FIRST COMMITTEE

45th meeting

Wednesday, 25 April 1979, at 3:55 p.m.

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

Report of the Chairman on the work of the Committee

1. The CHAIRMAN reminded the Committee that the terms of reference of the working group of 21 required it to organize direct negotiations between interest groups on the basis of the reports of Negotiating Groups 1, 2 and 3 and the Group of Legal Experts, and the group had been requested to adopt a report for submission to the First Committee. However, for lack of time, it had not been able to consider and adopt such a report in the normal form. It had been decided, therefore, that the Chairmen of the four above-mentioned negotiating forums would report directly to the First Committee on the work of the working group of 21 in so far as it touched upon their respective proposals.

2. Delegations should try to determine whether the proposals to be submitted by the Chairmen offered substantially improved prospects of consensus as compared with the informal composite negotiating text,[1] on the understanding of course that, even if the proposals were accepted, they would merely constitute a basis for further consultations in the future.

3. Speaking as Chairman of Negotiating Group 3, he stated that the suggestions for compromise which he had made in document NG3/6, and which involved revision of the provisions of the negotiating text, emanated from actual negotiations and enjoyed a substantive measure of consensus. It should be noted that the negotiating groups established by the First Committee itself, i.e. Negotiating Groups 2 and 3, had been open to all members of the Committee and that their work had therefore been widely followed by all delegations.

4. Some of the changes made in the text of articles 154 to 168 were only of a drafting nature. Others reflected the agreement of the participants on the use of certain precise terms in the various provisions under discussion. The Group had also made some significant changes to enable the subsidiary organs of the Council to fulfil their advisory role as technical institutions. In addition, it had been obliged to modify parts of the texts in order to take account of the stage reached in other negotiating groups. In other cases, it had made certain deletions because the ideas involved were being considered elsewhere. With regard to article 159, a new formulation had been adopted for the categorization of interests under paragraph 1 (*a*) and (*b*). Consultations had now been completed on that question, and a consensus reached in favour of replacing the words "including at least" in paragraph 1 (*b*) by the words "and in any case".

5. The Group had considered all the other articles not so far touched upon by the Committee, in particular those in subsections 4, 5, 7 and 8 concerning the secretariat, the Enterprise, legal status, privileges and immunities, and suspension of rights of members. With regard to the secretariat, the term of office of the Secretary-General had now been fixed at four years. In addition, the Group had agreed upon a procedure for disciplinary action. With regard to the Enterprise, it had been decided that its activities would cover transportation, processing and marketing of minerals recovered from the area.

6. The Group had also considered in full the provisions of annex III with the exception of those relating to finance, which were already being considered by Negotiating Group 2.

7. In conclusion, he drew the Committee's attention to the problems ahead, and particularly the problem raised by article 159. He personally believed that the outstanding issues of the voting system in paragraph 7 and the question of the composition of the Council were ripe for solution, perhaps at the following session. The same was true of article 160, paragraph 2 (x), since it would be increasingly difficult for any one to justify a provision which tended to undermine the authority of the Council over its technical subsidiary body.

8. Mr. NJENGA (Kenya), speaking as Chairman of Negotiating Group 1, said that document NG1/16/Rev.1 (see A/CONF.62/L.35, annex III) was the result of more than a year's work by the Group, and contained provisions relating to almost every aspect of the system of exploration and exploitation. Some of those provisions remained very close to the formulations in the negotiating text while others contained new ideas developed during negotiations in the Group.

9. The articles contained in the above-mentioned document were a new attempt to determine who would exploit the resources of the area, and how the area should be exploited for the benefit of all mankind.

10. The objectives of the Negotiating Group had been twofold: on the one hand, to agree on a system of exploration and exploitation satisfactory to developed as well as developing countries, to producers as well as consumers; on the other hand, to ensure that the system of exploration and exploitation would operate in reality in the precise manner envisaged in the text — in other words, to ensure that the parallel system would indeed be parallel once the régime came into force. The Group had therefore devoted a large part of its work to defining the means whereby the Enterprise could become an effective operator in the exploitation of the resources of the area; and, in that respect, the provisions in paragraph 4 *bis* of annex II on the transfer of technology constituted a considerable extension of the provisions of paragraph 4 (*c*) (iv) of the negotiating text.

11. Document NG1/16/Rev.1 contained the latest version of paragraph 4 *bis* of annex II and reflected the comments made by participants at the last meeting of Negotiating Group I and during the deliberations of the working group of 21. Some comments by members of the Negotiating Group on that paragraph had indicated the need for a definition of "technology" in order to make more precise the undertaking of applicants in that field.

12. In the course of its work, the Negotiating Group had considered many substantive amendments on other questions

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

concerning the system of exploration and exploitation, and, as a result, the various aspects of those questions had been clarified. Important changes had been made to the articles concerning the review conference; and, in particular, provision had been made for the application of a moratorium in case the Conference did not agree on a new system of exploration and exploitation. That method seemed to be the only way of ensuring that the Conference would reach a satisfactory conclusion within the time available to it.

13. In order to avoid unnecessary repetition, he reminded the Committee that he had already given a detailed account of the work of Negotiating Group 1 in his previous reports at the seventh session[2] and, more recently, in his memorandum contained in document NG1/17, dated 17 April 1979 (*ibid.*, annex II), which should be regarded as an annex to his current report.

14. In most of the above-mentioned areas, the text he was proposing to the First Committee was in reality very far removed from that of the negotiating text. He himself regarded the considerable changes as steps forward to a final solution. The compromise formula he was suggesting did not reflect the particular position of any country or any group of countries, and did not therefore prejudge the position of any delegation which had participated in the negotiations. At the same time, the text seemed to be the fairest compromise attainable at the current stage of the negotiations. Any drastic alteration of its content might in fact jeopardize its very existence. If any substantive amendments were to be made to improve the text, the best course would certainly be for Negotiating Group 1 to meet again during the following session of the Conference.

15. Finally, he suggested that Mr. Nandan should be asked to make a brief report to the Committee on the outcome of the consultations he had requested him to carry out on production limitation policies.

16. The CHAIRMAN invited Mr. Nandan, Chairman of Negotiating Group 4, to present the supplementary report referred to by the Chairman of Negotiating Group 1.

17. Mr. NANDAN (Fiji), Chairman of Negotiating Group 4, reported on the negotiations which had taken place on production policies, on the basis of article 150 *bis* of the revised compromise formula of the Chairman of Negotiating Group 1 (NG1/16/Rev.1). The article was entitled "Production policies". The Group had discussed seven main problems as follows:

—First, the limitation of production, which concerned nickel only, had given rise to some apprehension among producers of other minerals that the ceiling rule might be circumvented by increased production of other minerals; the Group had agreed to improve the production ceiling formula in order to regulate effectively the production of metals other than nickel.

—Secondly, the negotiating text did not allow for production contingencies and uncertainties regarding the capacity of plants, which would affect the production level of the contractor or the Enterprise; the Group had felt that a formulation could be incorporated in the text to allow for any needed flexibility in the contractor's annual production level and, at the same time, to preclude any misuse of such a provision, such flexibility should not of course result in the over-all ceiling being exceeded.

—Thirdly, the text should ensure that only actual or firmly committed production would be counted against the ceiling, and not notional or speculative production; the Group had felt that the text could be amended in that sense, thus avoiding speculation and ensuring that effective use would be made of the authorized production tonnage.

—Fourthly, a problem had arisen concerning the relationship between the date from which the interim period under article 150 *bis* was calculated and the date from which the period prior to the review conference was calculated in article 153; the Group had felt that the two articles could be harmonized to provide for the two periods to begin on the same date, which would be related to the date of commencement of commercial production.

—Fifthly, a question had been raised regarding the effect of commodity agreements on production limitation during the interim period, and the participation of the Authority in such agreements. With regard to the first part of the question, the present text already envisaged that, during the interim period, commodity agreements would supersede the provisions of article 150 *bis*. The related question of the role of the Authority in negotiations for commodity agreements was covered in paragraph 1 of article 150 *bis*.

—Sixthly, with regard to steps to be taken in cases of exceptional changes in world demand for metals, it had been generally accepted that in such a case the Authority should have the power to modify the over-all production ceiling accordingly. Further consideration would have to be given to the question whether a provision to that effect should be included in article 160 on the powers and functions of the Council or in another article.

—Seventhly, extensive discussion had taken place on the most difficult issue, namely the question of the production ceiling during the interim period referred to in paragraph 2 and the related question of the available number of mine sites during the initial and subsequent periods. The Group had not reached a solution to that problem but the discussions had provided a better understanding of the positions of each side.

18. Mr. KOH (Singapore), speaking as Chairman of Negotiating Group 2, said that his proposal concerning the financial arrangements of the Authority appeared in document NG2/4 (see A/CONF.62/C.1/L.22, annex I). Although the proposal had been before the working group of 21, it had not given rise to any comment by delegations, and he therefore thought that there was a consensus on it.

19. His proposal concerning the financial arrangements of the Enterprise appeared in document NG2/5.[3] In the course of the negotiations in the working group of 21 on the financial arrangements of the Enterprise, the Group of 77 had sought to link that proposal with his proposal relating to the financial terms of contracts (document NG2/12), since it considered that the proposal in document NG2/5 provided inadequately for the financing of the first project of the Enterprise and that that inadequacy would have to be made good by using the proceeds from payments to the Authority by contractors, as envisaged in document NG2/12.

20. The Group of 77 had also made two criticisms of paragraph 10 *bis (c)* in document NG2/5. They considered that it would be desirable for the cash-versus-debt ratio for the Enterprise's first project to be increased from 1:2 to at least 1:1, in order to prevent the financial situation of the Enterprise from being burdened by heavy debts when it began to implement the first project. The Group of 77 had also considered it unacceptable that the schedule referred to in article 158, paragraph 2 (vi), should be applied to all States parties, since it had taken the view that parties which would be exploiting the resources of the area or sponsoring entities for contracts should make an additional contribution to the Enterprise. The Chinese and Czechoslovak delegations had supported the second point made by the Group of 77.

21. The Norwegian delegation had proposed the creation of an establishment fund equivalent to 20 per cent of the capital required by the Enterprise, the money to be raised by mandatory contributions from all States parties. The Australian delegation had taken the view that a clearer definition of the word

[2] *Ibid.*, vol. X (United Nations publication, Sales No. E.79.V.4), pp. 21 and 137.

[3] *Ibid.*, p. 56.

"refundable" in paragraph 10 *bis* (*c*) might allay the concern of the Group of 77.

22. The proposal in document NG2/5 created no difficulty for the industrialized countries since the Enterprise was assured of the capital required to undertake one fully integrated project: one-third of the capital would be made available in the form of loans to the Enterprise, which would be required to borrow the rest by availing itself of guarantees by States parties. The industrialized countries had also observed that a capital structure of one part cash to two parts debt was a perfectly normal ratio in current commercial practice. They had further said that the Enterprise in its operations should not rely on the charity of States parties, but on its own ability to manage its affairs efficiently and in accordance with normal commercial practice.

23. Document NG2/5/Rev.1 (*ibid.*, annex II) contained a new version of paragraph 10 *bis* (*c*) with two substantive changes. The cash or equity-debt ratio had been set at 1:1 instead of 1:2 in an attempt to reconcile the position of the developed countries with that of the countries of the Group of 77, and it was made clear that half of the capital required by the Enterprise, which would be made available to it by States parties, would be in the form of long-term interest-free loans. The question of the date of repayment of those loans by the Enterprise to States parties would have to be decided at a later stage by the Assembly.

24. In the course of his consultations with delegations, he had sought in vain to secure agreement on the idea that 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 were entitled to be elected under article 159, paragraph 1 (*a*), or by the States parties referred to in article 159, paragraph 1 (*a*) and (*b*), or by States parties exploiting the area and States parties sponsoring applicants for contracts.

25. Lastly, his proposal concerning the financial terms of contracts, appearing in document NG2/12, had been the subject of very intensive discussion in the working group of 21. The Soviet delegation had considered that several aspects of the proposal were incompatible with its own position, but, in a spirit of compromise, it had finally agreed to the proposal as part of a package which also included documents NG2/4 and 5 relating to the financial arrangements of the Authority and the Enterprise. The Norwegian delegation had endorsed his compromise solution. The Group of 77, however, had criticized it on several points. It had considered that his new proposals would not make it possible to achieve the objective set forth in paragraph 7 (*e*) relating to exploitation by the Enterprise and it had also taken the view that the new text was less satisfactory, from the point of view of the Authority, than that submitted at the previous session in document NG2/10. The Group of 77 had made three other comments concerning respectively the internal rate of return, the capital of the Enterprise and the taxation of the contractor's profits.

26. The major industrialized countries had also raised a number of objections concerning the flat tax rate, the production charge rates in the mixed system, the attributable net proceeds and the two tax rates in the mixed system. In reply to a question by a member of the Group of 77, the major industrialized countries had stated that the internal rates of return given by him when evaluating his new compromise proposal were correct, but were based on certain assumptions which might never be realized and could not be used to predict the success or failure and the level of profitability of a contractor's operations. The same industrialized countries had also argued that his proposal would not provide satisfactorily for the case of a contractor who would be mining the nodules without undertaking a fully integrated operation.

27. Having carefully weighed the arguments advanced by the Group of 77 and by the major industrialized countries, he still believed that his revised compromise formula was the best formula he could propose for holding in equal balance the interests of the Authority and the interests of the owners of capital and technology. He had decided to make only two minor modifications to his proposal. The first was to lower the production charge rate in the mixed system in the first period, in order to reduce the burden on contractors without unduly reducing the Authority's total income. Because of the need to treat the single system and the mixed system equally, he had also reduced the production charge rate in the first period in the single system; and that would not unduly reduce the Authority's income either. The two amendments would appear in a new compromise formula to be circulated as document NG2/12/Rev.1 (*ibid.*, annex III).

28. Mr. WÜNSCHE (German Democratic Republic), Chairman of the Group of Legal Experts on the settlement of the disputes relating to part XI of the negotiating text, reminded the Committee that his Group had been established to consider the following questions: the type of dispute falling under the jurisdiction of the Sea-Bed Disputes Chamber; advisory opinions; the parties having access to such proceedings; the settlement of disputes relating to contractual matters; and the binding force of decisions. All those issues were taken up in working papers GLE/1 and GLE/2 (see A/CONF.62/C.1/L.25 and Add.1, annexes I and V). Discussions had centred mainly on the categories of dispute, the jurisdiction of the Chamber and the question as to who might be a party to the proceedings. The following articles had been studied: 157 (para. 10), 167, 187, 187 *bis*, 188, 190 and 192 and articles 15, 37, and 37 *bis* of annex V of the negotiating text relating to the statute of the Law of the Sea Tribunal. In his working paper (GLE/2), those articles had been classified in five categories according to the progress of work and the degree of consensus achieved on them. The merging of article 187 (jurisdiction of the Sea-Bed Disputes Chamber) and article 189, paragraph 1, (disputes) had led to the drafting of a new article 187 and an article 187 *bis*. The new article 187 was substantially the same as article 187, paragraph 1, in the negotiating text and dealt with the establishment of the Chamber. Article 187 *bis* covered the jurisdiction of the Chamber in regard to the various categories of disputes.

29. The question of advisory opinions had hardly raised any problems and article 190 of the negotiating text was basically acceptable. The proposed new wording was designed merely to bring the text into line with the usual United Nations practice. Paragraph 10 of article 157 (composition, procedure and voting of the Assembly) was closely linked to article 190, since it dealt with the procedures whereby the Authority might request an advisory opinion on a measure contemplated by the Assembly. The new wording of paragraph 10 merely sought to bring the English and French versions, which were too vague on certain points, into line with the clearer Spanish version. It might be desirable to incorporate the text of paragraph 10 in article 158 which would be a more appropriate place for that text, since it dealt with the powers and functions of the Assembly.

30. The jurisdiction of the Chamber, referred to in article 191, was limited by the terms of article 157 relating to the Assembly. The title of the new article 191 clearly defined those limits with respect to the decisions of the Authority. The new text of article 191 reflected the changes made in article 187 *bis*. It clearly specified that the Chamber should not infringe on the prerogatives of the Authority and that it should deal only with claims concerning lack of competence or misuse of power.

31. With regard to arbitration, which was referred to in article 188 and article 189, paragraph 2, of the negotiating text, a new article 188 was proposed which was a compromise allowing recourse to *ad hoc* chambers of the Sea-Bed Disputes Chamber instead of to arbitration, while maintaining the ex-

clusive jurisdiction of the Chamber in all sea-bed matters (paragraph 1). Paragraph 2 of the new article respected the principle of freedom of contract and allowed recourse to commercial arbitration when that procedure was provided for in the contract. To cover cases where parties disagreed on the exact form of the procedure to be followed, it would be advisable to include in an annex a uniform set of appropriate arbitration rules.

32. Views had been divided on the right of a State party to intervene in a dispute in which one of its nationals was a party. Since article 192 of the negotiating text was considered by some to be inadequate, a second paragraph had been added, specifying that a State party sponsoring a natural or juridical person would intervene at the request of the other party if the latter was a State.

33. The Group had been unable to reach agreement on the question of violations by the secretariat of the Authority of its obligations under the convention. It was agreed, however, that article 167, on the international character of the secretariat, should be restructured in order to separate questions of violations of a purely disciplinary nature from questions of disclosure of industrial secrets or information: that distinction was made in the first paragraph of the new article. The Group had felt that violations of discipline should be dealt with by an administrative tribunal. Regarding the disclosure of industrial secrets, a new paragraph had been added to the effect that the responsibility of members of the secretariat with regard to non-disclosure should extend beyond the termination of their functions. The group had considered — without taking a decision — the insertion of two other paragraphs in article 167; the first would empower the Authority to institute proceedings in an appropriate body at the request of an aggrieved party; the second might specify that the mode of application of the foregoing would be set out in the staff regulations of the Authority. In that connexion, the question of monetary penalties and damages would have to be considered.

34. Finally, the Group had broached the issue of the selection of members of the Sea-Bed Disputes Chamber. It would appear that the majority supported the idea that the judges of SBDC should be designated directly by the Law of the Sea Tribunal without any need for the Assembly to confirm the nominations, since the Tribunal would represent the States parties to the convention.

35. Mr. RIPHAGEN (Netherlands) said that one of the key elements on which the discussions in the working group of 21 had focussed had been the question of how to ensure that the Enterprise would effectively be engaged in sea-bed mining operations at the same time as other entities. His delegation had submitted to the group a proposal under which the Enterprise would have the option of entering into a joint venture arrangement with a contractor. If it exercised that option, its participation could be up to 20 per cent; and the same option, up to the same percentage participation, would be offered to the contractor with regard to the corresponding reserved area. In either case, the contractual arrangements would conform to the commercial terms and conditions customarily applied to joint ventures freely entered into by two independent parties. Provisions similar to those envisaged in paragraph 4 *bis* (*b*) of annex II to document NG1/16/Rev.1 should regulate questions such as time-limits for offering the options, negotiation of the contract, conciliation and arbitration procedures, etc.

36. In the view of his delegation, the inclusion of an arrangement along those lines in article 151 of the negotiating text would facilitate agreement on other issues such as transfer of technology and, possibly, the review conference and production limitation. In view of the positive response the proposal had received, he hoped that it would be considered further at the resumed session.

37. His delegation had submitted to Negotiating Group 2 very clear proposals for the establishment of a more equitable system of financial terms based on the principle that the contribution paid by the contractor should be in proportion to the profits he made. It had reiterated its earlier proposal for a system to determine the value of the gross proceeds of sea-bed mining operations in case there was not yet a market for nodules. His delegation considered that the proposal deserved further consideration in future discussions on the subject.

38. With regard to the report by the Chairman of the Group of Legal Experts, he considered it unsatisfactory that a member of the staff of the Authority who disclosed confidential information should merely incur disciplinary measures and monetary penalties. Other provisions should be envisaged, making it clear that the responsibility of the Authority itself was involved. It would be necessary to revert to that question also at a later stage.

39. In conclusion, his delegation shared the views expressed in plenary by the Chairman of the Committee at the opening of the session concerning the need to provide effective training facilities for the future staff of the Authority and the Enterprise. The Netherlands authorities would give sympathetic consideration to any concrete proposals to establish an effective training programme. Not only university institutions but also industry should take part in that programme; and their combined efforts would help to consolidate the future viability of the Enterprise.

40. Mr. DE LA GUARDIA (Argentina) said that, in spite of the extraordinary efforts made by Negotiating Groups 1, 2 and 3 and the working group of 21 to find a solution to outstanding First Committee issues, his delegation felt it very hard to accept the texts submitted. It recognized, however, that progress had been made on at least two issues. The latest proposals on transfer of technology formulated by the Chairman of Negotiating Group 1, Mr. Njenga, had the virtue of bringing closer the views expressed both by industrialized and by developing countries. His delegation nevertheless reserved its position on those proposals until it had been able to study the text in depth.

41. He also welcomed the first signs of a harmonization of positions on the financing of the Enterprise, and he supported the proposal of Mr. Koh, Chairman of Negotiating Group 2, concerning the cash-versus-debt ratio for projects of the Enterprise.

42. His delegation did not feel that the capital for the Enterprise should be constituted on the basis of the United Nations scale of assessments. It had two reasons for holding that view: first, the United Nations scale was based on criteria which had followed the evolution of the world economy and, secondly, part XI of the convention dealt with an essentially economic activity, namely the exploitation of the resources of the sea-bed, which were the common heritage of mankind. The parameters must therefore be different and new criteria applied. Countries which would benefit most directly from the exploitation of the mineral resources of the sea-bed — i.e., the industrialized countries — should contribute most of the capital for the Enterprise. His delegation therefore supported Mr. Koh's idea of differentiated contributions and would work for that solution. His country would not, nevertheless, attempt to evade its financial obligations when it acceded to the convention.

43. Finally, his delegation noted with regret that, in spite of its statements and those of many other countries, there was no provision to protect the interests of countries which were potential producers of minerals, including Argentina. If that omission were not remedied, his country would face serious difficulties.

44. He noted with satisfaction the considerable progress made by the Conference, and also the important contribution which the Group of Legal Experts had made to its work.

45. Mr. WOLF (Austria) said that the Netherlands proposal could open the way to a solution, a way out of deadlock. The idea of a unified joint venture system was, of course, not new for the Conference. The delegations of Nigeria, Sri Lanka and other countries had introduced it into the discussions on various occasions, as had his own delegation in 1977 (see enclosure 6 to the Evensen report).

46. The Netherlands proposal provided for a unified joint venture system only to the extent that the Enterprise exercised its option for a joint venture with the contractor in the non-reserved area, and the contractor exercised his option for a joint venture with the Enterprise in the reserved area. To the extent that those options were not exercised, the parallel system was retained. That meant that the changes required in the negotiating text were relatively minimal. They could be contained in an additional single article 151 *bis* and in annexes II and III. If the Conference agreed on financial terms, conditions of transfer of technology etc., all those paragraphs and articles could be included in the text and remain the basis for the parallel system. However, should the Conference fail to reach an agreement on those detailed provisions, there was no need to despair. Presumably the Enterprise and the contractors would then choose to exercise the option for joint ventures. The availability of the option reduced the importance of the provisions for financial arrangements and transfer of technology.

47. It should also be stressed that the Netherlands proposal did not detract from the rights and aspirations of the Enterprise as conceived by the developing countries. It merely added to those rights. The Enterprise retained its full rights to operate by itself and, in addition, acquired the right to share in all sea-bed production operations. Theoretically, it also had that option under the negotiating text; in practice, however, there was no guarantee that there would be State or private partners for the Enterprise in joint ventures. The Netherlands proposal ensured that the option could be exercised.

48. What advantages did the system offer? First of all, it was the only one to ensure that the Enterprise could initiate its operations at the same time as the private sector. Secondly, the problem of the financial terms of contracts became far simpler. Standard commercial practices might be applied: the share of the produce, the share of profits, and the share of decision-making powers were proportionate to the Enterprise's investment share, which could amount to 20 per cent in the non-reserved areas and at least 80 per cent in the reserved areas, i.e., an average of 50 per cent if all options were exercised. Thirdly, the system thus maximized the financial benefits of the Enterprise and the Authority (in the optimum case, 50 per cent of total sea-bed production). It was also financially advantageous to States and companies because it reduced their investment to an average of 50 per cent while providing a flexible profit-sharing and risk-sharing system, as advocated by the industrialized countries. Fourthly, the system solved the problems of transfer of technology, which was automatically ensured in a joint venture. Fifthly, joint ventures might cover one or more or all stages of an integrated operation, from research and development through prospecting, exploration, exploitation, processing and marketing; thus, the problem of calculating the available net proceeds was avoided. Sixthly, the banking system was greatly simplified. Under the negotiating text it was indeed difficult to decide at what point the two mine sites could be deemed to be of equal commercial value, and what that value was to be. The question of who was to be responsible for the costs of exploration up to the point of that decision had not been solved to the satisfaction of all parties. The Netherlands proposal eliminated that difficulty. Seventhly, the problem of discrimination between the Enterprise and States and companies with regard to taxation was avoided. All partners were treated in the same way. Eighthly, the most important advantage of the system was that the established industry was built into it on the basis of co-operation rather than competition. The Netherlands proposal introduced that principle in a most flexible way without undermining the basis of the parallel system. It opened up options. Ninthly, the problems of the review conference would become much more tractable because, if the system of exploration and exploitation were designed in such a way that the most efficient form of co-operation was allowed to emerge during the first 20 or 25 years, the task of the review conference would be greatly facilitated. It would consolidate the system and make some minor improvements in it but would not change it basically.

49. Mr. ALDRICH (United States of America) said that his delegation had submitted to the group of 21 some amendments to documents NG3/6 and NG3/4,[4] but they had not been examined for lack of time. They were not controversial but were designed to achieve an important objective, i.e., to protect the marine environment from harm which might be caused by exploitation of the sea-bed.

50. With regard to document NG3/6, two amendments were proposed to paragraph 2, subparagraphs (xxi) and (xxii) of article 160 concerning powers and functions. The words "or adjustment" should be added after the words "the suspension" in subparagraph (xxi), and in subparagraph (xxii) the words "irreparable harm to a unique environment", should be replaced by the words "serious harm to the marine environment," which appeared in subparagraph (xxi).

51. With regard to document NG3/4, he proposed first that the title of the Legal and Technical Commission should be amended to read: "Legal, Environmental and Technical Commission", so as to stress the environmental tasks of the Commission. Article 163, paragraph 2 (*e*), should also make it clear that the Commission had the task of minitoring activities in the area, as well as preparing assessments of their environmental implications. After paragraph 2, it should also be indicated that the Commission had the function of recommending to the Council at what point proceedings should be initiated before the Sea-Bed Disputes Chamber in cases of non-compliance with the relevant provisions, and of making recommendations to the Council to issue emergency orders and, where there was risk of serious harm to the marine environment, to disapprove areas for exploitation by contractors or the Enterprise. Finally, it was the Commission which should direct and supervise a staff of inspectors who would inspect activities in the area and ensure that they would violate none of the above-mentioned rules.

52. He recalled that it had been decided at the seventh session to expand the environmental protection functions of the Council and that the Council had been given certain functions which had previously been assigned to the Legal and Technical Commission. The latter's functions were now reduced to the bare essentials. His delegation's amendments were designed to remedy that situation and he hoped that the Committee would accept them.

53. Mr. MAZILU (Romania) said he wished to make three comments on the reports submitted. First, future negotiations should be more efficient and more intensive. A genuine compromise could be achieved only if the main problems of the area were solved, taking into account the need for all States to participate in the exploitation of sea-bed resources and in profit-sharing. Any compromise solution must take into account the interests of all States, especially those of the developing countries. Secondly, his delegation fully endorsed the Chairman's opinion that it was necessary to create an efficient and valid Enterprise. In that connexion, the question of the transfer of technology should be regulated in the revised text in very clear terms. Transfer of technology to the Enterprise

[4] *Ibid.*, p. 158.

and to developing countries should be an obligation of the applicants; otherwise, neither of them would have guarantees that transfer of technology would be effective. For that purpose, it would be necessary to elaborate programmes for the transfer of technology and scientific knowledge relating to activities in the area. Programmes should also be developed for training staff for the Authority, particularly persons from the developing and technically less advanced countries. Thirdly, it was necessary to make clear, both in the report of the Chairman of Negotiating Group 1 and in the revised text, that the Enterprise should be governed by the democratic principle of equitable geographical distribution and rotation of seats.

54. With regard to article 153, paragraph 6, he thought that the current text should be retained.

55. Turning to the report on financial arrangements, he said that his delegation welcomed the efforts made by the Chairman of Negotiating Group 2 to find a compromise solution. That text, which contained various proposals with financial implications for States parties, should be studied very thoroughly. His delegation reserved its position regarding those proposals.

56. It also reserved its position on certain proposals in the text produced by the Group of Legal Experts.

57. Finally, the reports should show more clearly that negotiations would be continued at the next session of the Conference on all the issues referred to by his delegation.

58. In conclusion, he said that genuine progress could be made if the needs and interests of the developing countries were taken into account.

59. Mr. CORTE REAL DA SILVA PINTO (Portugal) observed that the interests protected by the negotiating text, either in general or specifically, did not include one very important group of interests, namely the interests of the migrant workers who would contribute to the exploitation of the area and who deserved legal protection. Article 159 concerning the composition procedure and method of voting of the Council should therefore be modified so as to provide for representation in the Council for countries which had traditionally supplied — and would continue to supply — a surplus of manpower on the international labour market. It would be perfectly possible to amend that article since it had never obtained a consensus in its current form. It was indeed impossible not to amend it, since the interests of some 60 countries were involved.

60. In addition, the number of members of the Council should be increased to allow for proper rotation and to give a permanent voice in the Council to the countries of origin of migrant workers. His delegation fully supported the Swedish delegation's proposal in that regard.

61. Working conditions on the continental shelf would be hard, even harder than those which prevailed in the nineteenth century salt and coal mines. Respect for certain principles, such as non-discrimination, easy access to an international court, social security, security of employment etc., should therefore be guaranteed to migrant workers in the international area. His delegation insisted on that point because it had received information that serious problems in that regard had already arisen in parts of the continental shelf now being exploited, and that the principles he had mentioned were already being ignored. In one particular case, the rights of about 1,000 Spanish, Portuguese and Mexican migrant workers were not being respected; their contracts could be contested only in the courts of a single country under whose flag of convenience many ships were operating, and their professional classification depended on their country of origin and not on their qualifications and experience. Because they were considered as non-residents, they were not covered by the social security system of the country which derived direct advantages from the exploitation of the continental platform, although they were officially entitled to social security benefits. They could be replaced in their jobs at any time by citizens of the employer's country. Moreover, they were not directly recruited by the multinational company in charge of the exploitation but by firms specializing in the recruitment of international labour.

62. It was probable that situations of that kind would occur more frequently in the future if representatives of the countries of origin of migrant workers were not included permanently and by the rotation in the Council. They were the only representatives who could understand the difficulties confronting those workers.

63. According to information provided by United Nations Headquarters, the following countries would have a substantial emigration in the 1980s: Algeria, Bangladesh, Barbados, Bolivia, Cape Verde, Chad, Colombia, Comoros, Cuba, Cyprus, Dominican Republic, Egypt, Finland, Greece, Grenada, Guinea, Guyana, Haiti, Italy, India, Ireland, Jamaica, Lebanon, Lesotho, Malawi, Mali, Malta, Mauritania, Mauritius, Mexico, Morocco, Mozambique, Netherlands, Pakistan, Paraguay, Philippines, Portugal, St. Vincent, Samoa, Senegal, Seychelles, Spain, Suriname, Swaziland, Tonga, Trinidad and Tobago, Tunisia, Upper Volta, Uruguay, Yemen and Yugoslavia.

64. Until now the Conference had been mainly concerned with the important problems of the efficiency and profitability of exploitation of the sea-bed. It had not seen fit, in connexion with article 159, to regard the above-listed countries as constituting a group of special interests.

65. It was regrettable that the Conference had elaborated the text of a convention which contained no mention anywhere of the status of the people working in the international area. It should not be forgotten that a new mining industry was in process of development in the international area and that the convention which the Conference was preparing would in future constitute the fundamental law for the international area.

66. Mr. TORRAS DE LA LUZ (Cuba), speaking on a point of order, said that, in view of the nature of the meeting, he did not think it would be helpful to revert to details which had already been discussed at length in the negotiating groups. Moreover, it was incorrect to say that Cuba was among the main suppliers of migrant workers.

67. Mr. CORTE REAL DA SILVA PINTO (Portugal) said that he had perhaps allowed himself to be carried away by his concern for the serious problem of migrant workers. In reply to the Cuban representative, he said that the information he had given had been provided by the United Nations Secretariat.

68. Mr. KOH (Singapore), speaking on a point of order, proposed that as certain new texts (NG2/5/Rev.1 and NG2/12/Rev.1) had not yet been circulated, delegations should refrain from commenting on the texts produced by Negotiating Groups 1, 2 and 3 and the Group of Legal Experts until the plenary meeting on the following day.

69. Mr. MI-ENDAMNE (Gabon), speaking on a point of order, observed that no genuinely new point had as yet been raised and he suggested therefore that the meeting should be adjourned.

70. Mr. CARLSSON (Sweden) said that the formulation of article 159, paragraph 1, both in the negotiating text and in document NG3/6 created serious difficulties for the smaller industrialized countries which would be able to participate in the Council's work only from time to time. The delegations of those countries had held informal meetings with a view to finding a formula that would reflect their concern; and they had intended to submit that formula to the working group on First Committee issues. His delegation understood the reasons for the decision to postpone discussion of Negotiating Group 3 issues until the next session, but it regretted that decision, especially as article 159 had not been discussed at the resumed

seventh session either. He was sure, however, that, as a result of concerted efforts by the Chairman and participants, a formulation could be found for article 159 which would overcome his delegation's difficulties.

71. The CHAIRMAN observed that no decision had yet been taken on the matter and that it was only for lack of time that the article in question had not been discussed.

72. Mr. YARMOLOUK (Union of Soviet Socialist Republics) paid a tribute to the Chairman of the Committee and the Chairmen of Negotiating Groups 1, 2 and 3 and the Group of Legal Experts for the efforts they had made; he noted that many articles were not yet adequately balanced. That was particularly true of article 153, which should reflect the permanent right of States to participate in the exploitation of the resources of the area. With regard to the transfer of technology to enterprises, in particular those of developing countries, no justification had yet been given for the criteria for the choice of contractors on the basis of the principle of competition. Questions relating to the amounts to be paid by contractors to the Authority had not been settled either. That was also true of all questions concerning the financing of the Enterprise at the initial stage. However, the emergence of new problems might undermine the basis of what seemed to be a possible, though difficult, compromise.

73. With regard to the amendments proposed by the United States delegation concerning pollution control, his delegation would prefer to wait until the negotiations at the next session before deciding whether those amendments should appear in the negotiating text.

74. Though his delegation would be expressing serious reservations on certain articles, it considered that the texts proposed contained a number of important provisions and that they should be inserted in their entirety in the negotiating text and used as a basis for future negotiation. Any attempt to discuss them separately would, he feared, give rise to serious problems.

75. Mr. KOROMA (Sierra Leone) said that his delegation welcomed the revised proposal of the Chairman of Negotiating Group 2 concerning the operation of the Enterprise, because it felt that any proposal to ensure the efficient operation of the Enterprise deserved consideration.

76. The idea of a unified system of joint ventures proposed by the Netherlands and supported by Austria was not new, but offered an alternative solution to the problem of the establishment of a system for sea-bed exploitation in cases where the parallel exploitation system would not be viable. His delegation also recommended that that proposal should be discussed during the next session. In addition, it agreed with the Romanian delegation that negotiations should now be conducted in the group of 21, where they would have most chance of achieving the desired results.

77. Mr. URIBE VARGAS (Colombia) said that the progress made by the three negotiating groups provided a solid basis for continued discussion but regretted that, owing to lack of time, it had not been possible to conduct negotiations in the group of 21 on questions concerning the organs of the Authority, and particularly the composition of the Council.

78. His delegation shared the Argentine delegation's concern regarding the absence of provisions to protect the interests of countries which were potential producers of minerals, and the possible economic repercussions which that omission might have for certain countries. It also shared the concern of the Portuguese representative regarding migrant workers, and was sure that that problem could be solved, although the solutions proposed in the past had never obtained a consensus.

79. Mr. GHELLALI (Libyan Arab Jamahiriya) said that his delegation had always favoured the use of the single system for sea-bed exploration but it had no objection to the use of a new system during an interim period so that countries and companies could explore the sea-bed in parallel with the Enterprise to which developed countries had undertaken to supply the necessary financial and technical resources. However, documents NG3/6, NG2/12 and NG2/5 did not provide any idea of the new system; all one could find in them was an attempt to prolong the interim period indefinitely and certain provisions on the transfer of technology. With regard to the financing of the Enterprise, an attempt was being made to impose certain ideas on States on the basis of a precise time-table. In such conditions, 10 countries would be in a position to monopolize sea-bed activities for 20 years, and they should bear the financial burden involved. All kinds of precautions were envisaged for interim financing but no solid guarantee was given, and his delegation hoped that the proposals submitted by the delegation of Singapore would be more satisfactory in that respect.

80. Under joint ventures, the reserved area would go to the industrialized countries, since they would have the resources required to exploit it. The only way to protect the area would be to apply the anti-monopoly clause and a flags-of-convenience clause.

81. The attempts to define the competence of the Authority in articles 151 and 150 *bis* were unsatisfactory, and the inclusion of those documents in a partially revised negotiating text would not be appropriate at the present stage of negotiations.

82. Mr. KE Zaishuo (China) observed that a number of delegations were in agreement with the results of the negotiations on many issues. Although differences still existed, the texts produced were a good basis for future negotiations.

83. One of the most important issues touched upon recently by the group of 21 in the context of the parallel system of exploration during the interim period was the question of guarantees to ensure that the Enterprise would have equal possibilities of exploring the sea-bed. New amendments had been made to documents NG2/5 and NG2/12 and, although the texts themselves were still to be discussed, the general trend seemed to be satisfactory.

84. With regard to the assessment of contributions, it was for the States parties to decide on the contribution rates, which should not be based on the system in use in the United Nations.

85. His delegation would like further information on the source of the figure of 400,000 km^2 and the proportion of 3 per cent in paragraph 5 of annex II of document NG1/16/Rev.1 concerning the anti-monopoly clause.

86. Mr. GAYAN (Mauritius) said that document NG1/16/Rev.1 represented a considerable advance with regard to the transfer of technology and was a good basis for future discussion.

87. With regard to Negotiating Group 2, his delegation was pleased to note that the financing of the Enterprise was placed on a firmer basis, but he regretted the gradual erosion of the income of the Authority which would be reduced from $17 to $13 million. The objective of attracting investment in the area should not take priority over the need to ensure the satisfactory financing and viability of the Enterprise. Also, the safeguard clause should be applied not only to contractors but to the Enterprise as well, and the need to protect contractors should not lead the Conference to overlook the need to ensure a stable income for the Authority. The Enterprise should not be dependent solely upon developed countries but should receive from all countries the resources it needed for efficient operation.

88. Mr. HAMAD (United Arab Emirates) said he regretted that the amendments submitted by the representative of Bahrain to article 140 did not appear in document NG1/16/Rev.1, and he hoped that they would be incorporated in any revised text. Those amendments, initially submitted by Qatar on behalf of 20 States, had been supported by three African and

Latin American delegations during their consideration in Negotiating Group 1; they had been approved by the Group of 77 and mentioned by the Co-ordinator of that Group in the group of 21. The amendments introduced in the text of article 140 certain safety clauses based on General Assembly resolution 1514 (XV) to ensure that States claiming to be self-governing but in fact dominated by colonialists or foreign countries, as well as secessionist movements, would not enjoy the benefits of the area.

89. Mr. BRECKENRIDGE (Sri Lanka) said that the proposal by the Netherlands delegation constituted an elaboration on the system of exploitation envisaged in the basic text and deserved a thorough discussion, since it was based on a more precise definition of the concept of the joint venture which was frequently mentioned in the text but had not been adequately studied. The Austrian representative had also pointed out some of the advantages of that system. The delegation of Sri Lanka regarded the Netherlands proposal as a preliminary one and as being open to negotiation. In addition, it hoped that a solution would be found at the next session to the problem raised by the Swedish representative.

The meeting rose at 7.40 p.m.