prepared to acknowledge that the countries whose nationals (companies and consortia) were planning to invest large sums of money in sea-bed mining had special economic interests which, realistically, had to be protected in the Council. They felt, however, that it would be inappropriate for decisions of the Council to be based upon any system which would incorporate proposed concepts of veto, weighted voting or chamber voting. The developing countries, it may be recalled, have made strenuous efforts within the United Nations system to abolish the power of veto, especially in the Security Council. They thus felt that it would be wholly unacceptable to introduce a system of voting in this important new international organization which replicates a phenomenon regarded by them as obnoxious.

Analogies have often been drawn between the current negotiations and other recently concluded agreements such as the agreement to establish a "common fund" for the stabilization of commodity prices. The developing countries did not accept such an analogy, first because States Parties are not required to contribute funds on the basis of which differential votes can be allocated to the States Parties and, secondly, because we are dealing with a resource which has, by universal recognition, been declared the common heritage of mankind. It appeared that the developing countries could not accept chamber voting because they could not accept the principle that a decision of the Council should be taken in reference to categories of special interests or that such decisions should be blocked by the same interests. The Group of 77, the negotiating institution of the developing countries, has thus continued to insist in these negotiations that all questions of substance be made by an overall majority of two thirds of the members present and voting.

The Eastern European Group of States constitutes the only group in these negotiations which has been able to accept the

[29] Report submitted by Mr. Engo.

proposal contained in the revised negotiating text that all substantive questions be decided by a three-fourths majority. It would appear that they were able to accept this proposal because it did not give to the Group of 77 the power to impose affirmative action on the Council, nor did it afford to the Western States the power to block such decisions. This group of States has insisted that, on the basis of the principle of parity between East and West, if a blocking vote were to be given to the Western States in the Council, a similar blocking vote must be given to the countries of Eastern Europe. To help the Conference bridge the gaps existing between the three principal groups in the negotiations (the Group of 77, the Western European and Other States group of States and the Eastern European group of States), the Soviet Union, with the support of the Eastern European group, put forward two proposals as compromise. The first proposal was that decisions on questions of substance be made by a two-thirds majority, provided that such majority includes a simple majority in three of the first four categories in paragraph 1 of article 161, and provided that the members of any regional group have not unanimously voted against a proposal. Although this proposal appeared to be acceptable to the Western States, it was not found acceptable by the Group of 77 and therefore had to be abandoned. The second Soviet proposal was that a blocking vote should be granted to five members of the Council plus one from each regional group in which the five did not already belong. This proposal was not found acceptable by the Western States and had also to be abandoned.

The Federal Republic of Germany, France, Japan, the United Kingdom and the United States predicated their position on the premise that their consortia and companies would be investing billions of dollars in sea-bed mining. They argued that these very substantial investments could be jeopardized by adverse decisions of the Council. Therefore, in order to protect the economic interests of their consortia and companies, these five countries consistently demanded that in one form or another they must be given the collective power to block a Council decision on an issue critical to those interests. These delegations put forward, in the course of the negotiations, various proposals which would give them such blocking power. They suggested, for example, that a blocking power be given in any two of the first four categories of interest in paragraph 1 of article 161. They also suggested that a blocking power be given to 50 per cent of the producers and 50 per cent of the consumers. They suggested further that a blocking power be given to any combination of five members of the Council. It was clear that it was impossible, in the light of strong objections from the Group of 77, to reach agreement on the basis of any of these proposals.

My impression at the end of the first round of consultations could be summarized as follows: first, we did not have a single proposal at that time which enjoyed support among the three major negotiating parties on the question of the Council. Secondly, most of the proposals identified above did not appear to me to have a promising future. The proposal of a three-fourths majority contained in the negotiating text continued to be unacceptable to both the Group of 77 and the five prospective Western sea-bed miners. The proposal to give a blocking vote to a regional group and to a simple majority in any two of the four categories (*a*) to (*d*) in paragraph 1 did not commend itself to the Group of 77. The proposal emerging from previous sessions, that a blocking vote should be 7 appeared unlikely to be acceptable as a compromise to the five industrialized countries. It was clear that the difference between the figure 5 proposed by the industrialized countries and 7, which I considered a compromise, was not 2 but infinity. Similarly, the difference between the figure 9 supported by the developing countries and the Eastern European group of States and the figure 7 was not 2 but infinity. It was futile to discuss figures in isolation from the questions of principle over which hovered such a cloud of disagreement. Even the idea of interposing a conciliation procedure between the failure to achieve consensus and resorting to voting which appeared to be an interesting idea did not appear to have a bright future because of the difficulty posed by the failure of the conciliation process, the reason being that one would still have to confront the question of by what majority decisions would be taken consequently, as well as by what minorities such decisions could be blocked. Thirdly, it became obvious to me that we had to shop for new ideas which were not too far removed from the general discourse. This had to be done in close consultation with all interested parties in order to identify some basis with which they could live.

I was encouraged by these consultations to focus on the concept of consensus which was not new to the negotiations. We had had before us a suggestion appearing in a previous report of the working group of 21 that decisions either on all matters of substance or on a limited list of such questions should be made by consensus among the interest and regional groups. During the consultations I did not observe serious objections to the possibility of identifying a short list of subjects on which decisions could be taken by consensus. Consequently I proposed to the negotiators a broad formula with regard to paragraph 7 of article 161 by which substantive questions before the Council would be divided into three categories. Each category of substantive questions would require a different majority or method of decision-making. In other words, questions falling within each of three categories would be subject to a different régime of decision-making. Questions falling within the first would be decided by a two-thirds majority and those falling within the second would be decided by a three-fourths majority. With regard to the third category, I proposed two alternative methods of decision-making. Under the first, every effort would be made to achieve consensus; a process of conciliation would be interposed between failure to achieve consensus and resorting to voting; there would be a three-fourths majority with blocking vote for 5 + x and a blocking vote for a regional group + y, leaving the values of x and y to be negotiated. The second alternative was to adopt questions under this third category by consensus. Under this package I proposed a small list of subjects for the fourth category, a much larger list for the second category, and left all other substantive questions to the first.

As a second element in the package I proposed that article 162, paragraph 2 (*j*) should be negotiated separately but must form part of the package on the Council as a whole. The essence of the reformulated paragraph would be to make the qualifications of the applicant the only basis for approval.

Although many delegations were sceptical about this approach, they became convinced that it offered far better prospects than any of the existing ones. It became clear that the second alternative method of decision-making with regard to the third category formed a far better basis for further negotiations.

Support soon emerged for a special procedure intended to reduce the fear that the consensus procedure could be abused and the Council thereby paralyzed. It was that within 14 days from the submission of a proposal, the President of the Council would ascertain whether there would be an objection to the proposal if it were put to the Council for adoption. If the President of the Council ascertained that there would be such objection, he would constitute a conciliation committee for the purpose of reconciling the differences and producing a proposal which could be adopted by consensus. The Committee obviously had to comprise representatives of the various interests which were directly affected by the proposal in question. At the same time, it was not to be too large, otherwise it would tend to be inefficient. It was therefore proposed that the conciliation committee should consist of not more than nine members. The purpose of the committee was to impose pressure on the members of the Council to reconcile their differences, to accommodate each other and to come to an agreement. If that process failed, the dissenting member or members opposed to a proposal would be required to state the grounds on which it or they were opposed to the proposal. The grounds on which a proposal was being opposed would be reported by the Conciliation Committee to the Council. Because of these procedures and pressures, it was hoped that the Council would in

every instance find it possible to produce a proposal which could be adopted by consensus.

The results of the subsequent intensive consultations led me to the conclusion that this new "three-tier approach", with a relatively short list of issues which were to be decided by consensus enjoyed widespread and substantial support and led us graciously out of our impasse. The productive exchange of views revealed that there was common agreement that the procedure of consensus had clearly to be distinguished from the traditional veto. The traditional veto involves a system of voting in which might is given to each of a few powerful nations to defeat a proposal by negative vote. Under the consensus procedure, every member of the Council, not a select few, is given the power to block a decision if it feels strongly enough against the proposal. The power is therefore distributed equally among all the members of the Council without discrimination. The consensus procedure, therefore, appeared to be more acceptable to the developing countries because it is a democratic procedure, does not discriminate among nations, does not recognize that some members of the Council have a special interest and therefore ought to have greater weight in the decision-making process than others. At the same time, the consensus procedure affords to those whose companies and consortia plan to make substantial investments in sea-bed mining the kind of protection which they have always asked for. It could also meet the preoccupations of the Eastern European group of States because it does not offend the principle of parity between East and West. For all these reasons, it appeared that the "three-tier" approach with two-thirds majority in the first tier, three-fourths majority in the second tier, and consensus in the third tier, was likely to lead us to a broadly acceptable solution.

It became necessary, however, to define the term "consensus" for our purposes here in order to ensure that a single pertinent construction be acceptable.

The new text which I have suggested was the result of difficult, sometimes frustrating, negotiations in which all sides were constantly reminded of the need to die a little in order to attain provisions which could be universally acceptable. The negotiators had to reach a difficult understanding on the list of matters which fell into the different categorizations. This in itself involved a give-and-take exercise affecting every provision and other parts of Part XI. That all sides lost ground in the process gives testimony to their determination to resolve this nagging hard-core issue, the resolution of which almost alone at this time could dictate the success or failure of our historic endeavours.

The decision-making arrangements now submitted with a strong recommendation for adoption as a desirable consensus appear to allay the broad fears of all the interest groups. On the one hand it responds to the declaration of the Heads of State and Government of the Organization of African Unity rejecting the systems of veto, weighted voting and chamber voting, etc. On the other hand, it responds to the preoccupation of the industrialized States opposed to the unqualified rule of the majority which could undermine vital minority interests. Finally, it ensures that no geographical region could individually be discriminated against in the process of giving a fair hearing to the diversity of interests involved in the activities falling within the mandate of the Council.

Undoubtedly, the innovations introduced a new system with, perhaps, no precedent. Yet I am convinced that it is a pragmatic response to the peculiar needs of ensuring the successful establishment of conditions of peace necessary if the common heritage of mankind is to be truly managed for the benefit of all and to ensure that all States, large or small, rich or poor, participate in the fullness of international life.

The suggestion for a new paragraph 7, article 161, reads 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 arising under the following provisions shall be taken by a two-thirds majority of the members present and voting, provided that such majority includes a majority of the members of the Council: article 162, paragraph 2 (*f*), (*g*), (*h*), (*i*), (*m*), (*o*) and (*u*); article 189;

"(*c*) Decisions on questions of substance arising under the following provisions shall be taken by a three-fourths majority of the members present and voting, provided that such majority includes a majority of the members of the Council: article 162, paragraph 1; paragraph 2 (*a*), (*b*), (*c*), (*d*), (*e*), (*k*), (*p*), (*q*), (*r*) and (*s*); paragraph 2 (*t*) in cases of non-compliance by a contractor or a sponsor; paragraph 2 (*v*) provided that orders issued under this subparagraph may be binding for no more than 30 days unless confirmed by a decision taken in accordance with subparagraph (*d*) below; paragraph 2 (*w*), (*x*), and (*y*); article 163, paragraph 2; article 174, paragraph 3; article 11 of annex IV;

"(*d*) Decisions on questions of substance arising under the following provisions shall be decided by consensus: article 162, paragraph 2 (*l*) and (*n*); adoption of amendments to Part XI;"

This paragraph also addresses the question of how to deal with matters not specifically mentioned in the four categories above. It proposes firstly (in subparagraph (*f*)) that:

"(*f*) Decisions not listed above which the Council is authorized to take by the rules, regulations and procedures of the Authority or otherwise shall be taken pursuant to the subparagraphs of this article specified in the rules, regulations and procedures or, if not specified, by decision of the Council taken, if possible in advance, by the majority required for questions under subparagraph (*d*);

Secondly, in subparagraph (*g*), it proposes that:

"(*g*) When the issue arises as to whether a question is within subparagraphs (*a*), (*b*), (*c*) or (*d*) above, the question shall be treated as being within the subparagraph requiring the higher or highest majority as the case may be, unless otherwise decided by the Council by the said majority."

In subparagraphs (*f*) and (*g*) the term "majority" is, of course, intended to include consensus. From the consultations I get the clear impression that this formulation would meet with the approval of governments. I must indicate, however, that one industrialized State alone expressed reservations as it continues to insist that article 162, paragraph 2 (*q*), be put on the consensus list.

Article 162, paragraph 2 (j)

It took very considerable effort to bring the Group of 77 and the industrialized countries to an agreement on this subparagraph. I undertook, following intensive consultations, to present a working paper which presented a useful basis for the negotiating effort. It cannot be desirable to go into at considerable length the painful exchange of views that took place before and after my suggestion. The compromise which was finally accepted by all sides contains the following important feature. The Council shall approve plans of work in accordance with article 6 of annex III. The Council shall act within 60 days of the submission of a plan of work by the Legal and Technical Commission. If the Commission recommends the approval of a plan of work it shall be deemed to have been approved by the Council unless any member submits a written objection alleging that the plan of work does not comply with the requirements set out in article 6 of annex III. Upon receipt of such an objection, the conciliation procedure described in article 161, paragraph 7 (*e*), shall apply. If the conciliation process fails to remove the objection, the plan of work shall be deemed to have been approved by the Council unless the Council disapproves it by consensus. A member of the Council who is an applicant or who sponsors an applicant for a plan of work shall not participate in the decision-making of the Council on the question. On the other hand, if the Commission recommends the disapproval of a plan of work or if it makes no recommendation, the Council may decide to approve the plan of work by a three-fourths majority.

The fact that article 151 and article 7 of annex III had been

drastically amended to create a new two-stage contract appeared to have presented some basis for the Group of 77, in a spirit of compromise, to look more favourably at the new text of article 162, paragraph 2 (*j*). In the first stage, applications for plans of work are approved so long as they comply with the grounds contained in annex III. At this stage the Authority can afford to be liberal because it is not allocating a scarce resource between competitors. A contractor, at this point, does not have the right to produce from his mine-site. He can only do so after he has obtained production authorization from the Authority. The application for production authorization is the second stage of the contract and is governed by article 151, paragraph 2, and article 7 of annex III. The parties to the negotiations were unable to agree on whether all decisions of the Economic Planning Commission and the Legal and Technical Commission should be taken by the same majority or by different majorities. The Group of 77 contended that all decisions of the two Commissions should be taken by the same majority. The Soviet Union insisted that the two Commissions should decide all questions by a two-thirds majority. Because of this impasse, we have agreed to amend paragraph 10 of article 163, by deleting the first sentence therefrom and substituting in its place the following new sentence: "The decision-making procedures of the Commissions shall be established by the rules, regulations and procedures of the Authority".

Transfer of Technology

The transfer of technology is one of the most vexatious questions in the First Committee. It was therefore a great relief to me that it was possible to agree on a new formulation of paragraph 7 of article 5 of annex III. The new formulation is based upon a proposal made by the Group of 77 and accepted with very great reluctance by the industrialized countries. The difference between the new formulation and the old one is that under the old formulation contracts entered into after the commencement of commercial production by the Enterprise would not carry an undertaking to transfer technology. Under the new formulation contracts entered into during the first 10 years following the commencement of commercial production by the Enterprise would carry such undertakings. This is therefore a major gain for the Enterprise. The negotiators of the Group of 77 said during the meetings that with this amendment the Group might refrain from pressing their other amendments to article 5 and thus consider negotiations on transfer of technology closed. I should mention here that during the consultations the industrialized countries continued to press for the deletion of subparagraph 3 (*e*), but the proposal continued to meet with strong opposition from the developing countries.

Article 140 and related provisions

It is well known that the United States as well as some other Western delegations have strongly opposed article 140 on the ground that only States Parties should benefit from activities in the Area and that under the formulation of the article in the negotiating text, liberation movements could be entitled to receive benefits from the Authority. Of the Western countries, the United States had the strongest feelings on this subject. On the other side, of the constituent groups in the Group of 77, the group of Arab States had equally strong feelings. In negotiating this issue all interested parties were invited to participate. The compromise which was worked out consisted of amendments to articles 140, 160 and 162. The main elements of the compromise are the following. First, paragraph 2 of article 140 has been amended to state that the principle contained in paragraph 1 of the same article should be applied on a non-discriminatory basis. The second element is that the peoples who have not attained full independence or other self-governing status may also benefit from the payments made pursuant to article 82. The power of the Council is limited to that of making recommendations to the Assembly. However, if the Assembly rejects the recommendations of the Council, the Assembly may not adopt its own proposals but shall return the rejected recommendations to the Council for reconsideration in the light of the views expressed by the Assembly. In this way a system of checks and balances has been constructed between the Assembly and the Council.

Article 183—Immunities of the Authority

Members of the European Economic Community drew my attention to the fact that article 183 in the negotiating text is not as well drafted as a similar provision in the recently-concluded Common Fund Agreement. The text of the article from the Common Fund Agreement, with slight modifications, was made the basis of further consultations with the three groups. It was subsequently possible to obtain the agreement of all the three groups to the text, with one alteration. The alteration is that the word "possible" will be deleted and replaced by the word "practicable". The phrase "and subject to the law of the Member concerned" has also been deleted.

I wish to express my profound gratitude to my fraternal friend, Mr. Koh, for the tremendous help he was to me personally and to the negotiating effort, especially in making contacts with opposing parties at short notice and making valuable suggestions to me at moments when I needed them most. The magnitude and complexity of the problems involved in this innovative decision-making procedure made it imperative for me to call on the characteristic co-operation of the most dedicated men in the Committee. I also wish to express thanks to Mr. J. Bailey for making himself available to Tommy Koh and myself in the process of consultations. I cannot fail to recognize with a deep sense of gratitude the sacrifice and sense of urgency demonstrated by all who participated in the consultations from the various delegations involved in the negotiations. I am particularly proud to have had the privilege of being involved in the difficult task of resolving so delicate a set of issues, having by my side such dedicated individuals as those who participated in them with me.

Finally, I wish to express sincere gratitude to the Committee Secretary, Mr. J. P. Levy, to Mr. A. El-Hussein and to Mr. R. Lee, and to the rest of the First Committee secretariat team without whose co-operation our effort would have been considerably more difficult.

ANNEX

Modifications to the negotiating text proposed by the working group

Article 140
Benefit of mankind

1. Activities in the Area shall, as specifically provided for in this Part, be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of the developing States and peoples who have not attained full independence or other self-governing status recognized by the United Nations in accordance with General Assembly resolution 1514 (XV) and other relevant General Assembly resolutions.

2. The Authority shall provide for the equitable sharing of financial and other economic benefits derived from activities in the Area through any appropriate mechanism, on a non-discriminatory basis, in accordance with article 160, paragraph 2 (*f*).

Article 147. Accommodation of activities in the Area and in the marine environment

2. (*b*) Such installations shall not be located where they may obstruct passage through sea lanes of vital importance for international shipping or in areas of intense fishing activity;

Article 150. Policies relating to activities in the Area

Activities in the Area shall, as specifically provided in this Part, be carried out in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to pro-

mote international co-operation for the over-all development of all countries, especially the developing States, and with a view to ensuring:

(*a*) orderly and safe development and rational management of the resources of the Area, including the efficient conduct of activities in the Area and, in accordance with sound principles of conservation, the avoidance of unnecessary waste;

(*b*) the expansion of opportunities for participation in such activities consistent particularly with articles 144 and 148;

(*c*) participation in revenues by the Authority and the transfer of technology to the Enterprise and developing States as provided for in this Convention;

(*d*) the increase in the availability of the minerals produced from the resources of the Area as needed in conjunction with minerals produced from other sources, to ensure supplies to consumers of such minerals;

(*e*) the promotion of just and stable prices remunerative to producers and fair to consumers for minerals produced both from the resources of the Area and from other sources, and promoting long-term equilibrium between supply and demand;

(*f*) the enhancing of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area and preventing monopolization of activities in the Area;

(*g*) the protection of developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral, or in the volume of that mineral exported, to the extent that such reductions are caused by activities in the Area, as provided in article 151;

(*h*) the development of the common heritage for the benefit of mankind as a whole; and

(*i*) conditions of access to markets for the imports of minerals produced from the resources of the Area and for imports of commodities produced from such minerals shall not be more favourable than the most favourable applied to imports from other sources.

Article 151. Production policies

1. Without prejudice to the objectives set forth in article 150 and for the purpose of implementing the provisions of article 150, subparagraph (*g*), the Authority, acting through existing forums or such new arrangements or agreements as may be appropriate, in which all interested parties, including both producers and consumers, participate, shall take measures necessary to promote the growth, efficiency and stability of markets for those commodities produced from the resources of the Area, at prices remunerative to producers and fair to consumers. All States Parties shall co-operate to this end. The Authority shall have the right to participate in any commodity conference dealing with those commodities and in which all interested parties including both producers and consumers participate. The Authority shall have the right to become a party to any such arrangement or agreement resulting from such conferences as are referred to above. The participation by the Authority in any organs established under the arrangements or agreements referred to above shall be in respect of production in the Area and in accordance with the rules of procedure established for such organs. The Authority shall carry out its obligations under such arrangements or agreements in a manner which assures a uniform and non-discriminatory implementation in respect of all production in the Area of the minerals concerned. In doing so, the Authority shall act in a manner consistent with the terms of existing contracts and approved plans of work of the Enterprise.

2. During an interim period specified in subparagraph (*a*), commercial production shall not be undertaken pursuant to an approved plan of work until an operator has applied for and has been issued a production authorization from the Authority during a period beginning not more than five years prior to the planned commencement of commercial production under that plan of work unless the Authority prescribes another period in its rules and regulations having regard to the nature and timing of project development. In this connexion, the Authority shall adopt appropriate performance requirements in accordance with article 17 of annex III. In his application for the authorization, the operator shall specify the annual quantity of nickel expected to be recovered under the approved plan of work. The application shall include a schedule of expenditures to be undertaken subsequent to receiving an authorization by the operator reasonably calculated to allow him to begin commercial production on the date planned. The Authority shall issue a production authorization for the level of production applied for unless the sum of that level and the levels already authorized exceeds the nickel production ceiling, as calculated pursuant to subparagraph (*b*) in the year of issuance of the authorization, during any year of planned production falling within the interim period. When issued, the production authorization and approved application shall become a part of the approved plan of work.

(*a*) The interim period shall begin five years prior to 1 January of the year in which the earliest commercial production is planned to commence under an approved plan of work. In the event that the earliest commercial production is delayed beyond the year originally planned, the beginning of the interim period and the production ceiling originally calculated shall be adjusted accordingly. The interim period shall last 25 years or until the end of the Review Conference referred to in article 155 or until the day when such new arrangements or agreements as are referred to in paragraph 1 enter into force, whichever is earliest. The Authority shall resume the power provided in this paragraph for the remainder of the interim period if the said arrangements to agreements should lapse or become ineffective for any reason whatsoever;

(*b*) The production ceiling for any year of the interim period beginning with the year of the earliest commercial production shall be the sum of (i) and (ii) below:

(i) The difference between the trend line values for annual nickel consumption, as calculated pursuant to this subparagraph, for the year immediately prior to the year of the earliest commercial production and the year immediately prior to the commencement of the interim period; plus

(ii) Sixty per cent of the difference between the trend line values for nickel consumption, as calculated pursuant to this subparagraph, for the year for which the production authorization is being applied for and the year immediately prior to the year of the earliest commercial production;

(iii) Trend line values used for computing the nickel production ceiling pursuant to this subparagraph shall be those annual nickel consumption values on a trend line computed during the year in which a production authorization is issued. The trend line shall be derived from a linear regression of the logarithms of actual nickel consumption for the most recent 15-year period for which such data are available, time being the independent variable. This trend line shall be referred to as the original trend line.

(iv) If the annual rate of increase of the original trend line is less than 3 per cent, then the trend line used to determine the quantities referred to in (i) and (ii) shall instead be one passing through the original trend line at the value for the first year of the relevant 15-year period, and increasing at 3 per cent annually. Provided however that the production ceiling established for any year of the interim period may not in any case exceed the difference between the original trend line value for that year and the original trend line value for the year immediately prior to the commencement of the interim period.

(*c*) The Authority shall reserve for production by the Enterprise for its initial use a quantity of 38,000 tons of nickel from the available production ceiling calculated pursuant to subparagraph (*b*);

(*d*) If, pursuant to subparagraph (*b*), the operator's application for an authorization is denied, the operator may reapply to the Authority at any time;

(*e*) An operator may in any year produce less than or up to 8 per cent more than that level of annual production of minerals from nodules specified in his production authorization, provided that the over-all amount of production shall not exceed that specified in the authorization. Any increase over 8 per cent and up to 20 per cent in any year or any increase in the third and subsequent years following two consecutive years in which increases occur shall be negotiated with the Authority, which may require the operator to obtain a supplementary production authorization to cover additional production. Applications for such supplementary production shall be taken up by the Authority only after all pending applications by operators who have not yet received production authorizations have been acted upon and due account has been taken of other likely applicants. The Authority shall be guided by the principle of not exceeding the total production allowed under the production limitation in any year of the interim period. It shall not authorize the production, under any plan of work, of a quantity in excess of 46,500 tons of nickel per year.

(*f*) The levels of production of other metals such as copper, cobalt and manganese extracted from the nodules that are recovered pursuant to a production authorization should not be higher than those which would have been produced had the operator produced the maximum level of nickel from those nodules pursuant to this paragraph. The Authority shall establish rules and regulations pursuant to annex III, article 17 to implement the provisions of this subparagraph.

3. The Authority shall have the power to limit the level of production of minerals from the Area, other than minerals from nodules, under such

conditions and applying such methods as may be appropriate. Regulations adopted by the Authority pursuant to this provision will be subject to the procedure set forth in article . . . (entry into force of amendments to this Convention).

4. Following recommendations from the Council on the basis of advice from the Economic Planning Commission, the Assembly shall establish a system of compensation or other measures of economic adjustment assistance including co-operation with specialized agencies and other international organizations 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 the volume of mineral exported, to the extent that such reduction is caused by activities in the Area. The Authority on request shall 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.

Article 155. The Review Conference

1. Fifteen years from the 1st of January of the year in which the earliest commercial production commences under an approved plan of work, the Assembly shall convene a conference for the review of those provisions of this Part and the relevant annexes which govern the system of exploration and exploitation of the resources of the Area. The Conference shall consider in detail, in the light of the experience acquired during that period, whether the provisions of this Part governing the system of exploration and exploitation of the resources of the Area have achieved their aims in all respects, including whether they have benefited mankind as a whole; whether, during the 15-year period, reserved areas have been exploited in an effective and balanced way in comparison with non-reserved areas; whether the development and use of the Area and its resources have been undertaken in such a manner as to foster healthy development of the world economy and balanced growth of international trade; whether monopolization of activities in the Area has been prevented; whether the policies set forth in articles 150 and 151 have been fulfilled; and whether the system has resulted in the equitable sharing of benefits to be derived from activities in the Area, taking into particular consideration the interests and needs of the developing States.

2. The Conference shall ensure that the principles of the common heritage of mankind, the international régime designed to ensure its equitable exploitation for the benefit of all countries, especially the developing States and an Authority to conduct, organize and control activities in the Area are maintained. It shall also ensure the maintenance of the principles laid down in this Part with regard to the exclusion of claims or exercise of sovereignty over any part of the Area, the rights of States and their general conduct in relation to the Area, and their participation in exploration and exploitation of its resources in conformity with this Convention, the prevention of monopolization of activities in the Area, the use of the Area exclusively for peaceful purposes, economic aspects of activities in the Area, scientific research, transfer of technology, protection of the marine environment, and of human life, rights of coastal States, the legal status of the superjacent waters and air space and accommodation as between the various forms of activities in the Area and in the marine environment.

3. The Conference shall establish its own rules of procedure.

4. (formerly paragraph 5). Five years after the commencement of the Review Conference, if agreement has not been reached on the system of exploration and exploitation of the resources of the Area, the Conference may decide during the ensuing twelve months, by a two-thirds majority of the States Parties, to adopt and submit to the States Parties for ratification, accession, or acceptance such amendments changing or modifying the system as it determines necessary and appropriate. Such amendments shall enter into force for all States Parties twelve months after the date of deposit of the instruments of ratification, accession, or acceptance by two-thirds of the States Parties.

5. (formerly paragraph 4). Amendments adopted by the Conference under provisions of this article shall not affect rights acquired under existing contracts.

Article 158. Organs of the Authority

4. The principal organs and the Enterprise shall each be responsible for exercising those powers and functions which have been conferred upon them. In exercising such powers and functions each organ shall avoid taking any action which may derogate from or impede the exercise of specific powers and functions conferred upon another organ.

Article 160. Powers and functions

2 . . .

(*f*) (i) Consideration and approval, upon the recommendation of the Council, of the rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the payments and contributions made pursuant to Article 82, taking into particular consideration the interests and the needs of the developing States and peoples who have not attained full independence or other self-governing status. If the Assembly does not approve the recommendations of the Council, the Assembly shall return them to the Council for reconsideration in the light of the views expressed by the Assembly;

(ii) Consideration and approval of the rules, regulations and procedures of the Authority, and any amendments thereto, provisionally adopted by the Council pursuant to Article 162, paragraph 2 (*p*). These rules, regulations and procedures shall relate to prospecting, exploration, and exploitation in the Area, the financial management and internal administration of the Authority, and, upon the recommendation of the Governing Board of the Enterprise, the rules, regulations and procedures for the transfer of funds from the Enterprise to the Authority;

. . .

(*j*) Deciding upon the equitable sharing of financial and other economic benefits derived from activities in the Area, consistent with the provisions of this Convention and the rules, regulations and procedures of the Authority;

. . .

(*n*) Discussion of any question or matter within the competence of the Authority and decisions as to which organ shall deal with any such question or matter not specifically entrusted to a particular organ of the Authority, consistent with the distribution of powers and functions among the organs of the Authority.

Article 161. Composition, procedure and voting

1. The Council shall consist of 36 members of the Authority elected by the Assembly, the election to take place in the following order:

(*a*) Four members from among the eight States Parties which have the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals, including at least one State from the Eastern (Socialist) European region;

(*b*) Four members from among those States Parties which, during the last five years for which statistics are available, have either consumed more than two per cent of total world consumption or have had net imports of more than two per cent of total world imports of the commodities produced from the categories of minerals to be derived from the Area, and in any case one State from the Eastern (Socialist) European region;

(*c*) Four members from among countries 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 countries whose exports of such minerals have a substantial bearing upon their economies;

(*d*) Six members from among developing States, 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, 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 (Socialist), Latin America and Western Europe and others.

2. In electing the members of the Council in accordance with paragraph 1, the Assembly shall ensure that:

(*a*) Land-locked and geographically disadvantaged States are represented to a degree which is reasonably proportionate to their representation in the Assembly;

(*b*) Coastal States, especially developing States, which do not qualify under paragraph 1 (*a*), (*b*), (*c*) and (*d*) are represented to a degree which is reasonably proportionate to their representation in the Assembly;

(*c*) Each group of States Parties to be represented on the Council is represented by those members, if any, which are nominated by the group.

3. Elections shall take place at regular sessions of the Assembly, and each member of the Council shall be elected for a term of four years. In the first election of members of the Council, however, one half of the members of each category shall be chosen for a period of two years.

4. Members shall be eligible for re-election; but due regard should be paid to the desirability of rotating seats.

5. The Council shall function at the seat of the Authority, and shall meet as often as the business of the Authority may require, but not less than three times a year.

6. Each member of the Council shall have one vote.

7. (*a*) Decisions on questions of procedure shall be taken by a majority of the members present and voting:

(*b*) Decisions on questions of substance arising under the following provisions shall be taken by a two-thirds majority of the members present and voting, provided that such majority includes a majority of the members of the Council: Article 162, paragraph 2 (*f*), (*g*), (*h*), (*i*), (*m*), (*o*) and (*u*); article 189;

(*c*) Decisions on questions of substance arising under the following provisions shall be taken by a three-fourths majority of the members present and voting, provided that such majority includes a majority of the members of the Council: article 162, paragraph 1; paragraph 2 (*a*), (*b*), (*c*), (*d*), (*e*), (*k*), (*p*), (*q*), (*r*) and (*s*); paragraph 2 (*t*) in cases of non-compliance by a contractor or a sponsor; paragraph 2 (*v*) provided that orders issued under this subparagraph may be binding for no more than 30 days unless confirmed by a decision taken in accordance with subparagraph (*d*) below; paragraph 2 (*w*), (*x*), and (*y*); article 163, paragraph 2; article 174, paragraph 3; article 11 of annex IV;

(*d*) Decisions on questions of substance arising under the following provisions shall be decided by consensus: article 162, paragraph 2 (*l*) and (*n*); adoption of amendments to Part XI;

(*d*) Decisions on questions of substance arising under the following provisions shall be decided by consensus: article 162, paragraph 2 (*l*) and (*n*); adoption of amendments to Part XI;

(*e*) For the purpose of subparagraph (*d*) above, the term "consensus" means the absence of any formal objection. Within 14 days of the submission of a proposal to the Council the President shall ascertain whether there would be an objection to the proposal if it were put to the Council for adoption. If the President of the Council ascertains that there would be an objection to a proposal before the Council, he shall constitute a Conciliation Committee consisting of not more than nine members, with himself as Chairman, for the purpose of reconciling the differences and producing a proposal which can be adopted by consensus. The President shall establish the said committee within three days following such ascertainment. The Conciliation Committee shall work expeditiously and report to the Council within 14 days. If the Conciliation Committee is unable to recommend a proposal which can be adopted by consensus it shall, in its report, set out the grounds on which a proposal is being opposed;

(*f*) Decisions not listed above which the Council is authorized to take by the rules, regulations and procedures of the Authority or otherwise shall be taken pursuant to the subparagraphs of this article specified in the rules, regulations and procedures or, if not specified therein, then pursuant to the subparagraph determined by the Council, if possible in advance, by the majority required for questions under subparagraph (*d*) above;

(*g*) When the issue arises as to whether a question is within subparagraphs (*a*), (*b*), (*c*) or (*d*) above, the question shall be treated as being within the subparagraph requiring the higher or highest majority as the case may be, unless otherwise decided by the Council by the said majority.

8. A majority of the members of the Council shall constitute a quorum.

9. The Council shall establish a procedure whereby a member of the Authority not represented on the Council may send a representative to attend a meeting of the Council when a request is made by such member, or a matter particularly affecting it is under consideration. Such a representative shall be entitled to participate in the deliberations but not to vote.

Article 162. Powers and functions

1. The Council is the executive organ of the Authority, having the power to establish in conformity with the provisions of this Convention and the general policies established by the Assembly, the specific policies to be pursued by the Authority on any questions or matters within the competence of the Authority.

2. In addition, the Council shall:

(*a*) Supervise and co-ordinate the implementation of the provisions of this Part on all questions and matters within the competence of the Authority and invite the attention of the Assembly to cases of non-compliance;

(*b*) Propose to the Assembly a list of candidates for the election of the Secretary-General;

(*c*) Recommend to the Assembly candidates for election as members of the Governing Board of the Enterprise as well as the Director-General of the Enterprise;

(*d*) Establish, as appropriate, and with due regard to economy and efficiency, in addition to the Commissions provided for in article 163, paragraph 1, such subsidiary organs as may be found necessary for the performance of its functions in accordance with the provisions of this Part. In the composition of such subsidiary organs, emphasis shall be placed on the need for members qualified and competent in the relevant technical matters dealt with by such organs provided that due account shall be taken of the principle of equitable geographical distribution and of special interests;

(*e*) Adopt its rules of procedure including the method of selecting its president;

(*f*) Enter into agreements with the United Nations or other international organizations on behalf of the Authority and within its competence, subject to approval by the Assembly;

(*g*) Examine the reports of the Enterprise and transmit them to the Assembly with its recommendations;

(*h*) Present to the Assembly annual reports and such special reports as the Assembly may require;

(*i*) Issue directives to the Enterprise in accordance with article 170;

(*j*) Approve plans of work in accordance with article 6 of Annex III. The Council shall act upon each plan of work within 60 days of its submission by the Legal and Technical Commission at a session of the Council in accordance with the following procedures:

(i) If the Commission recommends the approval of a plan of work, it shall be deemed to have been approved by the Council if no Council member submits to the President within 14 days a specific written objection alleging non-compliance with the requirements of article 6 of annex III. In the event that there is an objection, the conciliation procedure contained in article 161, paragraph 7 (*e*), shall apply. If, at the end of the conciliation process, the objection to the approval of the plan of work is still maintained, the plan of work shall be deemed to have been approved by the Council unless the Council disapproves it by consensus among its members excluding the State or States, if any, making the application or sponsoring the applicant;

(ii) If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may decide to approve the plan of work by a three-fourths majority of the members present and voting, provided that such majority includes a majority of members participating in that session;

(*k*) Exercise control over activities in the Area in accordance with article 153, paragraph 4 and the rules, regulations and procedures of the Authority;

(*l*) Adopt on the recommendation of the Economic Planning Commission necessary and appropriate measures in accordance with article 150, subparagraph (*g*), to protect against adverse economic effects specified therein;

(*m*) Make recommendations to the Assembly on the basis of advice from the Economic Planning Commission for a system of compensation or other measures of economic adjustment assistance as provided in article 151, paragraph 4;

(*n*) (i) Recommend to the Assembly rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the payments and contributions made pursuant to article 82, taking into particular consideration the interests and needs of the developing States and peoples who have not attained full independence or other self-governing status;

(ii) Adopt and supply provisionally, pending approval by the Assembly, the rules, regulations and procedures of the Authority, and any amendments thereto, taking into account the recommendations of the Commission or other subordinate organ concerned. These rules, regulations and procedures shall relate to prospecting, exploration and exploitation in the Area, the financial management and internal administration of the Authority. Such rules, regulations and procedures shall remain in ef-

fect on a provisional basis until approval by the Assembly or by the Council in the light of any views expressed by the Assembly.

(*o*) Review the collection of all payments to be made by or to the Authority in connexion with operations pursuant to this Part;

(*p*) Make the selection among applicants for production authorization pursuant to article 7 of Annex III for the production authorization referred to in article 151, where such selection is required by those provisions;

(*q*) Submit to the Assembly for its approval the budget of the Authority;

(*r*) Make recommendations to the Assembly concerning policies on any question or matter within the competence of the Authority;

(*s*) Make recommendations to the Assembly concerning suspension of the privileges and rights of membership for gross and persistent violations of the provisions of this Part upon a finding of the Sea-Bed Disputes Chamber;

(*t*) Initiate on behalf of the Authority proceedings before the Sea-Bed Disputes Chamber in cases of non-compliance;

(*u*) Upon a finding by the Sea-Bed Disputes Chamber on proceedings resulting from subparagraph (*t*), notify the Assembly and make recommendations with respect to measures to be taken unless otherwise decided;

(*v*) Issue emergency orders, which may include orders for the suspension or adjustment of operations, to prevent serious harm to the marine environment arising out of any activity in the Area;

(*w*) Disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment;

(*x*) Establish a subsidiary organ for the elaboration of draft financial rules, regulations and procedures relating to:

(i) financial management in accordance with articles 171 to 175; and

(ii) financial arrangements in accordance with article 13 and article 17, paragraph 1 (*c*), of annex II.

(*y*) Establish appropriate mechanisms for directing and supervising a staff of inspectors who shall inspect activities in the Area to determine whether the provisions of this Part, the rules, regulations and procedures prescribed thereunder, and the terms and conditions of any contract with the Authority are being complied with;

(*z*) Approve plans of work submitted by the Enterprise in accordance with article 12 of annex IV, applying, *mutatis mutandis*, the procedures set forth in subparagraph (*j*).

Article 163. Organs of the Council

1. There are hereby established the following organs of the Council:

(*a*) Legal and Technical Commission;

(*b*) Economic Planning Commission.

2. Each Commission shall be composed of 15 members elected by the Council upon nomination by the States Parties. The Council may, however, if necessary, decide to increase the size of any Commission with due regard to economy and efficiency.

3. Members of the Commissions shall have appropriate qualifications in the area of competence of the Commission in which they seek election. In submitting names of candidates for election to the Commissions, States Parties shall bear in mind the need to submit candidates of the highest standard of competence and integrity with qualifications in relevant fields so as to ensure the effective functioning of the Commissions.

4. In the election of members of the Commissions, due regard shall be paid to the need for equitable geographical distribution and representation of special interests.

5. No State may nominate more than one person as a candidate to serve in the same Commission. No person shall be elected to serve in more than one Commission.

6. In the event of the death, incapacity or resignation of a member of a Commission prior to the expiry of his term of office, the Council shall appoint a member from the same geographical region or area of interest who shall hold office for the remainder of the term of the previous member.

7. Members of a Commission shall hold office for a term of five years. They shall be eligible for re-election for a further term.

8. Members of Commissions shall have no financial interest whatsoever in any activity relating to exploration and exploitation in the Area. Subject to their responsibilities to the Commissions upon which they serve, they shall not disclose, even after the termination of their functions, any industrial secret or data which is proprietary in accordance with article 14 of annex III to the present Convention, or other confidential information coming to their knowledge by reason of their duties for the Authority.

9. Each Commission shall perform its functions in accordance with such guidelines and directives as the Council may adopt.

10. Each Commission shall formulate and submit to the Council for approval such rules and regulations as may be necessary for the efficient conduct of the Commission's functions.

11. The decision-making procedures of the Commissions shall be established by the rules, regulations and procedures of the Authority. Recommendations to the Council shall, where necessary, be accompanied by a summary on the divergencies of opinion in the Commission.

12. Each Commission shall normally function at the seat of the Authority and shall meet as often as shall be required for the efficient performance of its functions.

13. In the performance of these functions, each Commission may, where appropriate, consult another commission or any competent organ of the United Nations and its specialized agencies, or any international organizations with relevant competence in the subject-matter of such consultation.

Article 165. The Legal and Technical Commission

1. Members of the Legal and Technical Commission shall have appropriate qualifications such as those relevant to exploration, exploitation and processing of mineral resources; oceanology; protection of the marine environment or economic or legal matters relating to ocean mining and other relevant fields of expertise. The Council shall endeavour to ensure that the membership fulfils the need for all appropriate qualifications in the Commission as a whole.

2. The Commission shall:

(*a*) Upon the request of the Council make recommendations with regard to the carrying out of the Authority's functions;

(*b*) Review formal written plans of work for activities in the Area in accordance with article 153, paragraph 3, and submit appropriate recommendations to the Council. The Commission shall base its recommendations solely on the grounds stated in annex III and shall report fully thereon to the Council;

(*c*) Upon the request of the Council, supervise activities in the Area, where appropriate, in consultation and collaboration with any entity carrying out such activities or State or States concerned and report to the Council;

(*d*) Prepare assessments of the environmental implications of activities in the Area;

(*e*) Make recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts in that field;

(*f*) Formulate and submit to the Council the rules, regulations and procedures referred to in article 162, paragraph 2 (*n*), taking into account all relevant factors including assessments of the environmental implications of activities in the Area;

(*g*) Keep such rules, regulations and procedures under review and recommend to the Council from time to time such amendments thereto as it may deem necessary or desirable;

(*h*) Make recommendations to the Council regarding the establishment of a monitoring programme which shall observe, measure, evaluate and analyse by recognized scientific methods on a regular basis the risks and effects of activities in the Area with respect to pollution of the marine environment, ensure that existing regulations are adequate and complied with and co-ordinate the implementation of the monitoring programme approved by the Council;

(*i*) Recommend to the Council that proceedings be initiated on behalf of the Authority before the Sea-Bed Disputes Chamber, in accordance with this Part and the relevant annexes as provided in article 187;

(*j*) Upon a finding by the Sea-Bed Disputes Chamber on proceedings resulting from subparagraph (*i*) above, make recommendations to the Council with respect to measures to be taken;

(*k*) Make recommendations to the Council to issue emergency orders, which may include orders for the suspension or adjustment of operations to prevent serious harm to the marine environment arising out of activities in the Area. Such recommendations shall be taken up by the Council on a priority basis;

(*l*) Make recommendations to the Council to disapprove areas for ex-

ploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment;

(*m*) Make recommendations to the Council regarding the direction and supervision of a staff of inspectors who shall inspect activities in the Area to determine whether the provisions of this Part, the rules, regulations and procedures prescribed thereunder, and the terms and conditions of any contract with the Authority are being complied with;

(*n*) Calculate the production ceiling and issue production authorizations on behalf of the Authority pursuant to article 151, following any necessary selection among applicants for production authorizations by the Council in accordance with article 7 of annex III.

3. The members of the Commission shall, upon request by any State Party or other party concerned, be accompanied by a representative of such State Party or other party concerned when carrying out their function of supervision and inspection.

Article 166. The Secretary-General

2. The Secretary-General shall act in that capacity in all meetings of the Assembly and of the Council, and of any subsidiary organs, and shall perform such other administrative functions as are entrusted to him by any such organs.

Article 167. The staff of the Authority

3. The staff shall be appointed by the Secretary-General. The terms and conditions on which the staff shall be appointed, remunerated and dismissed shall be in accordance with the rules, regulations and procedures of the Authority.

Article 168. International character and responsibilities of the secretariat

1. In the performance of their duties, the Secretary-General and the staff shall not seek or receive instructions from any Government or from any other source external to the Authority. They shall refrain from any action which might reflect on their position as international officials of the Authority responsible only to the Authority. Each State Party undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities. Any violation of responsibilities by a staff member shall be submitted to appropriate administrative tribunal as provided in the rules, regulations and procedures of the Authority.

. . .

3. Violations of the obligations of a staff member of the Authority set forth in paragraph 2 shall, on the request of a State Party affected by such violation, or a natural or juridical person, sponsored by a State Party as provided in article 153, paragraph 2 (*b*), and affected by such violation, be submitted by the Authority against the staff member concerned to a tribunal designated by the rules, regulations and procedures of the Authority. The Party affected shall have the right to take part in the proceedings. If the tribunal so recommends, the Secretary-General shall dismiss the staff member concerned.

4. The elaboration of the relevant provisions of this article shall be included in the rules, regulations and procedures of the Authority.

Article 176. Legal status

The Authority shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purpose.

Article 183. Immunities from taxation

1. Within the scope of its official activities, the Authority, its assets, property, income and its operations and transactions authorized by this Convention shall be exempt for all direct taxation and from all customs duties on goods imported or exported from its official use. The Authority shall not claim exemption from taxes which are no more than charges for services rendered.

2. When purchases of goods or services of substantial value necessary for the official activities of the Authority are made by or on behalf of the Authority, and when the price of such purchases includes taxes or duties, appropriate measures shall, to the extent practicable, be taken by States Parties to grant exemption from such taxes or duties or provide for their reimbursement. Goods imported or purchased under an exemption provided for in this article shall not be sold or otherwise disposed of in the territory of the State Party which granted the exemption, except under conditions agreed with that State Party.

3. No tax shall be levied by States Parties on or in respect of salaries and emoluments paid or any other form of payment made by the Authority to the Secretary-General and staff of the Authority, as well as experts performing missions for the Authority, who are not their citizens, nationals or subjects.

Article 184. Suspension of voting rights

A State Party which is in arrears in the payment of its financial contributions to the Authority shall have no vote in the Authority if the amount of its arrears equals or exceeds the amount of the contribution due from it for the preceding two years. The Assembly may permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.

ANNEX III

Article 4. Qualifications of applicants

1. Applicants, other than the Enterprise, shall be qualified if they have the nationality or control and sponsorship required by article 153, paragraph 2 (*b*), of this Convention and if they follow the procedures and meet the qualification standards established by the Authority by means of rules, regulations and procedures.

2. Sponsorship by the State Party of which the applicant is a national shall be sufficient unless the applicant has more than one nationality, as in the case of a partnership or consortium of entities from several States, in which event all States Parties involved shall sponsor the application, or unless the applicant is effectively controlled by another State Party or its nationals, in which event both States Parties shall sponsor the application. The criteria and procedures for implementation of the sponsorship requirements shall be set forth in the rules, regulations and procedures of the Authority.

3. The sponsoring State or States shall, pursuant to article 139, have the responsibility to ensure, within their legal systems, that a contractor so sponsored shall carry out activities in the Area in conformity with its obligations under this Convention and the terms of its contract. A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has adopted laws and regulations and taken administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction.

4. Except as provided in paragraph 6 below, such qualification standards shall relate to the financial and technical capabilities of the applicant and his performance under previous contracts with the Authority.

5. The procedures for assessing the qualifications of States Parties which are applicants shall take into account their character as States.

6. The qualification standards shall require that every applicant, without exception, shall as part of his application undertake:

(*a*) to accept as enforceable and comply with the applicable obligations created by the provisions of Part XI, rules and regulations of the Authority, decisions of the organs of the Authority, and terms of his contracts with the Authority;

(*b*) to accept control by the Authority of activities in the Area, as authorized by this Convention;

(*c*) to provide the Authority with a written assurance that his obligations under the contract will be fulfilled in good faith;

(*d*) to comply with the provisions on the transfer of technology set forth in article 5 of this annex.

Article 5. Transfer of technology

1. When submitting a proposed plan of work, every applicant shall make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the Area, as well as other relevant non-proprietary information about the characteristics of such technology, and information as to where such technology is available.

2. Every operator under an approved plan of work shall inform the Authority of revisions in the description and information required by paragraph 1 whenever a substantial technological change or innovation is introduced.

3. Every contract for the conduct of activities in the Area entered into by the Authority shall contain the following undertakings by the operator:

(*a*) To make available to the Enterprise, if and when the Authority shall so request and on fair and reasonable commercial terms and conditions, the technology which he uses in carrying out activities in the Area under the contract and which he is legally entitled to transfer. This shall

be done by means of licence or other appropriate arrangements which the operator shall negotiate with the Enterprise and which shall be set forth in a special agreement supplementary to the contract. This commitment may be invoked only if the Enterprise finds that it is unable to obtain the same or equally efficient and useful technology on the open market and on fair and reasonable commercial terms and conditions;

(*b*) To obtain a written assurance from the owner of any technology not covered under subparagraph (*a*) that the operator uses in carrying out activities in the Area under the contract and which is not generally available on the open market that the owner will, if and when the Authority so requests, make available to the Enterprise to the same extent as made available to the operator, that technology under license or other appropriate arrangements and on fair and reasonable commercial terms and conditions. If such assurance is not obtained, the technology in question shall not be used by the operator in carrying out activities in the Area;

(*c*) To acquire, if and when requested to do so by the Enterprise and whenever it is possible to do so without substantial cost to the contractor, a legally binding and enforceable right to transfer to the Enterprise in accordance with subparagraph (*a*) any technology he uses in carrying out activities in the Area under the contract which he is not legally entitled to transfer and which is not generally available on the open market. In cases where there is a substantial corporate relationship between the operator and the owner of the technology, the closeness of this relationship and the degree of control or influence shall be relevant to the determination whether all feasible measures have been taken. In cases where the operator exercises effective control over the owner, failure to acquire the legal rights from the owner shall be considered relevant to the applicant's qualifications for any subsequent proposed plan of work;

(*d*) To facilitate the acquisition by the Enterprise under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditior. any technology covered by subparagraph (*b*) should the Enterprise decide to negotiate directly with the owner of the technology and request such facilitation;

(*e*) To take the same measures as those prescribed in subparagraphs (*a*), (*b*), (*c*) and (*d*) for the benefit of a developing State or group of developing States which has applied for a contract under article 9 of this annex, provided that these measures shall be limited to the exploitation of the part of the area proposed by the contractor which has been reserved pursuant to article 8 and provided that activities under the contract sought by the developing State or group of developing States would not involve transfer of technology to a third State or the nationals of a third State. Obligations under this provision shall only apply with respect to any given contractor where technology has not been requested or transferred by him to the Enterprise.

4. Disputes concerning the undertakings required by paragraph 3, like other provisions of the contracts, shall be subject to compulsory dispute settlement in accordance with Part XI, and monetary penalties, suspension, or termination of contract as provided in article 18. Disputes as to whether offers made by the contractor are within the range of fair and reasonable commercial terms and conditions may be submitted by either party to binding commercial arbitration in accordance with the United Nations Commission on International Trade Law arbitration rules or other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority. In any case in which the finding is negative, the contractor shall be given 45 days to revise his offer to bring it within that range before the Authority makes any determinations with respect to violation of the contract and the imposition of penalties, as provided in article 18 of this annex.

5. In the event that the Enterprise is unable to obtain appropriate technology on fair and reasonable commercial terms and conditions to commence in a timely manner the recovery and processing of minerals from the Area, either the Council or the Assembly may convene a group of States Parties composed of those which are engaged in activities in the Area, those which have sponsored entities which are engaged in activities in the Area and other States Parties having access to such technology. This group shall consult together and shall take effective measures to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions. Each such State Party shall take all feasible measures to this end within its own legal system.

6. In the case of joint ventures with the Enterprise, technology transfer will be in accordance with the terms of the joint venture agreement.

7. The undertakings required by paragraph 3 shall be included in each contract for the conduct of activities in the Area until 10 years after the Enterprise has begun commercial production of minerals from the resources of the Area and may be invoked during that period.

8. For the purposes of this article, "technology" means the specialized equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to assemble, maintain and operate a viable system and the legal right to use these items for that purpose on a non-exclusive basis.

Article 6. Approval of plans of work submitted by applicants

1. Six months after the entry into force of this Convention, and thereafter each fourth month, the Authority shall take up for consideration proposed plans of work.

2. When considering an application for a contract with respect to activities in the Area, the Authority shall first ascertain whether:

(*a*) the applicant has complied with the procedures established for applications in accordance with article 4 of this annex and has given the Authority the commitments and assurances required by that article. In cases of non-compliance with these procedures or of absence of any of the commitments and assurances referred to, the applicant shall be given 45 days to remedy such defects;

(*b*) the applicant possesses the requisite qualifications pursuant to article 4.

3. All proposed plans of work shall be dealt with in the order in which they were received, and the Authority shall conduct, as expeditiously as possible, an inquiry into their compliance with the terms of this Convention and the rules, regulations and procedures of the Authority, including the operational requirements, the financial contributions and the undertakings concerning the transfer of technology. As soon as the issues under investigation have been settled, the Authority shall approve such plans of work, provided that they conform to the uniform and non-discriminatory requirements established by the rules, regulations, and procedures of the Authority, unless:

(*a*) Part or all of the proposed area is included in a previously approved plan of work or a previously submitted proposed plan of work which has not yet been finally acted on by the Authority; or

(*b*) Part or all of the proposed area is disapproved by the Authority pursuant to article 162, paragraph 2 (*w*);

(*c*) The proposed plan of work has been submitted or sponsored by a State Party which already holds:

(i) plans of work for exploration and exploitation of polymetallic nodules in non-reserved sites that, together with either part of the proposed site, would exceed in size 30 per cent of a circular area of 400,000 square kilometres surrounding the centre of either part of the area covered by the proposed plan of work,

(ii) plans of work for the exploration and exploitation of polymetallic nodules in non-reserved sites which in aggregate size constitute 2 per cent of the total sea-bed area which is not reserved or otherwise withdrawn by the Authority from eligibility for exploitation pursuant to article 162, paragraph 2 (*w*).

4. For the purpose of the standard set forth in paragraph 3 (*c*), a plan of work proposed by a partnership or consortium shall be counted on a *pro rata* basis among the sponsoring States Parties involved according to article 4, paragraph 2, of this annex. The Authority may approve plans of work covered by paragraph 3 (*c*) above, if it determines that such approval would not permit a State Party or persons sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the Area.

5. Notwithstanding the provisions of subparagraph 3 (*a*) above, after the end of the interim period as defined in article 151, the Authority may adopt by means of rules, regulations and procedures other procedures and criteria consistent with this Convention for deciding which applicants shall have plans of work approved in cases of selection among applicants for a proposed area. These procedures and criteria shall ensure approval of plans of work on an equitable and non-discriminatory basis.

Article 7. Selection of applicants

1. Six months after the entry into force of this Convention, and thereafter each fourth month, the Authority shall take up for consideration applications for production authorization submitted during the immediately preceding period. In the event all such applications can be approved without exceeding the production limitation or contravening the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided in Article 151, the Authority shall issue the authorizations applied for.

2. Where the selection must be made among applicants for production authorization because of the production limitation set forth in article 151, paragraph 2, or because of the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as

provided for in article 151, paragraph 1, the Authority shall make the selection on the basis of objective and non-discriminatory standards set forth in rules and regulations drawn up in accordance with this article.

3. The Authority shall consider all applications for production authorization received within the preceding period of time referred to in paragraph 1, and shall give priority to those which:

(*a*) Give better assurance of performance, taking into account the financial and technical qualifications of the proposed operator and performance, if any, under previously approved plans of work;

(*b*) Provide earlier prospective financial benefits to the Authority, taking into account when production is scheduled to begin;

(*c*) Have already invested most resources and effort in prospecting or exploration.

4. Applicants who are not selected in any period shall have priority in subsequent periods until they receive an authorization.

5. Selection shall be made taking into account the need to enhance opportunities for all States Parties, irrespective of their social and economic systems or geographical locations so as to avoid discrimination against any State or system, to participate in activities in the Area and to prevent monopolization of such activities. The provisions of this subparagraph shall be applied whenever the Authority considers priorities for production authorization.

6. Production authorization with respect to reserved areas shall have priority whenever fewer reserved sites than non-reserved sites are under exploitation.

7. The Authority shall make its decisions pursuant to this article as promptly as possible after the close of each period.

Article 11. Joint arrangements

3. Joint venture partners of the Enterprise shall be liable for the payments required by article 13 to the extent of their joint ventures share, subject to financial incentives as provided in article 13.

Article 13. Financial terms of contracts

1. In adopting rules, regulations and procedures concerning the financial terms of a contract between the Authority and the entities referred to in article 153, paragraph 2 (*b*), in accordance with the provisions of Part XI of this Convention, and in negotiating the financial terms of a contract in accordance with the provisions of Part XI and those rules, regulations and procedures, the Authority shall be guided by the following objectives:

(*a*) To ensure optimum revenues for the Authority from the proceeds of commercial exploitation;

(*b*) To attract investments and technology to the exploration and exploitation of the Area;

(*c*) To ensure equality of financial treatment and comparable financial obligations on the part of all States and other entities which obtain contracts;

(*d*) To provide incentives on a uniform and non-discriminatory basis for contractors to undertake joint arrangements with the Enterprise and developing countries or their nationals, to stimulate the transfer of technology thereto, and to train the personnel of the Authority and of developing States;

(*e*) To enable the Enterprise to engage in sea-bed mining effectively at the same time as the entities referred to in article 153, paragraph 2 (*b*); and

(*f*) To ensure that the financial incentives provided to contractors under paragraph 14 below, or under the terms of contracts reviewed in accordance with article 19 of this Convention, or under the provisions of article 11 with respect to joint ventures, shall not result in subsidizing contractors with a view to placing them at an artificially competitive advantage relative to land-based miners.

2. A fee shall be levied for the administrative cost of processing an application for a contract of exploration and exploitation and shall be fixed at an amount of $500,000 per application. If the cost incurred by the Authority in processing an application is less than $500,000, the Authority shall refund the difference to the applicant. The amount of the fee shall be reviewed from time to time by the Council in order to ensure that it covers the administrative cost of processing such an application.

3. A contractor shall pay an annual fixed fee of $1 million from the date of entry into force of the contract. If the approved commencement of commercial production is postponed because of a delay in the allocation of the production authorization, in accordance with article 151, the annual fixed fee shall be waived for the period of postponement. From the commencement of commercial production, the contractor shall pay either the production charge or the annual fixed fee, whichever is greater.

4. Within a year from the date of commencement of the commercial production, in conformity with paragraph 3, a contractor shall choose to make his financial contribution to the Authority by either:

(*a*) Paying a production charge only; or

(*b*) Paying a combination of a production charge and a share of net proceeds.

5. (*a*) If a contractor chooses to make his financial contribution to the Authority by paying a production charge only, it shall be fixed at a percentage of the market value of the processed metals produced from the nodules extracted from the contract area in accordance with the following schedule:

(i) Years 1-10 of commercial production: 5 per cent

(*ii*) Years 11 to the end of commercial production: 12 per cent

(*b*) The said market value shall be the product of the quantity of the processed metals produced from the nodules extracted from the contract area and the average price for those metals during the relevant accounting years, as defined in paragraphs 7 and 8.

6. If a contractor chooses to make his financial contribution to the Authority by paying a combination of a production charge and a share of net proceeds, such payments shall be determined as follows:

(*a*) The production charge shall be fixed at a percentage of the market value of the processed metals produced from the nodules extracted from the contract area in accordance with the following schedule:

(i) First period of commercial production: 2 per cent

(ii) Second period of commercial production: 4 per cent

If, in the second period of commercial production, as defined in subparagraph (*d*), the return on investment in any accounting year, as defined in subparagraph (*m*), shall fall below 15 per cent as a result of the payment of the production charge at 4 per cent, the production charge shall be 2 per cent instead of 4 per cent in that accounting year;

(*b*) The said market value shall be the product of the quantity of the processed metals produced from the nodules extracted from the contract area and the average price for those metals during the relevant accounting year as defined in paragraphs 7 and 8.

(*c*) (i) The Authority's share of net proceeds shall be taken out of that portion of the contractor's net proceeds which is attributable to the mining of the resources of the contract area, referred to hereinafter as attributable net proceeds.

(ii) The Authority's share of attributable net proceeds shall be determined in accordance with the following incremental schedule:

Portion of attributable net proceeds	*First period of commercial production*	*Second period of commercial production*
That portion representing a return on investment which is greater than 0 per cent, but less than 10 per cent	35 per cent	40 per cent
That portion representing a return on investment which is 10 per cent or greater, but less than 20 per cent	42.5 per cent	50 per cent
That portion representing a return on investment which is 20 per cent or greater	50 per cent	70 per cent

(*d*) The first period of commercial production referred to in subparagraphs (*a*) and (*c*) shall commence in the first accounting year of commercial production, and terminate in the accounting year in which the contractor's development costs with interest on the unrecovered portion thereof are fully recovered by his cash surplus, as set out below. In the first accounting year during which development costs are incurred, unrecovered development costs shall equal the development costs less cash surplus in that year. In each subsequent accounting year, unrecovered development costs shall equal the unrecovered development costs of the preceding accounting year, plus interest thereon at the rate of 10 per cent per annum, plus development costs incurred in the current accounting year and less contractor's cash surplus in the current accounting year. The accounting year in which unrecovered development costs become zero for the first time shall be the accounting year in which the contractor's development costs with interest on the unrecovered portion thereof are fully

recovered by his cash surplus. The contractor's cash surplus in any accounting year shall be his gross proceeds less his operating costs and less his payments to the Authority under subparagraph (*c*). The second period of commercial production shall commence in the accounting year following the termination of the first period of commercial production and shall continue until the end of the contract.

(*e*) The term "attributable net proceeds" shall mean the product of the contractor's net proceeds and the ratio of the development costs in the mining sector to the contractor's development costs. In the event that the contractor engages in mining, transportation of nodules and production primarily of three processed metals, namely, cobalt, copper and nickel, the amount of attributable net proceeds shall not be less than 25 per cent of the contractor's net proceeds. Subject to subparagraph (*n*), in all other cases, including those where the contractor engages in mining, transportation of nodules, and production primarily of four processed metals, namely, cobalt, copper, manganese and nickel, the Authority may, by regulations, prescribe appropriate floors which shall bear the same relationship to each case as the 25 per cent floor does to the three metal cases.

(*f*) The term "contractor's net proceeds" shall mean the contractor's gross proceeds less his operating costs and less the recovery of his development costs as set out in subparagraph (*j*).

(*g*) (i) In the event that the contractor engages in mining, transportation of nodules and production of processed metals, the term "contractor's gross proceeds" shall mean the gross revenues from the sale of the processed metals, and any other monies deemed to be reasonably attributable to the operation of the contract in accordance with the financial rules, regulations and procedures of the Authority.

(ii) In all cases other than those specified in subparagraphs (*g*) (i) and (*n*) (iii) the term "contractor's gross proceeds" shall mean the gross revenues from the sale of the semi-processed metals from the nodules extracted from the contract area, and any other monies deemed reasonably attributable to the operation of the contract in accordance with the financial rules, regulations and procedures of the Authority.

(*h*) The term "contractor's development costs" shall mean:

(i) All expenditures incurred prior to the commencement of commercial production which are directly related to the development of the productive capacity of the contract area and the activities related thereto for operations under the contract in all cases other than that specified in subparagraph (*n*) in conformity with generally recognized accounting principles, including, *inter alia*, costs of machinery, equipment, ships, processing plant, construction, buildings, land, roads, prospecting and exploration of the contract area, research and development, interest, required leases, licenses, fees; and

(ii) Similar expenditures to those detailed in subparagraph (i) above, incurred subsequent to the commencement of commercial production, necessary to carry out the plan of work, except those chargeable to operating costs.

(*i*) The proceeds from the disposal of capital assets and the market value of those capital assets which are no longer required for operations under the contract and which are not sold shall be deducted from the contractor's development costs during the relevant accounting year. When these deductions exceed the contractor's development costs the excess shall be added to the contractor's gross proceeds.

(*j*) The contractor's development costs referred to in subparagraphs (*h*) (i) and (*n*) (iv) shall be recovered in 10 equal annual instalments from the date of commencement of commercial production. The contractor's development costs incurred subsequent to the commencement of commercial production, referred to in subparagraphs (*h*) (ii) and (*n*) (iv), shall be recovered in 10 or fewer equal annual instalments so as to ensure their complete recovery by the end of the contract.

(*k*) The term "contractor's operating costs" shall mean all expenditures incurred after the commencement of commercial production in the operation of the productive capacity of the contract area and the activities related thereto, for operations under the contract, in conformity with generally recognized accounting principles, including, *inter alia*, the fixed annual fee or the production charge, whichever is greater, expenditures for wages, salaries, employee benefits, materials, services, transportation, processing and marketing costs, interest, utilities, preservation of the marine environment, overhead and administrative costs specifically related to the operation of the contract, and any net operating losses carried forward or backward as specified below. Net operating losses may be carried forward for two consecutive years except in the last two years of the contract when they may be carried backward to the two preceding years.

(*l*) In the event that the contractor engages in mining, transportation of nodules, and production of processed and semi-processed metals, the term "development costs of the mining sector" shall mean the portion of the contractor's development costs which is directly related to the mining of the resources of the contract area, in conformity with generally recognized accounting principles, and the financial rules, regulations and procedures of the Authority, including, *inter alia*, application fee, annual fixed fee, and, where applicable, costs of prospecting and exploration of the contract area, and a portion of research and development costs.

(*m*) The term "return on investment" in any accounting year shall mean the ratio of attributable net proceeds in that year to the development costs of the mining sector. The development costs of the mining sector for the purpose of this subparagraph shall include expenditures on new or replacement equipment in the mining sector less the original cost of the equipment replaced.

(*n*) In the event that the contractor engages in mining only:

(i) The term "attributable net proceeds" shall mean the whole of the contractor's net proceeds;

(ii) The term "contractor's net proceeds" shall be as defined in subparagraph (*f*) above;

(iii) The term "contractor's gross proceeds" shall mean the gross revenues from the sale of the nodules, and any other monies deemed to be reasonably attributable to the operation of the contract in accordance with the financial rules, regulations and procedures of the Authority;

(iv) The term "contractor's development costs" shall mean all expenditures incurred prior to the commencement of commercial production as in subparagraph (*h*) (i), and all expenditures incurred subsequent to the commencement of commercial production, as in subparagraph (*h*) (ii), which are directly related to the mining of the resources of the contract area, in conformity with generally recognized accounting principles;

(v) The term "contractor's operating costs" shall mean the contractor's operating costs as in subparagraph (*k*), which are directly related to the mining of the resources of the contract area in conformity with generally recognized accounting principles;

(vi) The term "return on investment in any accounting year" shall mean the ratio of the contractor's net proceeds in that year to the contractor's development costs. Contractor's development costs for the purpose of this subparagraph shall include expenditures on new or replacement equipment less the original cost of the equipment replaced.

(*o*) The costs referred to in subparagraphs (*h*), (*k*), (*l*) and (*n*) above, in respect of interest paid by the contractor, shall be allowed to the extent that, in all the circumstances, the Authority approves, pursuant to article 4, paragraph 1, the debt-equity ratio and the rates of interest as reasonable, having regard to existing commercial practice.

(*p*) The costs referred to in this paragraph shall not be interpreted as including payments of corporate income taxes or similar charges levied by States in respect of the operations of the contractor.

7. (*a*) The term "processed metals", referred to in paragraphs 5 and 6, shall mean the metals in the most basic form in which they are customarily traded on international terminal markets. For this purpose, the Authority shall specify, in the financial rules, regulations and procedures, the relevant international terminal market. For the metals which are not traded on such markets, the term "processed metals" shall mean the metals in the most basic form in which they are customarily traded in representative arm's length transactions.

(*b*) In the event that the Authority cannot otherwise determine the quantity of the processed metals produced from the nodules extracted from the contract area referred to in paragraphs 5 (*b*) and 6 (*b*), the quantity shall be determined on the basis of the metal content of the nodules extracted from the contract area, processing recovery efficiency and other relevant factors in accordance with the rules, regulations and procedures of the Authority, and in conformity with generally recognized accounting principles.

8. If an international terminal market provides a representative pricing mechanism for processed metals, nodules and semi-processed metals from the nodules, the average price on such a market shall be used. In all other cases, the Authority shall, after consulting the contractor, determine a fair price for the said products in accordance with paragraph 9.

9. (*a*) All costs, expenditures, proceeds and revenues and all determinations of price and value referred to in this article shall be the result

of free market or arm's length transactions. In the absence thereof, they shall be determined by the Authority, after consulting the contractor, as though they were the result of free market or arm's length transactions taking into account relevant transactions in other markets.

(*b*) In order to ensure enforcement of and compliance with the provisions of this paragraph, the Authority shall be guided by the principles adopted for, and the interpretation given to, arm's length transactions by the Commission on Transnational Corporations, the *Ad Hoc* Group of Experts on Tax Treaties between Developing and Developed Countries and other international organizations, and shall adopt rules and regulations specifying uniform and internationally acceptable accounting rules and procedures, and the means of selection by the contractor of certified independent accountants acceptable to the Authority for the purpose of auditing in compliance with the said rules and regulations.

10. The contractor shall make available to the accountants, in accordance with the financial rules, regulations and procedures of the Authority, such financial data as are required to determine compliance with this article.

11. All costs, expenditures, proceeds and revenues, and all prices and values referred to in this article, shall be determined in accordance with generally recognized accounting principles and the financial rules, regulations and procedures of the Authority.

12. The payments to the Authority under paragraphs 5 and 6 shall be made in freely usable currencies or currencies which are freely available and effectively usable on the major foreign exchange markets, or at the contractor's option, in the equivalents of processed metals at market value. The market value shall be determined in accordance with paragraph 5 (*b*). The freely usable currencies and currencies which are freely available and effectively usable in the major foreign exchange markets shall be defined in the rules, regulations and procedures of the Authority in accordance with prevailing international monetary practice.

13. All financial obligations of the contractor to the Authority, as well as all his fees, costs, expenditures, proceeds and revenues referred to in this article, shall be adjusted by expressing them in constant terms relative to a base year.

14. The Authority may, taking into account any recommendations of the Economic Planning Commission and the Legal and Technical Commission, adopt rules and regulations that provide for incentives, on a uniform and non-discriminatory basis, to contractors to further the objectives set out in paragraph 1.

15. In the event of a dispute between the Authority and a contractor over the interpretation or application of the financial terms of a contract, either party may submit the dispute to binding commercial arbitration, unless both parties agree to settle the dispute by other means, in accordance with article 188, paragraph 2.

Article 17. Rules, regulations and procedures

1. The Authority shall adopt and uniformly apply rules, regulations and procedures in accordance with article 160, paragraph (*f*) (ii), and article 162, paragraph 2 (*n*) (ii), for the implementation of its functions as prescribed in Part XI, *inter alia*, on the following matters:

Article 18. Penalties

2. The Authority may impose upon the contractor monetary penalties proportionate to the seriousness of the violation in any case of violation of terms of contract not covered under paragraph 1 (*a*), or in lieu of suspension or termination in any case covered under paragraph 1 (*a*).

Article 21. Applicable law

1. The law applicable to the contract shall be the provisions of Part XI, the rules and regulations of the Authority, the terms and conditions of the contract, and other rules of international law not incompatible with this Convention. Any final decision rendered by a court or tribunal having jurisdiction by virtue of this Convention relating to the rights and obligations of the Authority and of the contractor shall be valid and enforceable in the territory of each State Party.

Article 22. Liability

Any responsibility or liability for wrongful damage arising out of the conduct of operations by the contractor shall lie with the contractor, account being taken of contributory factors by the Authority. Similarly, any responsibility or liability for wrongful damage arising out of the exercise of the powers and functions of the Authority, including liability for violations under article 168, paragraph 2, shall lie with the Authority, account being taken of contributory factors by the contractor. Liability in every case shall be for the actual amount of damage.

ANNEX IV

Statute of the Enterprise

Article 1. Purpose

1. The Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly, pursuant to article 153, paragraph 2 (*a*), as well as transportation, processing and marketing of minerals recovered from the Area.

2. In carrying out its purposes and in the performance of its functions, the Enterprise shall act in accordance with the provisions of this Convention, including its annexes, and the rules, regulations and procedures of the Authority.

3. In developing the resources of the Area pursuant to paragraph 1, the Enterprise shall, subject to the provisions of this Convention, operate on sound commercial principles.

Article 2. Relationship to the Authority

1. Pursuant to article 170, the Enterprise shall act in accordance with the general policies of the Assembly and the directives of the Council.

2. Subject to paragraph 1, the Enterprise shall enjoy autonomy in the conduct of its operations.

3. Nothing in this Convention shall make the Enterprise liable for the acts or obligations of the Authority or the Authority liable for the acts or obligations of the Enterprise.

Article 3. Limitation of liability

Without prejudice to article 11, paragraph 3, of this annex, no member of the Authority shall be liable by reason only of its membership for the acts or obligations of the Enterprise.

Article 4. Structure of the Enterprise

The Enterprise shall have a Governing Board, a Director-General and the staff necessary for the performance of its functions.

Article 5. Governing Board

1. The Governing Board shall be composed of 15 members elected by the Assembly in accordance with article 160, paragraph 2 (*c*). In the election of the members of the Board, due regard shall be paid to the principle of equitable geographical distribution. In submitting nominations of candidates for election to the Board, members of the Authority shall bear in mind the need to nominate candidates of the highest standard of competence, with qualifications in relevant fields, so as to ensure the viability and success of the Enterprise.

2. Members of the Board shall be elected for a term of four years and shall be eligible for re-election. In the election and re-election of the members of the Board, due regard shall be paid to the principle of rotation.

3. Each member of the Board shall have one vote. All matters before the Board shall be decided by a majority of the members of the Board. If a member has a conflict of interest on a matter before the Board he shall refrain from voting on the matter.

4. Each member of the Board shall receive remuneration to be paid out of the funds of the Enterprise. The amount of remuneration shall be fixed by the Assembly, upon the recommendation of the Council.

5. Members of the Board shall act in their personal capacity. In the performance of their duties they shall not seek or receive instructions from any Government or from any other source. The members of the Authority shall respect the independent character of the members of the Board and refrain from all attempts to influence any of them in the discharge of their duties.

6. Members of the Board shall continue in office until their successors are elected. If the office of a member of the Board becomes vacant, the Assembly shall, upon the recommendation of the Council, elect another member for the remainder of the unexpired term.

7. The Board shall normally function at the principal office of the Enterprise and shall meet as often as the business of the Enterprise may require.

8. A quorum for any meeting of the Board shall be two thirds of the members of the Board.

9. Any member of the Authority may ask the Board for information

in respect of its operations which particularly affect that member. The Board shall endeavour to provide such information.

Article 6. Powers and functions

The Governing Board shall direct the business operations of the Enterprise. Subject to the provisions of this Convention and its annexes, the Governing Board shall exercise all the powers necessary to fulfil the purposes of the Enterprise, including powers:

(*a*) to develop plans of work and programmes in carrying out its activities as provided for in article 170;

(*b*) to draw up and submit formal written plans of work to the Council in accordance with article 153, paragraph 3, and article 162, paragraph 2 (*j*);

(*c*) to prepare and submit applications for production authorization to the Council in accordance with article 151, paragraph 2;

(*d*) to authorize negotiations on the acquisition of technology, including those provided for in article 5, paragraph 3 (*a*), 3 (*c*) and 3 (*d*), of annex III, and to approve the results of such negotiations;

(*e*) to establish terms and conditions and to authorize negotiations for entering into joint ventures and other forms of joint arrangements as provided for in article 9 and article 11 of annex III and to approve the results of such negotiations;

(*f*) to recommend what portion of its net income should be retained as its reserves in accordance with article 160, paragraph 2 (*f*);

(*g*) to approve the annual budget of the Enterprise;

(*h*) to authorize the procurement of goods and services in accordance with article 12, paragraph 3, of this annex;

(*i*) to submit an annual report to the Council as provided for in article 9 of this annex;

(*j*) to submit to the Council, for the approval of the Assembly, rules in respect of the organization, management, appointment and dismissal of the staff of the Enterprise, and to adopt regulations to give effect to such rules;

(*k*) to elect a Chairman from among its members;

(*l*) to adopt its own rules of procedure;

(*m*) to borrow funds and to furnish such collateral or other security as it may determine in accordance with article 11, paragraph 2, of this annex;

(*n*) to enter into any legal proceedings, agreements and transactions and to take any other actions in accordance with article 13 of this annex;

(*o*) to delegate, subject to the approval of the Council, any non-discretionary powers to the Director-General and to its committees.

Article 7. Director-General and staff

1. The Assembly shall, upon the recommendation of the Council, and the nomination of the Governing Board, elect the Director-General, who shall not be a member of the Board. The Director-General shall be the legal representative of the Enterprise. He shall participate in the meetings of the Board but shall have no vote. He may participate in meetings of the Assembly and the Council when these organs are dealing with matters concerning the Enterprise, but shall have no vote at such meetings. The Director-General shall hold office for a fixed term not exceeding five years and may be re-elected for further terms.

2. The Director-General shall be the chief executive of the Enterprise and shall be directly responsible to the Governing Board for the conduct of the business of the Enterprise. He shall be responsible for the organization, management, appointment and dismissal of the staff in accordance with the rules and regulations referred to in article 6, subparagraph (*j*), of this annex.

3. The Director-General and the staff of the Enterprise, in the discharge of their duties, shall not seek or receive instructions from any Government or from any other source. They shall refrain from any action which might reflect on their position as international officials of the Enterprise responsible only to the Enterprise. The members of the Authority shall respect the international character of the Director-General and the staff of the Enterprise and shall refrain from all attempts to influence any of them in the discharge of their duties.

4. In appointing the staff, the Director-General shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on an equitable geographical basis.

Article 8. Location

The Enterprise shall have its principal office at the seat of the Authority. The Enterprise may establish other offices and facilities in the territory of any member of the Authority with the consent of that member.

Article 9. Provision of reports

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

2. The Enterprise shall publish its annual report and such other reports as it deems appropriate.

3. Copies of all reports and financial statements referred to in this article shall be distributed to the members of the Authority.

Article 10. Allocation of net income

1. Subject to paragraph 3, the Enterprise shall make payments to the Authority under article 13 of annex III or their equivalent.

2. The Assembly shall, upon the recommendation of the Governing Board, determine what portion of the net income of the Enterprise shall be retained as its reserves. The remainder shall be transferred to the Authority.

3. During an initial period required for the Enterprise to become self-supporting, which shall not exceed 10 years from the commencement of its commercial production, the Assembly shall exempt the Enterprise from the payments referred to in paragraph 1, and shall leave all of the net income of the Enterprise in its reserves.

Article 11. Finance

1. The funds of the Enterprise shall include:

(*a*) amounts received from the Authority in accordance with article 173, paragraph 2 (*b*);

(*b*) voluntary contributions made by States Parties for the purpose of financing activities of the Enterprise;

(*c*) amounts borrowed by the Enterprise in accordance with the provisions of paragraphs 2 and 3;

(*d*) income of the Enterprise through its operations;

(*e*) other funds made available to the Enterprise to enable it to carry out its functions and to commence operations as soon as possible.

2. (*a*) The Enterprise shall have the power to borrow funds and to furnish such collateral or other security as it may determine. Before making a public sale of its obligations in the markets or currency of a State Party, the Enterprise shall first obtain the approval of that State Party. The total amount of borrowings shall be approved by the Council upon the recommendation of the Governing Board.

(*b*) States Parties shall make every reasonable effort to support application by the Enterprise for loans in capital markets and from international financial institutions.

3. (*a*) The Enterprise shall be provided with the funds necessary to explore and exploit one mine site, to transport, process and market the metals recovered therefrom, namely, nickel, copper, cobalt and manganese, and to meet its initial administrative expenses. The amount of the said funds, and the criteria and factors for its adjustment, shall be included by the preparatory commission in the draft rules, regulations and procedures of the Authority.

(*b*) All States Parties shall make available to the Enterprise an amount equivalent to one half of the funds referred to in subparagraph (*a*) above by way of long-term interest-free loans in accordance with the scale of assessments for the United Nations regular budget in force at the time when the contributions are made, adjusted to take into account the States which are not members of the United Nations. Debts incurred by the Enterprise in raising the other half of the funds shall be guaranteed by all States Parties in accordance with the same scale.

(*c*) In the event that the sum of the financial contributions of States Parties ratifying or acceding to the Convention is less than the funds to be provided to the Enterprise under subparagraph (*a*), the Assembly shall, at its first meeting, examine the extent of the shortfall and, taking into account the obligation of States Parties under subparagraphs (*a*) and (*b*) and the recommendations of the preparatory commission, adopt, by consensus, measures for dealing with the shortfall.

(*d*) Each State Party shall, within sixty days after the entry into force of this Convention, or within thirty days after the date of deposit of its instrument of ratification, acceptance or approval, whichever is later, deposit with the Enterprise irrevocable non-negotiable non-interest-bearing

promissory notes in the amount of the share of such State Party of interest-free loans under paragraph 3 (*b*).

At the earliest practicable date after this Convention enters into force and thereafter, at annual or other appropriate intervals, the Governing Board of the Enterprise shall prepare a schedule of the magnitude and timing of its requirements for the funding of its administrative expenses and for carrying out activities under article 170 of the Convention and article 12 of this annex.

The States Parties shall, thereupon, be notified by the Enterprise, through the Authority, of their respective shares of the funds in accordance with paragraph 3 (*b*), required for such expenses. The Enterprise shall encash such amounts of the promissory notes as may be required to meet the expenditure referred to in the schedule with respect to interest-free loans.

States Parties shall, upon receipt of such notification, make available their respective shares of guarantees of debt of the Enterprise in accordance with paragraph 3 (*b*).

(*e*) Upon request by the Enterprise, a State Party may provide a guarantee covering debts additional to the amount it has guaranteed in accordance with or on the basis of the said scale. In lieu of debt guarantee, a State Party may make a voluntary contribution to the Enterprise in an amount equivalent to that portion of the debts which it would otherwise be liable to guarantee.

(*f*) The repayment of the interest-bearing loans shall have priority over the repayment of the interest-free loans. The repayment of interest-free loans shall be in accordance with a schedule adopted by the Assembly, upon the recommendation of the Council and the advice of the Governing Board of the Enterprise. In the performance of this function the Governing Board of the Enterprise shall be guided by the relevant provisions of the rules, regulations and procedures. Such rules, regulations and procedures shall take into account the paramount importance of ensuring the performance of the Enterprise and, in particular, ensuring its financial independence.

(*g*) Funds made available to the Enterprise shall be in freely usable currencies or currencies which are freely available and effectively usable in the major foreign exchange markets. These currencies shall be defined in the rules, regulations and procedures of the Authority in accordance with prevailing international monetary practice. Except as provided in article 6 (*m*) of this annex, no State Party shall maintain or impose restrictions on the holding, use or exchange by the Enterprise of these funds.

(*h*) A "debt guarantee" shall mean a promise of each State Party to creditors of the Enterprise to pay, *pro rata* in accordance with the appropriate scale, the financial obligations of the Enterprise covered by the guarantee following notice by the creditors to the State Party of a default by the Enterprise. Procedures for the payment of those obligations shall be in conformity with the rules, regulations and procedures of the Authority.

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

5. The records, books and accounts of the Enterprise, including its annual financial statements, shall be audited annually by an independent auditor to be appointed by the Council.

Article 12. Operations

1. The Enterprise shall propose to the Council projects for carrying out activities in accordance with article 170. Such proposals shall include a formal written plan of work for activities in the Area in accordance with article 153, paragraph 3, and all such other information and data as may be required from time to time for its appraisal by the Technical Commission and approval by the Council.

2. Upon approval by the Council, the Enterprise shall execute the project on the basis of the formal written plan of work referred to in paragraph 1.

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

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

(i) The principle of non-discrimination on the basis of political or other considerations not relevant to the carrying out of operations with due diligence and efficiency;

(ii) Guidelines approved by the Council with regard to the preferences to be accorded to goods and services originating in the developing States, including the land-locked or otherwise geographically disadvantaged among them.

(*c*) The Governing Board may adopt rules determining the special circumstances in which the requirement of invitations to bid may in the best interests of the Enterprise be dispensed with.

4. The Enterprise shall have title to all minerals and processed substances produced by it.

5. The Enterprise shall sell its products on a non-discriminatory basis. It shall not give non-commercial discounts.

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

7. The Enterprise shall not interfere in the political affairs of any member; nor shall it be influenced in its decisions by the political character of the member or members concerned. Only commercial considerations shall be relevant to its decisions, and these considerations shall be weighed impartially in order to carry out the purposes specified in article 1.

Article 13. Legal status, immunities and privileges

1. To enable the Enterprise to perform its functions, the status, immunities and privileges set forth herein shall be accorded to the Enterprise in the territories of States Parties. To give effect to this principle the Enterprise and States Parties may, where necessary, enter into special agreements.

2. The Enterprise shall have such legal capacity as is necessary for the performance of its functions and the fulfilment of its purposes and, in particular, the capacity:

(*a*) To enter into contracts, joint arrangements, or other arrangements, including agreements with States and international organizations;

(*b*) To acquire, lease, hold and dispose of immovable and movable property;

(*c*) To be a party to legal proceedings in its own name.

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

4. (*a*) The property and assets of the Enterprise, wheresoever located and by whomsoever held, shall be immune from confiscation, expropriation, requisition, and any other form of seizure by executive or legislative action.

(*b*) The property and assets of the Enterprise, wheresoever located and by whomsoever held, shall be free from discriminatory restrictions, regulations, controls and moratoria of any nature.

(*c*) The Enterprise and its employees shall respect local laws and regulations in any State or territory in which the Enterprise or its employees may do business or otherwise act.

(*d*) States Parties shall assure that the Enterprise enjoys all rights, immunities and privileges afforded by States to entities conducting business within such States. These rights, immunities and privileges shall be afforded the Enterprise on no less favourable a basis than afforded by States to similarly engaged commercial entities. Where special privileges are provided by States for developing States or their commercial entities, the Enterprise shall enjoy such privileges on a similarly preferential basis.

(*e*) States may provide special incentives, rights, privileges and immunities to the Enterprise without the obligation to provide such incentives, rights, privileges or immunities to other commercial entities.

5. The Enterprise shall negotiate with the host countries in which its offices and facilities are located for exemption from direct and indirect taxation.

6. Each member shall take such action as is necessary for the purpose of making effective in terms of its own law the principles set forth herein

in this annex and shall inform the Enterprise of the detailed action which it has taken.

7. The Enterprise in its discretion may waive any of the privileges and immunities conferred under this article or in the special agreements referred to in paragraph 1 to such extent and upon such conditions as it may determine.