

DOCUMENTS OF THE FIRST COMMITTEE

DOCUMENT A/CONF.62/C.1/L.22

Second report by the Chairman of negotiating group 2

[Original: English]
[25 April 1979]

Permit me to begin my report by thanking the Chairman most warmly for the support and encouragement which he has always extended to me. I would also like to record again my gratitude to the negotiating group 2 team, Mr. John Bailey, Mr. Mati Pal, Mr. Shunichiro Yoshida, Mr. Eric Langevad and Mr. Basel Khatib. The work of the group has truly been the result of team effort. I would also like to thank all the delegates who participated in the work of the group for their goodwill, kindness and co-operation.

On 8 April 1979, I submitted my first report covering the work of the group during the first three weeks of this session. My report is contained in document NG2/12 and Corr. 1 and 2. I would describe the first three weeks as constituting the first phase of our work. The second phase of our work was done in the working group of 21 which commenced on 9 April and terminated on 24 April. My present report covers the negotiations conducted during the second phase in the working group of 21 on the three texts submitted by me, viz., documents NG2/4, NG2/5 and NG2/12 and Corr. 1 and 2.

Financial arrangements of the Authority

My proposal on the financial arrangements of the Authority is contained in document NG2/4 (see annex I). Although the proposal was before the working group, no delegation expressed any criticism against or comment upon it. My impression is that the proposal on financial arrangements of the Authority, as contained in document NG2/4, is a consensus text.

Financial arrangements of the Enterprise

My proposal on the financial arrangements of the Enterprise is contained in document NG2/5.⁴² In the course of negotiations in the working group of 21, the Group of 77 sought to link this proposal with my proposal on the financial terms of contracts contained in document NG2/12 and Corr. 1 and 2. The rationale put forward by the Group of 77 for this linkage was as follows. It was not satisfied that the proposal in document NG2/5 provided adequately for the financing of the first project of the Enterprise. The Group argued that, to the extent that document NG2/5 failed to provide adequately for this objective, it had to be made good by the financial payments to the Authority from contractors under document NG2/12 and Corr. 1 and 2.

The Group of 77 made two criticisms of document NG2/5, paragraph 10 *bis* (c). The first criticism was that the capital structure of the first project of the Enterprise would consist of one third cash and two thirds debt. The one third cash would be provided to the Enterprise by way of refundable loans by States parties. The Group of 77 felt that it would be desirable for the cash versus debt ratio to be raised from 1 to 2 to at least 1 to 1. The reason given by the Group for this preference was that the Enterprise would be a new organization with no assets and it should not be burdened by an unde-

sirably large debt component in the capital structure of its first project. The second criticism was that the cash payments to the Enterprise would be made by all States parties in accordance with the schedule referred to in article 158, paragraph 2 (vi). In the view of the Group of 77, the States parties which would be exploiting the area and those sponsoring entities for contracts, should make an extra contribution to the Enterprise. The delegations of China and Czechoslovakia supported the second point made by the Group of 77.

The delegation of Norway suggested the creation of an establishment fund. The fund would be equivalent to 20 per cent of the capital required by the Enterprise. According to the Norwegian proposal, the money would be raised by way of mandatory contributions by all States parties. The delegation of Australia suggested that if the term "refundable" in paragraph 10 *bis* (c) were more clearly defined, this could help to alleviate the concern of the Group of 77.

The response of the major industrialized countries to the two points made by the Group of 77 was as follows. Those countries could see no problem with the proposal contained in document NG2/5. In their view, the Enterprise was assured, under that proposal, of the capital required to undertake one fully integrated project; one third of the capital required would be made available to the Enterprise by States parties in the form of cash loans and the remainder would be raised by the Enterprise through borrowings. Those countries asserted that the Enterprise would have no trouble in borrowing such funds because they would be guaranteed by States parties. They also pointed out that a capital structure of one part cash or equity to two parts debt was quite a normal ratio in commercial practice. Finally, they said that the Enterprise should not be treated as an object of charity but should be expected to manage its affairs efficiently and in accordance with normal commercial practice.

I have decided to redraft paragraph 10 *bis* (c). The new text is contained in document NG2/5/Rev.1 (see annex II). I have made two substantive changes to the text. First, I have raised the cash or equity-debt ratio from 1 to 2 to 1 to 1. I have done this for several reasons. I recognize the validity of the argument of the Group of 77 that the Enterprise is a new institution with no assets and that the capital structure of its first project should not have too burdensome a debt component. I have surveyed the literature on the capital structures of the mining projects undertaken by mining companies all over the world and I find support therein for both an equity to debt ratio of 1 to 2 as well as an equity to debt ratio of 1 to 1. From the point of view of the industrialized countries, this change should not be viewed as being adverse to their interests. This is because, to the extent that the Group of 77 feels assured by the proposal in document NG2/5/Rev.1, the Group of 77 can be expected to take a more accommodating attitude on the demand of the industrialized countries to reduce the burden of front-end fixed charges in document NG2/12 and Corr. 1 and 2.

⁴²*Ibid.*, p. 56.

The second change I have made is to make it clear in the text that half of the capital required by the Enterprise, which would be made available to it in cash by States parties, would be in the form of long-term and interest-free loans. I have left the question of when such loans would be refunded by the Enterprise to the States parties to be decided in the future by the Assembly.

In the course of my consultations with delegations I tried to secure agreement on the idea that the cash payments to the Enterprise should be divided into two parts, one of which would be made by all States parties and the other, either by the States parties which are entitled to be elected to article 159, paragraph 1 (a); or the States parties falling within both article 159, paragraph 1 (a) and (b); or by States parties exploiting the area and States parties sponsoring applicants for contracts. Unfortunately, I was unable to secure general agreement on such a proposal. I have therefore decided not to incorporate this idea into my redraft of paragraph 10 *bis* (c) but to defer this question for further negotiation.

Financial terms of contracts

My proposal on the financial terms of contracts contained in document NG2/12 and Corr. 1 and 2 was the subject of very intensive discussion in the working group of 21.

The position of the Soviet Union was that the proposal failed to meet the position of the Soviet delegation on several points. For example, the Soviet delegation had argued that the production charge rate under the single system should not exceed 7.5 per cent. It had objected to the annual fixed fee. It had requested a safeguard clause in paragraph 7 *quinquies*. On all these points the Soviet delegation was disappointed in the Chairman's proposal in document NG2/12 and Corr. 1 and 2. Nevertheless, in a spirit of compromise, and as part of a package consisting of documents NG2/4, NG2/5 and NG2/12 and Corr. 1 and 2, the Soviet Union was prepared to accept the proposal in document NG2/12 and Corr. 1 and 2 as the final compromise on the financial terms of contracts.

The delegation of Norway also expressed its support for document NG2/12 and Corr. 1 and 2. It said that paragraphs 7, 7 *bis*, 7 *ter* and 7 *quater* should be acceptable to all delegations. With respect to paragraph 7 *quinquies*, Norway expressed the view that the two-tier system was an improvement over the three-tier system in document NG2/10 and that the two production charge rates were honest compromises and deserved support. With respect to paragraph 7 *sexies*, the Norwegian delegate said that the trigger system in subparagraph (e) was preferable to the safeguard clause in document NG2/10 and should be acceptable to both the Group of 77 and the major industrialized countries. He also expressed the view that the two production charge rates, the attributable net proceeds figure, and the two tax rates were honest compromises and should be acceptable to both the Group of 77 and to the major industrialized countries.

The co-ordinator of the Group of 77 made two substantive statements regarding document NG2/12 and Corr. 1 and 2. In his first statement he expressed concern that the proposal contained in document NG2/12 and Corr. 1 and 2 would not, in the view of his Group, achieve the objective set out in paragraph 7 (e). To cure this, he suggested the inclusion of a lump sum payment of \$60 million, half of which would be paid in the month following the signing of the contract and the other half on the commencement of commercial production. In his second statement, the co-ordinator of the Group of 77 compared document NG2/12 and Corr. 1 and 2 with document NG2/10. He said that, in comparison, document NG2/12 and Corr. 1 and 2 was worse than NG2/10 from the point of view of the Authority.

The co-ordinator of the Group of 77 expressed three other points on behalf of his Group. He said that a task force of the Group of 77 had recommended that an internal rate of return of 15 per cent, after national taxation, was an appropriate guideline for evaluating the tax system. His second point was that it was necessary to endow the Enterprise with the required capital to carry out a fully integrated operation. Thirdly, he said that his Group would want to impose a supertax on the contractor if his profits were high.

The comments of the major industrialized countries may be summarized as follows. First, they were critical of the flat-rate system in document NG2/12 and Corr. 1 and 2 which, in their view, was not very sensitive to the variation in the contractor's profitability. Secondly, they criticized the two production charge rates in the mixed system as being too high. Instead of 3 per cent and 5 per cent, they pointed out that 1 per cent and 2 per cent would be more reasonable. Thirdly, they criticized the attributable net proceeds figure of 35 per cent. In their view, the correct method for calculating the attributable net proceeds was to use the ratio between the costs of the mining sector and the costs of the whole project. Using such an approach one would arrive at approximately an attributable net proceeds figure of 20 per cent. Fourthly, they criticized the two tax rates of the mixed system, 45 per cent and 65 per cent, as being too high. They pointed out that under the proposal in the document the contractor's payment to the Authority would constitute 69 per cent in the first period and 90 per cent in the second period of his income from the mining sector.

A representative of the Group of 77, Thailand, asked the major industrialized countries whether they agreed with the figures, especially the internal rate of return figures, appearing on page 6 of the document. He also asked whether those internal rate of return figures were acceptable and, if not, what figures they would want. In their replies, the major industrialized countries said that the figures were correct, but that they were calculated on the basis of certain assumptions which might never be realized. They also pointed out that it was not possible to use the internal rate of return as an instrument to predict the success or failure and the level of profitability of a contractor's project. For these reasons, they said they were unable to answer the second and third questions posed by the delegate of Thailand. The major industrialized countries also complained that the document did not provide adequately for the case of a contractor who would be mining the nodules but not undertaking a fully integrated operation.

I have considered very carefully the comments and criticisms of both the Group of 77 and the major industrialized countries. I have come to the conclusion that my proposal in document NG2/12 and Corr. 1 and 2 is the best compromise I can propose which will hold in balance the interests of the Authority, as representing mankind, and those of the owners of capital and technology. I have decided to make only two minor modifications to my proposal in document NG2/12/Rev.1 (see annex III). In the mixed system I have reduced the production charge rate in the first period from 3 per cent to 2 per cent. This would reduce the burden on the contractor but would reduce the Authority's total income by only \$17 million. Because of the need to treat the mixed system and the single system equally, I have made a corresponding change in the production charge rate in the first period under the single system by reducing it from 8.5 per cent to 8 per cent. This would reduce the Authority's total income by \$13 million only. I feel able to make these changes because I have already met the concern of the Group of 77 by providing adequately for the financing of the first project of the Enterprise in document NG2/5/Rev.1.

ANNEX I

Financial arrangements of the Authority*

THE CHAIRMAN'S SUGGESTED COMPROMISE PROPOSALS

Article 158 (2)(vi)

Assessment of the contributions of members to the administrative budget of the Authority in accordance with an agreed general assessment scale based upon the scale used for the regular budget of the United Nations until the Authority shall have sufficient income from other sources for meeting its administrative expenses.

Article 170

The funds of the Authority shall include:

- (a) Assessed contributions made by States Parties in accordance with article 158, paragraph 2 (vi);
- (b) Funds transferred from the Enterprise in accordance with annex III, paragraph 9 (a);
- (c) Receipts of the Authority arising from activities in the Area in accordance with annex II, paragraph 7;
- (d) Loans received in accordance with article 174; and
- (e) Voluntary contributions made by States Parties or other entities.

Article 171⁴³

The Secretary-General shall prepare and submit to the Council the annual budget estimates of the Authority. The Council shall consider and submit to the Assembly the budget estimates, together with any recommendations thereon. The Assembly shall consider and approve these budget estimates in accordance with article 158, paragraph 2 (viii).

Article 172

1. The contributions of States Parties referred to in article 170, paragraph (a), shall be paid into a special account to meet the administrative expenses of the Authority until the Authority shall have sufficient funds from other sources for meeting its administrative expenses.

2. The administrative expenses of the Authority shall be a first call upon the funds of the Authority. Apart from the funds referred to in article 170, paragraph (a), the funds which remain after payment of administrative expenses may, *inter alia*:

- (a) Be distributed in accordance with article 151, paragraph 9, and article 158, paragraph 2 (xii);
- (b) Be used to provide the Enterprise with funds in accordance with article 169, paragraph 4, and annex III, paragraph 10 (a);
- (c) Be used to compensate developing countries in accordance with article 150, paragraph 1 (g) (D), and article 158, paragraph 2 (xiv).

Article 173

[The provisions of this article have been incorporated in the redraft of article 172.]

Article 174

- 1. The Authority shall have the power to borrow funds.
- 2. The Assembly shall prescribe the limits on the borrowing power of the Authority in its financial regulations adopted pursuant to article 158, paragraph 2 (vii).
- 3. The Council shall exercise the borrowing power of the Authority.
- 4. States Parties shall not be liable for the debts of the Authority.

Article 175

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

ANNEX II

Financial arrangements of the Enterprise*

THE CHAIRMAN'S SUGGESTED COMPROMISE PROPOSALS

Article 158 (2) (vii)

Adoption, upon the recommendation of the Council, of the financial regulations of the Authority, including rules on borrowing and the transfer of funds from the Authority to the Enterprise, and, upon the recommendation of the Governing Board of the Enterprise, the rules, regulations and procedures for the transfer of funds from the Enterprise to the Authority.

Article 160 (2) (xv bis)

Recommend to the Assembly the financial regulations of the Authority including rules on borrowing and the transfer of funds from the Authority to the Enterprise.

ANNEX III

Paragraph 9

(a) The Assembly shall, on the recommendation of the Governing Board, determine what portion of the net income of the Enterprise shall be retained as its reserves. The remainder shall be transferred quarterly to the Authority.

(b) During an initial period, required for the Enterprise to become self-supporting, the Assembly shall leave all of the net income of the Enterprise in its reserves.

Paragraph 10

The funds of the Enterprise shall include:

- (a) Amounts received from the Authority in accordance with article 172, paragraph 2 (b);
- (b) Voluntary contributions made by States Parties for the purpose of financing activities of the Enterprise;
- (c) Amounts borrowed by the Enterprise in accordance with the provisions of paragraph 10 *bis* below;
- (d) Amounts received through the participation in contractual relationships with other entities for the conduct of activities in the Area, including joint arrangements;
- (e) Reserves of the Enterprise in accordance with paragraph 9; and
- (f) Other funds made available to the Enterprise to enable it to carry out its functions and to commence operations as soon as possible.

Paragraph 10 bis

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

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

(c) The Enterprise shall be assured of the funds necessary to explore and exploit its first mine site and to transport, process and market the minerals recovered therefrom and to meet its initial administrative expenses to the extent that such funds are not covered by the other funds referred to in paragraph 10 above. States Parties shall make available to the Enterprise one half of the funds required by way of long-term, interest-free refundable loans. Debts incurred by the Enterprise in raising the balance of the funds shall be guaranteed by all States Parties in accordance with the scale referred to in article 158, paragraph 2 (vi). In lieu of debt guarantee, a State Party may make a voluntary contribution to the Enterprise of an amount equivalent to that portion of the debts which it would otherwise be liable to guarantee.

Paragraph 10 ter

The funds, assets and expenses of the Enterprise shall be kept separate and apart from those of the Authority. The provisions of

*Document NG2/4.

⁴³Logically, this article should be renumbered 172 and the redraft of article 172 should be renumbered 171.

*Document NG2/5/Rev.1.

paragraphs 10, 10 *bis* and of this paragraph shall not prevent the Enterprise from making arrangements with the Authority regarding facilities, personnel and services and arrangements for reimbursement of administrative expenses paid in the first instance by either organization on behalf of the other.

ANNEX III

Financial terms of contracts*

THE CHAIRMAN'S REVISED COMPROMISE PROPOSALS

Annex II, paragraph 7

In adopting rules, regulations and procedures concerning the financial terms of a contract between the Authority and the entities referred to in article 151, paragraph 2 (ii), 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 of the present Convention 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; and
- (e) To enable the Enterprise to engage in sea-bed mining effectively at the same time as the entities referred to in article 151, paragraph 2 (ii).

Paragraph 7 bis

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.

Paragraph 7 ter

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.

Paragraph 7 quater

From the commencement of commercial production, in conformity with paragraph 7 *ter* above, a Contractor shall choose to make his financial contribution to the Authority either by:

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

Paragraph 7 quinquies

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

- (i) First to tenth year of commercial production . . . 8 per cent
- (ii) Eleventh to twentieth year of commercial production 13.5 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 paragraph 7 *septies* and *octies* below.

Paragraph 7 sexies

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 5 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 paragraph 7 *septies* and *octies* below.

(c) The Authority's share of net proceeds shall be taken out of an amount equal to 35 per cent of the Contractor's net proceeds 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 45 per cent
- (ii) Second period of commercial production 65 per cent

(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.

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

(g) The term "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 operations of the contract in accordance with the financial rules, regulations and procedures of the Authority.

(h) The term "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 activities related thereto, in conformity with generally recognized accounting principles, including, *inter alia*, costs of machinery, equipment, ships, buildings, land, roads, prospecting and exploration of the contract area, construction, 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 development costs during the relevant accounting year. When these deductions exceed the development costs the excess shall be added to the gross proceeds.

(j) The development costs referred to in subparagraph (h) (i) above shall be recovered in 10 equal annual instalments from the date of commencement of commercial production. The development costs referred to in (h) (ii) above 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 "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, 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

* Document NG2/12/Rev.1.

environment, overhead and administrative costs specifically related to the operations of the contract area and any net operating losses carried forward from prior accounting years.

(l) The costs referred to in subparagraphs (h) and (k) above in respect of interest paid by the Contractor may only be allowed if, in all the circumstances, the Authority approves, pursuant to annex II, paragraph 4 (a), the debt-equity ratio and the rates of interest as reasonable, having regard to existing commercial practice.

(m) 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.

Paragraph 7 septies

(a) In all cases the price used for the sale of metals shall be the price for the metals in the most basic form in which they are customarily traded on an international market.

(b) If an international market provides a representative pricing mechanism for the metals in the most basic form in which they are customarily traded, the average price on such market shall be used. In all other cases, the Authority shall, after consulting the Contractor, determine a fair market price in accordance with paragraph 7 octies below.

Paragraph 7 octies

(a) All costs, expenditures, proceeds and revenues, and all determinations of market price and value, referred to in paragraph 7, shall be the result of free market or arm's length transactions. In the absence thereof, they shall be determined by the Authority, after consulting the Contractor, as though they were the result of free market or arm's length transactions taking into account relevant transactions in other markets.

(b) In order to ensure enforcement of and compliance with the provisions of this subparagraph, 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 created by the Economic and Social Council, the Group of Experts 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 certified independent accountants acceptable to the Authority for the purpose of auditing in compliance with the said rules and regulations.

Paragraph 7 novies

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

Paragraph 7 decies

All costs, expenditures, proceeds and revenues referred to in this paragraph shall be determined in accordance with generally recognized accounting principles and the financial rules, regulations and procedure of the Authority.

Paragraph 7 undecies

The payments to the Authority under paragraph 7 *quinquies* and *sexies* above 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 7 *quinquies* (b).

Paragraph 7 duodecies

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

Paragraph 7 terdecies

In all cases other than contracts for all stages of operations, the Authority shall establish the schedule of production charge applicable under the single system and the schedules of production charge and the Authority's share of net proceeds applicable under the mixed system, bearing in mind the objective set out in paragraph 7 (c) and the schedules set out in paragraph 7 *quinquies* and *sexies*.

Paragraph 7 quater decies

The Authority may, taking into account any recommendations of the Economic Planning Commission and the 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 7.

Paragraph 7 quindecies

In the event of a dispute between the Authority and a Contractor over the interpretation or application of the financial terms of contract, either party may submit the dispute to compulsory and binding commercial arbitration.

DOCUMENT A/CONF.62/C.1/L.23

Report by the Chairman of the First Committee on the work of the working group of 21 and of negotiating group 3

[Original: English]
[25 April 1979]

The First Committee meets today for reasons of imperative necessity. In the first place, the Committee must be informed of the results of all negotiating efforts regarding matters falling within its mandate. It has primary responsibility for examining these, together with important suggestions advanced by the Chairman of such subsidiary bodies as were established under special negotiating procedures.

Secondly, it must respond to the needs outlined in procedures set in motion by document A/CONF.62/62.⁴⁴ The plenary Conference has adopted a programme which provides for the revision of the informal composite negotiating text.⁴⁵ Modifications or revisions to the said text have, in the language of recommendation 10 in document A/CONF.62/62, to "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 least we can do is to give some indications to the plenary Conference of the scope of constructive work that has been done in this Committee so far, following the birth of the informal composite negotiating text. Our traditions have imposed on those who must preside over our deliberations the grave responsibility of producing suggestions which, in their judgement and having regard to the discussions, offer improved prospects of consensus. Our procedural traditions have undergone some metamorphosis. We were all, Chairmen and members together, called upon to make a co-operative effort to bring about an evolution in the ideas now reflected in the informal composite negotiating text that could substantially improve the prospects of such a consensus. Your role as delegates remains central. That of the Chairman must remain one of suggesting when ideas are necessary.

You may recall that three negotiating groups were set up to deal with the hard-core issues relating to our mandate. In the light of an issue raised in the plenary Conference, I also, in consultations with the President, established a group of legal

⁴⁴Official Records of the Third United Nations Conference on the Law of the Sea, vol. X (United Nations publication, Sales No. E.79.V.4).

⁴⁵*Ibid.*, vol. VIII (United Nations publication, Sales No. E.78.V.4).