lates this exploration and exploitation of the resources of the international sea-bed area. These are not covered by the freedoms of the high seas.

(2) The international sea-bed area beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind.

No State shall claim or exercise sovereignty or sovereign rights over any part of the international sea-bed area or its resources, nor shall any State or person, natural or juridical, appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights, nor such appropriation, shall be recognized. All rights in the resources of the area are vested in mankind as a whole. The exploitation of minerals from these resources shall be organized, regulated and controlled by an international machinery, such as the proposed International Sea-Bed Authority.

The above principles are imperative rules of international law, the derogation of which is allowed neither by unilateral legislation nor by restricted treaties. Any unilateral legislation adopted while these negotiations are going on will not only violate the rule of good faith in negotiations but, as I said on 19 March 1979, may also have wider impact on economic co-operation between developing and developed States.

(3) Unilateral mining legislation not only will not be recognized by the international community, but also will entail international responsibility to other States.

In view of the grave consequences which such unilateral mining legislation may entail for the enacting States and their contractors, for the future of the Conference, and for peace, co-operation and orderly economic development of the world community as a whole, the Group of 77 reiterates its request and urges all States to make every effort to bring this Conference to an early and successful conclusion and to the adoption of a Convention which is fair and acceptable to all sections of the world community.

DOCUMENT A/CONF.62/90

Letter dated 22 August 1979 from the Vice-Chairman of the group of coastal States to the President of the Conference

[Original: English/Spanish]
[24 August 1979]

In my capacity as Vice-Chairman of the group of coastal States, I have the honour to transmit to you herewith a declaration by the group and to request that it be circulated as soon as possible as an official Conference document.

(*Signed*) A. CABRERA (Mexico)
Vice-Chairman of the group of coastal States

DECLARATION BY THE GROUP OF COASTAL STATES

The group of coastal States noted with surprise and concern recent media reports that the Government of the United States of America had "ordered its Navy and Air Force to undertake a policy of deliberately sending ships and planes into or over the disputed waters of nations that claim a territorial limit of more than three miles".

In the view of the group of coastal States, such a policy, which in its essentials has been confirmed by officials of the United States Government, is highly regrettable and unacceptable, being contrary to customary international law, whereby a great majority of States exercise full sovereignty in their territorial seas up to a limit of 12 nautical miles, subject to the right of innocent passage. That policy is also inconsistent with the prevailing understanding at the United Nations Conference on the Law of the Sea which has recognized the validity of such a practice.

The group has taken note of the clarification which was later made by officials of the United States Government to the effect that there has been no order to challenge in an aggressive way the claims of other nations. However, the group considers the statement that the régime of high seas commences beyond three miles is clearly an anachronism.

The group has also taken note of the reassurances given by the same official source that the position of the United States of America in the Third United Nations Conference on the Law of the Sea has not changed as well as of the elements which, according to that source, should be combined within the context of an over-all package deal.

The group reaffirms its determination to continue working towards the early adoption of a generally acceptable, comprehensive convention on the law of the sea and, in the meantime, expresses its hope that every State will refrain from undertaking any actions that may adversely affect its relations with other States or the success of the Conference.

DOCUMENT A/CONF.62/91*

Reports to the plenary Conference

[Original: English]
[19 September 1979]

Memorandum by the President

This document contains the reports to the Conference of the Committees, the two groups of legal experts on the settlement of disputes relating to part XI of the revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1) and on final clauses, respectively, and of the Drafting Committee and the informal plenary meeting on the settlement of disputes (part XV of the negotiating text), as well as of negotiating groups 6 and 7, on their work during the resumed eighth session held in New York from 19 July to 24 August 1979.

The Conference had originally decided to effect the second revision of the informal composite negotiating text before the adjournment of the eighth session or immediately thereafter, as on the occasion of the first revision. Time and circumstances did not, however, permit the attainment of this objective and the Conference was unable to proceed beyond receiving the reports contained herein. It must be emphasized that the Conference did not have the time to discuss these results in such a manner as to permit assessment in

* Incorporating document A/CONF.62/91/Corr.1 of 15 October 1979.

conformity with document A/CONF.62/62.[32] As a consequence, the question of their incorporation in a second revision of the negotiating text did not arise, and the Conference therefore decided at its 120th plenary meeting, held on 24 August 1979, merely to record the results of the work accomplished during the resumed eighth session. They are included in this memorandum in order to preserve them in convenient form and thereby facilitate the preparation of the second revision.

The second revision was, by decision of the Conference at its 118th plenary meeting, held on 23 August 1979, deferred to the end of the fourth week of the ninth session following a formal discussion in plenary which will enable delegations to place their positions on record, both in regard to proposed revisions and the entire package, before the preparation and the adoption of the revised negotiating text as a draft convention. Document A/CONF.62/88 sets out the procedure that the Conference will follow in the matter.

CONTENTS

DOCUMENT A/CONF.62/88

Report of the General Committee approved by the Conference at the 118th meeting*

[Original: English]
[24 August 1979]

1. This memorandum was prepared by the President after consultation with the Chairmen of the three committees and negotiating groups, the Chairmen of the two groups of legal experts, and the Chairman of the Drafting Committee and the Rapporteur-General.

2. It was agreed that all negotiating groups should conclude their work by 17 August, and that the three committees would consider the reports of all the groups dealing with the issues falling within their respective mandates on 20 and 21 August, so as to be ready to make a final report to the Conference in plenary meeting by 22 August, immediately following the meeting of the General Committee. In the meantime, the Conference would also have held an informal plenary meeting to dispose of certain outstanding issues on the settlement of disputes and also to make as much progress as possible in the discussion of the final clauses.

3. It has been repeatedly stressed that the eighth session should be the final negotiating session and that every effort should be made to effect a second revision either by the end of the session, if that is feasible, or as soon after its adjournment as possible, as was done at the end of the first part of the eighth session. This second revision would again be not a negotiated text but a negotiating text.

4. The General Committee is called upon to consider, and to make a recommendation to the plenary meeting on, the most suitable procedure to be followed in regard to this second revision. The first revision was effected in accordance with the decision of the Conference contained in paragraphs 10 and 11 of document A/CONF.62/62. Under that procedure:

> "Any modifications or revisions to be made in the informal composite negotiating text should emerge from the negotiations themselves and should not be introduced on the initiative of any single person, whether it be the President or a Chairman of a Committee, unless presented to the plenary and found, from the widespread and substantial support prevailing in plenary, to offer a substantially improved prospect of a consensus.
>
> "The revision of the informal composite negotiating text should be the collective responsibility of the President and the Chairmen of the committees, acting together as a team headed by the President. The Chairman of the Drafting Committee and the Rapporteur-General should be associated with the team as the former should be fully aware of the considerations that determined any revision and the latter should, *ex officio*, be kept informed of the manner in which the Conference has proceeded at all stages."

5. It will be noted that the opinion of the plenary Conference could not be determined otherwise than by the presidential team. It is for the Conference to decide whether the same procedure adopted on the occasion of the first revision would be appropriate so far as the next revision is concerned. In making its recommendations to the Conference, the General Committee is requested to take into consideration the proposals that will follow in this note in regard to the procedure to be applied to the consideration of the second revision.

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

* This report consists of the text of a memorandum prepared by the President and submitted to the General Committee, together with modifications agreed upon in the General Committee. The President read out this amended text in a plenary meeting of the Conference as the report of the General Committee.

6. It would seem to the President that the situation on the occasion of the second informal revision is scarcely different from that which prevailed on the occasion of the first revision. If the Conference were to attempt to determine the contents of the second revision, a protracted debate would be unavoidable, and almost the same degree of agreement would have to be evidenced as would be necessary for the final draft itself.

7. The proposals that follow provide for an examination of the second revision and for negotiated changes to be effected in it at the second stage. It is apparent that the second revision cannot be effected before the closure of this session. The next alternative is that it be effected immediately following the adjournment of the session, as on the previous occasion, so as to be available to all delegations for study in the interval between the adjournment of the eighth session and the opening of the ninth session.

8. The President's consultations with those responsible for the conduct of negotiations lead him to the conclusion that a second revision, of the sort that is contemplated and desired, would be impossible to effect either before the adjournment or immediately after the adjournment of this session. The President suggests that a second revision not be attempted unless there is sufficient material to be incorporated in such a revision. In those circumstances and in order to preserve such results as have been achieved so far, the General Committee might wish to recommend to the Conference that, in place of a second revision at this stage, the only course open to the Conference is to agree to the incorporation in a memorandum of the revised formulations that satisfy the criteria specified in paragraph 10 of document A/CONF.62/62.

Organization of work for the ninth session

9. If the Conference is to conclude a convention during its ninth session, in 1980, it would be essential for it to have a definite time-table divided into separate stages. In the absence of such a programme which the Conference would accept as binding on it, there is a very serious risk of final decisions being deferred in the belief that more time is available. It is in this belief that the Conference must impose this discipline on itself and agree at the expiry of each stage indicated below to proceed to the next stage without modifications that would disrupt the schedule and defeat the declared objective of the Conference.

10. The following time-table is proposed:

First stage

During the first three weeks of the ninth session the work on the final clauses should be completed by the Conference in informal plenary meetings with the assistance of the group of legal experts on final clauses. This is imperative if the final draft of the convention is to be ready at the appropriate time.

During the same period of three weeks, the Chairmen of the three committees, assisted by the Chairmen of the established negotiating groups and the group of legal experts on the settlement of disputes relating to part XI, should conduct the necessary consultations within their respective spheres of competence in order, to the extent possible, to reach compromise solutions on outstanding issues. If these consultations are to be genuinely productive they must involve all delegations.

The Drafting Committee should, during the same period, meet informally to complete its work on informal recommendations that would have to be taken into account in the preparation of the final version of the informal composite negotiating text.

Should an informal intersessional meeting of the Drafting Committee between the eighth and the ninth sessions be considered necessary to expedite the preparation of the final version of the informal composite negotiating text, arrangements and facilities for this purpose would have to be considered.

Second stage

At the beginning of the fourth week, there should be a formal discussion by the Conference in plenary. Such a formal discussion would be necessary to meet the wishes of a very large number of delegations that consider an opportunity should be given to them, before the preparation and the adoption of the revised informal composite negotiating text as a final draft convention, to place on record their position, both in regard to proposed revisions and on the entire package. It is implicit in paragraphs 10 and 11 of document A/CONF.62/62 that the plenary Conference should have an opportunity of discussing the proposed changes in the informal composite negotiating text before revision is effected, to enable the collegium as required in document A/CONF.62/62 to prepare the revision. This is of special importance on the occasion of the second revision as it is to serve, with such changes as are negotiated, as a final draft convention through a decision of the Conference. Every delegation must be entitled to participate in the formal debate but, if the debate is to be concluded within a reasonable period of time and thus allow for the conclusion of the work of the Conference by the end of the ninth session, the Conference would be well advised to set a time-limit, of perhaps 15 minutes, for every speaker, on the understanding that delegations will, if they so wish, be permitted to present written statements whose contents will appear as part of the official records of the Conference, without forfeiting the right to make oral statements as well and which will form part of the summary records.

It is estimated that should 130 delegations participate in this debate, and given the acceptance of the proposed time-limit for each speaker, about 12 plenary meetings of three hours each, with night meetings, would be necessary and the debate could be concluded in one week.

At the end of this period, the President and the Chairmen of the committees, with whom the Chairman of the Drafting Committee and the Rapporteur-General will be associated, will revise the negotiating text in accordance with the procedure prescribed in paragraphs 10 and 11 of document A/CONF.62/62.

Third stage

In the middle of the fifth week, the plenary Conference should meet to decide on altering the status of the revised informal composite negotiating text to that of a final Conference document that would serve as a draft convention. It is recommended that in taking this decision the Conference also decide that all formal proposals which have previously been presented be treated as having lapsed, without prejudice to the right of any State participant to move a fresh amendment similar to or different in substance from the one that has lapsed, when the draft text has been given the status of a formal draft convention. Such a procedure would be perfectly logical, as the entire procedure of preparation of the informal composite negotiating text and of the second revision effected was designed to consider and dispose of the substance of such earlier proposals.

After the decision is taken to give the revised negotiating text the status of a formal Conference document, the Conference will have to decide the question of referring it for examination to the three committees and the plenary, operating as a committee, in the following manner: part XI and annexes II and III to the First Committee; parts I to X and annex I, as well as any additional annex that is found necessary, to the Second Committee; parts XII to XIV to the

Third Committee; parts XV and XVI and annexes IV to VII to the plenary Conference, operating as a committee.

Any delegation that wishes to submit formal amendments should endeavour to do so before the suspension of the session.

At this point, the session should be suspended to enable Governments to study the final draft convention and any amendments submitted.

Final stage

During the first 10 calendar days of the resumed session the committees should examine the draft convention. Any amendments not previously submitted would have to be submitted formally on the first day of this period. During that period of 10 calendar days the Chairmen, with the assistance, as appropriate, of the officers of their Committees, would have to pursue their efforts to facilitate the attainment of general agreement, having regard to the progress made on all matters of substance which are closely related to one another.

By the end of this period a decision on all pending amendments will be taken by the Committees.

The subsequent steps which would be taken during the resumed session could be determined by the Conference on the recommendations of the General Committee on the first day of the resumed session, so that the convention can be adopted before the end of the fifth week of the resumed session, having due regard to the rules of procedure and to the Gentlemen's Agreement appearing as an appendix to the rules of procedure.

DOCUMENT A/CONF.62/L.43

Report of the Chairman of the First Committee on the negotiations in the First Committee

[*Original: English*]
[*29 August 1979*]

1. Negotiations on matters falling within the mandate of the First Committee and consequently in part XI of the revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1), were, during this resumed session, continued in the working group of 21 established at Geneva last spring. In that group very intensive negotiations were followed by what the co-ordinators, including myself as Chairman, consider to be productive consultations on some of the critical questions relating to the hard-core issues.

2. I do not wish to duplicate by a further explanatory note the comprehensive report of the First Committee (A/CONF.62/C.1/L.26), which is annexed to this report. The 46th formal meeting of the First Committee was held on 22 August 1979 to consider it and some delegations placed on record their preliminary comments, both on the report and on the contents of the suggestions contained in document WG 21/2 (see appendix A).

3. I must also report that most delegations refrained from commenting on details because they needed time to study the suggestions. Perhaps more important, most of the delegations considered that it was undesirable to comment prematurely on what clearly represented only some elements of the package that must emanate from the hard-core issues before the First Committee.

4. It would appear, none the less, that it was generally agreed that much valuable work has been done at this resumed session and that consequently the results should be preserved at least for the purpose of providing a satisfactory starting point at the next session of the Conference—which will also be the final phase of our work.

5. All of these are to be found in the summary records of the proceedings before the First Committee.

6. The planning of the final phase, therefore, is the main preoccupation of my comments today. One overriding feature of our negotiations is the truth that a consensus on the outstanding issues before the First Committee must, of imperative necessity, address an important reservoir of mini-packages. The major package itself is not always easy to identify; some delegations often regard it as changing its character with each step made in our negotiations. For convenience, therefore, the major package must be regarded as part XI of the negotiating text as a whole.

7. The mini-packages of which I speak are comparatively easier to identify; but even here, there is hardly total agreement among the opposing sides as to their scope and content. The difficulty would appear to lie, in the first instance, in the variety of perspectives entertained by the two major interest groups, notably the developing and the developed countries. A more complex situation is posed by the perspectives of delegations with interests that cut across this traditional dichotomy. Among the developed countries are the major as well as the minor industrialized countries, both with varying degrees of interests.

8. In the world of developing countries, there are those who, as land-based producers or potential producers of the minerals that are the focus of impending exploitation in the deep sea-bed, must share a community of interests with some developed countries, also producers of the same minerals. Among the industrialized countries, the rate of development in economic and technological terms has been so uneven that our negotiating efforts must address seriously the apprehension of the majority with regard to monopoly threatened by the accelerated technological developments of a significant minority among them. There is also a curious community of interests among a number of countries opposed to discrimination in the award of contracts, even though the immediate motivations may be diverse.

9. The discussion of packages is thus complex and, indeed, delicate, especially because there is a tendency to equate them with the extreme priorities of individual delegations. There is a tendency to talk of "important national interest" in loose terms, without the more desirable approach of attempting to reconcile one's so-called national interests with the many diverse national interests of others within the international community and this Conference.

10. In the final analysis, I believe that the only packages that must preoccupy us in the search for compromise and consensus over part XI of the negotiating text are:

(1) Those which must reconcile the declared realistic interests of the few industrialized countries on the one hand, and, on the other hand, those of the vast majority of mankind represented by predominantly developing countries; and

(2) Those which must reconcile the declared realistic interests of two other opposing categorizations of countries. On the one hand, the family of current producers of the minerals in their national territories we seek to exploit in the area, whose economies depend significantly upon their export to the industrialized countries; on the other hand, the highly industrialized countries whose industrial growths consume these minerals, provide healthy markets for the producer countries and who, with contemplated activities in the area, seek assured access to the new source of these minerals through active participation as producers therein.

11. It can only be hoped that, in this monumental reconciliation effort, all concerned will preserve the collective needs of the young and fragile international community in which we can only survive together or perish like unthinking mortals, who punch each other senselessly into smelting lava from an erupting mountain.

12. One point that must be noted at this stage is that it is impossible to meet all the individual national interests of

each delegation. The scope of the diversity makes this clear. An important feature in successful negotiations is that each side must be seen to gain something, even if losses may be encountered in the process. Each negotiation must relate to a collectivity of interests, making it possible to protect some and to give up others on the basis of reciprocity.

13. At this Conference, we cannot, at this stage, insist on viewing the individual interests of each nation represented here, in isolation from the collectivity. We have all come with a set of interests which are "national"— each with a package, as it were. The negotiations must necessarily be among packages.

14. This question is an important one, because I honestly do not believe that in the programme the Conference has adopted for the next phase of our work it would be desirable for amendments and decisions to be made on the basis of individual articles in isolation from the mini or major package to which it belongs. The Conference must not contemplate, for instance, an amendment to an article in an annex which was worked out and agreed to *ad referendum* subject to agreements elsewhere. It is a package, not an isolated idea that should as a whole be the subject of proposals for amendment. If we do not reach a clear decision on this now, it may raise insurmountable problems when we invoke the final procedures for the adoption of a convention.

15. I shall now attempt to underline what I see as the elements of the outstanding mini-packages which we must together strive to resolve in the next session.

A. The system for activities

16. One broad underlying consideration, which is a type of *jus cogens* for us, is that we are endeavouring to work out an international régime for a limited pioneering period; that the system under current study is the parallel system and that we have all agreed that it falls apart if we do not ensure that both sides of the system work and work efficiently. It became the basis for negotiations only on this understanding. Therefore all sides must endeavour to agree on incorporating fundamental elements which will adequately ensure the effective functioning of the parallel system from the very beginning and throughout the contemplated period of time before the review conference.

17. Broadly speaking, a limited number of areas must be addressed under this heading:

(1) The direct operators now identified are the Authority through the Enterprise in the reserved area and, on the other hand, States parties and other entities in the contract area. Joint arrangements between the Enterprise and other entities in both reserved and non-reserved areas are a possibility which must be examined more closely.

It is essential here that each category of operator be qualified in accordance with the rules and regulations. The real issue is that the Enterprise must be given, through the convention, full capacity to become an effective operator in the area. Technology must be seen to be available to it, and it must be financially strong not only during the critical first five years but beyond.

In annex II, articles 8, 8 *bis* and 10 have attempted to take care of a range of issues: adequacy of prospecting and exploration data, and especially data for acceptance for reservation of mine sites; operations in the reserved area by the Enterprise at the commencement to be guaranteed for at least one fully-integrated project with financial burden carried largely by developed countries and with interest-free loans (considered as equity contribution) and interest-bearing loans in a ratio of 1:1; joint venture provisions for both reserved and contract areas; and some provisions for a system of technology transfer.

I believe that an important issue which must be tackled with seriousness after some reflection is that of adequate assurances of transfer of technology to and the financing of the Enterprise. As I have said, the parallel system will not work unless this is ensured.

(2) The second area within the system relates to an agreed resource policy, especially regarding the critical element of production limitation in article 151. With regard to the latter, the issue is between two needs for assurances: that sea-bed mining industry can commence and develop in an orderly and reasonable manner; and that this new industry does not introduce further chaos into the economics of the mineral industry, particularly with regard to the economies of the land-based producer countries. It is, however, important to observe that there is widespread feeling that the new industry must develop in a way that benefits mankind as a whole. I do not wish to do any more than make this a passing reference to a subject which remains the object of intensive but inconclusive informal negotiations co-ordinated by the Chairman of negotiating group 1, Mr. Njenga, Kenya, actively assisted in continuing consultations by Mr. Nandan of Fiji. It is my hope that armed with further and more appropriate instructions from their Governments, delegations will be better prepared for flexibility and a spirit of mutual accommodation.

(3) The third element in the package remains the agreement on the financial terms of mining contracts. The Chairman of negotiating group 2, Mr. Koh of Singapore, has constantly encouraged different negotiating parties to have a better understanding of the interests and concerns of the other parties; to understand also that each negotiating party has certain irreducible minimum interests that must be accommodated. I wish to endorse and encourage that approach.

18. The issue to be borne in mind remains that with which I commenced. The parallel system of exploration and exploitation was accepted on certain conditions understood by both sides. One of these conditions was the undertaking by developed countries to assure the Enterprise of the funds required to carry out one fully-integrated mining project. It must, on the other hand, be noted that the proposals made by the Chairman of negotiating group 2 on the financing of the Enterprise, as well as those on the financial terms of mining contracts, are linked.

19. Two years ago, when we embarked on the job of seeking to regulate a new industry, the problem seemed intractable. Our assumptions and estimates about capital requirements, operating costs and revenues are, at best, uncertain. Comparisons with land-based mining have offered us only limited help. We had to seek for a solution which has necessarily to be flexible to take into account the uncertainties of actual financial outcomes and, at the same time, generate an adequate and stable income for the Authority for the purpose of carrying out its functions and obligations. The proposed financial terms of contracts are intended to achieve these objectives of stability and flexibility.

20. The problems outstanding, as I have said, must remain a mini-package in itself. That package must be viewed as an integrated whole. Negotiating parties must resist the temptation to accept only those parts of the package which favour them and demand further negotiations on other parts of the package. All negotiating parties must endeavour to weigh the pluses and minuses of the package, and answer whether, taken as a whole, they can live with it. It is undesirable to cause Mr. Koh to enter into an unending pursuit of new figures and new provisions in a manner that gives the erroneous impression that the negotiations are being held between him and the opposing sides.

B. Institutional problems

21. The composition of the Council, its voting procedure and the relationship between the Council and the Assembly in terms of their respective powers and functions, constitute yet another mini-package. Each element may not appear linked with the other to a non-participant in the negotiating effort, but it must be recognized that from a political standpoint they are very closely linked. I shall attempt a brief survey of the broad aspects:

(1) The issue of the composition of the Council involves two aspects. The first is the categorization of special interests as contained in article 161, paragraph 1. This aspect has in principle been resolved with regard to general characteristics. Suggestions so far made relate to the enlargement of the scope of each. In the fourth category, reserved for developing countries, for instance, the plea for adding the interests of potential, land-based producers, island States etc. is a matter of detail which the Group of 77 should be able to resolve. Other suggestions, including the addition of the interests of countries with migrant workers, can be considered within the existing framework. The second relates to the numbers for each categorization. The provisions contained in the revised negotiating text were the product of intense negotiations and enjoy some consensus. However, it must be recalled that the suggestions of a group of less industrialized among the developed countries for some increase in the chances of their representation may, if accepted generally, lead to inevitable change in the size of the Council and consequently in a renegotiation of the numbers of the two major categorizations, i.e. the interest groups in article 161, paragraphs 1 (*a*)-(*d*) and that represented by paragraph 1 (*e*). A spirit of understanding on all sides should resolve this question at the next session.

(2) For convenience, we may wish to consider the relationship between the Assembly and the Council. This element has a number of considerations which are also linked. The first consideration relates to the powers and functions of the Authority itself. The developing countries insisted that these shall be specified but that implied powers and functions are recognized under international law. The industrialized countries have argued that these should be the sum total of those of all given to the organs and no more. The new text proposes a new approach which grants incidental powers consistent with the provisions of the convention, implicit in and necessary for the performance of these powers and functions. This appears to invite consensus, although, it must be remembered, it remains part of a package. Regarding the powers and functions of the principal organs, the central focus was the implications of the phenomenal "supreme" organ. The developing countries feel that the Assembly, looked at as the organ in which all States parties are members, must have a superior policy role over other principal organs; other organs, including the Council, must account to it; residual powers must be conferred upon it in addition to discussions on any question on part XI of the negotiating text. The developed countries prefer the Assembly as a deliberative or plenary organ, which must not be "supreme"; it may make general policies on the recommendations of the Council; that there should be strict separation of powers and non-interference. The new suggested amendments of article 162 may well provide a satisfactory compromise.

(3) The last element relates to the problem of a specific relationship between the discussions of the Council and its subsidiary organ. The report of the working group of 21 explains in sufficient detail the solution which appears to have emerged from consultations.

The results of negotiations on these considerations have, I believe, enhanced the chances of the package to which they belong.

C. The decision-making procedure in the Council

22. The report of the working group of 21 is adequately explanatory on this question. I continue to believe that this issue is a critical one. The developing countries have done their best to try to accommodate the industrialized countries in this field. As a result, negotiations are continuing in a far healthier atmosphere than ever before.

23. I can only state that this is perhaps the last thorny issue not yet resolved. The elements of resolution may well be with us and no one dares to show too much enthusiasm before a break-through is found to the actual decision-making system. As the report of the working group of 21 indicates, some matters of principle still underlie the questions of figures. I do not believe that the negotiations will let this issue hold back an over-all attainment of consensus on the entire package.

24. That is the guidance I wish to provide for the next phase of our work in the First Committee, as far as the core issues are concerned. I must state that there remains a wild field of less difficult but all-important negotiations regarding part XI of the negotiating text. We must continue with our present speed and determination if we are to conclude our work. Some of these issues will indeed be taken last of all, and may be resolved by the normal procedures of the Conference. Environmental questions have been raised after consultations and they would, as usual, appear to present no difficulties. As you know, they remain an informal paper in the working group of 21.

D. Settlement of disputes

25. I must refer briefly to the treatment of questions relating to the settlement of disputes touching upon part XI of the negotiating text as well as other parts of the document. My consultations convinced me that the First Committee must first conclude substantial work on those aspects under review by the group of legal experts under Mr. Wuensche, of the German Democratic Republic, before any co-ordination may be done with the plenary exercise. As you must know, most of the participants in these questions in that group are also involved with the efforts in plenary. They will best advise our co-ordinating efforts on financing, perhaps sometime early during the next session.

E. Report on manpower requirements of the Authority and related training needs

26. The special representative of the United Nations Secretary-General presented a preliminary report to the First Committee on 22 August 1979. It has been released as document A/CONF.62/82. We did not have time to receive comments on it but there was a general feeling of gratitude for its preparation. I expressed, and once again express, great satisfaction for the continuing work of the Secretary-General. I wish to add that in view of the details which he must provide in his final report, I believe that the Conference will wish to have the matter brought formally before the General Assembly of the United Nations because of some of the financial implications involved. In fact, it is my impression that the delegations agree to this being done.

27. Finally, I wish to register on behalf of the officers of the First Committee my sincere thanks to all who have made our work such a continuing success. Special thanks, in the first place, for the distinguished men who helped co-ordinate the working group of 21: Mr. Njenga, Mr. Koh, and Mr. Wuensche. They, in turn, have presented a list of others who have helped them in their work, including Mr. Nandan and Mr. Brennan of Australia. The team of experts from the United Nations Secretariat, as well as the various delegations, were incredibly helpful. I wish to thank the special representative of the Secretary-General for the characteristically excellent co-operation of his team.

28. We all look forward to the last phase of this Conference and to a viable convention that will instil the conditions of peace into international relations among nations.

ANNEX

DOCUMENT A/CONF.62/C.1/L.26

Report on negotiations held by the Chairman and co-ordinators of the working group of 21

[Original: English]
[21 August 1979]

At this resumed session, the working group of 21 continued its work in the form of meetings and consultations. It was chaired over-all by the Chairman of the First Committee, who also co-ordinated the negotiations on the Assembly and the Council. Mr. Njenga co-ordinated the negotiations on the system of exploration and exploitation. Mr. Koh co-ordinated the negotiations on financial arrangements, Mr. Wuensche acted as co-ordinator but held separate meetings of the group of legal experts, the results of which were reported to the working group of 21. The suggestions resulting from consultations held by the Chairman and the co-ordinators of the working group of 21 are given in document WG21/2 (appendix A). The report of Mr. Wuensche is incorporated in this report as appendix B.

The working group of 21 considered the hard-core issues in the following order: first, the Assembly and the Council: composition of the Council, decision-making system and interrelationship between the Council and the Assembly; secondly, financial arrangements; and thirdly, the system of exploration and exploitation.

I. The Assembly and the Council

The working group of 21 addressed the issues under this heading, bearing in mind the need to assemble a mini-package consisting of the interrelationship of the principal organs of the Authority, mainly regarding the scope of the powers and functions of the Assembly and the Council, and the decision-making system in the Council.

Document WG21/2 contains suggestions which were made during consultations held by the Chairman and co-ordinators following negotiations. Those relating to the Assembly and Council were chosen because it is the impression of the Chairman, in co-ordinating the negotiations, that they had been the basis for intense negotiations. Some of the suggestions were accepted on an *ad referendum* basis. Others, notably the ideas on the decision-making system, did not enjoy complete consensus, especially as the number of members required for a blocking majority remains unsettled and reservations have been expressed by some representatives regarding the list of subjects requiring a special voting régime.

The suggestions, all part of a "package", do not assume more than the role of providing indication as to the trends of negotiations. It is only the reaction of the membership of the First Committee that will dictate the capacity of any ideas to enter into the second revision of the negotiating text.

1. *Interrelationship*

The suggestions attempt to resolve the existing issues relating to the concept of the supremacy of the Assembly, which appeared to present difficulty to the industrialized countries. They also seek to clarify the scope of exercise of the powers and functions of each organ.

First, the suggested revision of article 160 states that the Assembly shall be considered the supreme organ of the Authority. The sources of its supremacy lie in its membership consisting of all the members of the Authority, in its accountability for the other principal organs of the Authority, in its "incidental powers" as defined in article 157 and its residual powers as referred to in new paragraph 2 (*o*) of article 160.

Secondly, the relationship of powers and functions of the principal organs of the Authority is defined in article 158, paragraph 4, which makes it explicit that each organ, in exercising its powers and functions, shall avoid taking any action which may derogate from or impede the exercise of specific powers and functions conferred upon another organ. Paragraph 2 (*o*) of article 160 gives the Assembly power to discuss and decide upon any question within the competence of the Authority, and to decide which organ shall deal with any question not specifically entrusted to a particular organ. The revised paragraph 2(*r*) of article 162 gives the Council power to make recommendations to the Assembly concerning policies on any question within the competence of the Authority.

A related issue is that of the interrelationship of the Council and its subsidiary organ, the Legal and Technical Commission. Paragraph 2 (*j*) of article 162 of the revised negotiating text provides that the Council shall act expeditiously in its approval of formal, written plans of work following the review of the Commission. It then provides that such plan of work shall be deemed to have been approved unless a decision to disapprove it is taken within 60 days upon its submission by the Commission. It is this latter provision that has proved to be a highly contested issue, the opponents considering that it erodes the supremacy of the Council over its subsidiary organ.

The suggested article 162, paragraph 2 (*j*) seeks to accomodate this serious preoccupation. It restricts the operation of such automatic approval system only to a plan of work which is not contested by a competing application. It also prescribes that a plan may be deemed to have been approved unless a proposal for its approval or disapproval has been voted upon within 60 days.

On an *ad referendum* basis, it would appear that these suggestions attract consensus.

2. *The decision-making system in the Council*

This has been perhaps the most difficult issue to tackle in the absence of a resolution of other issues in the mini-package. The clause of the revised negotiating text, stipulating that all decisions on questions of substance are to be taken by a three-fourths majority of members present and voting, clearly does not enjoy a consensus. It appears to be generally accepted now that no traditional veto system as known in the United Nations system is acceptable. There has also been widespread rejection of the concept of "chamber" voting, in which identified interest categorization could block a decision.

Consequently, some attempt has been made to identify special or sensitive issues over which the industrialized countries need special protection. The list of these was, however, not forthcoming. It was thought expedient to review issues over which no special régime or procedure of voting was acceptable.

The suggestions relating to article 161 reflect this new approach. It contains three new points. First, the decisions on questions of procedure shall be taken by a majority of the members present and voting. Secondly, certain questions of substance which are enumerated in subparagraph (*b*) 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. Thirdly, decisions on all other questions of substance shall be taken by a two-thirds majority of members present and voting, provided a specific number of members, still to be settled, has not cast negative votes. When the issue arises as to whether the question is covered by this subparagraph or not, the questions shall be treated as so covered unless otherwise decided by the Council by the majority required for questions under the paragraph.

The acceptance of this system itself will depend on a satisfactory resolution of two main questions. The crucial one is that of the blocking figure under subparagraph (*c*). As the suggestions indicate, that figure is somewhere between 5 and 10, both of which are clearly unacceptable as basis for consensus. The other, perhaps to a lesser extent, relates to the list of issues contained in subparagraph (*b*).

It is generally felt that the system, as stated, is not to be considered as a basis of a viable consensus until these issues are satisfactorily resolved. Consequently, it would appear inadvisable to consider the inclusion of these latter suggestions in any further revision of the negotiating text before that event. However, it is also clear that the system must be kept in view as an idea which may lead to a consensus, if the revised negotiating text continues to present difficulties.

II. Financial arrangements

Annex III: Financing the Enterprise

The Chairman of negotiating group 2 began his report by explaining the revisions which he proposed to annex III, the statute of the Enterprise.

The first revision proposed is to article 3. Mauritius pointed out that there is a need to make a cross-reference between article 3 and article 10 in order to make explicit the fact that article 3 is subject to article 10. The Chairman accepted this point and proposed the addition of the words "subject to article 10, paragraph 3, below". Since

this revision is only by way of clarification, it should not be controversial.

The second revision proposed is to article 10. Following a suggestion by India, he reformulated article 10, paragraph 2 (*c*) as a new paragraph 3. The Chairman deleted the words "to the extent that such funds are not covered by the other funds referred to in paragraph 1".

The new paragraph 3 contains the following salient points:

First, the Enterprise is assured of the funds necessary to carry out one fully-integrated mining project. An integrated mining project would enable the Enterprise to process up to four metals, namely, cobalt, copper, manganese, and nickel. The Enterprise has the discretion to decide whether to utilize these funds by investing them in one project of its own, or to invest them in joint ventures. During the consultations, the Chairman raised the question whether the amount of the funds should be specified. He asked this question because many Governments would like to know the extent of their obligations. Members of the Group of 77 were, however, against specifying an amount. They pointed out that estimates of the capital required to carry out one fully-integrated project varied greatly. The original estimates by the Massachussets Institute of Technology, based upon a three-metal case, and upon 1976 prices, were $560 million. The new estimates, based upon 1979 prices, suggest an amount of $750 million. Other estimates, however, based upon a four-metal case, are much higher and suggest a total amount exceeding $1 billion. The Chairman suggested specifying the amount of $1 billion, together with an escalating factor to take care of inflation. Members of the Group of 77 could not accept his proposal because they feared cost overruns would not be taken care of by the escalating factor. For these reasons, therefore, he left the amount unspecified. The amount would be determined by the Assembly, upon the recommendation of the Council, on the advice of the Governing Board of the Enterprise.

The next salient point is the ratio between the interest-free loans from States parties and the guaranteed interest-bearing loans. In dealing with this question, an analogy was often made with the debt-equity ratio of a company. The interest-free loans are compared with the equity capital of a company. The interest-bearing loans are compared with the debt capital of a company. Some delegates objected to this analogy on the ground that the shareholders of a company expect to earn dividends on their equity, whereas the lenders of the interest-free loans to the Enterprise would not receive any dividends. One answer to this criticism is that lenders of the interest-free loans to the Enterprise also expect to earn dividends by way of sharing the profits made by the Enterprise which will be distributed to States parties by the Authority. In his consideration of this question, the Chairman found the analogy with the debt-equity ratio a helpful one.

The members of the Group of 77 contend that the ratio of the interest-free loans to the guaranteed interest-bearing loans should be 1:1. Industrialized market-economy countries contend that the ratio should be 1:2. The Chairman has asked the United Nations Centre on Transnational Corporations to undertake a survey of the debt-equity ratios of mining companies in the industrialized market-economy countries. The results of the survey are contained in a document which is attached to this report as annex A. The table shows support for both a debt-equity ratio of 1:1 and a debt-equity ratio of 2:1. In view of this and in view of the fact that the Enterprise will be a new institution with no assets and no track record, he thought a ratio of interest-free loans to guaranteed interest-bearing loans of 1:1 would be justifiable.

The third salient point is the scale which will determine the contributions by States parties of interest-free loans as well as their guarantees of the debts of the Enterprise in raising the remaining half of the capital required. The Chairman of negotiating group 2 considered various possibilities, but came to the conclusion that the best scale to use is the scale referred to in article 160, paragraph 2 (*e*), which is based upon the United Nations scale. Several representatives of the Group of 77 pointed out, during consultations, that since the Enterprise belongs to all, no State Party should be exempted from making a contribution to the Enterprise. They also said that the contributions by States parties should reflect their varying capacities to help and that the most widely acceptable scale for doing this is the United Nations scale.

The fourth salient point concerns the repayment of the interest-free loans to States parties. The Chairman proposed that the repayment of interest-bearing loans shall have the priority over the repayment of interest-free loans. He also proposed that, upon the recommendation of the Council, on the advice of the Governing Board of the Enterprise, the Assembly shall adopt a schedule for the repayment of the interest-free loans to the States parties.

Annex II: Financial terms of contracts

Turning to article 12 of annex II of the revised negotiating text, the Chairman proposed a number of changes to this article, and attempted to explain the more important of these proposals. In paragraph 1, the Group of 77 has proposed the addition of a subparagraph (*f*) which would state the general principle that the financial terms of sea-bed mining should be comparable to the financial terms of land-based mining. The evil which the Group of 77 wishes to avoid is that investment would be artificially diverted from land-based mining to sea-bed mining if the financial terms of sea-bed mining were unduly favourable compared to those of land-based mining. As a result of consultations the Chairman proposed a new subparagraph (*f*) which he hoped would be generally acceptable.

The mixed system

The Chairman then turned to the mixed system of financial payments contained in article 12, paragraph 6. The Group of 77 did not like the proposal but could accept it. The industrialized countries said, however, that they could not accept the proposal. They had several complaints. The first complaint was that the production charge should be based upon the attributable gross proceeds and not on the gross proceeds. Secondly, the said that the production charge rates of 2 per cent in the first period and 5 per cent in the second period were too high. The best offer they were willing to make was 1 per cent in the first period and 2 per cent in the second period. Their third complaint was against the proposal that the attributable net proceeds should be equal to 35 per cent of the contractor's net proceeds. They said that the figure of 35 per cent was arbitrary and that it should be replaced by the ratio of the development costs of the mining sector to the contractor's total development costs. Fourthly, they complained that the trigger mechanism of recovery of twice the development costs was an inadequate method of reflecting the opportunity cost of capital invested in the project. Fifthly, they complained that the tax rates of 45 per cent in the first period and 65 per cent in the second period were too high. The best offer they were willing to make was for 25 per cent in the first period and 50 per cent in the second period. Finally, they complained that the tax system was inflexible in that it did not vary with the contractor's return on investment. It was regressive in that the Authority's relative share was larger when the contractor's return on investment was low and smaller when his return was high.

Proposal by Norway

In order to bridge the considerable gap existing between the Group of 77 and the industrialized market-economy countries, the representative of Norway, Mr. Evensen, made a very interesting proposal. A copy of his proposal is attached as annex B. Briefly, the production charge rates would be 2 per cent in the first period and 4 per cent in the second period; the attributable net proceeds would be 20 per cent in the first period and 40 per cent in the second period; the trigger mechanism would be the same as in paragraph 6 (*e*); and the tax rates would be 40 per cent in the first period and 75 per cent in the second period. In the Chairman's view, Mr. Evensen's proposal was a considerable improvement on his own proposal as contained in the revised negotiating text. Unfortunately, Mr. Evensen's proposal was not acceptable either to the group of 77 or to the industrialized market-economy countries.

New proposal on the mixed system

As a result of the intensive consultations and negotiations which took place at this resumed session of the Conference, the Chairman proposed a new package on the mixed system of financial payments which he hoped would be acceptable to both the Group of 77 and the industrialized market-economy countries.

Production charge

The Chairman had retained the idea that the production charge should be based upon the market value of the processed metals, or the Contractor's gross proceeds, rather than on the attributable gross proceeds. For the first period, he did not propose to change the rate, which remains at 2 per cent. For the second period, he proposed a reduction from 5 per cent to 4 per cent. During the consultations, some members of the Group of 77 indicated their willingness

to accept a production charge rate of 4 per cent for the second period.

The Chairman knows that the production charge rate of 4 per cent, based upon the market value of the processed metals, can be a heavy burden for the Contractor, even in the second period, if in a particular year the Contractor's project is doing badly. This is a legitimate concern and in order to take care of the concern he proposed a new safeguard. The safeguard is that if, in any financial year, the contractor's return on investment is less than 15 per cent, he shall pay a production charge of 2 per cent instead of 4 per cent. Return on investment is arrived at by dividing the attributable net proceeds by the development costs of the mining sector. The Chairman hopes that with this additional safeguard, the production charges of 2 per cent and 4 per cent, based upon the market value of the processed metals, will be acceptable to both the Group of 77 and the industrialized market-economy countries.

The attributable net proceeds

Perhaps the most difficult issue in the negotiations is the question how to determine the Authority's tax base if the Contractor's project is partially or fully integrated. In the revised negotiating text, the Chairman proposed a predetermined constant ratio of 35 per cent. This was not acceptable to the industrialized market-economy countries who complained that any predetermined constant ratio was arbitrary. They insisted that the most objective and logical method of determining the attributable net proceeds was to use the ratio of the development costs in the mining sector to the Contractor's total development costs.

In order to assist delegates in negotiating this difficult issue, negotiating group 2 prepared a paper. This paper is attached as annex C. The paper identifies four methods of determining the attributable net proceeds. First, the predetermined constant ratio method; second, the cost-ratio method; third, the net-back method; and fourth, the cost-plus method. Each of the four methods has its advantages and disadvantages.

The major disadvantage of the predetermined constant ratio method is that the ratio is derived from certain assumptions and the actual financial outcome may not conform to these assumptions. The actual ratio may turn out to be higher or lower than the predetermined constant ratio. If higher, the Authority's tax base, calculated by this method, is lower. If the actual ratio is lower, the tax base of the national taxing Authority is lower and the contractor's tax burden may be higher.

The cost-ratio method assigns the value of the nodules, if any, to the mining and the processing sectors proportionately to the development costs of the two sectors. A major disadvantage of the cost-ratio method is that it may vary from project to project, and thus the Authority has a less stable tax base compared with the predetermined constant ratio method.

The Chairman of negotiating group 2 was unable to convince the industrialized market-economy countries to use the net-back method or the cost-plus method. The intensive negotiations on this issue have resulted in the combination of the cost-ratio method and the predetermined constant ratio method. The latter will act as a floor above which the attributable net proceeds will be determined by the cost ratio. The Chairman suggested a floor of 25 per cent for a fully integrated three-metal project. In all other cases, including four metal projects producing nickel, copper, cobalt and manganese, he proposed that the Authority may, by regulations, prescribe appropriate floors which will bear the same relationship to each case as does the 25 per cent floor to the three-metal case.

The tax system

In order to assist representatives in the negotiations on the tax system and tax rates, negotiating group 2 prepared a paper entitled: "An alternative scheme of taxation: variable incidence". This paper is attached as annex D and deals with the trigger mechanism as contained in paragraph 6 (*e*) and with the relative merits of single rate and variable rate tax systems.

The paper suggests that, from the points of view of both the Authority and the contractor, a trigger mechanism whereby development costs are recovered with an interest rate on the unrecovered part of the development costs would be preferable to the proposal of twice the recovery of development costs. The reason is that it is possible for a project to achieve a more than adequate over-all return on investment before 200 per cent of development costs are recovered. In such an event, the contractor would continue to pay production charge and tax rates of the first period. This would consequently reduce the income to the Authority. For this reason, the Chairman reformulated the trigger mechanism. Under his new proposal, the first period would come to an end when the contractor recovered his development costs with interest at 10 per cent on that portion of his development costs not recovered by his cash surplus. Cash surplus means the contractor's gross proceeds, less his operating costs, less his payments to the Authority. This is the same as the contractor's net proceeds plus his annual recovery of development costs, as stated in paragraph 6 (*j*) of his new text, less his payments to the Authority.

The paper also demonstrates that from the points of view of both the Authority and the contractor, a flexible tax system based upon an incremental scale would be preferable to a single-rate system. Under a single tax rate the Authority would not be able to capture additional revenues during the years when the profits were high. For various reasons, the Chairman therefore proposed a change in the tax system to a flexible one using the contractor's return on investment. He proposed three incremental steps. The first would be when the contractor's return on investment was greater than 0 per cent but less than 10 per cent. That part of the attributable net proceeds falling within that increment would be taxed at 35 per cent in the first period and 40 per cent in the second period. The second step would be when the contractor's return on investment was 10 per cent or greater, but less than 20 per cent. That part of the attributable net proceeds falling within that increment would be taxed at 42.5 per cent in the first period and 50 per cent in the second period. The third step would be when the contractor's return on investment was 20 per cent or greater, when the applicable tax rates would be 50 per cent in the first period and 70 per cent in the second period.

The single system

One of the fundamental principles of our negotiations is that the single system and the mixed system must be equalized. The Chairman used the contractor's internal rates of return to equalize the two systems. Because of the changes he proposed to the mixed system, it would be necessary to propose some changes to the single system. He suggested reducing the production charge in the first period from 8 per cent to 5 per cent, and from 13.5 per cent to 12 per cent in the second period.

Monetizing the proposals

The single system and the mixed system contained in his new proposal would produce different amounts of income for the Authority and different internal rates of return for the contractor depending upon the technical and economic outcomes of sea-bed mining projects. It is nevertheless useful to examine payments to the Authority and the contractor's internal rates of return under several sets of possible circumstances.

The calculations which follow (annex E) are based upon a version of the Massachusetts Institute of Technology model of a vertically integrated sea-bed mining operation. These figures permit the comparison of the Authority's income and the contractor's internal rates of return, but they assume a mining operation financed with 100 per cent equity which pays United States taxes after sharing with the Authority, and which has a 25-year period of commercial production and not 20 years. For these reasons, the figures are not directly comparable with those reported in document NG2/12/Rev.1.[33] The internal rates of return would be higher by about one to three percentage points in the different cases if national taxes were not levied. The internal rates of return would also differ if debt-equity ratio was 1:1.

Case C is the original Massachusetts Institute of Technology baseline set of assumptions. Case A represents a low-profit situation with higher costs and lower ore grade (development costs and operating costs are increased by 25 per cent, research and development costs are increased to $150 million, and ore grade is reduced to 2.4 per cent). Case B is the same as case A but with metal prices increasing 1 per cent per year. Case D increases metal prices to near-current levels and the original Massachusetts Institute of Technology baseline costs. Case E is the same as case D except that the original Massachusetts Institute of Technology baseline development and operating costs are increased by 25 per cent and prices are allowed to increase by 2.5 per cent per year. Case F is the same as case E but with the original MIT baseline cost estimates.

[33] *Ibid.*, vol. XI (United Nations publication, Sales No. E.80.V.6), document A/CONF.62/C.1/L.22, annex III.

Table 1 in annex E shows payments to the Authority under the mixed system which are from about $260 million to about $2 billion as the contractor's internal rates of return range from about 6 per cent to 24 per cent. In the baseline case, payments to the Authority are $574 million. Under the single system, payments range from about $527 million to about $1.3 billion with payments in the baseline case equal to $599 million. The contractor's internal rates of return range from about 5 per cent to 25 per cent.

Case E represents the situation in which the original baseline price and cost estimates are revised to reflect more current values, and metal prices are allowed to increase 2.5 per cent per year. Some observers believe this case to be more realistic. Payments to the Authority in case E would be $1,792 million under the mixed system and $1,312 million under the single system.

Table 2 in annex E compares three proposals, namely my new proposal, the proposal contained in the revised negotiating text and the proposal by the United States.

ANNEX A

DEBT-EQUITY RATIOS OF MINING COMPANIES

	1958	1963	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977
Australia												
BHP	—	—	20/80	22/78	20/80	19/81	23/77	20/80	17/83	22/78	25/75	17/83
Western M	—	—	—	—	31/69	19/81	13/87	16/84	23/77	41/59	41/59	36/64
Canada												
Alcan	58/42	58/42	45/55	45/55	47/53	46/54	47/53	44/56	45/55	47/53	40/60	34/66
Falconbridge	4/96	1/99	1/99	1/99	1/99	50/50	56/44	50/50	47/53	45/55	41/59	43/57
Inco	—	—	16/84	16/84	21/79	30/70	28/72	25/75	28/72	29/71	35/65	35/65
Noranda	18/82	5/95	40/60	32/68	35/65	42/58	42/58	37/63	36/64	43/57	46/54	44/56
Sherrit G	—	—	26/74	26/74	21/79	14/86	32/68	32/68	25/75	22/78	19/81	34/66
France												
Imetal	—	—	—	—	—	—	—	—	—	18/82	17/83	16/84
Pechiney	—	—	32/68	25/75	35/65	—	46/54	46/54	45/55	50/50	54/46	54/46
Germany, Federal Republic of												
Metallgesell.	—	—	52/48	57/43	57/43	62/38	59/41	58/42	53/47	56/44	55/45	52/48
Preussag	—	—	—	—	—	—	—	63/37	56/44	56/44	53/47	59/41
Japan												
Mitsubishi	—	—	44/56	41/59	48/52	55/45	61/39	60/38	62/36	71/29	77/23	78/22
Mitsui	—	—	50/50	57/43	59/41	58/42	62/38	62/38	63/37	62/38	67/33	70/30
Nippon H	—	—	63/37	61/39	67/33	64/36	70/30	72/28	72/28	76/24	76/24	76/24
Sumitomo	—	—	44/56	49/51	47/53	55/45	65/35	61/39	61/39	67/33	73/27	73/27
South Africa												
Anglo	—	5/95	4/96	11/89	11/89	11/89	15/85	12/88	11/89	12/88	11/89	16/84
Sweden												
Boliden	—	—	33/67	28/72	46/54	51/49	52/48	53/47	53/47	62/38	67/33	70/30
Switzerland												
Alusuisse	—	—	29/71	38/62	38/62	44/56	50/50	45/55	50/50	56/44	53/47	52/48
United Kingdom												
Goldfields	7/93	28/72	33/67	42/58	38/62	34/66	30/70	30/70	29/71	22/78	24/76	27/73
RTZ	16/84	28/72	40/60	39/61	46/54	56/44	52/48	46/54	44/56	46/54	48/52	48/52
Selection T	—	—	—	—	—	—	7/93	19/81	33/67	39/61	41/59	31/69
United States												
Amax	6/94	20/80	28/72	25/75	28/72	36/64	39/61	34/66	29/71	28/72	29/71	29/71
Asarco	—	11/89	5/95	4/96	3/97	5/95	7/93	11/89	12/88	28/72	32/68	33/67
Anaconda	10/90	9/91	20/80	21/79	24/76	32/68	22/78	19/81	18/82	22/78	27/73	27/73
Alcoa	40/60	32/68	38/62	39/61	41/59	43/57	40/60	39/61	38/62	44/56	41/59	39/61
Bethlehem	9/91	7/93	16/84	18/72	23/77	22/78	23/77	23/77	21/79	25/75	28/72	35/65
Hanna M.	—	—	17/83	14/86	11/89	11/89	11/89	12/88	16/84	9/91	7/93	10/90
Kaiser	60/40	48/52	50/50	45/55	44/56	48/52	48/52	48/52	49/51	47/53	46/54	43/57
Kennecott	1/99	1/99	19/81	15/85	13/87	21/79	18/82	14/86	14/86	22/78	28/72	27/73
Newmont	—	—	—	11/89	19/81	30/70	31/69	28/72	25/75	28/72	31/69	34/66
Phelps D.	—	—	5/95	14/86	12/88	19/81	20/80	26/74	27/73	37/63	39/61	37/63
Reynolds	53/47	44/56	56/44	55/45	53/47	56/44	58/42	57/43	55/45	51/49	50/50	46/54
St. Joe	24/76	16/84	9/91	8/92	7/93	6/94	16/84	18/82	11/89	9/91	9/91	13/87
Texasgulf	—	—	30/70	26/74	26/74	33/67	34/66	28/72	21/79	28/72	26/74	33/67
Union C.	35/65	28/72	35/65	34/66	34/66	33/67	32/68	31/69	26/74	32/68	34/66	32/68
US Steel	14/86	19/81	32/68	29/71	29/71	29/71	30/70	27/73	23/77	24/76	28/72	31/69

ANNEX B

PROPOSAL BY NORWAY ON ANNEX II, ARTICLE 12, PARAGRAPH 6

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 commerical production: 2 per cent

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

(*b*) The said market value shall be the product of the quantity of the processed metals and the average price for those metals during the relevant accounting year. The average price shall be determined in accordance with paragraphs 7 and 8.

(*c*) The Authority's share of net proceeds shall be taken out of an amount equal to 20 per cent of the contractor's net proceeds for the first period of commercial production and 40 per cent for the second period of commercial production to represent the net proceeds attributable to mining of the resources of the contract area. This amount shall be referred to hereinafter as the attributable net proceeds.

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

(i) First period of commercial production: 40 per cent

(ii) Second period of commercial production: 75 per cent

This latter percentage shall not be applicable if the net profit of the mining of the resources in an area is less than 10 per cent.[34]

(*e*) The first period of commercial production referred to in subparagraphs (*a*) and (*d*) shall commence in the first year of commercial production and terminate in the year in which the contractor's total net proceeds plus his recovery of development costs less his payments to the Authority in the form of share of attributable net proceeds in the preceding accounting years are equal to twice the development costs incurred prior to the commencement of commercial production. The second period of commercial production referred to in subparagraphs (*a*) and (*d*) shall commence in the following accounting year and continue until the end of the contract.

ANNEX C

DETERMINATION OF THE TAX BASE FOR THE AUTHORITY

1. In the absence of a competitive market for nodules, the net proceeds of an integrated operation would need to be divided between the mining sector and the processing sector. This note deals with:

(i) The methods of determining the net proceeds of the mining sector, i.e., the Authority's tax base;

(ii) The implications of these methods.

2. Annual gross proceeds from the sale of metals processed from the nodules mined from the area are, in the accounting sense,

= Operating costs in the processing sector
+ Annual recovery of development costs in the processing sector
+ Return on development costs in the processing sector
+ Operating costs in the mining sector
+ Annual recovery of development costs in the mining sector
+ Return on development costs in the mining sector
+ "x" (a positive or negative amount reflecting other market factors).

As is evident from this schematic presentation, net proceeds of the integrate operation will be the sum of return on development costs in the processing sector and in the mining sector, and "x". The tax base of the Authority is return on development costs in the mining sector + "x", or the portion thereof assigned to the mining sector.

Of the accounting items above, gross proceeds, operating costs in the processing sector, recovery of development costs in the processing sector, operating costs in the mining sector, and recovery of development costs in the mining sector are directly ascertainable. Return on development costs in the processing sector and in the mining sector and "x" are not directly ascertainable and depend for their values on judgement. Hence, the problem of assignment of net proceeds to each of the two sectors arises.

3. There are several methods to deal with the problem, four of which are described below:

(*a*) Predetermined constant ratio;

(*b*) Ratio of development costs in the mining sector to total development costs;

(*c*) Net-back;

(*d*) Cost-plus.

4. Predetermined constant ratio

Tax base

= Predetermined constant ratio multiplied by total net proceeds.

Total net proceeds

= Gross proceeds
− Operating costs in the processing sector
− Annual recovery of development costs in the processing sector
− Operating costs in the mining sector
− Annual recovery of development costs in the mining sector
= Return on development costs in the processing sector
+ Return on development costs in the mining sector
+ "x"

The predetermined constant ratio is a negotiated figure aimed at assigning as great a portion of "x" as feasible to the mining sector, consistent with a reasonable return on development costs in order to ensure a fair value to the nodules. The value "x" is calculated on the basis of specific financial outcome.

(i) This method places a value on the nodules.

(ii) The Authority is assured of a stable tax base. This is one of the three factors accounting for the stability of the Authority's income. The other two factors are the actual financial outcome and the tax rate.

(iii) Risk-sharing by the mining sector is predetermined, as it is based on the estimated financial outcome. Actual financial outcome may not conform to the assumptions. The actual ratio may turn out to be higher or lower than the predetermined constant ratio. If higher, the Authority's tax base, as calculated above, is lower. If lower, the tax base of the national taxing authority is lower, and the contractor's tax burden may be higher.

5. The ratio of development costs in the mining sector to total development costs

$$\text{Tax base} = \text{Ratio of } \frac{\text{Development costs in the mining sector}}{\text{Development costs in the processing sector and in the mining sector}} \times \text{Total net proceeds}$$

The ratio is applied to total net proceeds to obtain the net proceeds in the mining sector. "x" is assigned to both sectors according to this ratio.

(i) Under this method the value of the nodules is assigned to both sectors proportionately.

(ii) Development costs in each sector earn the same rate of return, and hence this method does not favour investments in either the mining sector or the processing sector.

(iii) Risk is shared proportionately by both the sectors. Risk borne is based on actual outcomes, not estimates.

(iv) The ratio may vary from project to project and, thus, the Authority has a less stable tax base compared with the first method.

(v) According to the Massachusetts Institute of Technology baseline case and the European base case, the ratio will be lower than in annex II, article 12 of the revised negotiating text.

6. Net-back

Tax base

= Gross proceeds
− Operating costs in the processing sector
− Agreed return on development costs in the processing sector
− Annual recovery of development costs in the processing sector
− Operating costs in the mining sector

[34] The 40 per cent tax (on 40 per cent of attributable net proceeds) would apply. An alternative would be a formulation whereby in the second period a 40 per cent tax should always apply to the first 10 per cent of the profit and 75 per cent to additional profits. My proposal referred to the first solution, not the alternative.

– Annual recovery of development costs in the mining sector
= Return on development costs in the mining sector
+ "x"

Under this method, "x" is assigned to the mining sector.

(i) As the payments in the processing sector are assured, changes in gross proceeds affect the mining sector only. The risk resulting from changes in gross proceeds is borne by the mining sector. Consequently, net proceeds in the mining sector are subject to fluctuations in gross proceeds. The tax base of the Authority is the least stable.

(ii) Depending on the agreed rate of return on development costs in the processing sector, the tax base may be the highest in good years and the lowest in bad years, compared with other methods.

(iii) The impact on the investment decisions in the processing sector is minimal.

7. Cost-plus

Tax base
= Agreed return on development costs in the mining sector
Gross proceeds
– Operating costs in the processing sector
– Recovery of development costs in the processing sector
– Operating costs in the mining sector
– Recovery of development costs in the mining sector
– Agreed return on development costs in the mining sector
= Return on development costs in the processing sector
+ "x"

"x" is assigned to the processing sector. This is the converse of the net-back method.

(i) As the payments in the mining sector are assured, changes in gross proceeds affect the processing sector only. The risk resulting from changes in gross proceeds is borne by the processing sector. The mining sector bears no risk and net proceeds in the mining sector do not vary with gross proceeds.

(ii) The Authority has a stability of tax base compared with other approaches.

(iii) The impact on the investment decisions in the mining sector is minimal.

ANNEX D

AN ALTERNATIVE SCHEME OF TAXATION: VARIABLE INCIDENCE

1. In order to ensure that the Authority's share of the net proceeds will be maximized throughout the life of the project, the system of taxation should respond to the financial outcome of sea-bed mining; that is, a system in which the incidence of taxation (or tax burden) will rise or fall with corresponding changes in annual net proceeds. The system should provide that the contractor's share of the net proceeds is not less than the "opportunity" cost of the capital he would tie up in sea-bed mining in order that he does not select another investment as preferable. At the same time, the system should limit the contractor's net proceeds to no more than would otherwise be needed to attract his investment, so that the Authority's share is maximized.

2. The uncertainty of the financial outcome of sea-bed mining and the likely difficulty in implementing changes in the financial terms of the contract, which might be desirable in light of any re-evaluation of the project, complicate any effort to arrive at a single correct tax rate. This tax rate, if it could be devised, would achieve the dual objectives of maximizing the Authority's share of the net proceeds and of encouraging investments in sea-bed mining at a level of return to the contractor no higher than necessary to undertake the investment. Yet there is a great risk that a single tax rate would be either too low, in which case the Authority's share of net proceeds would fall below what it could obtain and still attract investment, or too high, and thus discourage investment in sea-bed mining. It is likely that in view of the uncertain financial outcome of sea-bed mining, a rate of taxation appropriate to a low financial outcome would be chosen to safeguard the viability of investment in case such an outcome results. In the event that the outcome was more favourable, under the single low rate chosen, the Authority's share of income would be adversely affected.

3. Under a single tax rate, the Authority also runs the risk of failing to capture additional revenue from more profitable operations. For example, with a single tax rate system, if there were two mining operators, one whose net proceeds were low and the other whose net proceeds were high, both would pay at the same rate to the Authority. Yet the Authority could impose a high tax rate on the contractor whose net proceeds were higher without discouraging him from investing in the area.

4. The "trigger" clause under the mixed system of financial arrangements (A/CONF.62/WP.10/Rev.1, annex II, art. 12, para. 6 (*e*)) addresses this issue from the perspective of protecting the contractor from a higher tax incidence if his returns are low. But its impact on the Authority's share is uncertain because the timing of the increase from the low to the high rate could materially alter the financial outcome of the project. As such, the Authority's share might be less than it needs to be. Moreover, it is possible for a project to achieve a more-than-adequate over-all return before 200 per cent of development costs are recovered—a situation in which the Authority's share would continue needlessly to be taken at a low rate. If recovery of 200 per cent of development costs occurs late in a project's life, however, the over-all return to the contractor may be unacceptably low even to withstand higher sharing rates. From the perspective of either party, therefore, this mechanism can be improved. Of course, any such "trigger" clause fails to respond to annual changes in profitability.

5. An effective way of dealing with the uncertain financial outcome of sea-bed mining, while at the same time achieving the objectives of maximizing the Authority's share of net proceeds and of ensuring investment in the area, is to devise a system of taxation which will respond to annual changes in net proceeds of any one operation as well as to different annual levels of net proceeds among individual contractors. Such a system would ensure that when annual net proceeds were high, the tax burden would be higher than when annual net proceeds were low. It would also ensure that, in any one year, contractors whose net proceeds were higher than other contractors would contribute relatively more to the Authority's share of net proceeds.

6. The rate of tax which determines the Authority's share of net proceeds will be subject to the constraint of maintaining incentives to invest in the area by ensuring that the return to the contractor is not less than the "opportunity" cost of his money. This objective will be achieved if the tax payments to the Authority are structured so that, when the contractor's over-all profitability is low, these payments result in a small reduction in the profitability of the project, whereas when the over-all profitability of the project is high, these payments substantially reduce its profitability. The effective level of taxation will thus vary with the over-all level of profitability.

7. Since the over-all profitability of the project can be evaluated only in the context of the whole financial history of the project, some care needs to be taken in determining rates of incidence and their timing. This can be achieved by the use of two complementary mechanisms: first, by having two schedules for sharing net proceeds, one to apply before over-all project profitability approaches a threshold level, and the other, higher schedule to apply subsequently; secondly, by having both rate schedules vary with annual profitability. The first mechanism would help to ensure that higher sharing rates would apply to a project when it had achieved an acceptable threshold internal rate of return. The second mechanism of variable rates would ensure that annual payments would apply progressively with annual returns.

8. The over-all economic status of a project is best measured by the extent to which its capital is recovered, taking into account its "opportunity cost", or the rate of return forgone by capital tied up in the project. This will be achieved by signalling the second higher sharing schedule to come into effect once the project's cash flow is sufficient to recover the development costs with a minimum required rate of interest.

9. In both cases, payments to the Authority will be maximized. In the first case, before the recovery of the cost of development, the Authority's share will increase as net proceeds increase. Where different contractors' net proceeds vary, they will be taxed in accordance with their ability to pay. Contractors whose net proceeds are higher than those of other countries will pay more in both proportional and absolute terms.

10. After the costs of tied-up capital are recovered, higher rates will apply. The reason for higher rates is that having recovered his tied-up capital with interest, the contractor's risk project is minimized. As such, the contractor's share of net proceeds could be less than it was before recovery of development costs. Thus, this

part of the financial arrangements would not have a negative impact on his investment planning. Moreover, after capital recovery, the contractor would have received the internal rate of return, equal to the interest rate used. Subsequent additions to that internal rate of return, though a significant and necessary element in the over-all profitability of the project, are less critical once the risk of a return less than the interest rate has been reduced.

11. The incidence of tax would apply to the contractor's net proceeds arising from the exploitation of resources in the area. The appropriate rate of incidence would depend on the success of his undertaking and would be calculated annually. A measure which is likely to reflect the success of the investment is a ratio of the contractor's "cash surplus" to his development costs. While net proceeds alone are a more frequently used and a more direct measure of profitability, their use in evaluating the outcome of sea-bed mining is limited, at least in the initial stages, because of the uncertainties of development costs, and other capital requirements. Hence, there is a need to use a measure related to development costs.

ANNEX E

TABLE 1. MONETIZATION OF THE PROPOSED TAX SYSTEMS

	Mixed system			*Single system*	
Case	*Payments ($ millions)*	*Internal rates of return (percentage)*	*First year of second period (year)*	*Payments ($ millions)*	*Internal rates of return (percentage)*
A	258	6.1	—	527	5.1
B	429	8.5	20	638	7.9
C	574	13.8	8	599	13.9
D	1 015	19.5	5	807	20.1
E	1 792	20.2	6	1 312	20.9
F	1 964	23.9	5	1 312	25.0

TABLE 2. COMPARATIVE TABLE FOR THE AUTHORITY'S INCOME AND CONTRACTOR'S INTERNAL RATES OF RETURN UNDER THE MIXED SYSTEM

	Document WG21/2		*Informal composite negotiating text*		*United States proposal August 1979*	
Case	*Authority's income ($ millions)*	*Contractor's internal rates of return (percentage)*	*Authority's income ($ millions)*	*Contractor's internal rates of return (percentage)*	*Authority's income ($ millions)*	*Contractor's internal rates of return (percentage)*
A	258	6.1	455	5.7	141	6.5
B	429	8.5	745	7.9	203	8.9
C	574	13.8	882	13.2	372	14.5
D	1 015	19.5	1 464	18.6	641	20.4
E	1 792	20.2	2 484	19.4	1 103	21.0
F	1 964	23.9	2 696	23.0	1 185	25.0

III. SYSTEM OF EXPLORATION AND EXPLOITATION

The Chairman of negotiating group 1 on the system of exploration and exploitation still considers that definitive answers to the questions of who will exploit the area and how the area will be exploited are to be found not very far from the solutions he previously proposed in formulae now incorporated in the revised negotiating text. Indeed, although in the new proposal now submitted, some amendments have been introduced and some new provisions added, the essential characteristics of the system have been kept unchanged. These amendments and additions refer to very specific points and either improve the draft without altering the substance or develop some ideas that were summarily mentioned in the text.

All the amended provisions but one belong to annex II. The exception is article 140 of the convention on the principle of the benefit of mankind into which it was decided to insert a reference to General Assembly resolution 1514 (XV) and other General Assembly resolutions relevant to the question of peoples who have not attained full independence or other self-governing status. This inclusion was proposed by the delegation of Qatar on behalf of the Arab group towards the end of the first part of this session. The proposal has been endorsed by the Group of 77. It is believed that this addition to article 140 reflects the wishes of the overwhelming majority of the group of 21. It must be added that, in the opinion of some representatives, the question of implementation of this provision is a problematic one and will require careful scrutiny at the next stage of the negotiations.

Concerning the provisions of annex II, at the beginning of the deliberations at this resumed session it was proposed to this group, and accepted, that the discussions be confined to the following issues:

(1) (*a*) Training of personnel (art. 2, para. 1 (*b*));

(*b*) Right of the Authority to close a particular sector of the area (art. 2, para. 1 (*d*));

(2) Scope of the undertaking by the applicant concerning transfer of technology which he is not entitled to transfer and which is not available on the open market (art. 5, para. 2);

(3) Procedure in case of failure of negotiations concerning terms and conditions of transfer of technology (art. 5, para. 2);

(4) Transfer of processing technology (art. 5, para. 3);

(5) Anti-monopoly clause (arts. 6 and 7);

(6) Priority given to the Enterprise when competing with other applicants for contracts (art. 7, para. 4);

(7) Undertaking by the applicant concerning transfer of data necessary to assess value of the sites (art. 8);

(8) Joint arrangements (art. 10);

(9) Applicability of annex II to the activities conducted by the Enterprise (art. 11);

(10) Scope of undertaking by contractor to transfer data to the Authority (art. 13);

As a result of the discussions and of the informal consultations changes were introduced in articles 1 to 4, 6, 8 and 10 and 13 of annex II.

The new draft of article 1 on title to minerals is a drafting change and seems to be more general without affecting its substance. It also makes it clear that title would also pass to the Enterprise as well as to the prospector with respect to the samples collected, in accordance with the relevant provisions. In article 2, paragraph 1 (*b*), it was decided to replace the reference of the training of personnel nominated by the Authority by a reference to articles 143 and 144 which deal respectively with marine scientific research and transfer

of technology. Article 2 of annex II, dealing with prospecting, is not the right place to set forth the obligations related to training of personnel. What is necessary is to indicate the scope of the obligations of the prospector with respect to training, which is dealt with in articles 143 and 144. It was not necessary to establish a separate or new obligation in this provision but it would be sufficient to provide for the co-operation of the prospector in the training programmes so that the personnel of the Authority and the developing countries would be able to acquire prospecting skills.

Since the nature of prospecting activities is such that it is unlikely to have such major effects as to cause irreparable harm to the marine environment or interfere seriously with other uses of the area, the Chairman of negotiating group 1 decided to delete the provision in paragraph 1 (*d*) of the same article. The protection of the marine environment as well as the accommodation of different activities in the area are matters which have been taken care of in other provisions of the convention dealing particularly with operations of exploration and exploitation which are likely to have a greater impact on the environment.

In article 3, two new paragraphs were added, namely paragraphs 1 and 2. These new paragraphs deal with the presentation of plans of work by the Enterprise or other entities. The addition of these provisions was necessary as a general introduction to the other provisions of the same article since they refer to the first steps in a sequence developed in the other paragraphs of article 3 and in the following articles. Paragraph 2 states clearly and categorically that the Enterprise may apply for a plan of work in respect of any part of the area, either reserved or non-reserved. In light of this change, the saving clause in article 8, paragraph 4, of the annex is no longer necessary. The amendment in paragraph 4 (*c*) of the same article was made to delimit the scope of the exclusive right conferred on the operator.

Also for the sake of clarification, the word "qualification" was added before "standards" in article 4, paragraph 1. The amendment in paragraph 4 of the same article is a consequence of the addition made in paragraph 1. Paragraphs 2 and 3 are new and deal with the question of sponsorship of applicants by States parties, a question that until now was mentioned briefly in the text without providing any detail. In these two paragraphs general rules are set forth on sponsorship of national and multinational entities and on responsibility of the sponsors. It is hoped that these new additions will command general acceptance since they fill a lacuna in the existing text. However, it should be pointed out that some delegations have serious reservations about the need to have such provisions at all.

Article 6, paragraph 3, on the procedures to be followed by the Authority after receiving the proposed plan of work, has been amended to clarify its meaning. No other changes have been made to this article.

In article 8, relating to the reservation of sites, some amendments were introduced in order to ensure that the Authority would obtain all the data necessary to make the right decision on the selection of the reserved site. There is a new sentence, according to which the Authority may request an independent expert to assess whether the applicant submitted all data required. It has been considered convenient to separate into two different articles the provisions of article 8 in the revised negotiating text. The existing and new provisions dealing with the conditions under which activities in reserved sites will be carried out are grouped in a new article (art. 8 *bis*). Paragraphs 1 and 4 of this new article are to clarify the process according to which the Enterprise shall decide whether it will carry out activities in the reserved site and the extent to which developing countries may have access to the reserved sites if the Enterprise decides not to exploit the sites itself or in joint ventures with such countries. The new paragraph 2 deals with the conclusion of contracts by the Enterprise for the execution of parts of its activities, as well as entry into joint ventures with other entities on a voluntary basis. The matters dealt with in the new paragraphs 2, 3 and 4 are quite complex and in many respects delicate, and consequently further discussions on these matters may be required.

In article 10, the introduction of the words "when the parties so agree" in paragraph 1 has been made in order to stress the voluntary character of joint arrangements between the contractor and the Authority. Paragraph 3 is a new one and establishes the obligation of the partners of the Enterprise in joint ventures in reserved sites to pay the financial contributions required by article 12 to the extent of their share, subject to financial incentives as provided for in article 12.

The new wording of article 13, paragraph 3, appears in document WG21/2. The amendments introduced in this provision are meant to make more precise the responsibilities of the Authority and the Enterprise concerning the disclosure of proprietary data.

Unfortunately, the group could not deal extensively with other important matters still pending, the consideration of which would have required more time and additional negotiations. One of these matters is the problem of transfer of technology. Although during the last two sessions of the Conference tremendous progress was made in this field, some delegations consider that the present text, in particular article 5 of annex II, does not provide a totally satisfactory solution to the problem and that we have to work out such provisions in order to make the undertaking of the contractors more specific and mandatory. However, no one gave any concrete proposals on these matters and, therefore, detailed discussions on the issues could not be conducted.

It is hoped that the next session of the Conference will provide the opportunity to make a last attempt to find a solution on this matter acceptable to all sectors concerned.

With regard to the anti-monopoly clause, the delegation of France submitted to the group a proposal suggesting a new wording for article 6, paragraphs 3 and 4, and article 7, paragraphs 2 and 3. This proposal and an explanatory note are contained in document WG21/Informal Paper 3, of 10 August 1979. Since the proposal deals in part with a technical subject which is extremely complex, there was not sufficient time to examine it and discuss it thoroughly. Another opportunity will be provided to take up this matter in the future.

The question of the moratorium in case of failure of the review conference to reach an agreement within five years was not considered by the group during the resumed session. Since this is a very important problem and also because of the polarization of the positions of the delegations on this issue, it was proposed to the group to leave this matter to be treated either in a forum broader than the group of 21 or in any case at a later stage after other, less intractable issues have been dealt with.

APPENDIX A

Suggestions resulting from consultations held by the Chairman and co-ordinators of the working group of 21*

A. System of exploration and exploitation

Article 140. Benefit of mankind

1. Activities in the Area shall 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 countries 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 resolution as specifically provided for in this Part of the present Convention.

Annex II

Article 1. Title to minerals

1. Title to minerals shall pass upon recovery in accordance with the present Convention.

Article 2. Prospecting

1. (*a*) The Authority shall encourage the conduct of prospecting in the Area.

(*b*) Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector shall comply with the present Convention and the relevant rules and regulations of the Authority concerning protection of the marine environment, co-operation in training programmes according to articles 143 and 144 and accepts verification by the Authority of compliance. The proposed prospector shall, together with the undertaking, notify the Authority of the broad area or areas in which prospecting is to take place.

(*c*) Prospecting may be carried out by more than one prospector in the same area or areas simultaneously.

(*d*) [*Deleted*]

2. Prospecting shall not confer any preferential, proprietary, exclusive or any other rights on the prospector with respect to the

*Document WG21/2.

resources. A prospector shall, however, be entitled to recover a reasonable amount of resources of the Area to be used for sampling.

Article 3. Exploration and exploitation

1. The Enterprise, States Parties, and the other entities referred to in article 153, paragraph 2 (*b*), may apply to the Authority for approval of plans of work covering exploration and exploitation of resources of the Area.

2. The Enterprise may apply with respect to any part of the Area, but applications by others with respect to reserved areas are subject to the additional requirements of article 8.

(Formerly para. 1) 3. Exploration and exploitation shall be carried out only in areas specified in plans of work referred to in article 153, paragraph 3, and approved by the Authority in accordance with the provisions of this annex and the relevant rules, regulations and procedures of the Authority.

(Formerly para. 2) 4. Every plan of work approved by the Authority shall:

(*a*) Be in strict conformity with the present Convention and the rules and regulations of the Authority;

(*b*) Ensure control by the Authority of activities in the Area in accordance with article 153, paragraph 4;

(*c*) Confer on the operator exclusive rights for the exploration and exploitation of the specified categories of resources in the area covered by the plan of work in accordance with the rules and regulations of the Authority. If the applicant presents a plan of work for one of the two stages only, the plan of work may confer exclusive rights with respect to such a stage.

(Formerly para. 3) 5. Except for plans of work proposed by the Enterprise, each plan of work shall take the form of a contract to be signed by the Authority and the operator or operators upon approval of the plan of work by the Authority.

Article 4. Qualifications of applicants

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

2. Sponsorship by the State Party of which the applicant is a national shall be sufficient unless the applicant has more than one nationality, as in the case of a partnership or consortium of entities from several States, in which event all States Parties involved shall sponsor the application, or unless the applicant is effectively controlled by another State Party or its nationals, in which event both States Parties shall sponsor the application.

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

(Formerly para. 2) 4. Except as provided in paragraph 6, such qualification standards shall relate to the financial and technical capabilities of the applicant and his performance under previous contracts with the Authority.

(Formerly para. 3) 5. The procedures for assessing the qualifications of States Parties which are applicants shall take into account their character as States.

(Formerly para. 4) 6. The qualification standards shall require that every applicant, without exception, shall, as part of his application, undertake:

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

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

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

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

Article 6. Approval of plans of work submitted by applicants

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

2. When considering an application for a contract with respect to exploration and exploitation, the Authority shall first ascertain whether:

(*a*) The applicant has complied with the procedures established for applications in accordance with article 4 of the present annex and has given the Authority the commitments and assurances required by that article. In cases 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 necessary and as expeditiously as possible, an inquiry into their compliance with the terms of the present Convention and the rules, regulations, and procedures of the Authority, including the operational requirements, the financial contributions and the undertakings concerning the transfer of technology. As soon as the issues under investigation have been settled, the Authority shall approve such plans of work, provided that they conform to the uniform and non-discriminatory requirements established by the rules, regulations, and procedures of the Authority, unless:

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

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

(*c*) Selection among applications received during that period of time is necessary because approval of all plans of work proposed during that period would be contrary to the production limitation set forth in article 151, paragraph 2, or to the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided for in article 151, paragraph 1;

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

(*i*) Three plans of work for exploration and exploitation of sites not reserved pursuant to article 8 of the present annex within a circular area of 400,000 square kilometres which is centred upon a point selected by the applicant within the requested additional site;

(*ii*) Plans of work for exploration and exploitation of sites not reserved pursuant to article 8 which in aggregate size constitute 3 per cent of the total sea-bed Area which is not reserved pursuant to that article or otherwise withdrawn by the Authority from eligibility for exploitation pursuant to article 162, paragraph 2 (*w*).

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

Article 8. Reservation of sites

Each application, other than those proposed by the Enterprise or by any others for reserved sites, shall cover a total area, which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations. The proposed operator shall indicate the co-ordinates dividing the area into two parts of equal estimated commercial value and submit all the data obtained by him with respect to both parts of the area. Within 45 days of receiving such data the Authority shall designate the part which is to be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing countries. This designation may be deferred for a further period of 45 days if the Authority requests an independent expert to assess whether all data required by this article has been submitted to the Authority. The area designated shall become a reserved area as soon

as the plan of work for the non-reserved area is approved and the contract is signed.

Article 8 bis. *Activities in reserved sites*

1. The Enterprise shall be given an opportunity to decide whether it intends to carry out activities in each reserved site. This decision may be taken at any time, unless a notification pursuant to paragraph 4 is received by the Authority, in which event the Enterprise shall take its decision within a reasonable time. The Enterprise may decide to exploit such sites in joint ventures with the interested State or entity.

2. The Enterprise may conclude contracts for the execution of part of its activities in accordance with article 11 of annex III. It may also enter into joint ventures for the conduct of such activities with any willing entities which are eligible to carry out activities in the Area pursuant to article 153, paragraph 2 (*b*). When considering such joint ventures, the Enterprise shall offer to States Parties which are developing countries and their nationals the opportunity of effective participation.

3. The Authority may prescribe, in the rules, regulations, and procedures of the Authority, procedural and substantive requirements with respect to such contracts and joint ventures.

4. Any State Party which is a developing country or any national entity sponsored by it which is a qualified applicant or any group of the foregoing, may notify the Authority that it wishes to apply for a plan of work pursuant to article 6 of the present annex with respect to a reserved site. The plan of work shall be considered if the Enterprise decides, pursuant to paragraph 1 above, that it does not intend to carry out activities in that site.

Article 10. Joint arrangements

1. Contracts for the exploration and exploitation of the resources of the Area may provide for joint arrangements, when the parties so agree, between the Contractor and the Authority through the Enterprise, in the form of joint ventures, production sharing or service contracts, as well as any other form of joint arrangement for the exploration or exploitation of the resources of the Area.

2. Contractors entering into such joint arrangements with the Enterprise may receive financial incentives as provided for in the financial arrangements established in article 12 of the present annex.

3. Joint venture partners of the Enterprise in the reserved sites shall be liable for the payments required by article 12 of the present annex to the extent of their joint venture share, subject to financial incentives as provided for in article 12.

Article 13. Transfer of data

1. The operator shall transfer in accordance with the rules and regulations and the terms and conditions of the plan of work to the Authority, at time intervals determined by the Authority, all data which are both necessary and relevant to the effective implementation of the powers and functions of the principal organs of the Authority in respect of the area covered by the plan of work.

2. Transferred data in respect of the area covered by the plan of work, deemed to be proprietary, may only be used for the purposes set forth in this article. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment and safety shall not be deemed to be proprietary.

3. Data transferred to the Authority by prospectors, applicants for contracts for exploration and exploitation, and contractors deemed to be proprietary shall not be disclosed by the Authority to the Enterprise or outside of the Authority. Such data transferred by such persons to the Enterprise shall not be disclosed by the Enterprise to the Authority or outside of the Authority. The responsibilities set forth in article 168, paragraph 2, are equally applicable to the staff of the Enterprise.

B. Financial arrangements

1. Financial terms of contract

Annex II

Article 12

1. In adopting rules, regulations and procedures concerning the financial terms of a contract between the Authority and the entities referred to in article 153, paragraph 2 (*b*), in accordance with the provisions of Part XI of the present Convention, and in negotiating the financial terms of a contract in accordance with the 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 countries;

(*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*);

(*f*) To ensure that the financial incentives provided to contractors under paragraph 14 of this article, or under the terms of contracts reviewed in accordance with article 18, or under the provisions of article 10 with respect to joint ventures, shall not result in subsidizing contractors with a view to placing them at an artificial 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. 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 month 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, hereinafter referred to as the single system; or

(*b*) Paying a combination of a production charge and a share of net proceeds, hereinafter referred to as the mixed system.

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 shedule:

(i)	Years 1-10 of commercial production:	5 per cent
(ii)	Years 11-20 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 year, as defined in paragraph 7 below.

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 (*n*) below, shall fall below 15 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 paragraph 7 below.

(*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:

Return on investment	*First period of commercial production*	*Second period of commercial production*
Greater than 0 per cent, but less than 10 per cent	35 per cent	40 per cent
Equal to or greater than 10 per cent, but less than 20 per cent	42.5 per cent	50 per cent
Equal to or greater than 20 per cent	50 per cent	70 per cent

(*d*) The first period of commercial production referred to in subparagraphs (*a*) and (*c*) above shall commence in the first accounting year of commercial production and terminate in the accounting year in which the Contractor's cash surplus, that is, his total gross proceeds less his operating costs, less his payments to the Authority in the form of shares of attributable net proceeds, in the preceding accounting years shall exceed for the first time the Contractor's development costs with interests at 10 per cent on that portion of his development costs not recovered by his cash surplus. The second period of commercial production referred to in subparagraphs (*a*) and (*c*) above shall commence at the conclusion of the first period and continue until the end of the contract.

(*e*) The amount of attributable net proceeds shall be 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. 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 case.

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

(*g*) (i) 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 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 the event that the Contractor engages in mining only, 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.

(iii) In all cases other than those specified in subparagraphs (i) and (ii) above, 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 conformity with generally recognized accounting principles, including, *inter alia*, costs of machinery, equipment, ships, construction, buildings, land, roads, prospecting and exploration of the contract area, research and development, interest, required leases, licences, fees; and

(ii) Similar expenditures, incurred subsequent to the commencement of commercial production, for the replacement, improvement, or addition of machinery and equipment.

(*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 subparagraph (*h*) (i) shall be recovered in 10 equal annual instalments from the date of commencement of commercial production. The Contractor's development costs referred to in subparagraph (*h*) (ii) 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, supplies, materials, services, transportation, 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 from prior accounting years.

(*l*) (i) 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 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.

(ii) In the event that the Contractor engages in mining only, the term "development costs of the mining sector" shall mean the Contractor's development costs.

(iii) In all cases other than those specified in subparagraphs (i) (ii) above, the term "development costs of the mining sector" shall be defined as in subparagraph (i) above.

(*m*) The term "operating costs of the mining sector" shall mean the portion of the Contractor's operating 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.

(*n*) 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 additions to the development costs of the mining sector incurred prior to the commencement of the commercial production, in order to carry out the specified plan of work. It shall also include expenditures on new or replacement equipment in the mining sector less the original cost of the equipment replaced.

(*o*) The costs referred to in subparagraphs (*h*), (*k*), (*l*) and (*m*) above, in respect of interest paid by the Contractor may only be allowed if, 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 in respect 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 above, shall mean the metals in the most basic form in which they are customarily traded on international terminal markets. 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. For this purpose, the Authority shall specify, in the financial rules, regulations and procedures, the relevant international terminal market.

(*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 subparagraphs 5 (*b*) and 6 (*b*) above, 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 below.

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 the present 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 established by the Economic and Social Council, the Expert Group on Tax Treaties between Developed and Developing 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 independent certified 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 the 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 may be made either in a freely convertible currency or in a currency agreed upon between the Authority and the Contractor, 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*).

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 compulsory and binding commercial arbitration.

2. FINANCING OF THE ENTERPRISE

Annex III

Article 3

Subject to article 10, paragraph 3 below, no member of the Authority shall be liable by reason only of its membership for the acts or obligations of the Enterprise.

Article 10

Delete paragraph 2 (*c*) and insert a new paragraph 3:

3. (*a*) The Enterprise shall be assured of the funds necessary to explore and exploit one mine site and to transport, process and market the metals recovered therefrom, namely, nickel, copper, cobalt and manganese, and to meet its initial administrative expenses, or the equivalent amount thereof. The said amount shall be determined by the Assembly upon the recommendation of the Council, on the advice of the Governing Board of the Enterprise.

(*b*) States Parties shall make available to the Enterprise an amount equivalent to one half of the funds referred to in paragraph 3 (*a*) above by way of long-term, interest-free loans in accordance with the scale referred to in article 160, paragraph 2 (*e*). Debts incurred by the Enterprise in raising the balance of the funds shall be guaranteed by all States Parties in accordance with the said scale. Upon request by the Enterprise, a State Party may provide a guarantee covering debts additional to the amount it has guaranteed in accordance with the said scale. In lieu of debt guarantee, a State Party may make a voluntary contribution to the Enterprise of an amount equivalent to that portion of the debts which it would otherwise be liable to guarantee.

(*c*) The repayment of the interest-bearing loans shall have priority over the repayment of the interest-free loans. The repayment of interest-free loans shall be in accordance with a schedule adopted by the Assembly, upon the recommendation of the Governing Board of the Enterprise.

C. THE ASSEMBLY AND THE COUNCIL

Article 157

Add a new paragraph 1 *bis*:

The powers and functions of the Authority shall be those expressly conferred upon it by the provisions of this Part and by annexes II and III. The Authority shall have such incidental powers, consistent with the provisions of this Convention, as are implicit in and necessary for the performance of these powers and functions with respect to activities in the Area.

Article 158

Revise paragraph 4 to read:

4. The principal organs 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

Revise paragraph 1 to read:

1. The Assembly, as the sole organ of the Authority consisting of all the members, shall be considered the supreme organ of the Authority to which the other principal organs shall be accountable as specifically provided for in this Part. The Assembly shall have the power to establish general policies in conformity with the provisions of this Part on any question or matter within the competence of the Authority.

Add a new paragraph 2 (*o*):

(*o*) Dicussion 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 by the provisions of this Convention to a particular organ of the Authority, consistent with the distribution of powers and functions among the organs of the Authority.

Article 161

Paragraph 7

Revise subparagraphs (*a*) and (*b*) to read:

(*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 article 162, paragraph 2 (*b*) to (*i*) and (*o*), (*r*) and (*t*) in cases of non-compliance by a contractor or a sponsor, (*u*) and (*v*) provided that orders issued under this subparagraph may be binding for no more than 10 days unless confirmed by a decision taken in accordance with subparagraph (*c*) below, (*x*) and (*y*) 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;

Present trend for subparagraph (*c*) appears as follows:

(*c*) In order to promote the resolution of particularly sensitive issues by means of consensus, decisions on all other questions of substance shall be taken by a two-thirds majority of members present and voting, provided that . . .[35] members have not cast negative votes. When the issue arises as to whether the question is within this subparagraph or not, the question shall be treated as within this subparagraph unless otherwise decided by the Council by the majority required for questions under this subparagraph.

Article 162

Paragraph 2

Subparagraph (*f*):

After "of the Authority" add "and within its competence"

Revise subparagraph (*i*) to read:

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

Subparagraph (*j*):

Delete second and third sentences and replace by the following:

The Council shall act within 60 days of the submission of a plan of work by the Legal and Technical Commission at a session of the Council. Except where selection must be made among applicants, a plan of work shall be deemed to have been approved unless a proposal for its approval or disapproval has been voted upon within the aforementioned period of 60 days;

Revise subparagraph (*r*) to read:

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

D. Settlement of disputes relating to Part XI and connected issues

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 the appropriate administrative tribunal as provided in the staff rules of the Authority.

2. The Secretary-General and the staff shall have no financial interest whatsoever in any activity relating to exploration and exploitation in the Area. Subject to their responsibilities to the Authority, they shall not disclose, even after the termination of their functions, any industrial secret or data which is proprietary in accordance with article 13 of annex II to the present Convention, or other confidential information of commercial value coming to their knowledge by reason of their official duties with or on behalf 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 for in article 153, paragraph 2 (*b*), and affected by such violation, be submitted by the Authority against the staff member concerned to an appropriate tribunal. 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 staff regulations of the Authority.

Section 6. Settlement of disputes and advisory opinions

Article 187. Jurisdiction of the Sea-Bed Disputes Chamber

The Chamber shall have jurisdiction under this Part and the annexes relating thereto in the following categories of disputes with respect to activities in the Area:

1. Disputes between States Parties concerning the interpretation or application of this Part and the annexes relating thereto.

2. Disputes between a State Party and the Authority concerning acts or omissions of the Authority or of a State Party which are alleged to be in violation of this Part or the annexes relating thereto, or of rules, regulations or procedures promulgated in accordance therewith, or acts of the Authority alleged to be in excess of jurisdiction or a misuse of power.

3. Disputes between parties to a contract, being States Parties, the Authority or the Enterprise, State entities and natural or juridical persons as referred to in article 153, paragraph 2 (*b*), concerning:

(*a*) The interpretation or application of a relevant contract or a plan of work;

(*b*) Acts or omissions of a party to the contract relating to activities in the Area and directed to the other party or directly affecting its legitimate interests.

4. Disputes between the Authority and a prospective contractor who has been sponsored by a State as provided for in article 153, paragraph 2 (*b*), and has duly fulfilled the conditions referred to in article 4, paragraph 4 and article 12, paragraph 2, of annex II, concerning the refusal of a contract, or a legal issue arising in the negotiation of the contract.

5. Disputes between the Authority and a State Party, a State entity or a natural or juridical person sponsored by a State Party as provided for in article 153, paragraph 2 (*b*), where it is alleged that the Authority has incurred liability as provided for in article 21 of annex II.

6. Any dispute for which jurisdiction of the Chamber is specifically provided for in this Part and the annexes relating thereto.

Article 188. Submission of disputes to a special chamber of the Law of the Sea Tribunal or an ad hoc *chamber of the Sea-Bed Disputes Chamber or to binding arbitration*

1. Disputes between States Parties referred to in article 187, paragraph 1, may be submitted:

(*a*) To a special chamber of the Law of the Sea Tribunal to be established in accordance with articles 15 and 17 of annex V, upon the request of the parties to the dispute; or

(*b*) To an *ad hoc* chamber of the Sea-Bed Disputes Chamber to be established in accordance with article 36 *bis* of annex V, upon the request of any party to the dispute.

2. Disputes referred to in article 187, paragraph 3, shall be submitted to binding commercial or other arbitration, in so far as this is provided for in any contract between the parties to the dispute, at the request of any party thereto. Failing agreement of the parties, the procedure in accordance with commercial arbitration rules to be specified shall apply.

Article 191. Participation and appearance of sponsoring States Parties

1. In any dispute referred to in article 187 when a natural or juridical person is a party, the sponsoring State shall be given notice thereof, and shall have the right to participate in the proceedings by submitting written or oral statements.

2. In any dispute referred to in article 187, paragraph 3, if an action is brought against a State Party by a natural or juridical person, of another nationality, the State Party sponsoring that person may be requested by the respondent State Party to appear in the proceedings on behalf of that person. Failing such appearance, the respondent State may arrange for the appearance on its behalf of a juridical person of its nationality.

[35] The figure is still being negotiated; current proposals range from 5 to 10.

Annex II

Article 21. 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 damages.

Annex V

Article 4. Procedure for nomination and election

1. Each State Party may nominate not more than two persons having the qualifications prescribed in article 2. The members of the Tribunal shall be elected from a list of persons thus nominated.

2. At least three months before the date of the election, the Secretary-General of the United Nations in the case of the first election and the Registrar of the Tribunal in the case of subsequent elections shall address a written invitation to the States Parties to submit their nominations for members of the Tribunal within two months. He shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties before the seventh day of the last month before the date of each election.

3. The first election shall be held within six months of the date of entry into force of the present Convention.

4. Elections of the members of the Tribunal shall be by secret ballot. They shall be held at a meeting of the States Parties convened by the Secretary-General of the United Nations in the case of the first election and by procedure agreed to by the States Parties in the case of subsequent elections. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Tribunal shall be those nominees who obtain the largest number of votes and a two-thirds majority of votes of the States Parties present and voting, provided that such majority shall include at least a majority of the States Parties.

Article 36. Composition of the Chamber

1. The Sea-Bed Disputes Chamber established in accordance with article 14 shall be composed of 11 members, selected by a majority of the members of the Tribunal from among its members.

2. In the selection of the members of the Chamber, the representation of the principle legal systems of the world and equitable geographical distribution shall be assured. The Assembly of the Authority may adopt recommendations of a general nature relating to such representation and distribution.

3. The members of the Chamber shall be selected every three years and may be selected for a second term.

4. The Chamber shall elect its President from among its members, who shall serve for the period for which the Chamber has been selected.

5. If any proceedings are still pending at the end of any three-year period for which the Chamber has been selected, the Chamber shall complete the proceedings in its original composition.

6. Upon the occurrence of a vacancy in the Chamber, the Tribunal shall select a successor from among its members who shall hold office for the remainder of the term of his predecessor.

7. A quorum of seven members shall be required to constitute the Chamber.

Article 36 bis. Ad hoc *chambers of the Sea-Bed Disputes Chamber*

1. The Sea-Bed Disputes Chamber shall form an *ad hoc* chamber, composed of three of its members, for dealing with a particular dispute submitted to it in accordance with article 188, paragraph 1 (*b*). The composition of such a chamber shall be determined by the Sea-Bed Disputes Chamber with the approval of the parties.

2. If the parties do not agree on the composition of an *ad hoc* chamber referred to in paragraph 1, each party to the dispute shall appoint one member, and the remaining member shall be appointed by them in agreement. If they disagree, or if any party fails to make an appointment, the President of the Sea-Bed Disputes Chamber shall promptly make such appointments from among the members of the Sea-Bed Disputes Chamber, after consultation with the parties.

3. Members of the *ad hoc* chamber must not be in the service of, or nationals of, any of the parties to the dispute.

APPENDIX B

Report by the Chairman of the group of legal experts on the settlement of disputes relating to part XI

Though the questions of the settlement of disputes were not discussed in the group of 21, the Chairman of the group of legal experts on the settlement of disputes relating to part XI presented his report to the group of 21, before presenting it in the First Committee.

The group of legal experts held three meetings during the resumed eighth session in New York. After each of the meetings, the Chairman had intensive consultations with interested delegations, on the basis of which he attempted to reach compromise solutions. This process followed the procedure which had been agreed to by the Group.

At the opening of the first meeting, the Chairman stated that he had, on 25 April 1979, reported to the Chairman of the First Committee on the results of the work of the group, setting out fully the status of the work at the conclusion of the first part of the eighth session at Geneva (A/CONF.62/C.1/L.25 and Add.1[36]). That report identified the outstanding issues which were not discussed at all and those that were discussed, though not fully.

The Chairman suggested that the outstanding issues be dealt with in the following sequence:

(1) The manner of selection of members of the Sea-Bed Disputes Chamber of the Law of the Sea Tribunal and the necessary changes to annex V;

(2) The suggestion regarding *ad hoc* chambers of the Sea-Bed Disputes Chamber;

(3) Liability of the Authority, in cases of staff members violating their duty not to disclose confidential information, and in other cases;

(4) Aspects of contractual disputes for which commercial arbitration would be appropriate.

The Chairman also pointed out the need to consider articles 187, 189, 190 and 191 which the group had formulated at the first part of the session, as incorporated in part XI, section 6, because there could be some matters that needed clarification. However, he suggested that this be taken up last, after the negotiations on the outstanding issues had been subject to the same process of negotiation as those issues in respect of which texts had been included in the revised negotiating text.

This course of procedure was accepted by the Group.

1. Selection of members of the Sea-Bed Disputes Chamber

On the first issue, which was the manner of selection of members of the Chamber, the Chairman stated that, after the original discussion at Geneva, he had the impression that it would be possible to provide that members of the Chamber be selected by the Law of the Sea Tribunal itself. The Tribunal was to be elected by the Conference of States Parties, who would be the same as the members of the Assembly, and there appeared to be no need for a second vote of confidence. Should there be agreement that the Chamber be selected by the Tribunal, consideration could then be given to whether the Assembly should be empowered to make recommendations that the principles of equitable geographical distribution and the representation of the principal legal systems be followed.

A clear desire to compromise was shown. A willingness to accept that the members of the Tribunal itself should select the members of the Chamber was expressed by those who had originally opposed it. Those who opposed the role of the Assembly in that regard, also in a spirit of compromise, agreed that the Assembly could be empowered to make recommendations of a general nature regarding equitable geographical distribution and the representation of the principle legal systems which was to be assured in the Chamber. It was also

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

agreed that the selection of the members of the Chamber would be made by the decision of a majority of the members of the Tribunal. A consensus was reached in the group on this compromise solution. The text drafted on this basis is to be found in annex V, article 36, in appendix A above.

2. Special and *ad hoc* chambers of the Sea-Bed Disputes Chamber

Regarding the second item, namely, the formation of *ad hoc* chambers of the Sea-Bed Disputes Chamber (art. 188, para. 1, of the revised negotiating text), there was an exhaustive expression of views. Some felt that for disputes between States the choice of procedures available in article 287 should be available, as that would ensure consistency of application of dispute settlement procedures in all cases of interpretation or application of the convention. That view was strongly opposed by those who advocated unity of jurisdiction of the Chamber for all matters in part XI and the related annexes.

All sides were of the opinion that the concept of *ad hoc* chambers represented a compromise on their part. Those who advocated unity of jurisdiction emphasized that the *ad hoc* chambers could only be envisioned as an exception to the general rule. For this reason, they felt strongly that resort to the *ad hoc* chambers could only be had upon agreement of the parties. Those who opposed the exclusive jurisdiction of the Chamber envisioned the *ad hoc* chambers as a parallel system for the settlement of sea-bed disputes. They insisted that resort to the *ad hoc* chambers should be allowed upon the request of any party to the dispute.

It was suggested that if there could be agreement in the group on the composition of the *ad hoc* chamber, that might facilitate the reaching of a compromise of the divergent views. In that connexion, the size of the *ad hoc* chamber; the question of whether to allow the selection of judges who were of the same nationality as a State party; and the question of whether the judges should be selected from among the members of the Chamber or of the Tribunal appeared to be the critical factors. Several alternative compromises were presented but, rather than a single trend, two alternative suggestions emerged as commanding support. The alternatives presented in article 188, paragraphs 1 (*a*) and (*b*), contained in appendix A above seemed to offer the best prospects for widespread support.

This article provides that on the agreement of the parties, a special chamber could be established on the lines set out in annex V, articles 15 and 17, which provide for the inclusion of national members and the selection from among the 21 members of the Tribunal. The alternative presented in this paragraph permits one party to request an *ad hoc* chamber which consists only of three members to be selected from among the members of the Chamber, excluding nationals of the parties.

3. Liability of the Authority for staff violations and other matters

The third item, the question of liability of the Authority for the unauthorized disclosure of secret data by its staff, had been raised in the first part of the session, but it had not been dealt with by the group. It was noted that this liability would be in addition to the liability of the staff member concerned, which article 168, paragraph 2, already provided for. The Chairman pointed out that the responsibility of the Authority for wrongful damage was referred to in annex II, article 21. Liability under article 168, paragraph 2, could also be set out in that article. The group agreed upon such an approach and, accordingly, provision was included in annex II, article 21 (see appendix A above) for liability of the Authority in the case of staff members' violations.

The Chairman suggested that it might be desirable to provide jurisdiction of the Chamber for all such questions of liability of the Authority. The group agreed to that suggestion. Accordingly, such provision was included in article 187, which deals with the jurisdiction of the Chamber, in a new paragraph 5 (*ibid*).

4. Commercial arbitration

In considering the fourth question, commercial arbitration in cases of contractual disputes, the Chairman drew the attention of the group to some aspects of the issues that arose regarding the present article. He pointed out that article 188, paragraph 2, referred to article 187, subparagraph (*c*). That paragraph was again subdivided into: the interpretation or application of contracts or plans of work and acts or omissions relating to activities in the area. While commercial arbitration was suited to the first such category of disputes, its appropriateness to the second category was raised.

The Chairman suggested that the intention of providing commercial arbitration appeared to be because of the expeditious nature of the procedure and its suitability in disputes of a technical or commercial nature.

He explained that it might be found unnecessary at the time of contracting to include a detailed arbitration procedure and for that reason the existing second sentence of article 188, paragraph 2, suggested that a standard form procedure be specified where the contract itself did not provide it.

A lengthy discussion ensued. Some felt that commercial arbitration might be appropriate for disputes of a purely commercial and technical nature, provided that the parties had agreed thereto, and that in no case should the commercial arbitration tribunal be empowered to determine questions of the interpretation or application of the convention.

In that connexion a compromise suggested was that the scope of the article should be limited to article 187, subparagraph (*c*) (i). Those who were of the view that in all cases agreement of the parties was needed felt that agreement could be evidenced either by a provision regarding commercial arbitration in the contract or by subsequent agreement on the subject. The opposing view, also strongly expressed, was that the request to resort to arbitration could be made by either party, whether or not the contract so provided.

The interpretation of the existing text of article 188, paragraph 2, appeared to present difficulties to both sides and attempts to reconcile doubts on the text only led to a further polarization of positions.

It became clear that in order to move towards reconciling the divergence, it was necessary to set out clearly the principle that the arbitral tribunal would not be competent to determine questions of the interpretation or application of the convention, and that its competence should be limited strictly to the interpretation or application of relevant contracts or plans of work. If that were done, it might be possible to allow for resort to commercial arbitration at the request of any party, whether or not it was provided for in the contract. Time, however, did not permit a full consideration of the question and it would most certainly need to be examined thoroughly at the very beginning of the next session.

The rules of the United Nations Commission on International Trade Law (UNCITRAL) appeared to command wide acceptance and, in the absence of specific arbitration rules in the contract, there appeared to be agreement that standard-form arbitration rules, such as the UNCITRAL rules, could apply. As an alternative, or in addition, the Authority could specify other rules in its rules, regulations and procedures.

No conclusions were reached regarding article 188, paragraph 2, and no suggestions were sufficiently widely accepted to warrant any change in the present text.

5. Jurisdiction of the Sea-Bed Disputes Chamber and limitations thereof; participation of sponsoring States and advisory opinions

In the consideration of articles 187, 189, 190 and 191, the Chairman pointed out that these articles were very closely linked and that the substance of those provisions form a composite unit; he therefore suggested that the articles be considered in conjunction. The Chairman also noted that it was the decision of the Conference that no changes could be made to any texts unless there was widespread and substantial support. He therefore urged members of the group to refrain from making suggestions which were not likely to receive such support and that a constructive attempt be made to arrive at compromise solutions. That procedure was adopted by the Group.

Regarding article 187, the suggestion was made that paragraph (*a*) should be deleted and that disputes covered under that provision should be subject to the general dispute settlement procedures under part XV. That was strongly opposed on the grounds that a uniform legal order must be maintained for all sea-bed questions.

Regarding paragraph (*b*) of article 187, it was generally agreed that the wording contained in the revised negotiating text was acceptable.

Regarding paragraph (*c*), it was noted that this referred to a "plan of work". The point was made that this wording implied that the Sea-Bed Disputes Chamber would have jurisdiction over disputes between the Authority and the Enterprise. Strong and widespread opposition was recorded to this possibility on the basis that, since the Enterprise was an arm of the Authority, any possible conflict between them should be resolved by the Council of the Authority. It was urged that some formulation be arrived at whereby the possibility of the Chamber exercising jurisdiction over such disputes should be avoided at all costs.

The question was raised as to whether article 187, subparagraph (*c*) (i), dealt with disputes only between the Authority, as one party, and the other possible contractors. If that was the case, it was suggested that the reference to "plan of work" be deleted. On the other hand, the point was made that there should be provision covering disputes between contractors who had independent contracts with the Authority although they did not have a contract between themselves. If this interpretation was not possible under article 187, paragraph (*c*); it was a question that needed resolution and would have to be considered at the beginning of the next session.

Regarding article 187, paragraph (*d*), some wanted it deleted while others wanted to strengthen it by eliminating the necessity to comply with any conditions. It was the Chairman's impression, in the light of the discussions, that the existing text represented the best basis for a possible compromise. Concern was expressed as to the possibility of unsuccessful applicants impeding the work of those to whom contracts had been awarded by bringing disputes and obtaining restraining orders from the Chamber.

A proposal was made to provide for jurisdiction of the Chamber in disputes between prospectors and the Authority, but there was a lack of support for such provision, it being pointed out that prospectors had no contractual rights to be safeguarded.

No points were raised regarding articles 189 and 190 dealing, respectively, with advisory opinions and limitations on the jurisdiction of the Chamber. The Chairman noted that the group found these acceptable and there was no desire expressed to make any changes in the text.

There was much discussion on the question of the appearance and participation in proceedings of sponsoring States, and a clear division of views regarding article 191, paragraph 2. On the one hand, it was argued that such a provision was necessary to protect the juridical personality of a State. In this respect, it was noted that, according to the general principles of international law, a State always enjoyed immunity from legal process compared to a natural or juridical person, and that therefore a safeguard clause, whereby the State sponsoring the applicant person must join the proceedings, was needed. Counter to this argument was the view that a State could not be compelled to participate in the proceedings merely because its sponsored natural or juridical persons wished to bring a claim against another State. It was felt that this should be a matter of discretion with the State. Supporters of this view advocated the deletion of paragraph 2.

In the spirit of compromise, it was suggested that perhaps paragraph 2 could be reformulated whereby the Chamber would have no jurisdiction in cases where the sponsoring State of a natural or juridical person did not agree to participate in the proceedings. An alternative compromise was suggested whereby the respondent State party could nominate a natural or juridical person of its own nationality to participate in the proceedings in its place. A combination of these two suggestions led to further consultations which provided the basis for the revised draft of article 191 in appendix A above. This draft could seem to command widespread support.

6. Other issues

All drafting suggestions made in the course of the negotiations or submitted to the Chair have been closely examined and wherever practicable have been incorporated in the Chairman's suggested text. Due regard was given to avoiding the inclusion of any drafting suggestions that might have had implications on substantive issues. It was suggested, however, by many participants that the texts should be examined as a whole for consistency and accuracy of drafting and translation. Reference was also made to the need to examine the titles of all articles and some changes that were agreed upon have been incorporated in the new draft.

The sequence of the articles may need to be changed. In this regard it was suggested that article 189 concerning advisory opinions appear last or as a separate section.

DOCUMENT A/CONF.62/L.42

Report of the Chairman of the Second Committee

[Original: Spanish]
[24 August 1979]

1. The Conference decided to establish seven negotiating groups to concern themselves with the most difficult questions. Three of those groups, negotiating groups 4, 6 and 7, were to concern themselves with matters which were completely or partially within the competence of the Second Committee.

2. At the present resumed eighth session, only negotiating groups 6 and 7 held meetings. Negotiating group 4 did not hold any meetings.

3. The Second Committee also devoted a number of meetings to the consideration of other questions, apart from those which were within the competence of the negotiating groups. I shall refer to those meetings later in this report.

Negotiating groups

4. Negotiating group 7, presided over by Mr. E. J. Manner of Finland, concerns itself with the definition of the maritime frontiers between adjacent States and between States whose coasts lie opposite each other—subjects within the competence of the Second Committee—and with the settlement of disputes related thereto, a matter dealt with by the plenary Conference.

5. Negotiating group 6, of which I am Chairman, is concerned with the definition of the outer limit of the continental shelf and the question of payments and contributions in connexion with the exploitation of the continental shelf beyond 200 miles, or the question of revenue sharing.

6. At its 126th informal meeting on 22 August 1979, the Second Committee received the reports of the Chairmen of negotiating groups 6 and 7 on the work done during the current second stage of the eighth session.

7. Owing to lack of time and in order to avoid duplication of work, it was agreed that no substantive comments would be made concerning the report of Mr. Manner on the work of negotiating group 7, since any delegations interested in commenting could do so in the plenary Conference. The report will be published as informal document NG7/45. I wish to express once more my gratitude to Mr. Manner for his untiring efforts to find solutions to the problems dealt with by his group.

8. My report to the Second Committee on the activities of negotiating group 6 is contained in informal document paper NG6/19, which is now in the hands of delegations. I do not propose to repeat it in this forum and shall merely refer in a general way to the group's work. Negotiating group 6 held five meetings, and at its meeting of 13 August 1979, at the request of several delegations, it established the so-called group of 38, an open-ended group formed on the basis of registration of delegations interested in dealing with the same subjects in a smaller framework. The group of 38 also held five meetings and considered the following items: the outer limit of the continental shelf; payments and contributions for the exploitation of the continental shelf beyond 200 miles; submarine oceanic ridges; the commission on limits; and the problem of Sri Lanka.

9. Concerning these items, delegations presented various informal suggestions which helped to determine more precisely the various positions and the possible solutions. I hope that the deliberations and extensive consultations held during this stage have prepared the ground for finding satisfactory solutions on these items at the next session.

Other matters

10. There were two informal meetings of the Second Committee devoted to other matters than those assigned to

negotiating groups 4, 6 and 7. The items considered were dealt with in accordance with the numbering of the articles of the revised informal composite negotiating text. The items were the following:

Article 25, paragraph 3

The informal suggestion by Belgium to add the words "or for the safety of ships" at the end of the first sentence of article 25, paragraph 3, was incorporated into the text in accordance with the recommendation I made in my report presented at the 116th plenary meeting on 27 April 1979. The proposing delegation stated that, as a result of new consultations, the words quoted should be replaced by the words "including weapons exercises", with the explanation that the amendment related to artillery exercises carried out by the coastal State.

Article 36

Informal suggestion by Yugoslavia (C.2/Informal Meeting/2/Rev.1), to add the following: "; in such routes the freedoms of navigation and overflight shall not be impeded".

Article 56

Informal suggestion by Afghanistan, Austria, Bolivia, Lesotho, Nepal, Singapore, Uganda, Upper Volta and Zambia (C.2/Informal Meeting/45), proposing payments or contributions in kind by the coastal State into a common heritage fund from the proceeds accruing to it from the exploitation of the non-living resources of the exclusive economic zone. The Authority would determine the rate of the payments and contributions, taking into account the relative capacity of the States to make such payments and contributions. The Authority would also make disbursements to the States parties to the convention on the basis of equitable sharing criteria, taking into account the interests and needs of developing countries, particularly the least developed and the land-locked countries among them. The Authority might also make disbursements to protect the marine environment, to foster the transfer of marine technology, to assist the work of the United Nations in those fields and to help finance the Enterprise.

Article 62

Informal suggestion by Romania and Yugoslavia (C.2/Informal Meeting/1/Rev.1) to insert, in paragraph 2, after the words "other States", the words "developing States in particular"; to delete, in the same paragraph, after the words "articles 69 and 70", the rest of the sentence; and to insert, in paragraph 3, after the words "of developing countries", the words "in particular, those".

Article 63, paragraph 2

Informal suggestion by Argentina (C.2/Informal Meeting/48) to delete the word "seek" and replace it by "be obliged"; and to add, at the end of the paragraph, an additional text specifying the measures to be included in the respective agreements and stating that, if no agreement is reached within a reasonable period of time, the State fishing for the stocks mentioned in paragraph 2 of the article should abide by the regulations issued by the coastal State for the conservation of such stocks.

Article 65

Informal suggestion by the United States of America (C.2/Informal Meeting/49) for a text reading: "Nothing in this Part restricts the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in this Part. In this connexion, States shall co-operate with a view to the conservation of marine mammals and, in the case of cetaceans, shall in particular work through the appropriate international organizations for their conservation, management and study". This suggestion was not discussed by the Committee because the delegation making the proposal introduced it for the sole purpose of subsequently receiving the comments of other delegations.

Article 70

In connexion with this article, a document entitled "The stand of the Socialist Republic of Romania with regard to the right of access to the fishing resources in the economic zones" (C.2/Informal Meeting/42) was submitted. In this informal document it is proposed that the article should be supplemented, after paragraph 4, by an additional text stating that the geographically disadvantaged States bordering enclosed or semi-enclosed seas poor in biological resources, particularly the developing countries located in a subregion or region which is also poor in biological resources, should have the right to participate, on an equitable basis, in the exploitation of biological resources of the exclusive economic zones of the coastal States located in other regions or subregions, under the conditions provided for by the article.

Article 77

Informal suggestion by Cape Verde, Greece, Italy, Malta, Portugal, Tunisia and Yugoslavia (C.2/Informal Meeting/43/Rev.1) to add a new paragraph 5 giving the coastal State sovereign rights over any object of an archaeological and historical nature on or under its continental shelf for the purposes of research, salvaging, protection and proper presentation. The State or country of origin, or the State of historical and archaeological origin, would have preferential rights over such objects in the case of sale or any other disposal resulting in the removal of such objects out of the coastal State.

Article 98

Informal suggestion by Bulgaria, the Byelorussian Soviet Socialist Republic, Czechoslovakia, the German Democratic Republic, Hungary, Poland, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics (C.2/Informal Meeting/44) to add a paragraph 3 providing that, without prejudice to the provisions of the convention and other universally recognized rules of international law, sunken ships and aircraft, as well as equipment and cargoes located on board them, may be salvaged only by the flag State or with its consent.

Article 121

Informal suggestion by Ireland (C.2/Informal Meeting/46) to replace, in paragraph 2, the words "except as provided for in paragraph 3", but "without prejudice to the provisions of articles 15, 74 and 83 and except as provided for in paragraph 3".

Article 121 bis

Informal suggestion by Ecuador ((C.2/Informal Meeting/47) to add a new article to the effect that the territorial sea, the exclusive economic zone and the continental shelf of a group of islands forming part of the territory of a State which constitute an archipelago as defined in article 46 (*b*) should be determined through the system of baselines drawn in accordance with article 47. This suggestion was not discussed by the Committee at the request of the delegation making the proposal, to enable it to be studied and thus facilitate its consideration at the next session.

11. Thus, most of these informal suggestions were considered by the Committee and the proposing States have a clear idea of the extent to which they are accepted.

12. I should like to express my sincere thanks to the delegations participating in the work of the Second Committee for their valuable co-operation in the conduct of our programme of work, to the members of the secretariat of the Conference for their dedication and competence in the performance of their functions, to the interpreters, the translators and all the staff co-operating in this resumed eighth session.

DOCUMENT A/CONF.62/L.41

Report of the Chairman of the Third Committee

[*Original: English*]
[*23 August 1979*]

1. I have the honour, in accordance with the decision of the Conference, to submit for your consideration, the report on the work of the Third Committee during this resumed session. The report was considered at the 41st, 42nd, and 43rd meetings of the Committee.

2. As I have pointed out in my previous report (A/CONF.62/L.34),[37] in view of the progress of the negotiations made during the first part of the eighth session at Geneva and the very important positive results that were achieved, the substantive negotiations on part XII (Protection and preservation of the marine environment) and part XIV (Development and transfer of marine technology) could be considered as completed. As far as part XIII (Marine scientific research) is concerned, I pointed out in that report that, though there was substantial support for the informal composite negotiating text, and for the maintenance of the delicate balance achieved so far in the over-all package with regard to that part, several delegations maintained that they should have the opportunity to continue the negotiations on the outstanding issues relating to marine scientific research. It was agreed that we should try at this session to make an effort to broaden the basis for agreement on the pending issues.

3. Accordingly, at this resumed session, our efforts were directed to the consideration of the pending substantive issues relating to the régime for the conduct of marine scientific research on the continental shelf beyond 200 miles from the baselines from which the breadth of the territorial sea is measured as well as the problem of the settlement of disputes relating to the interpretation or implementation of the provisions of this convention with regard to marine scientific research.

4. There were also some other substantive issues still pending, such as the facilities with regard to access of research vessels to the harbours of the coastal State and assistance to be rendered to such vessels conducting marine scientific research activities; the requirement for making the research results internationally available through appropriate national or international channels; the conditions for cessation or suspension of marine scientific research activities; the assistance or co-operation for providing the research vessels with information necessary to prevent and control damage to the health and safety of persons, or to the marine environment; the modalities under which marine scientific research projects could be undertaken under the auspices of an international organization etc. Informal proposals on most of these issues are contained in documents MSR/2/Rev.1, MSR/3, MSR/4 and MSR/5. At the last moment, a new proposal contained in document MSR/5 was submitted which sought to amend some of the provisions contained in article 254 relating to the rights of the neighbouring land-locked and geographically disadvantaged States.

5. These proposals were considered at six informal meetings of the Third Committee. Intensive negotiations were also conducted through informal consultations with delegations directly concerned.

6. During these informal meetings and consultations some compromise formulae have emerged which in my personal assessment have such a considerable degree of support as to provide a reasonable prospect for consensus. These compromise formulae refer to articles 242, 246 *bis*, 247, 249, 253, 255 and 264. They are contained in an annex to this report. In my view these provisions could serve as a basis for a subsequent agreement leading to the revision of the negotiating text.

7. I wish to reiterate that, in our attempts to broaden the basis for a reasonable compromise in the field of marine scientific research, we should not lose sight of the fundamental principles of the newly emerging law of the sea and the need to keep a viable and equitable balance between the interests of all States. This has been our main concern throughout the work of the Third Committee. Evaluating the results of this session, I believe that we have succeeded in our endeavours to search for compromise formulae that do not upset the delicate balance which constitutes the very foundation of the régime for the conduct of marine scientific research. It is my submission that the compromise formulae, which emerged from the intensive negotiations during this session, are altogether the result of certain concessions made from the delegations which held opposing views. This is, indeed, the only way to achieve a compromise which provides the basis for mutual agreement. Of course, this does not mean that there is no room for improvement of the formulations contained in my report. Unfortunately, owing to lack of time during this session, we could not complete the consideration of these proposals.

8. Turning to the specific formulations and considering them in the light of the debate that took place in the Third Committee, I should like to state the following: first, the formulations on articles 242, 247 and 255 (with some drafting amendments) have acquired widespread support and therefore they can be considered as generally acceptable; secondly, on the other formulations, concerning articles 246 *bis*, 249 253 and 264, most of the representatives expressed support in substance for the underlying basic concepts and there have been suggestions for drafting amendments. However, certain delegations opposed in principle some of these proposals or parts of them. But even they did not oppose a further consideration of those proposals. In my view, the main trends in the debate and the prevailing desire to reach a compromise represent in themselves an encouraging feature. This is, indeed, a promising avenue for our future work.

9. In conclusion, I wish to extend to all the members of the Third Committee my gratitude for their co-operation and goodwill, which enabled us to make substantial progress in our negotiating efforts. I wish also to pay special tribute to the members of the secretariat for their dedication, competence and most valuable assistance rendered to the Committee in the discharge of its mandate.

ANNEX

Compromise formulae emerging from the intensive negotiations during the resumed eighth session

Article 242

Add the following sentence at the end of the paragraph:

"In this context, without prejudice to the rights and duties of States under this Convention, a State in the application of this Part shall provide, when appropriate, other States with a reasonable opportunity to obtain from it, or with its co-operation, information necessary to prevent and control damage to the health and safety of persons and the environment."

Article 246 bis

For the purposes of article 246:

(*a*) The absence of diplomatic relations between the coastal

[37] *Ibid.*

State and the researching State does not necessarily mean that normal circumstances do not exist between them for purposes of applying article 246, paragraph 3;

(*b*) The exercise by the coastal State of its discretion under article 246, paragraph 4 (*a*), shall be deferred and its consent shall be implied with respect to marine scientific research projects undertaken outside specific areas of the continental shelf beyond 200 miles, from the baselines of which the breadth of the territorial sea is measured, which the coastal State has publicly designated as areas in which exploitation or exploratory operations, such as exploratory drilling, are occurring or are about to occur;

(*c*) The coastal State shall give reasonable notice of such areas.

Article 247

In line 1, after "global" add "intergovernmental".

Article 249

Redraft paragraph 1 (*d*) to read:

"(*d*) If requested, provide the coastal State with an assessment of such data, samples, and research results or assist in their interpretation;".

In paragraph 1 (*e*), delete "subject to paragraph 2 of this article".

Redraft paragraph 2 to read:

"2. The present article is without prejudice to the conditions established by the laws and regulations of the coastal State for the exercise of its discretion to grant or withhold consent pursuant to article 246, paragraph 4, including requiring prior agreement for making internationally available the research results of a project of direct significance for the exploration and exploitation of natural resources."

Article 253

Redraft the title to read:

"Suspension or cessation of research activities".

In paragraph 1, line 1, before "cessation" insert "suspension or".

Redraft paragraph 1 (*a*) to read:

"(*a*) The research activities are not being conducted in accordance with the information communicated as provided for under article 248 upon which the consent of the coastal State was based and compliance is not secured within a reasonable period of time;".

Add a new paragraph 2:

"2. The coastal State may require cessation of research activities if the conditions provided for in paragraph 1 are not complied with within a reasonable period of time after suspension has been invoked, subject to any proceedings which may have been instituted pursuant to section 2 of Part XV."

Article 255

States shall endeavour to adopt reasonable rules, regulations and procedures to promote and facilitate marine scientific research activities beyond their territorial sea and, as appropriate, to facilitate, subject to the provisions of their internal law, access to their harbours and promote assistance for marine scientific research vessels, which comply with the relevant provisions of this Part.

Article 264

Add a new paragraph 2:

"2. Disputes arising from an allegation by the researching State that with respect to a specific project the coastal State is not exercising its rights under articles 246 and 253 in a manner compatible with the provisions of this Convention shall be submitted, at the request of either party and notwithstanding article 284, paragraph 3, to the conciliation procedure described in annex IV, provided that the Conciliation Commission shall not call in question the exercise of the discretion to withhold consent in accordance with article 246, paragraph 4."

DOCUMENT A/CONF.62/L.40

Report of the Chairman of the Drafting Committee

[*Original: English*]
[*22 August 1979*]

At the 93rd plenary meeting of the Conference, the Drafting Committee was requested to commence work by addressing itself to the provisions of the informal composite negotiating text that appeared to be settled and to recommend changes that were considered necessary from a technical and drafting point of view, particularly the adoption of uniform terminology.

At the request of the Drafting Committee, the secretariat prepared a list of recurring words and expressions in the informal composite negotiating text which might be harmonized (informal paper 2). The examples which were selected were not exhaustive on any particular issue but they clearly indicated the difficult task which the Committee faced in carrying out the mandate of ensuring uniformity of terminology.

It was recognized that it is desirable, to the extent possible, to avoid the use of different words, where the intended meaning appears to be the same.

The following pattern has been adopted for this paper. Firstly, there is a representative list of examples which has been chosen from each section of informal paper 2, then some issues involved. This is followed by the recommendations of the Drafting Committee. The substance of these recommendations, which were themselves based on the work of the language groups, was discussed by the coordinators of the language groups under the direction of the Chairman of the Drafting Committee.

I

"*All States*"

Examples

Article 17:

"ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea".

Article 52, paragraph 1:

"ships of all States enjoy the right of innocent passage through archipelagic waters".

Article 90:

"every State, whether coastal or land-locked, has the right to sail ships under its flag on the high seas".

Article 116:

"all States have the right for their nationals to engage in fishing on the high seas".

Article 140:

"activities in the Area shall be carried out for the benefit of mankind as a whole irrespective of the geographical location of States, whether coastal or land-locked".

Article 150, subparagraph (*f*):

"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".

Article 238:

"States, irrespective of their geographical location . . . have the right to conduct marine scientific research".

Article 256:

"States, irrespective of their geographical location . . . shall have the right . . . to conduct marine scientific research in the Area".

Article 257:

"States, irrespective of their geographical location . . . shall have the right. . . to conduct marine scientific research in the water column beyond the limits of the exclusive economic zone".

Some issues involved

(*a*) Should the term "all States", wherever it appears, be qualified by an expression such as "whether coastal or land-locked"?

(*b*) What is the distinction between the following expressions: "all States", "every State" and "States"?

The recommendations of the Drafting Committee

The Drafting Committee recommended the addition of the word "all" before "States" in articles 238, 256 and 257 of the revised negotiating text.

II

(i) "*Developing country*";
(ii) "*Developing State*".

Examples

Article 61, paragraph 3:
"special requirements of developing countries".

Article 62, paragraph 4 (*a*):
"of developing coastal States".

Article 82, paragraph 3:
"a developing country which is a net importer of a mineral resource".

Article 82, paragraph 4:
"the interests and needs of developing countries".

Article 119, paragraph 1 (*a*):
"requirements of developing countries".

Article 140:
"and taking into particular consideration the interests and needs of the developing countries and peoples who have not attained full independence or other self-governing status".

Article 143, paragraph 3 (*b*):
"for the benefit of developing countries".

Article 144, paragraph 2 (*b*):
"the domestic technology of developing countries . . . and from developing countries".

Article 150, subparagraph (*g*):
"the protection of developing countries".

Article 202, subparagraph (*a*):
"and other assistance to developing States".

Article 202, subparagraph (*a*) (iv):
"enhancing the capacity of developing States".

Article 202, subparagraph (*c*):
"in particular to developing States".

Article 203:
"developing States".

Article 266, paragraph 2:
"particularly developing States".

Annex II, article 5, paragraph 1 (*e*):
"for the benefit of a developing country".

Annex II, article 8, paragraph 1:
"or in association with developing countries".

Some issues involved

The text, as these examples show, is not consistent in its use of the words "developing country" or "developing State". The following factors may help to elucidate this issue:

(*a*) As used within the United Nations system, a "developing country" is a State.

(*b*) This issue should be divorced from the question of participation in the convention, for example, whether dependent territories may become parties to the convention.

(*c*) This issue is not related either to the separate question of whether States which are not parties to the convention can benefit from or be bound by the provisions of the convention.

(*d*) On the other hand, the expression "developing country" is hallowed by usage.

The recommendations of the Drafting Committee

The Drafting Committee recommended that the phrase "developing States" should replace "developing countries" except where the reference is to an entity other than a State (for example, in article 140, paragraph 1).

III

(i) "*States with special geographical characteristics*";
(ii) "*Land-locked and geographically disadvantaged States*";
(iii) "*Land-locked and other geographically disadvantaged States*";
(iv) "*Land-locked or otherwise geographically disadvantaged State* ".

Examples

Article 70:
"States with special geographical characteristics shall have the right to participate . . .".

Article 148:
"The effective participation of developing countries . . . having due regard to their special needs and interests, and in particular the special needs of the land-locked and geographically disadvantaged States among them".

Article 160, paragraph 2 (*k*):
"for States in connexion with activities in the Area as are due to their geographical location, including land-locked and geographically disadvantaged countries.

Article 254, title:
"neighbouring land-locked and geographically disadvantaged States".

Article 254, paragraph 1:
"rights of neighbouring land-locked and other geographically disadvantaged States".

Article 266, paragraph 2:
"particularly developing States, including land-locked and geographically disadvantaged States".

Annex III, article 11, paragraph 3 (*b*) (ii):
"in the developing countries, including the land-locked or otherwise geographically disadvantaged among them".

Some issues involved

The issue here seems to be to all intents and purposes one of nomenclature. The choice of expression will depend on general acceptance of a name for such States. It should be pointed out that in article 70, paragraph 2, there is a definition of the term "States with special geographical characteristics".

The recommendations of the Drafting Committee

Articles 69 and 70 use the phrase "States with special geographical characteristics" whereas articles 148, 160, 161, 254, 266, and 272 use the phrase "geographically disadvantaged States". The Drafting Committee recommended that the Chairman of the Drafting Committee consult with the relevant chairmen on the question of the harmonization of the use of these terms.

IV

"*State enterprises*".

Examples

Article 137, paragraph 1:
"whether undertaken by States Parties, or State enterprises or persons natural or juridical".

Article 153, paragraph 2 (*b*):
"by States Parties or State entities or persons natural or juridical".

Article 165, paragraph 2 (*c*):
"in consultation and collaboration with any entity carrying out such activities or State or States concerned".

Some issues involved

There are perhaps two issues here. In the first place, is there a difference between "State enterprises" and "State entities"? Secondly, does not the expression "persons natural or juridical" include "State enterprises"?

The recommendations of the Drafting Committee

The co-ordinators of the language groups are continuing to consult on this section.

V

"*Persons*".

Examples

Article 137, paragraph 1:
"or person, natural or juridical".

Article 153, paragraph 2 (*b*):
"or persons natural or juridical".

Article 235, paragraph 2:
"natural or juridical persons".

Article 263, paragraph 2:
"their natural or juridical persons".

Some issues involved

This section poses a relatively simple problem concerning the position of the adjectives "natural or juridical". Should they be placed before the noun "person" or after it? The question whether "juridical" should be replaced by "legal" is also raised.

The recommendations of the Drafting Committee

The Drafting Committee recommended use of the phrase "natural or juridical persons".

VI

(i) "*Ship*";
(ii) "*Vessel*".

Examples

The word "ship", with few exceptions, is used in Parts II, III, IV, V, and VII of the English version and the word "vessel" is used in Parts XII, XIII and XV, save in one case (article 233).

Some issues involved

This problem affects only the English and Russian versions since only one word is used in the other languages, e.g. *buque* in Spanish and *navire* in French. The words "ship" and "vessel" are not interpreted as meaning different things in the text.

The recommendations of the Drafting Committee

In the Arabic, Chinese, French and Spanish texts, one word is used consistently throughout the text. The Drafting Committee suggested that the chairmen of the English and Russian language groups might consult with each other in an attempt to resolve the issue within their groups.

VII

"*Joint ventures*".

Examples

Article 62, paragraph 4 (*i*):
"relating to joint ventures or other co-operative arrangements".

Article 72, paragraph 1:
"by establishing joint collaboration ventures".

Article 153, paragraph 3:
"such contracts may provide for joint arrangements in accordance with".

Article 269, subparagraph (*e*):
"promote joint ventures and other forms of bilateral and multilateral co-operation".

Annex II, article 7, paragraph 4:
"or through joint ventures with States".

Annex II, article 8, paragraph 3:
"into joint arrangements".

Annex III, article 12, paragraph 2 (*a*):
"forms of association, or other arrangements".

Some issues involved

It seems reasonable to seek more uniformity in references such as "joint ventures or other co-operative arrangements" and "joint collaboration ventures".

The recommendations of the Drafting Committee

The Drafting Committee recommended that the word "collaboration" be deleted from article 72, paragraph 1, following the model of article 62, paragraph 4 (*i*).

VIII

"*Internal law*".

Examples

Article 94, paragraph 2 (*b*):
"assume jurisdiction under its internal law over each ship flying its flag".

Article 217, paragraph 6:
"such proceedings to be taken in accordance with their laws".

Article 220, paragraph 2:
"to be taken in accordance with its laws".

Article 223:
"as may be provided under national legislation".

Article 235, paragraph 2:
"in accordance with their legal systems".

Annex III, article 12, paragraph 6:
"of making effective in terms of its own law".

Some issues involved

In this list of references there are several different expressions used to convey the notion of "municipal" or "domestic" law, for example, "internal law", "their laws", "its own law". Consequently, there should be some harmonization to the extent possible.

The recommendations of the Drafting Committee

The Drafting Committee noted that the Arabic, Chinese, French, Russian and Spanish co-ordinators were in agreement that it was preferable to use either "internal law" or "national law" rather than expressions such as "its laws", "their laws", "legislation" or "national legislation".

It also noted that the co-ordinator of the English language group expressed a preference for "its laws" or "their laws". Wherever added precision is required to distinguish from

international or other types of law, the term "national" should be used.

IX

"Subject to the consent of the coastal State".

Examples

Article 40:
"without the prior authorization of the States bordering straits".

Article 77, paragraph 2:
"without the express consent of the coastal State".

Article 79, paragraph 3:
"subject to the consent of the coastal State".

Article 210, paragraph 3:
"without the permission of the competent authorities of States".

Article 210, paragraph 5:
"without the express prior approval of the coastal State".

Article 245:
"only with the express consent of and under conditions set forth by the coastal State".

Article 246, paragraph 2:
"with the consent of the coastal State".

Article 265:
"without the express approval of the coastal State concerned".

Some issues involved

The problem here is whether there is a need for this variety of expressions—"express consent", "consent", "prior authorization", "express approval", "express prior approval", etc.

The recommendations of the Drafting Committee

The Drafting Committee recommended that it should aim for standardization in translation of expressions such as "consent" or "authorization", but that standardization of expressions within each language may not be possible.

X

"Artificial islands, installations and structures and international navigation"

Examples

Article 60, paragraph 7:
"Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation".

Article 147, paragraph 2 (*c*):
"The configuration and location of such safety zones shall not be such as to form a belt impeding the lawful access of shipping to particular maritime zones or navigation along international sea lanes.".

Article 261:
"The deployment and use of any type of scientific research installations or equipment shall not constitute an obstacle to established international shipping routes".

Some issues involved

The problem here relates to what language should be used to express the notion that the establishment of artificial islands, installations and structures should not impede international navigation.[38]

[38] See article 5 paragraph 6, of the Convention on the Continental Shelf (United Nations, *Treaty Series*, vol. 499, No. 7302, p.312).

The recommendations of the Drafting Committee

The co-ordinators of the language groups are continuing to consult on this section. In this connexion, a model article based on article 60 will be examined.

XI

"Status of artificial islands, installations and structures"

Examples

Article 60, paragraph 8:
"Artificial islands, installations and structures have no territorial sea of their own".

Article 147, paragraph 2 (*e*):
"Such installations shall not possess the status of islands. They shall have no territorial sea".

Article 259:
"The installations or equipment referred to in this section shall not have the status of islands, or possess their own territorial sea".

Some issues involved

With respect to the language used in this section, see article 5, paragraph 4, of the Convention on the Continental Shelf.

The recommendations of the Drafting Committee

The Drafting Committee recommended that the relevant parts of articles 60, paragraph 8, 147, paragraph 2 (*e*) and 259 read as follows: ". . . . do not possess the status of islands. They have no territorial sea of their own . . . ".

XII

(i) *"Sea lanes and traffic separation schemes";*

(ii) *"Any channels customarily used for international navigation";*

(iii) *"All normal passage routes used as routes for international navigation";*

(iv) *"To the use of recognized sea lanes essential to international navigation".*

Examples

Article 22, paragraph 1:
"through its territorial sea to use such sea lanes and traffic separation schemes".

Article 22, paragraph 3 (*b*):
"any channels customarily used for international navigation".

Article 41, paragraph 1:
"States bordering straits may designate sea lanes or traffic separation schemes".

Article 53, paragraph 4:
"all normal passage routes used as routes for international navigation".

Article 53, paragraph 4:
"all normal navigational channels".

Article 53, paragraph 12:
"through the routes normally used for international navigation".

Article 60, paragraph 7:
"to the use of recognized sea lanes essential to international navigation".

Article 147, paragraph 2 (*b*):
"through sea lanes of vital importance for international shipping".

Article 147, paragraph 2 (*c*):
"or navigation along international sea lanes".

Article 261:
"to established international shipping routes".

Some issues involved

The language used is not consistent, for example, article 147, paragraph 2 (*c*), refers to "international sea lanes" whereas article 261 speaks of "international shipping routes". Both could be referring to the same maritime area. Moreover, the term "sea lanes" is used in a specific sense in some articles, for example, articles 22, paragraph 1, and 41, paragraph 1, and in a general sense in, for example, articles 60, paragraph 7, and 147. The specific usage of the term is frequently associated with traffic separation schemes.

The recommendations of the Drafting Committee

The Drafting Committee noted that the terminology used in these articles requires article-by-article consideration. However, it recommended that the following suggestions be made to the Conference:

1. The word "such" should be added to the beginning of article 53, paragraph 5, so that it reads "such sea lanes".

2. The term "sea lanes" should be retained in part III.

3. A term other than "sea lanes" should be used elsewhere than in Parts II, III and IV of the Convention, for example, in articles 60, paragraph 7, and 147.

XIII

"*Delimitation of the territorial sea, the exclusive economic zone or the continental shelf*"

Examples

Article 60, paragraph 8:
"and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf".

Article 134, paragraph 4:
"shall affect the validity of any agreement between States with respect to the establishment of limits between opposite or adjacent States".

Article 147, paragraph 2 (*e*):
". . . nor shall their presence affect the determination of territorial or jurisdictional limits of any kind".

Article 259:
"and their presence shall not affect the delimitation of the territorial sea, exclusive economic zone and the continental shelf of the coastal State".

Some issues involved

With respect to the language used in these references see article 5, paragraph 4, of the Convention on the Continental Shelf.

The recommendations of the Drafting Committee

The Drafting Committee recommended that the relevant parts of articles 60, paragraph 8, 147, paragraph 2 (*e*), and 259 should read as follows: ". . . and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf".

XIV

(i) "*Between States with opposite or adjacent coasts*";

(ii) "*Between adjacent or opposite States*".

Examples

Article 15, title:
"Delimitation of the territorial sea between States with opposite or adjacent coasts".

Article 74, paragraph 1:
"The delimitation of the exclusive economic zone between adjacent or opposite States".

Article 83, paragraph 1:
"The delimitation of the continental shelf between adjacent or opposite States".

Article 298, paragraph 1 (*a*):
"disputes concerning sea boundary delimitations between adjacent or opposite States".

Some issues involved

The choice lies between the expressions "States with opposite or adjacent coasts" and "between adjacent or opposite States".

The recommendations of the Drafting Committee

The Drafting Committee recommended that the words "opposite" or "adjacent" should modify "coasts" not "States". The model would therefore be the title of article 15 which, in the English text, reads in part: "Delimitation . . . between States with opposite or adjacent coasts".

The choice of whether "opposite" precedes "adjacent", or vice versa, was left to the Chairman of the Drafting Committee to decide on the basis of which phrase would require the least change to the text, bearing in mind that the "equidistance line" is appropriate to States with adjacent coasts and the "median line" to States with opposite coasts.

XV

"*Due publicity of charts*", *etc.*

Examples

Article 16, paragraphs 1 and 2:
"1. The baselines for measuring the breadth of the territorial sea determined in accordance with articles 7, 9 and 10, or the limits derived therefrom, and the lines of delimitation drawn in accordance with articles 12 and 15, shall be shown on charts of a scale or scales adequate for determining them. Alternatively, a list of geographical co-ordinates of points, specifying the geodetic datum, may be substituted.
"2. The coastal State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations."

Article 47, paragraph 6:
"The archipelagic State shall clearly indicate such baselines on charts of a scale or scales adequate for determining them. The archipelagic State shall give due publicity to such charts and shall deposit a copy of each such chart with the Secretary-General of the United Nations."

Article 75, paragraphs 1 and 2:
"1. Subject to this Part, the outer limit lines of the exclusive economic zone and the lines of delimitation drawn in accordance with article 74 shall be shown on charts of a scale or scales adequate for determining them. Where appropriate, lists of geographical co-ordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.
"2. The coastal State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations."

Article 76, paragraphs 7 and 8:
"7. Information on the limits of the continental shelf beyond the 200 nautical mile exclusive economic zone shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under annex on the basis of equitable geographic representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf

established by a coastal State taking into account these recommendations shall be final and binding.

"8. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto."

Article 84, paragraphs 1 and 2:

"1. Subject to this Part, the outer limit lines of the continental shelf and the lines of delimitation drawn in accordance with article 83 shall be shown on charts of a scale or scales adequate for determining them. Where appropriate, lists of geographical co-ordinates of points, specifying the geodetic datum, may be substituted for such outer limits or lines of delimitation.

"2. The coastal State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations."

Article 134, paragraphs 2 and 3:

"2. States Parties shall notify the Authority established pursuant to article 156 of the limits referred to in article 1, paragraph 1 (1), determined by co-ordinates of latitude and longitude and shall indicate the same on appropriate large-scale charts officially recognized by that State.

"3. The Authority shall register and publish such notification in accordance with rules adopted by it for the purpose".

Some issues involved

The major issues here concern the repetition of certain provisions, for example, "the coastal State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations", and the problem of co-ordination between articles 75, 76, 84 and 134.

The recommendations of the Drafting Committee

The secretariat has prepared a draft article on publicity of charts. That article might be submitted after review by the Drafting Committee to the chairmen of the relevant committees for discussion.

The co-ordinators of the language groups are continuing to consult on the harmonization of articles 134, 76 and 84 with a view to consultation with the chairmen of the relevant committees.

XVI

"*Notification*".

Examples

Article 27, paragraph 3:

"In the cases provided for in paragraphs 1 and 2, the coastal State shall, if the captain so requests, advise the diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken."

Article 73, paragraph 4:

"In cases of arrest or detention of foreign vessels the coastal State shall promptly notify, through appropriate channels, the flag State of the action taken and of any penalties subsequently imposed".

Article 231:

"States shall promptly notify the flag State and any other State concerned of any measures taken pursuant to section 6 against foreign vessels, and shall submit to the flag State all official reports concerning such measures. However, with respect to violations committed in the territorial sea, the foregoing obligations of the coastal State shall apply only to such measures as are taken in proceedings. The consular officers or diplomatic agents, and where possible the maritime authority of the flag State, shall be immediately informed of any such measures".

Some issues involved

There are certain issues of harmonization raised by these examples. First, whereas articles 73 and 231 use the word "notify", article 27 uses the word "advise". In the second place there is a lack of uniformity as to who should be notified or advised. Article 27, paragraph 3, makes mention of the "diplomatic agent or consular officer of the flag State". Article 73, paragraph 4, refers to "the flag State" and article 231 refers to "the flag State or any other State concerned" and in the case of violations committed in the territorial sea "the consular officers or diplomatic agents, and where possible the maritime authority of the flag State". The question of the consistency in substance of articles 27, paragraph 3, and 231 is also raised.

The recommendations of the Drafting Committee

The Drafting Committee recommended that the word "notify" be used rather than "advise". In French the words *aviser* or *avertir* should be changed to *notifier*.

XVII

"*Exploration and exploitation of the resources of the Area*".

Examples

Article 1, paragraph 3:

"'Activities in the Area' means all activities of exploration for, and exploitation of, the resources of the Area".

Article 133, subparagraph (*a*):

"'Activities in the Area' means all activities of exploration for, and exploitation of, the resources of the Area."

Article 150, subparagraph (*f*):

"of the exploration and exploitation of the resources of the Area".

Article 155, paragraph 6:

"of exploration and exploitation of the resources of the Area".

Article 215:

"activities concerning exploration and exploitation of the Area".

Article 269, subparagraph (*a*):

"in the exploration and exploitation of the marine resources".

Article 273:

"to the exploration of the Area, the exploitation of its resources and other related activities".

Article 274:

"to the exploration of the Area and the exploitation of its resources".

Some issues involved

A variety of expressions is used to signify the idea of exploring and exploiting the resources of the area. The main point, however, is that article 1, paragraph 3, does declare that "activities in the Area" means "all activities of exploration for, and exploitation of, the resources of the Area". Thus, it ought to be possible to replace expressions such as those in articles 215 and 273 by the phrase "activities in the Area".

The recommendations of the Drafting Committee

The Drafting Committee recommended:

1. That the expression "exploration and exploitation of the resources of the Area" and similar expressions such as those in articles 215 and 273, should be changed to "activities in the Area", which is defined in article 1, paragraph 3;

2. That the definition of "activities in the Area" should occur only in article 1, paragraph 3.

XVIII

(i) "*For peaceful purposes*";

(ii) "*Exclusively for peaceful purposes*".

Examples

Article 88:
"The high seas shall be reserved for peaceful purposes."

Article 141:
"The Area shall be open to use exclusively for peaceful purposes."

Article 147, paragraph 2 (*d*):
"such installations shall be used exclusively for peaceful purposes;".

Article 155, paragraph 3:
"the use of the Area exclusively for peaceful purposes".

Article 240, subparagraph (*a*):
"Marine scientific research activities shall be conducted exclusively for peaceful purposes".

Article 242:
"promote international co-operation in marine scientific research for peaceful purposes".

Article 246, paragraph 3:
"to be carried out in accordance with this Convention exclusively for peaceful purposes".

Some issues involved

The issue here is whether it is necessary to change any of these expressions for the purposes of harmonization.

The recommendations of the Drafting Committee

The Drafting Committee recommended that the French and Russian texts be adjusted to conform with the English in articles 88 and 141 and that no further harmonization was necessary.

XIX

"*Transfer of technology*".

Examples

Article 144, paragraph 2:
"promoting the transfer of technology".

Article 150, subparagraph (*c*):
"transfer of technology to the Enterprise".

Article 266, paragraph 1:
"transfer of marine science and marine technology".

Article 268, subparagraph (*c*):
"the transfer of marine technology".

Article 269, subparagraph (*a*):
"transfer of all kinds of marine technology".

Article 270:
"transfer of marine technology".

Article 272:
"in the field of transfer of marine technology".

Article 273:
"transfer . . . of skills and technology".

Annex II, article 5, paragraph 1:
"transfer of technology".

Some issues involved

There are certain issues which are raised by these references. Should the term be "transfer of technology" or "transfer of marine technology"? Does the inclusion of expressions such as "all kinds of" in article 269 and "of skills" in article 273 create negative implications regarding the meaning of other provisions?

The recommendations of the Drafting Committee

The Drafting Committee recommended that the word "marine" should be added to articles 276 and 277 and that the suggested deletion of "all kinds of" in article 269, subparagraph (*a*), and "skills and" in article 273 should be subject to further consultation.

XX

"*International rules and standards*".

Examples

Article 21, paragraph 2:
"unless they are giving effect to generally accepted international rules or standards".

Article 21, paragraph 4:
"generally accepted international regulations relating to the prevention of collisions at sea".

Article 39, paragraph 2 (*a*):
"comply with generally accepted international regulations, procedures and practices for safety at sea".

Article 42, paragraph 1 (*b*):
"the prevention, reduction and control of pollution by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait".

Article 60, paragraph 5:
"taking into account applicable international standards . . . except as authorized by generally accepted international standards".

Article 60, paragraph 6:
"All ships must respect these saftey zones and shall comply with generally accepted international standards regarding navigation".

Article 61, paragraph 3:
"and any generally recommended subregional or global minimum standards".

Article 94, paragraph 3 (*b*):
"The manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments".

Article 213:
"to implement applicable international rules and standards established through".

Article 217, paragraph 4:
"rules and standards established through the competent international organization or general diplomatic conference".

Article 222:
"in conformity with all relevant international rules and standards concerning the safety of air navigation".

Some issues involved

This is clearly one of the most difficult sections to harmonize. The plethora of examples cited indicate quite eloquently that on the face of it, at least, there is need for intensive study.

The recommendations of the Drafting Committee

The Drafting Committee recommended that there should be further discussion on this issue and that, with this in mind,

representatives from all language groups should participate in the small group established by the English language group.

XXI

(i) "*Protection and preservation of the marine environment*";

(ii) "*The preservation of the marine environment*".

Examples

Article 21, paragraph 1 (*f*):
"the preservation of the environment of the coastal State".

Article 56, paragraph 1 (*b*) (iii):
"the preservation of the marine environment".

Article 145:
"effective protection for the marine environment".

Article 202, subparagraph (*a*):
"for the protection and preservation of the marine environment".

Article 234:
"the protection of the marine environment".

Article 235, paragraph 1:
"concerning the protection and preservation of the marine environment".

Article 266, paragraph 2:
"the preservation of the marine environment".

Article 277, subparagraph (*c*):
"related to the protection and preservation of the marine environment".

Annex II, article 2, paragraph 1 (*b*):
"concerning protection of the marine environment".

Annex II, article 16, paragraph 1 (*b*) (xii):
"the protection of the marine environment".

Some issues involved

The main issue here is whether the expression should be "preservation of the marine environment", "protection of the marine environment", or "protection and preservation of the marine environment". Some guidance in this matter is given by article 192 which can be considered the source of this obligation. Article 192 states that: "States have the obligation to protect and preserve the marine environment".

The recommendations of the Drafting Committee

The Drafting Committee recommended the use of the phrase "protection and preservation of the marine environment" throughout, except in Part XI. In addition, the Committee suggested that a draft of article 145, using the language of Part XII and of article 1, paragraph 4, be prepared for discussion in the co-ordinator's group and used as a model for Part XI and annexes II and III.

XXII

"*References to subregional, regional and global organizations*".

Examples

Article 61, paragraph 2:
"As appropriate, the coastal State and relevant subregional, regional and global organizations shall co-operate to this end".

Article 63, paragraph 1:
"these States shall seek either directly or through appropriate subregional or regional organizations".

Article 66, paragraph 5:
"The State of origin of anadromous stocks and other States fishing these stocks shall make arrangements for the implementation of the provisions of this article, where appropriate, through regional organizations."

Article 118:
"They shall, as appropriate, co-operate to establish subregional or regional fisheries organizations to this end."

Article 123:
"directly or through an appropriate regional organization".

Article 197:
"States shall co-operate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, global or regional."

Article 200:
"States shall co-operate directly or through competent international organizations, global or regional".

Article 202:
"States shall directly or through competent international or regional organizations, global or regional".

Article 204, paragraph 1:
"individually or collectively through the competent international organizations, global or regional".

Article 205:
"or provide at appropriate intervals such reports to the competent international or regional organizations".

Article 207, paragraph 3:
"States shall endeavour to harmonize their national policies at the appropriate regional level."

Article 247:
"A coastal State which is a member of a regional or global organization".

Article 268, subparagraph (*e*):
"international co-operation at all levels, particularly at the regional, subregional and bilateral levels".

Some issues involved

An issue raised here is whether expressions such as "subregional, regional, and global organizations" or "international organizations, global or regional" could be replaced by the simple phrase "international organizations".

The recommendations of the Drafting Committee

The Drafting Committee recommended that:

1. In article 61, paragraph 5, the word "relevant" should be inserted to conform to article 61, paragraph 2.

2. In principle, except with respect to article 61, the term "competent international organizations" is sufficient to refer to global organizations or to both global and other organizations. The use of the word "competent" is subject to later reconsideration in connexion with the other adjectives referred to in section 15 of informal paper 2/Add.1.

3. Most co-ordinators of the language groups felt that there was no substantive issue in the order in which "global", "regional" and "subregional" appeared. However, there may be reason for distinguishing between provisions on living resources in which "subregional" and "regional" precede "global", and provisions on pollution in which "global" precedes "regional".

4. It should be noted that the Spanish text uses the word "competent" in article 61, paragraph 2, where the English text uses "relevant".

XXIII

"*Bilateral, subregional or regional agreements*".

Examples

Article 69, paragraph 2:
"through bilateral, subregional or regional agreements".

Article 70, paragraph 3:
"through bilateral, subregional or regional agreements".
Article 125, paragraph 2:
"through bilateral, subregional or regional agreements".
Article 243:
"through the conclusion of bilateral, regional and multilateral agreements".
Article 255:
"for the purpose of giving effect to bilateral or regional and other multilateral agreements".
Article 282:
"through a general, regional or special agreement".

Some issues involved

There are two types of agreements mentioned in these references: agreements of a limited kind, for example, "bilateral, subregional or regional agreements" and those which are of a wider nature, for example, "bilateral, regional and multilateral agreements". It seems that harmonization can be carried out in the latter type of expressions (articles 243, 255 and 282).

The recommendations of the Drafting Committee

The Drafting Committee recommended that the expression "bilateral, regional and multilateral agreements" be simplified to read "bilateral and multilateral agreements" except where a specific type of international agreement is contemplated. A change would not therefore be made in articles 69, 70, 125 and 282. Where the negotiating text uses the word "or" rather than "and", that word would be retained pending an article-by-article review. The expression "through a general, regional or special agreement" in article 282 is still under consideration.

XXIV

(i) "*Obligation*";
(ii) "*Duty*".

Examples

Article 192, title:
"General obligation".
Article 192:
"States have the obligation to protect and preserve the marine environment".
Article 193:
"States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment".
Article 237, title:
"Obligations under other conventions on the protection and preservation of the marine environment".
Article 237, paragraph 1:
"The provisions of this Part shall be without prejudice to the specific obligations assumed by States under special conventions and agreements".
Article 282, title:
"Obligations under general, regional or special agreements".
The term "duty" or "duties" is used in the titles of articles 24, 39, 44, 54, 56, 58, 94, 98, 100, 117, 195, 225, 248 and 249.

Some issues involved

These examples raise the following questions: Do the words "obligation" and "duty" carry the same legal meaning? If the answer is in the affirmative, should there be only one word throughout the text to express the notion of duty? Of course, there may be other criteria, for example, usage which may determine in each instance the choice of word. It should be pointed out that this issue arises in a different manner in the other languages.

The recommendations of the Drafting Committee

The Drafting Committee recommended that this section receive further consideration by the language groups. It recommended that harmonization was preferable noting, for example, the problems of harmonization and linguistic concordance in articles 192 and 193.

The French language group expressed a preference for the term *obligation* in French, but could agree to any other harmonized solution.

XXV

(i) "*Juridical status*";
(ii) "*Legal status*".

Examples

Article 2, title:
"Juridical status of the territorial sea, of the airspace over the territorial sea and of its bed and subsoil".
Article 34, title:
"Juridical status of waters forming straits used for international navigation".
Article 49, title:
"Juridical status of archipelagic waters, of the airspace over archipelagic waters, and of their bed and subsoil".
Article 78:
"the legal status of the superjacent waters".
Article 135:
"shall affect the legal status of the waters superjacent to the Area".
Article 155, paragraph 3:
"the legal status of the superjacent waters".
Article 259, title:
"Legal status".

Some issues involved

For the sake of uniformity either "juridical status" or "legal status" should be chosen.

There is a broader question of the distinction in the English text between the words "status" and "régime", the question of the consistency in the use of the adjective "legal", and the problem of concordance among the different languages.

The recommendations of the Drafting Committee

The Drafting Committee recommended that "legal status" be used throughout the English text in preference to "juridical status". Equivalents in other languages: Arabic- القانوني المركز, Chinese— 法律地位, French—*régime juridique*, Russian— правовой статус, Spanish—*régimen jurídico*.

The Drafting Committee recommended that the language groups review instances other than those listed in informal paper 2 where the English text uses words such as "régime", "legal régime", "status", "legal (juridical) status".

XXVI

"*Other rules of international law*".

Examples

Article 2, paragraph 3:
"and to the other rules of international law".

Article 34, paragraph 2:
"and to other rules of international law".

Article 58, paragraph 2:
"other pertinent rules of international law . . . in so far as they are not incompatible with this Part".

Article 58, paragraph 3:
"and other rules of international law in so far as they are not incompatible with this Part".

Article 87, paragraph 1:
"by other rules of international law".

Article 139, paragraph 1:
"to applicable principles of international law".

Article 223:
"or applicable international law".

Article 294:
"by international law".

Some issues involved

The main issues here relate to the use of various expressions such as "other rules of international law", "other pertinent rules of international law", "applicable principles of international law" and "other rules of international law in so far as they are not incompatible with this Part". Do the adjectives "pertinent" and "applicable" carry any meaning in this context? Does the term "rules of international law" adequately cover the meaning?

The recommendations of the Drafting Committee

The Drafting Committee recommended the deletion of the word "pertinent" wherever it appears in this context, and the use of the word "rules" rather than "principles" in article 139, paragraph 1.

The Drafting Committee also recommended that the adjective "applicable" be deleted when reference is made to rules or principles of international law.

XXVII

"*The Charter of the United Nations*".

Examples

Preamble, paragraph 2
"in accordance with the purposes and principles of the United Nations as set forth in the Charter".

Preamble, paragraph 3
"in accordance with the Charter of the United Nations".

Article 19, paragraph 2 (*a*)
"of the principles of international law embodied in the Charter of the United Nations".

Article 39, paragraph 1 (*b*)
"of the principles of international law embodied in the Charter of the United Nations".

Article 138
"other pertinent rules of international law, including the Charter of the United Nations".

Some issues involved

The examples all refer to the Charter of the United Nations. Therefore, the issue relates to the finding of a uniform formula where the principles of the Charter of the United Nations are referred to. See section XXVI above.

The recommendations of the Drafting Committee

The co-ordinators of the language groups recommended that article 138 be redrafted in part to read: "the provisions of this Part, the principles embodied in the Charter of the United Nations and other rules of international law . . .".

XXVIII and XXIX

(i) "the above provisions do not affect the right of the coastal State to take any steps"

(ii) "nothing in this Part shall affect the right of States to take measures";

(iii) "applies";

(iv) "shall apply".

Examples

Article 10, paragraph 6:
"The foregoing provisions do not apply to".

Article 27, paragraph 2:
"the above provisions do not affect the right of the coastal State to take any steps".

Article 28, paragraph 3:
"paragraph 2 is without prejudice to the right of the coastal State".

Article 35:
"nothing in this Part shall affect".

Article 49, paragraph 4:
"The régime of archipelagic sea lanes passage established in this Part shall not in other respects affect the status of the archipelagic waters".

Article 71:
"the provisions of articles 69 and 70 shall not apply".

Article 110, paragraph 4:
"these provisions shall apply".

Article 112, paragraph 2:
"Article 79, paragraph 5 applies".

Article 134, paragraph 1:
"this Part shall apply".

Article 135:
"Neither the provisions of this Part nor any rights granted or exercised pursuant thereto shall affect the legal status of the waters".

Article 142, paragraph 3:
"Neither the provisions of this Part nor any rights granted or exercised pursuant thereto shall affect the rights of coastal States to take such measures".

Article 233:
"Nothing in sections 5, 6 and 7 of this Part shall affect the legal régime of straits used for international navigation".

Article 236:
"the provisions of the present Convention . . . shall not apply".

Article 249, paragraph 2:
"This article is without prejudice to the conditions".

Article 293, paragraph 1:
"The court or tribunal having jurisdiction under this section shall apply the present Convention".

Some issues involved

The main issue involved here concerns the use of "shall". It is generally agreed that "shall" denotes an imperative and expresses an obligation. The text, as the examples show, in English, Russian and Spanish, tends to be indiscriminate in its use of "shall" vis-à-vis the present tense. There is certainly a case for consistency in the use of this auxiliary.

The recommendations of the Drafting Committee

The co-ordinators of the language groups are continuing to consult on this section. The secretariat has prepared a paper on the use of the word "shall" in the English text which will form the basis for further discussions in the language groups.

XXX

(i) "*Not contrary to*";

(ii) "*Consistent with*".

XXXI

"*Except where otherwise provided*".

XXXII

(i) "*In accordance with*";

(ii) "*In conformity with*";

(iii) "*Pursuant to*";

(iv) "*In strict conformity with*";

(v) "*In pursuance of*".

XXXIII

(i) "*Provided in*";

(ii) "*Provided for in*";

(iii) "*Established in*";

(iv) "*Referred to in*";

(v) "*Defined in*";

(vi) "*Set out in*";

(vii) "*Listed in*";

(viii) "*Mentioned in*";

(ix) "*Called for in*";

(x) "*Described in*";

(xi) "*Prescribed in*";

(xii) "*Laid down in*";

(xiii) "*Set forth in*";

(xiv) "*Created by*";

(xv) "*Designated under*";

(xvi) "*Determined under*";

(xvii) "*Covered by*";

(xviii) "*Required by*".

Examples

Section XXX

Article 1, paragraph 5 (*b*) (ii):
"is not contrary to the aims of the present Convention".

Article 56, paragraph 2:
"compatible with the provisions of the present Convention".

Article 58, paragraph 1:
"compatible with the other provisions of the present Convention".

Article 58, paragraph 2:
"so far as they are not incompatible with the present Part".

Article 62, paragraph 4:
"consistent with the present Convention".

Article 236:
"in a manner consistent, so far as is reasonable and practicable, with the present Convention".

Article 240, subparagraph (*c*):
"compatible with the present Convention".

Article 293, paragraph 1:
"[illegible]".

Section XXXI

Article 5:
"except where otherwise provided in the present Convention".

Article 8, paragraph 1:
"except as provided in Part IV".

Article 24, paragraph 1:
"except in accordance with the present Convention".

Article 32:
"With such exceptions as are contained in subsection A".

Article 121, paragraph 2:
"except as provided for in paragraph 3".

Article 298, paragraph 1 (*b*):
"subject to the exceptions referred to in article 296".

Article 302:
"unless expressly provided otherwise".

Section XXXII

Article 3:
"in accordance with the present Convention".

Article 19, paragraph 1:
"in conformity with the present Convention".

Article 72, paragraph 2:
"pursuant to articles 69 and 70".

Article 73, paragraph 1:
"in conformity with the present Convention".

Article 208, paragraph 1:
"pursuant to articles 60 and 80".

Annex II, article 3, paragraph 2 (*a*):
"in strict conformity with the present Convention and the rules and regulations of the Authority".

Annex II, article 16, paragraph 1 (*d*):
"in pursuance of articles 151 and 164".

Section XXXIII

Article 8, paragraph 2:
"as provided in the present Convention".

Article 10, paragraph 6:
"provided for in article 7".

Article 34, paragraph 1:
"established in the present Part".

Article 38, paragraph 1:
"referred to in article 37".

Article 42, paragraph 2:
"as defined in the present section".

Article 56, paragraph 3:
"The rights set out in the present article".

Article 64, paragraph 1:
"species listed in annex I".

Article 67, paragraph 3:
"mentioned in paragraph 1".

Article 94, paragraph 5:
"called for in paragraphs 3 and 4".

Article 101, subparagraph (*c*):
"described in subparagraphs (*a*) and (*b*)".

Article 140, paragraph 1:
"as specifically provided for in the present Part".

Article 153, paragraph 2:
"as prescribed in paragraph 3".

Article 155, paragraph 1:
"policies set forth in article 150".

Article 155, paragraph 3:
"principles laid down in the present Part".

Article 199:
"[illegible]".

Article 206:
"in the manner provided in article 205".

Article 237, paragraph 1:
"principles set forth in the present Convention".

Article 238:
"as provided for in the present Convention".

Article 252, subparagraph (*d*):
"with regard to conditions established in article 249".

Article 253, paragraph 1 (*a*):
"as provided under article 248".

Annex V, article 23:
"covered by the present Convention".

Some issues involved

The list of expressions cited above are phrases which introduce a reference to an article, section, a part, or to the convention itself. The object is to discern what distinction, if any, there might be in the different forms used. Perhaps, if there is a distinction, the expressions will be retained; if not, some harmonization may be necessary.

It should be noted, however, that even from an initial examination there seems to be no need for an expression such as "in strict conformity with", which may raise an unintended negative implication regarding the meaning of other provisions which omit the word "strict".

The recommendations of the Drafting Committee

The French language group has established a special group to advise the co-ordinators of the language groups on these expressions.

DOCUMENT NG6/19

Report of the Chairman of negotiating group 6

[*Original: Spanish*]
[*22 August 1970*]

Negotiating group 6 deals with the definition of the outer limit of the continental shelf and the question of payments and contributions with respect to the exploitation of the continental shelf beyond 200 miles or the question of revenue-sharing. At this resumed eighth session, it held five meetings, at which 72 statements were made. At its meeting on 13 August 1979, negotiating group 6 established the so-called group of 38. This was in response to the request by several delegations for questions referred to negotiating group 6 to be considered by a smaller group with a view to facilitating the solution of those questions. In response to those suggestions, I invited delegations interested in participating in a smaller group to register with the secretariat. The delegations which did so are as follows, in order of registration: Uruguay, Ireland, Libyan Arab Jamahiriya, Singapore, Bulgaria, Sri Lanka, United States of America, Philippines, Argentina, Seychelles, United Kingdom of Great Britain and Northern Ireland, France, United Arab Emirates, Japan, Ecuador, Iceland, India, Indonesia, Colombia, Yuogoslavia, Union of Soviet Socialist Republics, Swaziland, Netherlands, Australia, New Zealand, Venezuela, Austria, Brazil, Romania, Morocco, Switzerland, Norway, Canada, Iraq, Jamaica, Sweden and Peru.

Although the number of delegations registered turned out to be somewhat large, I decided, in accordance with the wishes expressed by negotiating group 6, to begin the meetings of this working group immediately, on the understanding that it would be an open group in which delegations would refer to such items as they considered appropriate within the context of the mandate of negotiating group 6.

The items considered by the group of 38 were: the outer limit of the continental shelf; payments and contributions with respect to the exploitation of the continental shelf beyond 200 miles; submarine oceanic ridges; the Commission on the Limits of the Continental Shelf; and the problem of Sri Lanka.

The group of 38 held five meetings, at which there were 65 statements on the aforementioned items.

(a) *Outer limit of the continental shelf*

Some delegations expressed their preference for the 200-mile extension, although, in the light of the progress of negotiations, they declared their willingness to continue negotiations to achieve a general agreement.

The Chinese delegation submitted an informal proposal regarding article 76 of the revised negotiating text, in document NG6/18. In paragraph 1, it would be made clear that the natural prolongation of the territory of the coastal State would be to a "limit not exceeding" the outer edge of the continental margin. In paragraph 3, in the listing of the elements which constitute the continental margin, the word "generally" would be inserted to indicate that those elements do not occur in all regions.

The Austrian delegation submitted an informal suggestion (NG6/12) containing a draft resolution for adoption by the Conference, urging the coastal States to facilitate participation by land-locked and geographically disadvantaged States of the same region or subregion in the exploration and exploitation of the natural resources of the continental shelf, through their entities or persons natural or juridical of their nationality.

(b) *Payments and contributions established by article 82 of the informal composite negotiating text*

In addition to the suggestions concerning this item made during the first part of the current session, there was an informal suggestion by the United States (NG6/13) to redraft paragraph 3 of article 82.

The delegations of Afghanistan, Austria, Bolivia, Lesotho, Nepal, Singapore, Uganda, Upper Volta and Zambia submitted an informal suggestion (NG6/15), according to which the payments or contributions referred to in article 82 would be made to the common heritage fund to be established to receive from the coastal States a portion of the proceeds from the exploitation of the non-living resources of their exclusive economic zones.

(c) *Submarine ocean ridges*

In connexion with this item, which is mentioned in the foot-note to paragraph 3 of article 76, the Group examined the suggestions contained in informal papers NG6/9 and NG6/11, submitted, respectively, by the Union of Soviet Socialist Republics and by Argentina, Australia, Canada, India, Ireland, New Zealand, Norway, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Uruguay. The first suggestion was to add at the end of article 76, paragraph 5, the following text: "However, the limit of the shelf in areas containing submarine oceanic ridges shall not extend farther than the aforementioned 350-mile distance". The second suggestion would define submarine oceanic ridges as long, narrow submarine elevations formed of oceanic crust and establish that in the areas of such ridges the outer limit of the continental shelf would not exceed the same distance of 350 miles.

Bulgaria also submitted an informal proposal (NG6/14/Rev.1), according to which the extension of the continental shelf on the basis of depth and distance would be subject to the shelf not being extended to submarine oceanic ridges. Singapore submitted an informal proposal (NG6/17), which was basically to delete in article 76, paragraph 5, the reference to the possibility of the continental shelf being extended 100 nautical miles from the 2,500-metre isobath. Japan sug-

gested that ridges formed of oceanic crust should be excluded from the definition of the continental margin as well as the ocean floor and the subsoil thereof (NG6/16).

In connexion with this item, I held consultations with the delegations most directly concerned and I trust that it will be possible to reach a solution at the next session.

(d) *Commission on the Limits of the Continental Shelf*

Article 76, paragraph 7, provides for the establishment of this commission. Some delegations referred to consultations held for the purpose of preparing a text to serve as the basis for the annex that would describe the composition and functions of the commission.

Singapore suggested informally (NG6/17) an amendment to paragraph 7, so that the limits of the shelf established by a coastal State would be in accordance with the recommendations of the commission, although the coastal State could deviate from those recommendations in consultation with the commission and in accordance with any decision mutually arrived at.

(e) *The problem of Sri Lanka*

This question was referred to in the foot-note to paragraph 4 (*a*) of article 76. As indicated in the foot-note, the suggestion of the delegation of Sri Lanka for an additional method of delimitation applicable to its geological and geomorphological conditions had received widespread sympathy during the first part of the eighth session. The question was considered both in negotiating group 6 and in the group of 38. Sri Lanka submitted a new informal proposal (NG6/10) to add a new subparagraph (iii) to paragraph 4 (*a*) of article 76. According to that proposal, in the case of a State where the mathematical average of the thickness of sedimentary rocks along the outer edge of the continental margin established at the maximum distances set in paragraph 4 was not less than 3.5 kilometres, and where more than half of the margin lay beyond the outer edge as so delineated, the outer limit of the continental shelf would extend to a line delineated on the basis of the outermost fixed points where the thickness of the sedimentary rocks was not less than 0.8 kilometre. No detailed analysis was made of this informal proposal, at the request of the delegation of Sri Lanka itself, pending the outcome of consultations with other delegations.

This summary of the activities of negotiating group 6 shows that it examined all the questions submitted to it for its consideration on the basis of the various suggestions made by participating delegations. Although its work has not produced formulae reflecting a definitive general agreement, I believe that the discussion has made it possible to define precisely the areas where some differences exist and possible solutions.

DOCUMENT NG7/45

Report of the Chairman of negotiating group 7

[*Original: English*]
[*22 August 1979*]

The present report is confined to giving an account of the work of negotiating group 7 during the resumed eighth session. As far as the group's previous work and the results thereof are concerned, reference is made to earlier reports by the Chairman contained in documents NG7/21, NG7/24 and NG7/39. Since the establishment of the group, it has held a total of 51 meetings, with 45 working papers being distributed in the course of its deliberations.

During the resumed eighth session, negotiating group 7 discussed in 10 meetings the following three items,[39] widely explored but not resolved in its previous negotiations: criteria to be applied in the delimitation of the exclusive economic zone or the continental shelf between States with opposite or adjacent coasts; interim measures to be applied pending final delimitation; settlement of delimitation disputes.

Besides meetings of the group itself, the Chairman met separately with the sponsors of documents NG7/2 and NG7/10 and Add.1 to discuss delimitation criteria. In addition, discussions for the elaboration of compromise texts on interim measures and the settlement of delimitation disputes were conducted in small consultation groups as will be mentioned below. Furthermore, the Chairman also held numerous private consultations with interested delegations on the issues pending solution.

Article 74 and article 83, paragraph 1

As before, the discussions on delimitation criteria were characterized by the opposing positions of, on the one hand, delegations advocating the equidistance rule and, on the other hand, those specifically emphasizing delimitation in accordance with equitable principles. In the main, the arguments of the two sides remained as before, referring to the concepts and expressions to be used in the provisions concerned. At the Chairman's meetings with the supporters of the two differing opinions, it became apparent that a consensus may not be based upon a "non-hierarchical" formulation listing only the basic elements of delimitation, an alternative which earlier had seemed to have some support. Similarly, a concise formulation providing merely that the delimitation would be "effected by agreement in accordance with international law" did not receive any particular sympathy from either side.

At the same time, however, the discussions and consultations seemed to indicate a certain gain of common ground in the technical formulation of the respective provisions, while also certain new elements of delimitation, notably that of the equality of States, were introduced in private consultations, possibly to prove conducive to the final solution.

It is hardly necessary to explore in detail the reasons so far obstructing our attempts to find a compromise. The opposing positions on this controversial problem have time and again been voiced in clear terms by the supporters of each group. It would seem, however, that despite abundant opportunities to change views on the present issue in negotiating group 7, the efforts to reach a compromise may have suffered from a certain lack of communication between delegations belonging to the opposing interest groups. It is my sincere wish, as the Chairman of the group, that in this sense a fruitful dialogue may be established not merely to reflect the positions of the past but also, in essence, to follow any possible course of compromise. In any case, the differences of opinion, as reflected in the wording and formulation of the various proposals, would not seem to be insurmountable.

Compromise efforts might find substantive ground in at least some of the proposals presented during the work of our group. In this regard—and not excluding other alternatives—reference might be made to the text offered as the Chairman's assessment of a possible basis for a compromise in my report of 20 April (NG7/39). While this proposal would still remain available for further discussion, an alternative formulation, contained in document NG7/44, was also introduced by the Chairman, based upon my estimation of the present state of negotiations on delimitation criteria.

Article 74 and article 83, paragraph 3

During the first part of the eighth session several new proposals were introduced on interim measures. In view of the discussions and consultations held, the Chairman offered, in document NG7/39 a somewhat modified formulation for the

[39] It was also suggested that a special provision might be needed for delimitation of contiguous zones but no discussion on this matter took place.

facilitation of further negotiations on the issue. The observations made on this formula at the end of the first part of the eighth session indicated that the main difficulty with the proposed text lay in its second sentence, which was criticized by a number of delegations for introducing what they felt to be a moratorium arguably prohibiting, *inter alia*, any economic activities in the disputed area.

During the resumed eighth session, the discussions on interim measures were focused on this specific question as displaying the following basic alternatives: whether the second sentence could remain as it appeared in the above-mentioned document or, if not, whether it could be somehow modified or should be deleted altogether.

As a result of intensive negotiations both in the negotiating group itself and in two small consultation groups convened by the Chairman, a revised text was produced. After a comprehensive debate on the basis of the new text, the Chairman was able to draw the conclusion that, except for certain reservations by a few delegations, the revised formula was generally regarded as a positive outcome of the group's deliberations and that, accordingly, it could serve as one of the three basic elements of the final compromise package on the delimitation issue. Some delegations emphasized, however, that their acceptance of any provision on interim measures would be dependent on the final result of the negotiations on delimitation criteria.

Taking into account the above clarifications, the following text is offered as the sought-after compromise formula on interim measures and does not, at least for the time being, need further negotiation:

"Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation."

Article 298, paragraph 1 (a)

Extensive discussions were conducted on the formula of a revised rule on settlement of delimitation disputes, included in my report of 20 April 1979. While the proposal received fairly broad support, at least as a basis for further negotiations, it was also objected to by a number of delegations advocating a more comprehensive system of dispute settlement. For further elaboration of the text, it was suggested by many delegations that a small consultation group should be established composed of delegations having different points of view. However, owing to conflicting opinions on the mandate of such a group, the Chairman was not able to convene a working body fully representative of the membership of negotiating group 7. As a result of discussions with a number of delegations assisting the Chairman in the revision of his text, certain changes, based mainly upon proposals by the United States of America (NG7/40), were made to the Chairman's proposal which was then presented in its modified form to the negotiating group (NG7/41). In subsequent debate, however, the text was found to be inadequate by a number of delegations, while several others, many of whom considered the proposal as the maximum compromise they could approve, advocated its adoption as a basis for a consensus.

Upon this unsatisfactory outcome of the negotiations, further consultations were continued in a new group, the composition of which reflected in a more comprehensive manner the various positions on dispute settlement in negotiating group 7. However, this time, it did not prove possible to reach the final compromise either.

In the light of the negotiations and consultations held, and still being convinced of the necessity to continue our efforts to reach an acceptable solution, the following text is hereby offered as the Chairman's suggestion for a basis for further negotiations on article 298, paragraph 1 (*a*):

"(i) Disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that the State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, and notwithstanding article 284, paragraph 3, accept submission of the matter to conciliation provided for in annex IV; and provided further that there shall be excluded from such submission any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory;

"(ii) After the Conciliation Commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report; if these negotiations do not result in an agreement, the parties shall, by mutual consent, submit the question to one of the procedures provided for in section 2 of Part XV, unless the parties otherwise agree;

"(iii) The provisions of this subparagraph shall not apply to any sea boundary dispute finally settled by an arrangement between the parties, or to any such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon those parties."

The lengthy discussions on the settlement of delimitation disputes during the eighth session have strengthened my understanding that only a proposal based upon the procedure of compulsory conciliation is consistent with a realistic view of the possibilities, if any, to reach a compromise on this controversial issue. However, owing to the fact that no consensus prevails on the matter, it remains, as indicated above, subject to further negotiations. Accordingly, and taking into account the provisions of document A/CONF.62/62, I do not find myself in a position to suggest the incorporation of the above proposal in any new revised text, although suggestions were made by several delegations during the discussions of negotiating group 7 to include the formula appearing in document NG7/41.

In this connexion, it may also be recalled that reference was made to a proposal, already submitted during the first part of the eighth session, for the modification of the introduction to the present article 298. No conclusion, however, was drawn on this point.

In view of the above and bearing in mind, in particular, that according to a number of delegations the issues falling under the mandate of negotiating group 7 are to be settled together as parts of a final "package", it is to be stated that, though notable progress was recorded especially as regards the reaching of a positive solution on the question of interim measures, the texts considered did not, as a whole, receive such support that would justify a conclusion that negotiating group 7 had, at the end of this session, completed its task. On the other hand, it would not seem ungrounded to expect that the texts proposed by the Chairman in view of the discussions held might serve as a basis for the sought-after final compromise to be reached during the next stage of the Conference.

In conclusion, I have once again the pleasure to express my gratitude to the members of the secretariat for their valuable advice and efficient assistance in our efforts to find a consensus within the group.

DOCUMENT FC/16

Report of the Chairman of the group of legal experts on final clauses

[*Original: English*]
[*23 August 1979*]

1. The group of legal experts on final clauses was constituted as explained by the President in his statement of 27 July 1979 (FC/2). According to paragraph 2 of the statement, the mandate of the group of legal experts on final clauses was to examine the technical aspects of the final clauses and the establishment of a preparatory commission and, taking into consideration the discussions in the informal plenary meeting, to prepare draft texts without seeking to resolve the political issues involved.

2. The group has so far held 10 meetings, the first on 31 July 1979 and the last on 20 August 1979.

3. The group considered the first six items on the final clauses identified as non-controversial. On the basis of a draft text suggested by the Chairman in informal document GLE/FC/1, the group considered draft texts on those items as follows: signature (art. 298 *bis*), ratification (art. 299), accession (art. 300), status of annexes (art. 302), depositary (art. 303), authentic texts (art. 304) and a testimonium clause (art. 304). Based on the discussions in the group, the Chairman has prepared a draft text which is annexed to the report.

4. After the consideration of the texts of the non-controversial items, the group commenced its consideration of the first controversial item on final clauses, namely, amendment or revision. In the course of the discussion of this question, several draft proposals were submitted: documents GLE/FC/2 and GLE/FC/2/Amend.1 proposed by the delegations of Peru and Portugal; an informal proposal by the delegations of Austria and Singapore (GLE/FC/3); a working paper (GLE/FC/4) by a member of the group; another working paper (GLE/FC/5) proposed by a member; a draft text suggested by the Chairman (GLE/FC/6); an informal proposal by Ecuador (GLE/FC/7); an informal proposal by the delegations of Peru and Portugal (GLE/FC/8); and an informal working paper (GLE/FC/10).

5. The group has not completed its consideration of the item. It would require additional meetings to continue the study of the existing proposals mentioned above and additional suggestions that may be made for the purposes of preparing a text on the item. In this context, it should be noted that the final clauses are now being discussed in a substantive way for the first time at the Conference. Many of the issues have a bearing on the different subject-matters of the convention and hence on the package deal. It is, therefore, of the utmost importance to have an exhaustive discussion on various aspects of these clauses.

6. In order to complete its mandate, apart from the need to conclude the discussion on the item, the group must take up for discussion the following controversial issues which have already been discussed by the conference in informal plenary meetings, namely: reservations, relation to other conventions, entry into force, including the establishment of a preparatory committee, transitional provision, and denunciation.

7. In concluding, the Chairman would thank the members of the group for their co-operation and constructive contribution to the work during this first stage. He also wishes to express his gratitude and appreciation to the members of the secretariat for their dedication, competence and untiring efforts to assist the group in carrying out its task.

ANNEX

Draft text suggested by the Chairman of the group of legal experts on final clauses

Article 298 bis. *Signature*

The present Convention shall be open for signature by . . . until . . . (the last day of the twenty-fourth month after the opening date of signature) at the Ministry of Foreign Affairs of the Republic of Venezuela and also, from . . . (first day of the seventh month after the opening date of signature) until . . . (last day of the twenty-fourth month after the opening date of signature), at United Nations Headquarters in New York.

Article 299. Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 300. Accession

The present Convention shall remain open for accession by . . . The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 302. Status of annexes

The annexes form an integral part of the present Convention and, unless expressly provided for otherwise, a reference to the Convention includes a reference to its annexes.

Article 303. Depositary

The Secretary-General of the United Nations shall be the depositary of the present Convention.

Article 304. Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto . . . , have signed the present Convention.

DONE at Caracas, this . . . day of . . . , one thousand nine hundred and eighty . . . .

DOCUMENT A/CONF.62/L.44

Report of the President on the work of the informal plenary meeting of the Conference on final clauses

[*Original: English*]
[*27 August 1979*]

1. At the 117th plenary meeting, on 19 July 1979, it was decided that the discussion of the final clauses of the new convention would be undertaken in informal plenary meetings, to be assisted by a group of legal experts established to consider the technical aspects of the clauses.

2. The first informal plenary meeting on final clauses was held on 23 July 1979 and the 11th and last one on 23 August 1979.

3. At the first meeting, I presented a suggested programme of work in a statement distributed as informal document FC/1. In paragraph 5 of that document, I suggested that the final clauses be examined by placing the relevant subjects and issues in two categories, namely, the subjects and issues that, for various reasons, are likely to prove controversial; and the subjects and issues that may be considered non-controversial, as they follow a traditional pattern irrespective of the substance of the convention. The first category was constituted as follows: (i) amendment or revision, (ii) reservations, (iii) relations to other conventions, (iv) entry into force (including consideration of a preparatory commission), (v) transitional provision, (vi) denunciation and (vii) participation in the convention. In the second category, the following items were placed: (i) signature, (ii) ratification, (iii) status of annexes, (iv) authentic texts and (v) testimonium clause.

4. It was agreed that the informal plenary meetings should first take up consideration of the non-controversial items, on the understanding that such items, as noted in document FC/1, are not non-controversial *per se*, since they may have a bearing also on controversial issues or some issues regarded by some delegations as being of paramount importance.

5. After a preliminary discussion on the non-controversial items during the 2nd informal plenary meeting, it was agreed to refer the items to the group of legal experts with the mandate to examine the technical aspect of the final clauses and the establishment of a preparatory commission and, taking into consideration the discussions in the informal plenary meeting, to prepare draft texts without seeking to resolve the political issues involved. The group was constituted under the chairmanship of Mr. Evensen, as I explained in informal document FC/2.

6. Having finished consideration of the non-controversial items, which were then transmitted to the group of legal experts for its consideration, the informal plenary meetings of the Conference took up consideration of the controversial items for the purposes of preliminary discussions and then submission to the group of legal experts.

7. The controversial items were taken up in the informal plenary meetings in the order in which they appear in paragraph 5 of document FC/1 and as enumerated in paragraph 3 above. The discussion on these items and the major ideas that emerged have been summarized in informal documents FC/3, FC/4, FC/6, FC/7, FC/9, FC/11, FC/13 and FC/17. I need not repeat them here.

8. Two items, however, remained unfinished: the question of participation in the convention and the establishment of the preparatory commission, both of which will be taken up at the next session.

9. The group of legal experts also attempted to carry out its mandate and, as explained by the Chairman in his report (FC/16), more work is necessary to produce draft articles for consideration in informal plenary meetings of the Conference at the next session.

10. I would like to thank the Chairman of the group of legal experts for the work he and the group have done so far, which has been most useful.

DOCUMENT A/CONF.62/L.45

Report of the President on the work of the informal plenary meeting of the Conference on the settlement of disputes

[*Original: English*]
[*29 August 1979*]

1. At the resumed eighth session, the Conference held one informal plenary meeting, on 20 August 1979, for the purpose of considering the informal proposal of 11 May 1978 of the delegations of the Netherlands and Switzerland (SD/1). This proposal dealt with the conciliation procedure (art. 284 and annex IV); the listing of the alternative dispute settlement procedures, namely the Court and tribunals (art. 287, para. 1); and *ad hoc* chambers of the International Court of Justice.

2. At its informal plenary meeting, the Conference first considered the conciliation procedure and dealt with the ambiguity in paragraphs 1, 2 and 3 of article 284 caused by the use of the word "procedure" in different senses. Drafting clarifications were suggested by the President, and it was decided that changes should be made to article 284 as follows:

Article 284

"1. Any State Party which is a party to a dispute relating to the interpretation or application of the present Convention may invite the other party or parties to the dispute to submit the dispute to conciliation in accordance with the procedure in annex IV, or with some other conciliation procedure.

"2. If the other party accepts this invitation and if the parties agree upon the procedure in annex IV or such other conciliation procedure, any party to the dispute may submit it to the agreed procedure.

"3. If the other party does not accept the invitation or the parties do not agree upon the procedure in annex IV or such other conciliation procedure, the conciliation proceedings shall be deemed to be terminated.

"4. When a dispute has been submitted to conciliation, such conciliation proceedings may only be terminated in accordance with the provisions of annex IV or other agreed conciliation procedure, as the case may be."

3. The next item dealt with was the right of any party to the conciliation to terminate the proceedings where the conciliators appointed by the parties had failed to appoint the chairman of the commission (annex IV, art. 3, para. 4). It was agreed that if the conciliation proceedings had reached the stage where the parties had appointed their conciliators, it was preferable to avoid the procedure being terminated at the request of either party to the dispute. This would also derogate from the compulsory resort to conciliation provided for in article 296, paragraph 3 (*b*), of the revised negotiating text, as formulated by negotiating group 5. The informal proposal of the Netherlands and Switzerland on this question was accepted for changing the existing text of the revised negotiating text. The new text reads as follows:

"Within 30 days following the date of the last of their own appointments, the four conciliators shall appoint a fifth conciliator chosen from the list, who shall be chairman. If the appointment is not made within the prescribed period, either party may, within one week of the expiration of the prescribed period, request the Secretary-General to make the appointment in accordance with paragraph 5."

4. The next issue considered was the number of national conciliators that a party can appoint (annex IV, art. 3, para. 2). The present text permits each party to appoint two national conciliators. The informal proposal suggests that this should be limited to one national. One reason adduced for the proposed change was that a heavy burden would be imposed on the Chairman of the Commission who would have a greater responsibility, acting as the sole arbiter amongst four other members representing the interests of the parties. The counter argument was that the parties should have the flexibility to appoint two national conciliators if they felt that it was in their interests. The President suggested that consideration be given to incorporating aspects of both provisions by permitting each party to appoint one national unless the parties agreed otherwise. Consideration of this question could not be concluded. The President held consultations with the delegations most interested and it would appear that further consultations were needed.

5. The proposal to change the order in which the alternative dispute settlement forums are listed (art. 287, para. 1) would place the International Court of Justice first in that list. While the rationale for listing in first place the principal judicial organ of the United Nations was explained, this was met by the reasoning that the creation of a new judicial organ with comprehensive jurisdiction over all aspects of the law of the sea would necessitate its being listed as the first alternative. The delegations of the Netherlands and Switzerland indicated a willingness to consider withdrawing this proposal, which was, however, conditional upon the outcome of the outstanding proposal regarding national conciliators referred to above. Consequently, this item too is outstanding.

6. The President expressed appreciation for the spirit of compromise and for the co-operation shown by the delegations of the Netherlands and Switzerland which had indicated that they would not pursue the other suggestions in their informal proposal.

7. At the conclusion of the informal plenary meeting on the settlement of disputes, the President identified the other outstanding issues, which were as follows:

(i) The necessary changes to co-ordinate article 298, paragraph 1 (*b*), with article 296 as fomulated by negotiating group 5;

(ii) The report by the Chairman of the group of legal experts on the settlement of disputes relating to part XI;

(iii) The report of the Third Committee relating to the dispute settlement provision on marine scientific research;

(iv) The report relating to the dispute settlement provisions within the mandate of negotiating group 7.

8. Regarding the first item, as a consequence of the redrafting of article 296 by negotiating group 5, it has become necessary to bring article 298, paragraph 1 (*b*), in line with the new structure of article 296. Article 298, paragraph 1 (*b*), therefore needs to be reformulated to maintain its original intent.

9. Regarding the second item, the Chairman of the group of legal experts on the settlement of disputes relating to part XI has presented his report (A/CONF.62/C.1/L.26, appendix B) to the formal plenary Conference. The report has been presented to the working group of 21 of the First Committee, and to the Committee itself, where it has been considered. The changes suggested in that report relate to annex V, the statute of the Law of the Sea Tribunal, and in particular to the provisions concerning the Sea-Bed Disputes Chamber. This report could be accepted by the Conference without the need for a separate consideration of its content. The outstanding issues referred to by the Chairman would need to be dealt with at the first stage of the ninth session, and this has already been included in the decision of the Conference in the programme of work for that session. The Chairman is to be complimented on the excellent work done by the group which has been appreciated all around.

10. Regarding the third item, the Chairman of the Third Committee has presented his report to the plenary Conference and that included a new formulation of article 264 dealing with dispute settlement. There has been a discussion of that report and it is only necessary for the plenary Conference, therefore, to take note of the dispute settlement provision on the question of marine scientific research.

11. Regarding the fourth item, the Chairman of negotiating group 7 has also presented his report to the Conference. As all matters falling within the competence of that negotiating group are closely interrelated, including the dispute settlement provision, and as the Chairman had not presented any new formulations which would satisfy the conditions laid down by the Conference in document A/CONF.62/62, there is no need for the report to be discussed at the present stage.

DOCUMENT A/CONF.62/92

Statement by the representative of the United States of America in response to the statement by the Vice-Chairman of the group of coastal States contained in document A/CONF.62/90*

[Original: English]
[1 October 1979]

It is both surprising and distressing that distorted press reports should have caused such a stir at the Third United Nations Conference on the Law of the Sea, where the views of the United States with respect to navigation and overflight have long been well known to all participants. Press reports notwithstanding, those views have not changed. Activities in the oceans by the United States are fully in keeping with its long-standing policy and with international law, which recognizes that rights which are not consistently maintained will ultimately be lost. At the same time, it remains the firm position of the United States that a comprehensive convention on the law of the sea offers by far the best, and perhaps the last, opportunity to establish a universally agreed and conflict-free régime governing all uses of the world's oceans and their resources. We have indicated that, as part of such an agreement, we could accept a 12-mile territorial sea coupled with transit passage of straits used for international navigation, all within the context of the over-all package deal. In this regard, we note that the group of coastal States reaffirms its determination to continue working towards the early adoption of a generally accepted comprehensive convention on the law of the sea.

Let us not be diverted from our shared goal by debate over the very differences in national régimes that compelled our Governments to enter into negotiations in the first place.

*Circulated at the request of the representative of the United States of America.

DOCUMENT A/CONF.62/93

Statement by the representative of the United States of America in response to the statement by the Chairman of the Group of 77 contained in document A/CONF.62/89

[Original: English]
[1 October 1979]

It is regrettable that controversy has been introduced once again into the deliberations of this Conference, which can ill afford distraction from its goal of forging consensus on a comprehensive legal régime for the use and management of the oceans and their resources. In light of the full and repeated explanations of views and positions to which the Con-