Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/RCNG/1

Reports of the Committees and Negotiating Groups on negotiations at the resumed seventh session contained in a single document both for the purposes of record and for the convenience of delegations

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume X (Reports of the Committees and Negotiating Groups, Seventh and Resumed Seventh Session)*

DOCUMENT A/CONF.62/RCNG/1

Reports of the Committees and Negotiating Groups on negotiations at the seventh session contained in a single document both for the purposes of record and for the convenience of delegations 1/

[Original: English/Spanish]
[19 May 1978]

1/ Circulated in accordance with the decision taken by the Conference at its 105th meeting on 19 May 1978.

REPORT TO THE PLENARY BY THE CHAIRMAN OF THE FIRST COMMITTEE, MR. PAUL BAMELA ENGO (UNITED REPUBLIC OF CAMEROON)

It may be recalled that the Plenary decreed in document A/CONF.62/62 the establishment of three Negotiating Groups to deal with three hard-core issues relating to the mandate of the First Committee at this Conference.

The Plenary itself established the first Negotiating Group to negotiate the system of exploration and exploitation, as well as the resource policy of the International Sea-bed Authority. It was to take note of the work of the group of experts on production control chaired by a member of the United Kingdom delegation. On 8 May 1978, the Chairman of that Negotiating Group, Mr. Frank Njenga of Kenya, gave to the plenary a progress report in which he outlined the suggestions he had to make at that stage of the negotiations, contained in document NG1/6 of 2 May 1978.

If you may recall he has since submitted his report to us both in accordance with the provisions of para. 3 of document A/CONF.62/62. Mr. Njenga's final suggestions for compromise, based on further negotiations and a revision of previous suggestions, are contained in document NG1/10/Rev.1 of 16 May 1978

In exercise of the discretion offered the Chairman of a Main Committee in para. 4 of document A/CONF.62/62, I decided that the results of Negotiating Group 1 should first be considered in the First Committee before bringing them to the Plenary. The reason for this, which I have made clear in the past, relates to the necessity for examining them in the proper context of the package to which they belong, and from which they could neither be isolated nor divorced, i.e. the mandate of Negotiating Groups 2 and 3.

Mr. Njenga also made some introductory remarks to an informal meeting of the First Committee in which he explained further the work of the Group. An explanatory memorandum by him concerning his suggestions is contained in document NG1/12 of 16 May 1978.

Negotiating Group 2, chaired by Ambassador Tommy Koh of Singapore, was set up by the First Committee to deal with financial problems. It also had before it the results of an informal and preliminary study which was made solely for the information of delegates. The Group examined the financial arrangements of the Authority (involving Articles 170 to 175 of the ICNT), the financial arrangements of the Enterprise (involving paras. 9 and 10 of Annex III and Articles 158 (2)(vii) and 160 (2)(xv) of the ICNT), and, finally, the financial terms of contracts for exploration and exploitation. On all of these, tremendous strides were made, experts and non-experts alike making sacrifices and contributions to the common good.

The Chairman, Ambassador Koh, reported to the First Committee that pressure of time conspired with "other reasons" to deprive Negotiating Group 2 of the opportunity to complete negotiations on certain important questions relating to financial terms of contracts. He outlined the following:

(1) the amount of the application fee;

(2) the amounts of the annual fixed fee, if paid annually or if paid in a lump sum;

(3) the percentage of the market value of the processed metals, or the percentage of the amount of the processed metals produced from the nodules extracted from the contract area, which a Contractor should pay to the Authority, if he chooses to make his financial contributions by way of the production charge;

(4) in the case of a Contractor who chooses to make his financial contributions by way of a combination of production charge and share of net proceeds, three questions remain outstanding: first, how much should the Contractor pay by way of production charge?; second, what percentage of the Contractor's total net proceeds should be attributed to mining of the resources of the contract area?; third, what should be the Authority's share of the net proceeds attributable to the mining of the resources of the contract area, on each of the eight levels of profitability I have proposed?

These outstanding issues on financial terms will, on his recommendation, have to be taken up at the next session of the Conference.

The suggested compromise proposals by the Chairman of Negotiating Group 2 are contained in the following documents: NG2/4; NG2/5 and Corr.1; and NG2/7 and Corr.1. He has also submitted a memorandum to explain document NG2/7 in view of its complexity. This is to be found in document NG2/8 and Corr.1.

It was decided that the Third Negotiating Group be chaired by the Chairman of the First Committee himself. It dealt with the third hard-core area relating to the composition, powers and functions of the Organs of the Authority. A report was given to the Committee and is contained in document NG3/2 of 12 May 1978. It annexed suggestions for possible improvements to Article 159 of the ICNT relating to the composition, procedure and voting in the Council.

As soon as it was possible to do so, the texts of the above reports and suggested formulae were made available to delegations, with a view to expediting and facilitating the examination of the package involved in the three hard-core

issues identified by the Plenary. It was the general intention that this package be discussed in the First Committee before I made this report here. Time was made available for consultations among and across regional groups. Unfortunately, however, the inability of the translation services to reproduce them in the various official languages, between 9 p.m. on Friday night and, in some cases, Tuesday morning, frustrated the desired fruitful study by these informal contacts among delegations.

There is a general feeling in the Committee that our negotiating efforts this session have not been without some unprecedented success. We grappled with the hard-core issues and there is a willingness on all sides to negotiate, at least to ensure a closer walk with consensus. We may not have succeeded in adopting consensus text in every or most spheres, but we all share some satisfaction that there has been movement forward.

My consultations left me in no doubt that all delegations would like our attainments to be preserved and that some basis be found for continuing to negotiate the provisions postulated by the ICNT, having regard to the progress we have made in our efforts so far this session. We wanted a satisfactory basis on which we could move forward rather than backwards at our next meeting; one that will enable us to commence that meeting exactly where we terminated this one.

The Group of 77, in spite of their inability to have an in-depth review of the package in the short time available, nevertheless endeavoured to consider the package "in a preliminary way" and in a spirit of co-operation decided to raise no objection to the reports of Negotiating Groups 1, 2 and 3, providing or constituting such basis for negotiations at the next meeting of the Conference. This was "without prejudice", they said, "to the ICNT, the proposals of the Group of 77 and other individual proposals of delegations". With similar co-operation and understanding from delegations in other groups, this approach was accepted by the Committee. I thus commend it to the Plenary together with the set of the three reports.

I feel duty bound to refer to one matter which did not emerge from the texts of the Negotiating Groups. It was pointed out by one delegation that the matter fell between two mandates and proved impracticable to be dealt with in either. It concerned Article 148 which deals with the participation of developing countries in the activities in the Area. It was suggested that the words "remoteness from" should be inserted between the words "including" and "access" at the end of Article 148. There was no objection to this and it was so decided. I was duly informed about and encouraged the informal contacts made to attain this.

Thus, for the purpose of work in the First Committee, there has in fact been an adjournment, not a termination, of a continuing process for agreeing on an overall package on our mandate. We will have to examine in future not only this mini-package of hard-core issues but also other questions, some of which may not necessarily divide us but may present difficulties of a sort. We also have unfinished business on appropriate figures in the financial arrangements. The scope is not discouragingly wide.

Throughout this extremely demanding and, in my view, fruitful session, in addition to the many duties I have had to cope with, I have tried to maintain a constant overview of the separate core-issues negotiations in progress and their impact on the text of the ICNT as a whole.

One of the problems we shall have eventually to examine is that of refining and clarifying Annex II. This Annex will lie at the heart of the operations under Part XI of the Convention. It may be a constant point of reference. It will be the centre of intense scrutiny. It is inevitable that it will become the subject of frequent and careful interpretation by those who come after us, and who will be charged with implementing the provisions of the Convention.

A reading of that Annex leaves one profoundly aware, by the lack of clarity and systematic presentation, of many of its provisions. At this session, we have witnessed much progress on some of its provisions under the leadership of my brothers, Frank Njenga and Tommy Koh. The Annex will be substantially completed - as a negotiating text, of course, and no more - and enhanced by the results of their work.

However, I think the time may be approaching when it will be necessary to take a very critical look at the way in which the provisions of Annex II have been put together, and to take some preliminary steps towards clarification. Ambassador Tommy Koh has approached the difficult task of financial questions with the same objective.

It would be useful if we could all begin to take such a look at the Annex. I shall be glad to receive informal suggestions from all of the delegates who would be kind enough to give me the benefit of their wisdom, ways and means of improving the presentation of the provisions. I could then informally suggest ideas at the appropriate moment in order to avoid wasteful exercise in a general debate in the future.

For the rest, Mr. President, I can only express my satisfaction for the work done this session and express the hope that we do not delay in returning to complete the unfinished task of the First Committee mandate which is of such vital importance to mankind. I wish to add the hope that in these final moments of our historic effort, each delegation or group of delegations, each interest group, each side of an existing conflict of interests and views will endeavour to take an over-all stock of our journey. We cannot have a viable convention if many nations participating at this Conference must find at the end that they have gained nothing from it. This is particularly so with regard to poor young nations who obtained self-determination after generations of subjugation, and must struggle to survive in a cruel and complicated world. In my considered opinion, we are not here merely to write a business arrangement to facilitate exploitation of the sea-bed resources by the industrially rich and powerful nations. We are here to design a new relationship among States and between them and the International Sea-bed Authority we seek to establish to ensure that the declared common heritage benefits all of mankind. History chooses its great and its poor for each generation. It does not leave a permanent seat for any nation. We have an opportunity here to alter the course of history by ensuring that nationalism does not invoke the selfishness and injustices that lead to the fall of great nations. Let us not design a pattern of potential discord and injustices that will aid history on the same part. Ambassador Avid Pardo's words must guide us because he was inspired by the common good. The common heritage demands a common endeavour to ensure sustenance for the common good. While we seek protection of interests, let us not lose sight of the truth and the scope of the varied interests involved here. In the ocean space, and especially in its sea-bed, there is room enough and wealth enough to ensure prosperity for all. At this last cross-roads of our final lap to the tape, let us make the great fellowship of a common need for universal development our mutual aspiration.

I wish, in closing, to thank all who have helped to bring success to our negotiations, the Chairmen of the Negotiating Groups, the Secretariat staff and experts, the interpreters and translators, etc.

Explanatory memorandum by the Chairman
concerning document NG1/10/Rev.1

Document NG1/10/Rev.1 of 16 May 1978 contains the text of a set of articles dealing with the principle aspects of a system of exploration and exploitation of the Area and its resources. The text of these articles was essentially taken from the Informal Composite Negotiating Text, to which various amendments were made with the object of formulating solutions to the problem of the system of exploitation of the Area which would be more acceptable to the Conference.

The changes made have been indicated by underlining the amended passages, except in the case of an entirely new provision, when the fact that the provision is new is expressly indicated.

As is indicated in the title of the document, it is a compromise formula put forward by the Chairman of Negotiating Group 1 and does not reflect the position of any country in particular or of any group of countries. It therefore does not prejudge the position of any delegation which participated in the negotiations. The amendments were made only after extensive negotiations and many consultations and are therefore an attempt to incorporate in the text formulas which, I feel, may bring the Conference closer to solutions more acceptable than those previously proposed for dealing with the complex problem of the system of exploitation of the Area and of its resources.

The question of the exploitation of the Area and its resources involves, as is well known, difficult legal, philosphic and economic problems. On each of these problems there may be said to exist among the various interest groups of the Conference a minimum of agreement which has so far made it possible to view with some optimism the progress of the negotiations, despite the enormous difficulties which had to be faced. There cannot be said to be any radical differences on certain basic points such as the question of the entities which are to be responsible for the exploitation of the Area during the interim period, the question of the manner in which the activities are to be carried out, the predominant role to be performed by the Authority in the organization, conduct and control of the activities, or on the question of certain specific obligations of the contracting parties, such as the obligation to transmit technology to the Enterprise. It is more a question of finding a balance between the various interests than of reconciling radically opposed philosophies. It is precisely with the object of finding the point of equilibrium between the partisans of guaranteed access by States and other entities to the Area and the partisans of absolute discretion of the Authority that changes have been made in the text of article 151 which, while ensuring the participation of the States Parties and other entities in the activities to be carried out in the Area, also give the Authority a predominant role in the organization, conduct and control of those activities. This was the intention behind the amendments made to article 151, which constitutes the heart of the system of exploration. Other functions of the

Authority connected with the equitable sharing of profits, the conduct and co-ordination of marine scientific research and the transfer of technology have been removed from article 151 and have been placed in the articles containing the general principles concerned. With regard to the transfer of technology, the changes made in article 144 and particularly those made in certain subparagraphs of paragraph 4 of annex II result in the establishment of what, in my view, are more realistic and especially more specific rules than those contained in the Composite Text.

Other substantial changes which I believe reflect a broad measure of agreement between the various interest groups are those made in article 150 bis on resources policy. In this connexion, the work done by the subgroup of experts under the chairmanship of Mr. Archer has been of enormous value for the work of Negotiating Group 1 and has made it possible to reformulate this provision in such a way as to reflect fairly faithfully a formula which proved acceptable to all the interest groups.

The question of the Review Conference was one of the most controversial ones considered by Negotiating Group 1. Following arduous negotiations, the formula incorporated in paragraph 6 of article 153 seems to give what I feel is a satisfactory solution to the extremely difficult problem of what happens in case the Review Conference does not reach agreement.

I must point out that the negotiations were at times extremely difficult. I know that the formula submitted is far from being the ideal solution for the various interest sectors, but I believe that it is close to what could be an equitable solution in which, although each sector has made concessions, I am sure that each one has obtained much through the concessions made by others. This is, basically, what negotiation is and it is therefore inevitable that each country must at some moment sacrifice some of its objectives. Fortunately, this has been understood by the distinguished delegations which participated in the negotiations and it is thanks to their understanding that it was finally possible to complete the task.

I want to thank all distinguished delegates who participated in the negotiations, without whose co-operation my task would have been impossible. In particular, I want to thank the Chairman of the First Committee for his encouragement and co-operation in facilitating the work of Negotiating Group 1, even at the expense of the meetings of the First Committee which, on some occasions, were cancelled in order to give the Negotiating Group time to meet.

Finally, I want to thank the Secretariat staff assigned to our Negotiating Group who have shown remarkable dedication and efficiency.

ANNEX A

Revised Suggested Compromise Formula
by the Chairman of Negotiating Group 1

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 as specifically provided for in this Part of the present Convention.

2. To this end, the Authority shall provide for the equitable sharing of benefits derived from the Area through any appropriate mechanism in accordance with sub-paragraph (xii) of paragraph 2 of Article 153.

Article 143 - Marine scientific research

1. Marine scientific research in the Area shall be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole, in accordance with Part XIII of the present Convention.

New paragraph 2

2. The Authority shall carry out marine scientific research concerning the Area and its resources, and may enter into contracts for that purpose. The Authority shall promote and encourage the conduct of marine scientific research in the Area, and shall co-ordinate and disseminate the results of such research and analysis when available.

3. States Parties shall carry out marine scientific research and promote international co-operation in marine scientific research in the Area exclusively for peaceful purposes by:

(a) Participation in international programmes and encouraging co-operation in marine scientific research by personnel of different countries and of the Authority;

(b) Ensuring that programmes are developed through the Authority or other international bodies as appropriate for the benefit of developing countries and technologically less developed countries with a view to

(i) Strengthening their research capabilities;

(ii) Training their personnel and the personnel of the Authority in the techniques and applications of research;

(iii) Fostering the employment of their qualified personnel in activities of research in the Area;

(c) Effective dissemination of the results of research and analysis when available, through the Authority or other international channels when appropriate.

Article 144 - Transfer of technology

New paragraph 1 (former paragraph 8 of Article 151)

1. The Authority shall take measures in accordance with this Convention:

(a) to acquire technology and scientific knowledge relating to activities in the Area; and

(b) to promote and encourage the transfer of such technology and scientific knowledge so that all States benefit therefrom.

2. To this end the Authority and States Parties shall co-operate in promoting the transfer of technology and scientific knowledge relating to activities in the Area so that the Enterprise and all States benefit therefrom. In particular they shall initiate and promote:

(a) Programmes for the transfer of technology to the Enterprise and to developing countries with regard to activities in the Area, including, inter alia, facilitating the access of the Enterprise and of developing countries to the relevant technology, under fair and reasonable terms and conditions;

(b) Measures directed towards the advancement of the technology of the Enterprise and the domestic technology of developing countries, particularly through the opening of opportunities to personnel from the Enterprise and from developing countries for training in marine science and technology and their full participation in activities in the Area.

Article 150

General policies relating to activities in the Area

Activities in the Area shall be carried out in accordance with the provisions of this part of the present Convention in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to promote international co-operation for the over-all development of all countries, especially the developing countries and with a view to ensuring:

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

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

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

(d) increasing availability of the minerals originating in the Area as are also produced outside the Area as needed to assure adequate supplies to consumers of such minerals;

(e) just and stable prices remunerative to producers and fair to consumers for minerals originating both in the Area and also outside the Area and promoting equilibrium between supply and demand;

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

(g) the protection of developing countries from _____ adverse effects on their economies or on their earnings resulting from a reduction in the price of an affected mineral, or in the volume of that mineral exported, to the extent that such reductions are caused by activities in the Area, as provided in article 150 bis.

Article 150 bis

Production policies

Without prejudice to the objectives set forth in article 150, and for the purpose of implementing the provisions of paragraph (g) of article 150:

1. Acting through existing forums or such new arrangements or agreements as may be appropriate, and in which all interested parties participate, the Authority shall take measures necessary to promote the growth, efficiency and stability of markets for those ---------- commodities produced from the resources of the Area, at prices remunerative to producers and fair to consumers. All States parties shall co-operate to this end. The Authority shall have the right to participate in any commodity conference dealing with those commodities. The Authority shall have the right to become a party to any such arrangement or agreement resulting from such conferences as are referred to above. The participation by the Authority in any organs established under the arrangements or agreements referred to above shall be in respect of the production in the Area and in accordance with the rules of procedure established for such organs. The Authority shall carry out its obligations under such arrangements or agreements in a manner which assures a uniform and non-discriminatory implementation in respect of all production in the Area of the minerals concerned. In doing so, the Authority shall act in a manner consistent with the terms of existing contracts and approved plans of work of the enterprise.

2. During an interim period specified in sub-paragraph 2(a), the Authority shall not approve any plan of work covering exploitation if the level of production of minerals from nodules as specified in that plan of work will cause the nickel production ceiling, as calculated pursuant to sub-paragraphs 2(b) and 2 (c) during the year of approval of the plan of work, to be exceeded during any year of planned production. Should the level of planned nickel production not cause the ceiling to be so exceeded, the level of nickel production specified in that plan of work shall be authorized.

(a) The interim period shall begin five years prior to 1 January of the year in which the earliest commercial production is planned to commence under an approved plan of work. In the event that the earliest commercial production is delayed beyond the year originally planned, the beginning of the interim period and the production ceiling originally calculated shall be adjusted accordingly. The

interim period shall last twenty-five years or until the day when such new arrangements or agreements as are referred to in paragraph 1 above enter into force, whichever is earlier. The Authority shall resume the power to limit the production of minerals from nodules as provided in this Article for the remainder of the twenty-five year period if the said arrangements or agreements should lapse or become ineffective for any reason whatsoever.

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

(i) The difference between the trend line values for annual nickel consumption, as calculated pursuant to sub-paragraph 2 (c) for the year immediately prior to the year of the earliest commercial production, and the year immediately prior to the commencement of the interim period;

(ii) Sixty per cent of the difference between trend line values for nickel consumption, as calculated pursuant to sub-paragraph 2 (c), for the year for which the ceiling is being calculated, and the year immediately prior to the year of the earliest commercial production.

(c) Trend line values used for computing the nickel production ceiling shall be those annual nickel consumption values on a trend line computed during the year in which a plan of work is approved. The trend line shall be derived from a linear regression of the logarithms of actual annual nickel consumption for the most recent 15-year period for which such data are available, time being the independent variable.

3. The Authority shall regulate production of minerals from the Area, other than minerals from nodules, under such conditions and applying such methods as may be appropriate. Regulations adopted by the Authority pursuant to this provision will be subject to the procedure set forth in article . . . . (entry into force of amendments to this Convention).

4. Following recommendations from the Council on the basis of advice from the Economic Planning Commission, the Assembly shall establish a system of compensation for developing countries which suffer adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or the volume of that mineral exported, to the extent that such reduction is caused by activities in the Area.

Article 150 ter

1. The Authority shall avoid discrimination in the exercise of its powers and functions, including the granting of opportunities for activities in the Area.

2. Special consideration for developing countries, including particular consideration for the land-locked and geographically disadvantaged among them, specifically provided for in this part of the present Convention, shall not be deemed to be discrimination.

3. All rights granted shall be fully safeguarded in accordance with the provisions of this Convention.

Article 151 - System of exploration and exploitation

1. Activities in the Area shall be organized, carried out and controlled by the Authority on behalf of mankind as a whole in accordance with the provisions of this article as well as other relevant provisions of this Part of the present Convention and its annexes, and the rules, regulations and procedures of the Authority adopted under subparagraph (xvi) of paragraph 2 of article 158 and subparagraph (xiv) of article 160.

2. Activities in the Area shall be carried out ---------- as prescribed in paragraph 3 below:

(i) by the Enterprise, and

(ii) in association with the Authority by States Parties or State Entities, or persons natural or juridical which possess the nationality of States Parties or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing which meet the requirements provided in this part of the present Convention including annex II.

3. Activities in the Area shall be carried out in accordance with a formal written plan of work drawn up in accordance with annex II to the present Convention and approved by the Council after review by the Technical Commission. In the case of activities in the Area carried out as authorized by the Authority by the entities specified in subparagraph (ii) of paragraph 2 of this article, such a plan of work shall in accordance with ---------- paragraph 3 of annex II be in the form of a contract. Such contracts may provide for joint arrangements in accordance with ---------- paragraph 5 of annex II.

4. The Authority shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of this Part of the present Convention, including its annexes, and the rules, regulations and procedures of the Authority adopted under subparagraph (xvi) of paragraph 2 of article 158 and subparagraph (xiv) of paragraph 2 of article 160 and the plans of work approved in accordance with paragraph 3 of this article. State Parties shall assist the Authority by taking all measures necessary to ensure such compliance, in accordance with article 139.

5. The Authority shall have the right to take at any time any measures provided for under this Part of the present Convention to ensure compliance with its terms, and the performance of the control and regulatory functions assigned to it thereunder or under any contract. The Authority shall have the right to inspect all facilities in the Area used in connexion with ---------- activities in the Area.

6. A contract under paragraph 3 of this article shall provide for security of tenure. Accordingly, it shall not be ----------, revised, suspended or terminated except in accordance with paragraphs 12 and 13 of annex II.

Article 153 - The Review Conference

1. Twenty years from the approval of the first contract or plan of work under the present Convention the Assembly shall convene a conference for the review of those provisions of this Part of the present Convention and the annexes thereto which governs the system of exploration and exploitation of the resources of the Area. The Conference shall consider in detail, in the light of the experience acquired during that period, whether the provisions of this Part of the present Convention governing the system of exploration and exploitation of the resources of the Area have achieved their aims in all respects, in particular whether they have ----- benefited mankind as a whole, whether they have not resulted in an excessive concentration of the exploitation of these resources in the hands of a small number of States, whether the economic principles set forth in Arts. 150 and 150 bis have been complied with and whether the régime has resulted in a just distribution of the benefits from activities in the Area, in the light of the general economic situation of developing countries.

2. Deleted.

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

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

5. Decisions adopted by the Conference under the provisions of this article shall not affect rights acquired under existing contracts. ----------.

6. Five years after the commencement of the Review Conference, and until an agreement on the system of exploration and exploitation of the resources of the Area enters into force, the Assembly may decide, by the majority required for questions of substance, that no new contracts or plans of work for activities in the Area shall be approved. However, such decision shall not affect contracts already approved, or contracts and plans of work for the conduct of activities in the areas already reserved in accordance with paragraph 5 (j) of Annex II.

Annex II, Paragraph 4 (c)(ii)

New: (ii) Make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the non-reserved area, as well as other relevant information about the characteristics of such technology. That description shall be submitted with the application and thereafter whenever a substantial technological change or innovation is introduced.

New: (ii bis) Undertake to use, in carrying out activities in the Area, technology other than that covered by (ii ter) only if he has obtained written assurance from the owner of the technology that he will, if and when the Authority so requests, make available to the Enterprise that technology under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions.

(ii ter) (former (ii bis) in the ICNT) Undertake to make available to the Enterprise, if he receives the contract and on fair and reasonable commercial terms and conditions, the technology which is to be used by him in carrying out activities in the Area and which he is legally entitled to transfer. This shall be done, upon the conclusion of the contract and if and when the Authority shall so request, by means of licence or other appropriate arrangements which the Contractor shall negotiate with the Enterprise and which shall be set forth in a special agreement supplementary to the contract.

New: (ii quater) Undertake to facilitate, upon the conclusion of the contract and if and when the Authority shall so request, the acquisition by the Enterprise under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, the technology which is to be used by the Contractor and which the Contractor is not legally entitled to transfer.

New: (ii quinte) Undertake the same obligations as those prescribed in (ii bis), (ii ter) and (ii quater) for the benefit of a developing country or a group of developing countries which has applied for a contract under paragraph 5 (j)(ii), provided that these obligations shall be limited to the exploitation of the reserved part of the Area proposed by the applicant, and provided that activities under the contract sought by the developing country or group of developing countries would not involve transfer of technology to a developed country or the nationals of a developed country.

Paragraph 5 (j)(iv)

If upon a request in accordance with paragraph 4 (c), the pertinent negotiations are not concluded within a reasonable time, either party may refer any matter arising in the negotiations to conciliation in accordance with Annex IV of this Convention. The conciliation commission shall within 60 days make recommendations to the parties which shall form the basis of further negotiations. Should the latter negotiations fail, either party may refer to binding arbitration, within 90 days, the question of the fulfilment of the undertakings made in accordance with paragraph 4 (c). In the event that the Contractor does not accept, or fails to implement the arbitral decision, the Contractor shall be liable to penalties in accordance with the provisions of paragraph 12 of this Annex.

ANNEX B

CORRIGENDUM IN ENGLISH ONLY HAS BEEN INTRODUCED IN THE TEXT

NEGOTIATING GROUP 1

SUB-GROUP OF TECHNICAL EXPERTS

Progress Report

1. The Sub-Group was invited to consider the technical problems associated with any formula that might be used to limit production of minerals from the Area. The Sub-Group noted the work of the Informal Sub-Group of Technical Experts that met in New York during the informal intersessional meeting in February 1978.

2. It was agreed at the first meeting that the Sub-Group should approach the technical problems under three main headings, which would serve as the agenda:[1]

(a) discussion of the technical problems involved in a production limitation formula and drafting a text that is technically unambiguous;

(b) examination of the issues involved in converting a quantity of nickel (the "cumulative growth segment") into numbers of mine sites;

(c) identification and clarification of any other technical problems that might arise in relation to any production limitation formula.

3. This progress report refers only to the first item on this agenda (sub-paragraph 2 (a) above), with particular respect to sub-paragraphs (iii) and (iv) of Article 150 (1) (g) (B).

4. Some experts emphasized that the complete system of production limitation should be considered as a whole and that it might be necessary to consider the ways in which any formula might be used, to ensure that the system that emerged would be functional. To that end, it was indicated that the Sub-Group would need to consider the relevant parts of Annex II of the ICNT. It was pointed out that there are specific references in paragraph 5 (c), (e) and (g).

The Future

5. The experts agreed that, by definition, the future is unknown and unknowable, but it was recognized that some statements about future consumption or production of nickel are more likely to be proved true than others. There was some discussion of the relative merits of indicating possible future events by projecting past trends, or of carrying out sectorial (or multiple contingency) analyses of the end uses to which nickel is put.

1/ But see paragraph 18 below.

6. It was concluded that for the present purpose, projection of past trends is the appropriate procedure.

The Historical Data to be used (the "data base")

7. It was agreed that, preferably, data published by the Statistical Office of the Department of Economic and Social Affairs of the United Nations should be used. As a result of preliminary discussion of the merits of using demand, consumption or production data, two experts were invited to analyse historical series of world nickel production and consumption data. The results are in Annex I of this report.

8. These two experts reported that only mine production data appear to be published by the United Nations. As far as the experts could establish, world-wide consumption data are published only by Metalgesellschaft and the World Bureau of Metal Statistics[2/] and they had used data in "Metal Statistics", published by the former. It was suggested that the United Nations Statistical Office should be invited to make available world nickel consumption statistics.

9. The results in Tables 2 and 4 in Annex I show that for the periods studied (20 years, 1957 to 1976; 10 years, 1957 to 1966 and 1967 to 1976) the annual growth rates of consumption (6.25 per cent) and both mine and refinery production (6.06 per cent and 6.02 per cent) were similar over the 20-year period. But during the second 10-year period (1967 to 1976) the annual growth rate in consumption (3.94 per cent) had been significantly lower than the rates for production (5.2 per cent and 5.7 per cent) during the same period and much lower than the rate of growth of consumption during the first 10-year period (9.1 per cent).

10. It was pointed out that during both 10 and 20-year periods, average consumption was about 5 per cent less than average refinery production.

11. Some experts believed that, ideally, demand data[3/] should be used although, in practice, as these are not available, they recognized that consumption data would have to be used. Preferably these should relate to consumption of primary nickel. Recent trends are more accurately reflected in consumption data.

2/ Subsequently it was pointed out that consumption data are also published by Imétal.

3/ The terms used were discussed briefly. Definitions and short comments contributed by one delegation are given in Annex II.

12. Other experts suggested that it would be more appropriate to use nickel production data, as the formula being considered is related to the limitation of production of metals from nodules. It was suggested that the use of mine production data, rather than those for refinery production, would be more appropriate. It was said that a greater element of judgment is involved in the compilation of consumption statistics than applies to production statistics.

13. It was also said that theoretically consumption and production data should be the same over a long enough time period.

14. It was suggested that the choice should be left to the Authority or to one of its organs, but it was also said that the decision should be made by the Conference.

15. The Sub-Group agreed that consumption data should be used (subject to paragraph 23 below).

Methods of Analyses of Historical Series

16. It was agreed that it is appropriate to fit[4/] historical series of data to an exponential growth curve or equation, in which the annual rate of change is expressed as a constant percentage.

17. It was agreed that either of the two equations (paragraphs 2 and 7 of Annex I) used by the two experts could be used with equal validity. This procedure is called regression analysis.

18. It was noted that during earlier discussions a different procedure had been suggested by some experts based on the "average annual increase". The Sub-Group agreed to consider this procedure after it had completed work on the second item on its agenda.

The Length of the Historical Series

19. Some experts stressed that the historical data analysed should extend over a period of 10 years, so that the most recent trends in consumption are reflected as much as possible in the results of the analysis. In turn, this would ensure that projection of historical trends would reflect recent trends as accurately as possible.

20. Other experts believed that analysis of a 20-year historical series is necessary in order to provide a statistically more reliable basis for projections, as well as to reduce the effect of shorter term cyclical fluctuations in the level of consumption or production.

4/ By the least squares method, a mathematical procedure for obtaining the best fit of scattered data to a curve.

21. The difference between using 10 and 20-year periods was expressed as being that they would provide, respectively, more sensitive or more stable projections of future growth. The Sub-Group agreed that 15-year historical series of data would provide an appropriate balance between these two criteria (but see paragraph 23 below).

Frequency of Revision of Calculations

22. It was agreed that analysis of historical data should be carried out annually (but see paragraph 23 below).

Calculation of the Cumulative Growth Segment (or "ceiling")

23. The Sub-Group agreed that each year the first step in calculating the cumulative growth segment should be regression analysis of a 15-year historical series of world nickel consumption statistics, to provide an exponential trend line which can be projected into the future. Agreement to use consumption data, a 15-year series, direct projection and annual revision was seen as part of a mini-package which would also include the final stage of the calculation (paragraph 24 below). Adoption of these elements would not prejudice later consideration of the views of the experts referred to in paragraph 18 above.

24. Discussion on the final steps in the calculation concentrated on two methods:

(a) each year, subtracting the amount of nickel corresponding to consumption of nickel in, for example, 1979[5/] on the current trend line, from the amount of nickel corresponding to the future year on the projection of the same current trend line;

(b) each year, subtracting the amount of nickel corresponding to consumption of nickel in, for example, 1979 on the trend line calculated for the initial year, from the amount of nickel corresponding to the future year on the projection of the current trend line.

25. Some experts considered that the method outlined in paragraph 24(a) is more satisfactory, as both the base amount (in, for example, 1979) and the future amount would be obtained from the same trend line. It was suggested that this method would provide greater sensitivity.

5/ The example is the year before the start of the interim period according to the ICNT.

26. Other experts thought that the method outlined in paragraph 24(b) has the advantage of simplicity, as the same base amount (the amount of nickel consumed in, for example, 1979, according to the trend line calculated in the first year) would be used throughout.

27. The table at Annex III illustrates the application of these methods during the last 9 years for which consumption data are available. It is assumed that the starting date was 1 January 1970.

28. The Sub-Group agreed that the method outlined in paragraph 24(a) should be used. A draft indicating how the conclusions of the Sub-Group could be incorporated in Article 150 (1)(g)(B) is included as Annex IV.

Application

29. The Sub-Group was reminded that any system of production limitation that might be devised must be functional, so that the use to which it is going to be put must be borne in mind. For example, it was pointed out that it would be necessary to consider the lead-time or time-lag that there would be between the application to the Authority for a contract or plan of work and the start of commercial production. It was agreed that this issue would need to be considered and that it seems to fall within the scope of the third item on the Sub-Group's agenda (para. 2(c) above).

30. It was also agreed that there would be a need to consider Article 150 (1)(g) as a whole in the application of any production ceiling. It was recognized, however, that an understanding would need to be reached in particular on subparagraphs B(i) and (ii) of that Article to facilitate further work on the application of a production limitation formula.

General

31. Of the commodities that may be derived from the mineral resources of the Area, the Sub-Group has considered only the nickel that may be recovered from manganese nodules. It is recognized, however, that at future meetings (under the third item of its agenda, para. 2(c) above) it should examine the technical problems associated with other commodities that may be affected by the application of a production limitation formula.

32. Although this report is presented by the Chairman of the Sub-Group, it has been accepted by the members as a summary of its work and of the conclusions reached.

Annex I

COMPARISON OF HISTORICAL DATA ON NICKEL
BY CANADIAN AND UNITED KINGDOM EXPERTS

Introduction

1. At the request of the Chairman of the Sub-Group of Technical Experts, least squares regressions were performed on three sets of historical nickel data, assuming that the intrinsic growth function is an exponential curve.[1/]

2. This curve can be defined by the following equation:

$$y = ae^{bx}$$

that is $\log y = \log a + bx$

where: y is the quantity (in thousands of metric tonnes)
x is time in years
a is the value of y when x is 0
b is the "instantaneous"[2/] growth rate
e is 2.7183 (a mathematical constant)

3. Solution of the exponential equation (using an HP65 programmable calculator with programme STAT 1-23A) for the "best fit" (using the least squares regression method) to the data yields values for a and b. In addition, a measure of the goodness of fit (coefficient of determination: r^2) and the arithmetical average of the historical data were calculated.

4. The data considered (Table 1) were:

(i) world mine production of nickel;
(ii) world production of refined nickel;
(iii) world consumption of nickel.

5. For each set of data, calculations were made for a 20-year period from 1957 to 1976 and for a 10-year period from 1967 to 1976.

1/ This was the assumption made for calculating examples by the Informal Sub-Group of Technical Experts in New York (see Chairman's Report, 16 February 1978, paragraph 7).

2/ This "instantaneous" growth rate will be numerically different from the constant average growth rate on an annual basis - the latter rate is utilized for calculations herein.

Table 1. Nickel Data

Year	Mine Production	Refined Production	Consumption
	Thousand metric tonnes		
1957	299.4	275.4	235.3
1958	227.0	222.5	196.4
1959	289.8	280.4	249.2
1960	341.7	327.0	292.7
1961	377.2	354.7	320.8
1962	371.6	365.5	318.0
1963	370.3	345.2	342.9
1964	391.4	380.4	401.7
1965	420.9	407.9	431.0
1966	415.8	401.8	467.6
1967	476.2	463.4	473.0
1968	545.3	487.3	490.4
1969	512.6	480.5	502.8
1970	665.6	607.1	576.6
1971	681.1	619.6	526.6
1972	625.4	583.4	580.1
1973	674.1	656.2	655.2
1974	736.8	716.1	707.2
1975	743.5	712.1	574.5
1976	778.9	751.2	665.7

Source: "Metal Statistics", Metallgesellschaft.

Results

6. Equation coefficients, (a, b), the coefficient of determination (r^2), the "constant annual growth rate" and the average of the historical data are listed below:

Table 2

For the 20-year period 1957-1976

	a	b	r^2	growth rate	average
Mine Production	253.4	.06	.94	6.06	497.2
Refined Production	241.2	.06	.96	6.02	472.1
Consumption	224.7	.06	.92	6.25	450.4

For the 10-year period 1967-1976

	a	b	r^2	growth rate	average
Mine Production	481.4	.05	.84	5.20	644.0
Refined Production	441.5	.06	.91	5.72	607.8
Consumption	461.2	.04	.72	3.94	575.2

Alternative Method

7. An alternative method that achieves exactly the same results is to employ the following formula:

$$y = A\ (1 + R)^x$$

8. Where y = the quantity (of consumption or production, etc.)
x = time, measured in years
A = a constant representing the quantity in year x = o
R = a constant representing the annual growth rate (as a fraction of 1; therefore, multiply by 100 to obtain the percentage growth rate).

9. The formula can be recognized as the familiar "compound interest" formula. It also has the advantage of being readily expressed in the following linear form:

$$\log y = \log A + x \log (1 + R)$$

10. Where log represents the logarithms to any base, including natural logarithms to base e. It is usually easiest, and most conveniently illustrated graphically, by using common logarithms to base 10.

11. The task is to evaluate the constants A and R from a given set of recorded data, that is for N values of x and y where N = the number of years covered. Computation is aided by measuring x, that is time, in years from a certain base year instead of in actual years. For example, if 1956 is the first year where

x = o, and so on. Any year can be selected for this purpose which is solely to simplify the arithmetic. All that has to be remembered is that in presenting the results the year from which x is measured must be stated.

12. From the recorded data a number of straightforward calculations now need to be made. Using the conventional sign Σ (capital sigma) to indicate summation of all the values over the given range of years N, one needs to calculate the following: $\Sigma \log y$, $\Sigma x \log y$, Σx, and Σx^2.

13. These are then substituted in the two normal equations used in this technique (referred to as the method of Least Squares):

$$\Sigma \log y = N \log A + \log(1 + R) \Sigma x$$
$$\Sigma x \log y = x \log A + \log(1 + R) \Sigma x^2$$

14. Solution of these simultaneous equations by simple algebra yields the values of the constants A and R.

15. The use of this method is illustrated by the following three examples, using the data base provided in Table 3 attached to the "Informal Sub-Group of Technical Experts: Chairman's Report", dated 16 February 1978 (with the addition of assumed data for 1977 and 1978 from Table 2 in the same Report).

Table 3

World Consumption of Nickel: 20 years, 1959-1978

"Demand" in thousand metric tonnes

Year	x	y (actual)	y (predicted)
1959	1	249.2	290.4
1960	2	292.7	306.0
1961	3	320.8	322.4
1962	4	318.0	339.7
1963	5	344.9	357.9
1964	6	396.8	377.1
1965	7	425.6	397.3
1966	8	467.6	418.6
1967	9	473.0	441.1
1968	10	490.4	464.8
1969	11	502.8	489.7
1970	12	576.6	516.0
1971	13	526.6	543.6
1972	14	580.1	572.8
1973	15	655.2	603.5
1974	16	707.2	635.9
1975	17	574.5	670.0
1976	18	665.7	705.9
1977	19	695.7	743.8
1978	20	727.0	783.7

Note: x is expressed in years measured from 1958 = 0.

Substitutions of any value of x in the regression equations below gives the corresponding predicted value of y. These are shown in the adjoining column for all values of x from x = 1 to x = 20, so that the values for y generated or predicted by the equation may be compared with the actual data for the same year.

If projection to, say, the year 1980 is required, then substituting x = 1980 - 1958 = 22 in the regression equation gives a projected "demand" for 1980 of y = 870 thousand metric tonnes.

16. The values of x and y (actual) are given in the data base. Using only these and a simple pocket calculator (HP45) the following summations were obtained:

$N = 20$, $\Sigma x = 210$, $\Sigma x^2 = 2870$, $\Sigma \log y = 53.57188$, $\Sigma x \log y = 577.59503$

17. Substitution in the two normal equations gave the following:

$$53.57188 = 20 \log A + 210 \log (1 + R)$$
$$577.59503 = 210 \log A + 2870 \log (1 + R)$$

) Common logarithms to base 10

18. Solution of these simultaneous equations gave:

$\log A = 2.44033$, hence (antilogarithm) $A = 275.6$

and $\log (1 + R) = 0.02269$, hence (antilogarithm) $(1 + R) = 1.05363$ and $R = 5.363\%$

19. Hence, the required regression equation is $\underline{y = 275.6\ (1.05363)^x}$ or, in its linear form, $\underline{\log y = 2.44033 + 0.02269\ x}$. Substitution of any value of x (time, in years) gives the predicted "demand" either within the period of the data base (illustrated above) or extrapolated beyond it (i.e. projected).

Table 4

World Consumption of Nickel (Metallgesellschaft data): 10 years 1957-1966

Years	x	y (actual)	y (predicted) for comparison
1957	1	235.3	212.1
1958	2	196.4	231.5
1959	3	249.2	252.6
1960	4	292.7	275.6
1961	5	320.8	300.7
1962	6	318.0	328.2
1963	7	344.9	358.1
1964	8	396.8	390.8
1965	9	425.6	426.4
1966	10	467.6	465.3

$\log y = \log A + x \log (1 + R)$

$n = 10$, $\Sigma x = 55$, $\Sigma x^2 = 385$, $\Sigma \log y = 24.97154$, $\Sigma x \log y = 140.47116$

$\therefore\ 24.97154 = 10 \log A + 55 \log (1 + R)$

and $140.47116 = 55 \log A + 385 \log (1 + R)$

Hence, $\log A = 2.28864$ and, antilog, $A = 194.4$

$\log (1 + R) = 0.03791$ and, antilog, $(1 + R) = 1.09122$, i.e. $R = 9.122\%$

Regression: $\underline{\log y = 2.28864 + 0.03791\ x}$

or: $\underline{y = 194.4\ (1.09122)^x}$

Table 5

World Consumption of Nickel (Metallgesellschaft data): 10 years 1967-1976

Years	x	y (actual)	y (predicted) for comparison
1967	1	473.0	479.4
1968	2	490.4	498.2
1969	3	502.8	517.8
1970	4	576.6	538.2
1971	5	526.6	559.4
1972	6	580.1	581.4
1973	7	655.2	604.3
1974	8	707.2	628.0
1975	9	574.5	652.8
1976	10	665.7	678.4

$\log y = \log A + x \log (1 + R)$

$n = 10$, $\Sigma x = 55$, $\Sigma x^2 = 385$, $\Sigma \log y = 27.56115$, $\Sigma x \log y = 152.96942$

$27.56115 = 10 \log A + 55 \log (1 + R)$

and $152.96942 = 55 \log A + 385 \log (1 + R)$

Hence, $\log A = 2.66391$ and, antilog, $A = 461.2$

and $\log (1 + R) = 0.01676$ and, antilog, $(1 + R) = 1.03935$, i.e. $R = 3.935\%$

Regression: $\log y = 2.66391 + 0.01676\, x$

or: $y = 461.2\ (1.03935)^x$

Results using Alternative Method

20. The values of A (representing the quantity in year x = o) and R (the annual growth rate) for consumption data can be summarized as follows:

Table 6

Consumption

	A	R
20-year Period 1959-1978	275.6	5.363%
10-year Period 1957-1966	194.4	9.122%
10-year Period 1967-1976	461.2	3.935%

21. The calculated "best fit" curves are shown graphically in Figures 1 and 2.

Annex I
Figure 1

World "Demand" for Nickel: 20 years 1959-1978

Data base: Table 3 of this Annex.

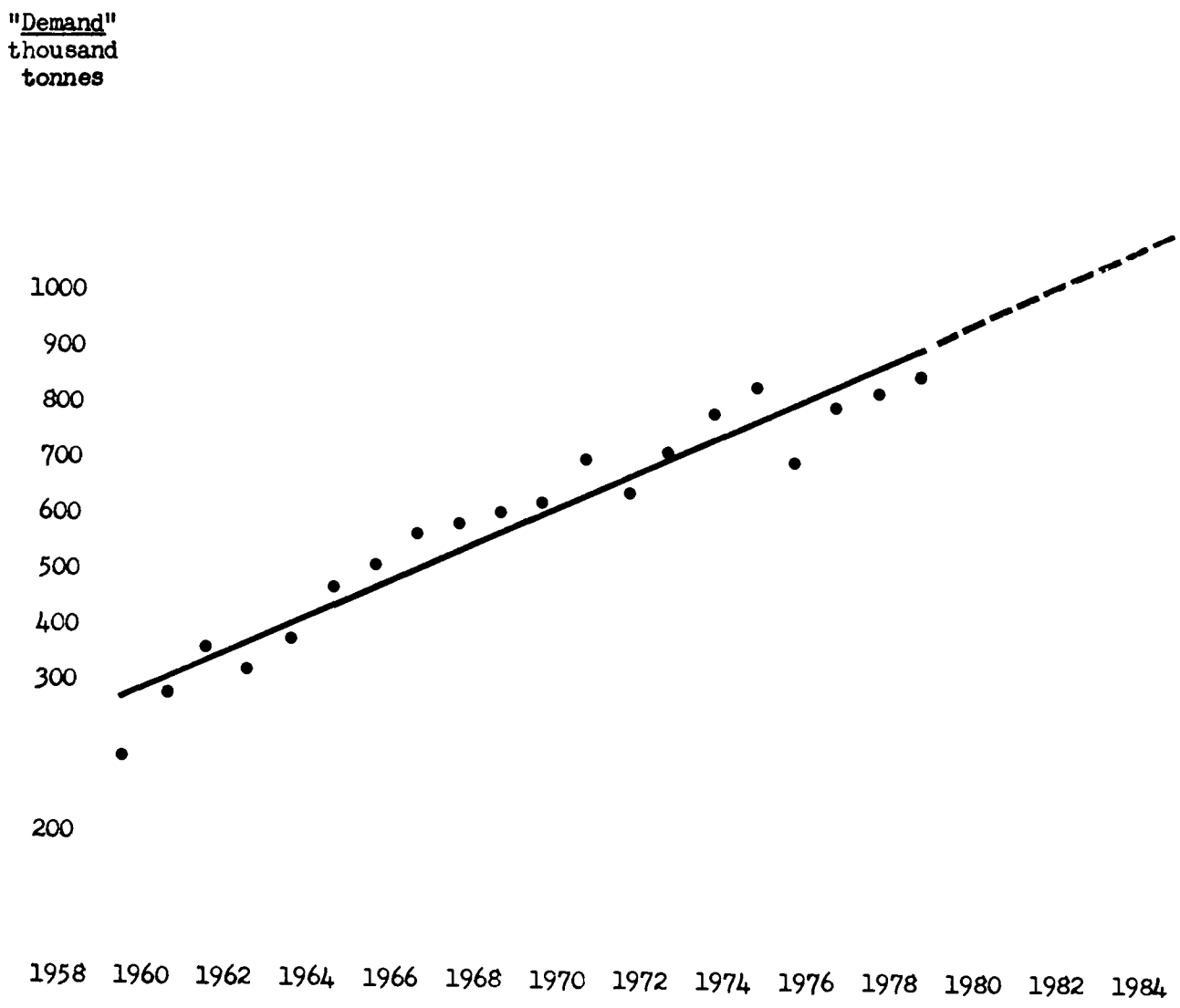
● = Actual "demand" 1959-1978 as given in the data base.

—— = Regression line 1959-1978:

$$y = 275.6\ (1.05363)^x$$

where y = world "demand" in thousand tonnes
and x = time in years measured from 1958 = 0.

- - - = Projection of 1959-1978 regression line.



Annex I
Figure 2

World Consumption of Nickel 1957-1976 (Metallgesellschaft data)

Separate analyses of the two consecutive periods 1957-1966 and 1967-1976.

● = Actual world consumption as recorded by Metallgesellschaft.

—— = Regression lines for 1957-1966 and 1967-1976.

1957-1966 regression:

$y = 194.4\ (1.09122)^x$

where y = consumption in thousand tonnes

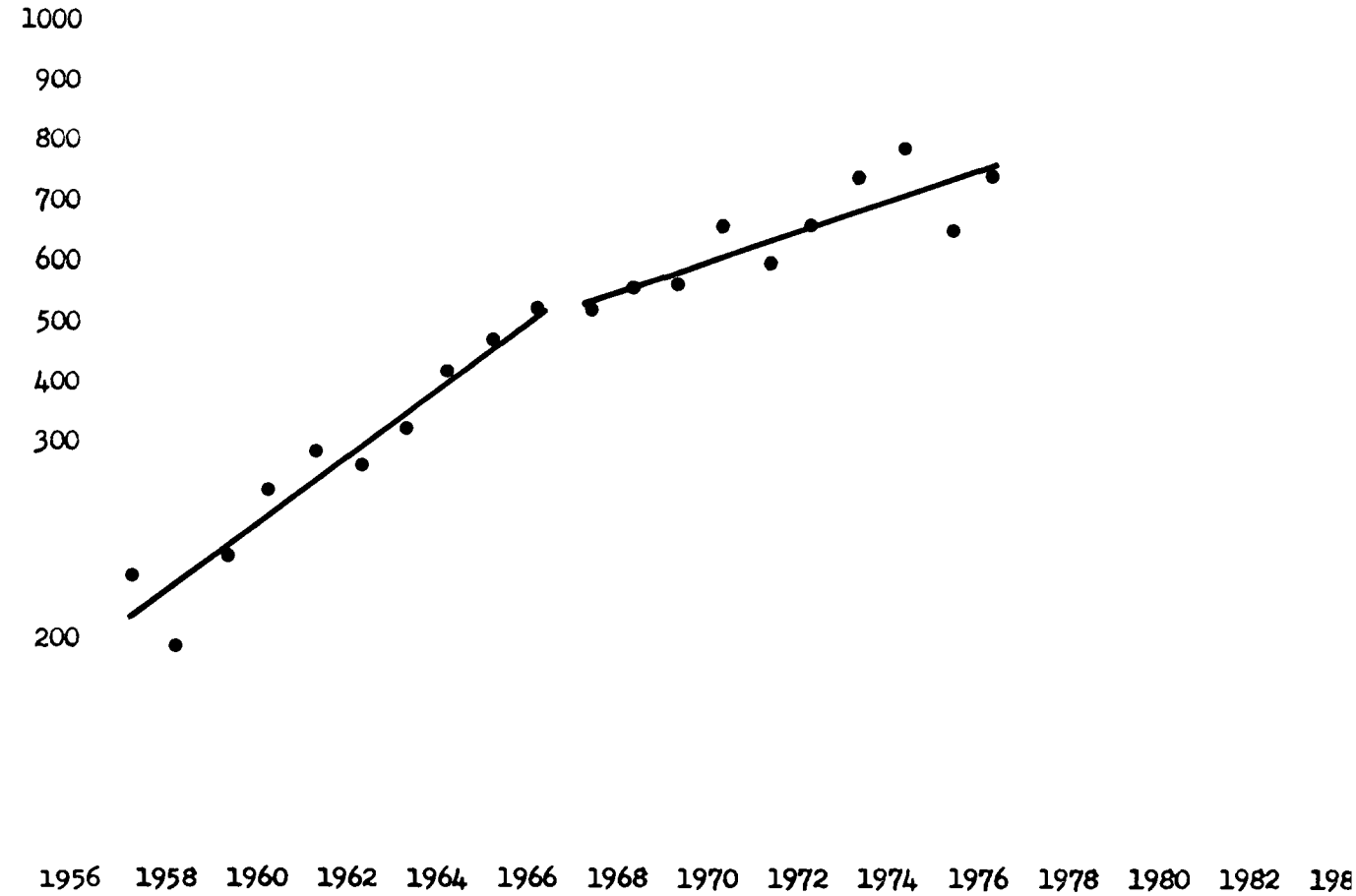
and x = time in years, measured from 1956 = 0.

1967-1976 regression:

$y = 461.2\ (1.03935)^x$

where y = consumption in thousand tonnes

and x = time in years, measured from 1966 = 0.



Annex II

DEFINITIONS (in physical terms)

1. There are difficulties in measuring demand. An estimate of demand is probably best arrived at by measuring the two principal elements which constitute demand:

   (a) demand for consumption;

   (b) demand for stocks (where demand for stocks can be negative).

2. A practical definition capable of statistical measurement is:

   Demand = consumption ± changes in consumers' stocks.

3. Demand is more elastic than consumption.

4. Production can be measured at either the mine, smelter or refinery and can be expressed as:

   Production = demand ± changes in producers' stock.

5. Production is less elastic than consumption.

6. Consumption may be measured at any point in a long chain of processing from industrial absorption (of crude metal) to final end-use (in manufactured articles, e.g. in stainless steel saucepans).

7. For convenience in compilation, some consumption figures may be those for deliveries from producers. The available world consumption data for nickel therefore relate more to demand, as producer deliveries include those to consumers' stocks: as an indication of consumption, the data are more closely related to industrial absorption than to final end-use.

ANNEX III

ILLUSTRATION OF PROCEDURES OUTLINED IN PARAGRAPH 24, AS IF APPLIED FROM 1970 TO 1978

Year in which calculation is made ("current year")	15 year historical series	Constant annual growth rate %	Projected consumption in current year (thousand tonnes)	Consumption on the trend line in 1969 calculated in current year (in thousand tonnes)	Cumulative growth segments in current year (thousand tonnes), according to: para. 24 (a)	para. 24 (b)
1	2	3	4	5	6	7
1970	1954 - 68	7.73	595.8	553.1	42.7	42.7
1971	1955 - 69	7.45	623.3	539.9	83.4	70.2
1972	1956 - 70	7.52	672.1	540.7	131.4	119.0
1973	1957 - 71	7.34	699.4	526.9	172.5	146.3
1974	1958 - 72	7.16	731.7	517.8	213.9	178.6
1975	1959 - 73	6.41	744.4	512.8	231.6	191.3
1976	1960 - 74	6.13	779.5	514.0	265.5	226.4
1977	1961 - 75	5.40	766.1	503.0	263.1	213.0
1978	1962 - 76	5.08	782.6	501.1	281.5	229.5

Notes: (1) Column 6 is obtained by subtracting column 5 from column 4.

(2) Column 7 is obtained by subtracting 553.1 from column 4.

(3) The amounts shown in column 6 would be less than those in column 7 if the calculations were to be performed in a different period during which the growth rate was increasing, rather than decreasing as in the example shown.

(4) Based on world nickel consumption statistics published in "Metal Statistics" (Metalgesellschaft).

(5) The annual growth rates shown in column 3 were calculated by the method described in paragraphs 7 to 14 of Annex I.

Annex IV

POSSIBLE REDRAFT OF ARTICLE 150 (1) (g) B (iii) AND (iv)

(iii) For the first year of the interim period referred to in subparagraph (i) above, the rate of increase in annual world nickel consumption shall be the constant annual rate of increase in annual world consumption of nickel during the latest 15-year period prior to 1 January 1980 for which satisfactory data are available. Such rate of increase shall be derived from a linear regression of the logarithms of the annual nickel consumption on their respective years, time being the independent variable.

(iv) Thereafter, this rate of increase shall be recalculated every year by applying the aforesaid method and using corresponding data from the latest 15-year period for which such data are available.

(v) For the first year of the interim period, the base amount for determination of the cumulative growth segment shall be world consumption for the year 1979 obtained by projecting to that year the linear regression described in subparagraph (iii) above.

(vi) The base amount for each subsequent year shall be world consumption for the year 1979 according to the recalculated regression described in subparagraph (iv) above.

(vii) The cumulative growth segment shall be the difference between world consumption projected to the year in question and the recalculated base amount for 1979; annual consumption shall be projected on the linear regression obtained in the manner described in subparagraphs (iii) and (iv) above and the base amount shall be obtained as described in subparagraphs (v) and (vi) above.

ANNEX 6

NEGOTIATING GROUP 1

SUB-GROUP OF TECHNICAL EXPERTS

Second Progress Report

1. This Second Progress Report refers to the examination of the issues involved in converting a quantity of nickel (the "cumulative growth segment") into numbers of mine sites. This is the second item on the Agenda for the Sub-Group (see NG1/7, 3 May 1978, paragraph 2).

2. The experts agreed that commercial evaluation would include estimation of the quantity of polymetallic nodules that will be produced and their content of all recoverable metals. However, for the work of the Sub-Group in assessing limitations on the number of mining operations, the quantity of metallic nickel that is recoverable would be used as a basis for calculation. The Sub-Group would consider other metals under the third item of its Agenda.

Mine sites

3. The Sub-Group agreed that a mine site may be defined as one or more areas, containing deposits of polymetallic nodules on the sea floor, in which there are sufficient nodules with a high enough grade and abundance to sustain a commercially viable mining operation.

4. As a mining operation under a single contract or plan of work may mine nodules from several deposits, it is simpler to refer to "mining operations" rather than to "mine sites" in the present context.

Nickel production

5. Some experts suggested that it could be assumed that the annual capacity of each mining operation would be such that about 30,000 tonnes of nickel can be produced each year.

6. Other experts pointed out that, by analogy with mines on land, the output of different deep-sea nodule mining operations might be different:

(a) the quantity of nodules recovered each year might vary between 1 million and 4½ million (dry) tonnes;

(b) generally, the average nickel content is likely to be between 1.2 per cent and 1.4 per cent for mines operated with the "first generation" of mining equipment;

(c) the process plant might recover between 85 per cent and 95 per cent of the nickel present in the nodules.

7. Combination of these variables could lead to between 10,200 and 59,850 tonnes of nickel being recovered from different operations. The effect of these variables is illustrated in Annex I.

Cumulative growth segment

8. Bearing in mind the impossibility of foretelling the future, but remembering that some possibilities are more probable than others, it was agreed that the cumulative growth segment of nickel consumption might be assumed to lie in the range corresponding to constant annual growth rates between 2 per cent and 6 per cent from 1977 to 2000.

9. The cumulative growth segments that would correspond to assumptions that the constant annual growth rate between 1977 and 2000 is 2 per cent and 6 per cent are illustrated in Annex II (calculated by the procedure proposed in the Sub-Group's First Progress Report, NG1/7).

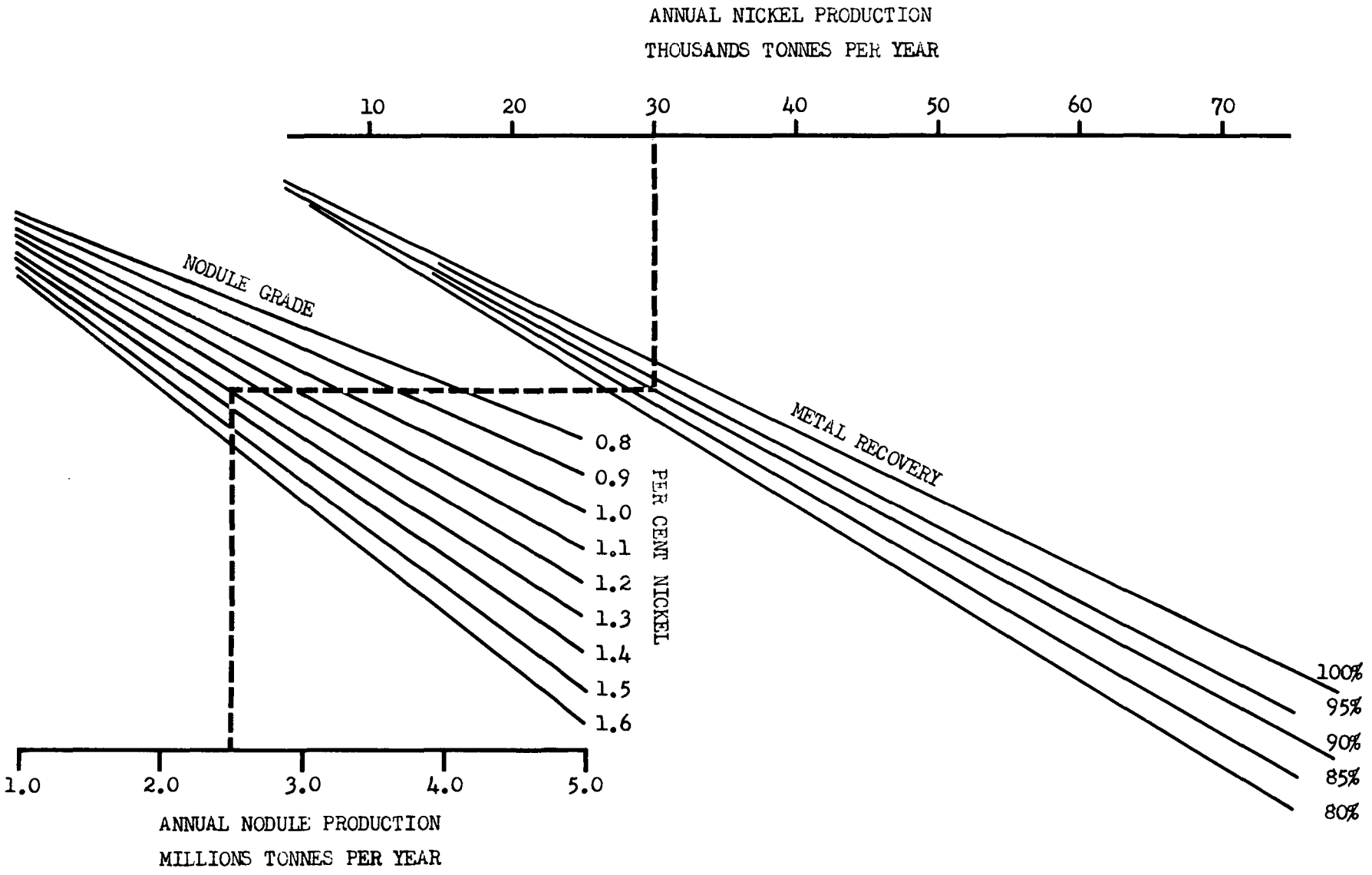
Examples

10. In the following examples no account is taken of the other issues that need to be considered (see paragraphs 29 and 30 of the First Progress Report, NG1/7). For example no account is taken of the percentage that is included in Article 150 (1) (g) (B) (i) of the ICNT, or the lead-time (or time-lag).

11. If it is assumed that 30,000 tonnes of nickel a year are produced from each mine site and that the constant annual growth rate is 4½ per cent from 1977 to 2000, the cumulative growth segment would admit a maximum of 38 mining operations in 2000.

12. If it is assumed that the constant annual growth rate is 2 per cent over the same period, the maximum number of mining operations with an annual capacity of one million tonnes of nodules would be between 27 and 35 in 2000. Alternatively, if a constant annual growth rate of 6 per cent is assumed, the corresponding number of mining operations would be between 143 and 186. If it is assumed that the mining operations will have an annual capacity of 3 million tonnes of nodules, the maximum number permitted in 2000 would be between 9 and 11 if the constant annual growth rate is 2 per cent, and between 47 and 62 if the constant annual growth rate is 6 per cent.

13. If only a certain percentage of the cumulative growth segment is allowed to seabed production, then the numbers of mine sites given in paragraphs 11 and 12 will be reduced by applying the percentage.



EXAMPLE: ANNUAL NODULE PRODUCTION = 2.5 MILLION TONNES/YEAR
NODULE GRADE = 1.3% NICKEL
METAL RECOVERY = 90%
ANNUAL NICKEL PRODUCTION = 29,250 TONNES/YEAR

ILLUSTRATION OF POSSIBLE CUMULATIVE GROWTH SEGMENTS

Year in which calculation is made ("current year")	15-year historical series	Constant annual growth rate %		Projected consumption in current year (thousand tonnes)		Consumption on the trend line in 1979 calculated in current year (thousand tonnes)		Corresponding cumulative growth segments in current year (thousand tonnes)	
1	2	3		4		5		6	
Assumed constant annual growth rate 1977-2000		2%	6%	2%	6%	2%	6%	2%	6%
YEAR									
1980	1964-1978	3.96	4.25	783.3	809.1	753.5	776.2	29.8	32.9
1985	1969-1983	2.68	4.67	825.2	1 054.2	704.2	801.6	121.0	252.6
1990	1974-1988	2.02	5.73	878.6	1 480.0	704.8	801.6	173.8	678.4
1995	1979-1993	2.00	6.00	969.8	2 014.0	706.4	792.9	263.4	1 221.2
2000	1984-1998	2.00	6.00	1 070.7	2 695.4	706.4	792.9	364.3	1 902.5

Notes: (1) Based on world nickel consumption statistics published in "Metal Statistics" (Metalgesellschaft) for 1964-1976.

(2) Column 6 is obtained by subtracting column 5 from column 4.

(3) This table is comparable with Annex III of NG1/7 dated 3 May 1978.

ANNEX D

NEGOTIATING GROUP 1

SUB-GROUP OF TECHNICAL EXPERTS

Final Report

1. This third and final report refers to issues related to discussion of items 1 and 2 of the Sub-Group's agenda, as well as to item 3, the identification and clarification of any other technical problems that might arise in relation to any production limitation formula (see paragraph 2 of NG1/7, 3 May 1978).

Different procedure

2. The different procedure referred to in paragraph 18 of the Progress Report (NG1/7) was considered by the Sub-Group.

3. The method was not difficult to compute. The use of data assuming a two-year time-lag in publication from reputable statistical sources was in keeping with recent conclusions of technical experts. The use of an average increase in consumption for the previous 10 years was mathematically sound and posed no technical problems.

4. A calculation based on actual nickel production was made to assess the possible effects of the formulation. The results are shown in Tables 1 and 2. The technical experts did not have available the data needed to assess the effects of the formulation on all metals, so it was not possible to assess whether or not difficulties might arise.

5. As a general observation they noted that the maximum possible production of metals for each 1,000 tons of nickel produced (assuming 90% recovery for each metal) for one notional example of a high-grade mine would be 1,000 tonnes of nickel, 870 tonnes of copper, 140 tonnes of cobalt and 17,100 tonnes of manganese (if recoverable by existing processes).

6. However, the consensus of the experts was that a variable recovery for each metal was likely, as discussed in greater detail below.

Other metals

7. At an early stage of the work of the Sub-Group, it was agreed that the technical problems associated with other commodities that may be affected by the application of a production limitation formula should be considered (paragraph 31 of NG1/7, 3 May 1978; paragraph 2 of NG1/9, 9 May 1978).

8. The Sub-Group did not have sufficient time to examine this issue in detail, but agreed on the following summary of the main relationships between the relative amounts of nickel, copper, cobalt and manganese that may be consumed and the relative amounts that may be produced from polymetallic nodules.

9. Generally, nodules with a high nickel content also contain above average amounts of copper. The cobalt content of these nodules is usually relatively low; conversely, cobalt-rich nodules contain relatively little nickel and copper.

10. Nodules containing between 1.2 per cent and 1.4 per cent of nickel (see para. 6(b) of NG1/9 of 9 May 1978) may be assumed also to contain 1.0 per cent to 1.2 per cent of copper, 0.2 per cent to 0.25 per cent of cobalt and 25 per cent to 30 per cent of manganese. The process plant might be capable of recovering between 85 per cent and 95 per cent of the copper present in these nodules, between 55 per cent and 90 per cent of the cobalt and, perhaps, 50 per cent to 90 per cent of the manganese.

11. It can be assumed that as much as possible of the nickel and copper will be produced from the nodules and that some, if not all, of the cobalt that can be recovered, will be produced (see paragraph 18). Initially, at least, manganese will be produced from only some operations.

12. For the sake of illustration, it might be assumed that the metals will be produced in the following ratios:

nickel	1,000 tonnes
copper	860 tonnes
cobalt	110 tonnes
manganese	6,000 tonnes[1/]

13. Thus if, for example, 750,000 tonnes of nickel were to be produced from nodules in the year 2000, production of the other metals might be very approximately as follows:

copper	645,000 tonnes
cobalt	82,500 tonnes
manganese	4,500,000 tonnes

14. At present, for every 1,000 tonnes of nickel consumed in the world, the following approximate quantities of the other metals are also consumed:

copper	10,000 tonnes
cobalt	40 tonnes
manganese	10,800 tonnes

15. For the purpose of this comparison, it might be assumed that world consumption of these metals will be in the same ratio in 2000. If world consumption of nickel in 2000 were assumed to be 2,000,000 tonnes, consumption of the other metals might thus be assumed to be:

copper	20,000,000 tonnes
cobalt	80,000 tonnes
manganese	21,600,000 tonnes

1/ This is a rough estimate, bearing in mind the uncertainties associated with the amount of manganese that may be produced.

16. The metals produced from nodules (para. 13) would therefore account for the following proportions of world consumption in 2000 (para. 15):

nickel	37.5 per cent
copper	3.2 per cent
cobalt	103. per cent
manganese	21 per cent

17. The differences between these percentages arise from the marked disparity in the proportions of metals recoverable from nodules (para. 12) and the proportions of world demand for the same metals (para. 14). Unless some of the assumptions made are proved to be seriously in error, the percentages shown in para. 16 are likely to indicate the contribution that production of copper, cobalt and manganese from polymetallic nodules may make to world supply, if nickel contributes 37.5 per cent.

18. With respect to the future market for cobalt, the Sub-Group agreed with the suggestion that an analogy might be drawn with the development of the nickel market about 60 years ago. Cobalt has many uses, particularly in steel and other alloys, but its use may have been restricted by its limited supply and high price. As the increased availability of nickel led to extensive metallurgical research on new applications after the first world war, which in turn led to increased consumption, so the increased availability of cobalt, at lower prices, from polymetallic nodules, coupled with further metallurgical research, may lead to increased consumption relative to the present ratios (para. 14).

Lead-time (or time-lag)

19. The need to consider lead-times was recognized during the Sub-Group's discussions on the calculation and application of a cumulative growth segment or ceiling (paragraph 29 of NG1/7, 3 May 1978).

20. Because commercial production from a project outlined in an approved application for a plan of work covering exploitation will not occur until further evaluation of the deposits has been completed and the mining vessel and other equipment can be constructed, there will be a time-lag between the time of approval of the plan of work and the actual production of nickel by that mining operation.

21. It was suggested, therefore, that the method of calculating and administering the ceiling should allow the ceiling in future years to be projected, in order to determine whether the production specified in a plan of work will cause the ceiling to be exceeded during the years in which production from that mining operation will occur.

Conclusion

22. The Sub-Group recognized that there are other technical issues which might be examined by technical experts if this were considered to be useful and appropriate.

23. The Sub-Group expressed its appreciation of the support it had received from the secretariat.

TABLE 1

Calculation using historical data showing 10-year average increases

Year in which calculation is made ("current year")	10-year historical data used	Calculated average increase (thousand tonnes)	Cumulative increase (thousand tonnes)
1970	1958 - 1968	29.4	29.4
1971	1959 - 1969	25.3	54.7
1972	1960 - 1970	28.3	83.0
1973	1961 - 1971	20.5	103.5
1974	1962 - 1972	26.2	129.7
1975	1963 - 1973	31.2	160.9
1976	1964 - 1974	30.5	191.4

Note: Based on world nickel consumption statistics published in "Metal Statistics" (Metalgesellschaft).

TABLE 2

Hypothetical calculation on the basis of assumed constant annual growth rates in consumption of 2% and 6% from 1976

Year in which calculation is made ("current year")	10-year data used	Average increase based on 2% growth (thousand tonnes)	Average increase based on 6% growth (thousand tonnes)
1988	1976 - 1986	14.6	52.7
1989	1977 - 1987	14.9	55.8
1990	1978 - 1988	15.2	54.7
1991	1979 - 1989	15.5	62.7
1992	1980 - 1990	15.8	66.5

Note: The assumed annual consumption data used are the same as those used in the Table appended to NGl/9.

Report of the Chairman of Negotiating Group 2 to the First Committee

I would like, on behalf of Negotiating Group 2, to make a brief report on its work to the First Committee. I would like to begin my report by thanking you for the guidance and advice which you have given me. I would also like to thank the Rapporteur of the First Committee, Mr. John Bailey, two members of the Secretariat, Messrs. Yoshida and Mati Pal, and Mr. Eric Langevad of the UNDP, for their valuable contributions.

Negotiating Group 2 was appointed by the First Committee. The First Committee entrusted the Negotiating Group with three agenda items. The first item was the Financial Arrangements of the Authority. The Negotiating Group discussed in detail the provisions of Articles 170, 171, 172, 173, 174 and 175 of the ICNT. No major problem or disagreement was encountered in our discussion of those articles. On the basis of the discussion in Negotiating Group 2 I have redrafted these articles, in order to clarify them and to remove ambiguities and contradictions. My suggested compromise proposals are contained in document NG2/4.

The second agenda item assigned to the Negotiating Group was on the Financial Arrangements of the Enterprise. The Negotiating Group also discussed in detail the provisions of paragraphs 9 and 10 of Annex III and of Articles 158 (2)(vii) and 160 (2)(xv). On the basis of the discussion in the Negotiating Group, I have redrafted those provisions. My suggested compromise proposals are contained in document NG2/5 and Corr.1.

The third item on the Negotiating Group's agenda was the Financial Terms of Contracts for Exploration and Exploitation. This was by far the most difficult of the three items assigned to the Negotiating Group. The basis of our discussion was paragraph 7 of Annex II of the ICNT. It is no exaggeration to say that of all the provisions in the ICNT, this was probably the most difficult to read and to understand. The Negotiating Group discussed the main concepts and elements in this paragraph. It was felt, at a certain point, that in order to make further progress on the details of financial terms of contracts, it was necessary to establish an open-ended group of financial experts. This was done and very good progress was achieved in the meetings of the group of financial experts. We were able to establish broad areas of agreement on assumptions, on concepts and on the schemes of financial payments by Contractors to the Authority. Unfortunately, because of the pressure of time, and for other reasons, we were unable to complete our negotiations on:

(1) the amount of the application fee;

(2) the amounts of the annual fixed fee, if paid annually or if paid in a lump sum;

(3) the percentage of the market value of the processed metals, or the percentage of the amount of the processed metals produced from the nodules extracted from the contract area, which a Contractor should pay to the Authority, if he chooses to make his financial contributions by way of the production charge;

(4) in the case of a Contractor who chooses to make his financial contributions by way of a combination of production charge and share of net proceeds, three questions remain outstanding: first, how much should the Contractor pay by way of production charge?; second, what percentage of the Contractor's total net proceeds should be attributed to mining of the resources of the contract area?; third, what should be the Authority's share of the net proceeds attributable to the mining of the resources of the contract area, on each of the eight levels of profitability I have proposed?

These outstanding issues on financial terms of contracts will have to be taken up at the next session of our Conference.

My suggested compromise proposals on the financial terms of contracts are contained in document NG2/7 and Corr.1. Because it deals with such a difficult subject, I have written a memorandum to explain document NG2/7. The explanatory memorandum is contained in document NG2/8 and Corr.1.

ANNEX A

FINANCIAL ARRANGEMENTS OF THE AUTHORITY

The Chairman's Suggested Compromise Proposals

Article 158 (2)(vi)

(redraft)

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

(redraft)

The funds of the Authority shall include:

(a) assessed contributions made by States Parties in accordance with sub-paragraph (vi) of paragraph 2 of Article 158;

(b) funds transferred from the Enterprise in accordance with paragraph 9(a) of Annex III;

(c) receipts of the Authority arising from activities in the Area in accordance with paragraph 7 of Annex II;

(d) loans received in accordance with Article 174; and

(e) voluntary contributions made by States Parties or other entities.

Article 171*/

(redraft)

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 sub-paragraph (viii) of paragraph 2 of Article 158.

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*/ Logically, this Article should be renumbered 172 and the redraft of Article 172 should be renumbered 171.

Article 172

(redraft)

(1) The contributions of States Parties referred to in paragraph (a) of Article 170 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 paragraph (a) of Article 170, the funds which remain after payment of administrative expenses may, inter alia:

(a) be distributed in accordance with paragraph 9 of Article 151 and subparagraph (xii) of paragraph 2 of Article 158;

(b) be used to provide the Enterprise with funds in accordance with paragraph 4 of Article 169 and subparagraph (a) of paragraph 10 of Annex III; and

(c) be used to compensate developing countries in accordance with subparagraph (g)(D) of paragraph 1 of Article 150, and subparagraph (xiv) of paragraph 2 of Article 158.

Article 173

(deleted)

(The provisions of this article have been incorporated in the redraft of Article 172).

Article 174

(redraft)

(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 subparagraph (vii) of paragraph 2 of Article 158.

(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

(redraft)

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 B

FINANCIAL ARRANGEMENTS OF THE ENTERPRISE

The Chairman's Suggested Compromise Proposals

Article 158 (2)(vii)

(redraft)

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)

(redraft)

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 (redraft)

(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 (redraft)

The funds of the Enterprise shall include:

(a) amounts received from the Authority in accordance with subparagraph (b) of paragraph 2 of Article 172;

(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 on its own 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. Debts incurred by the Enterprise to this end shall be guaranteed by all States Parties in accordance with the scale referred to in subparagraph (vi) of paragraph (2) of Article 158. To the extent necessary for securing such loans, States Parties undertake to advance as refundable paid-in capital, up to one-third of the liability which they will have incurred under this subparagraph. 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 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 3

FINANCIAL TERMS OF CONTRACTS

(A) The Chairman's Suggested Compromise Proposals

Paragraph 7, Annex II

In adopting rules, regulations and procedures concerning the financial terms of a contract between the Authority and the entities referred to in sub-paragraph (ii) of paragraph 2 of Article 151, and in negotiating those terms within the framework of the provisions of Part XI of the present Convention, and of 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, and to stimulate the transfer of technology thereto; and

(e) to enable the Enterprise to engage in sea-bed mining effectively from the time of entry into force of this Convention.

Paragraph 7 (bis)

A fee shall be levied for the administrative cost of processing an application for a contract and shall be fixed at an amount of $ ..... per application. The amount of the fee shall be reviewed at five-yearly intervals 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 $ ..... from the date of entry into force of the contract. In lieu of an annual payment, a Contractor may elect to pay a lump sum of $ ..... .

Paragraph 7 (quater)

In addition to his obligation under paragraph 7 (ter) a Contractor may choose to make his financial contributions to the Authority, (a) by paying a production charge, or (b) by paying a production charge and a share of net proceeds.

Paragraph 7 (quinquies)

(a) If a Contractor chooses to make his financial contributions to the Authority by paying a production charge, it shall be fixed at .... per cent of the market value of the processed metals or .... per cent of the amount of the processed metals produced from the nodules extracted from the contract area.

(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 period. If an international commodity exchange provides a representative pricing mechanism, the average price on such exchange shall be used. In all other cases, the Authority shall, after consulting the Contractor, determine the average price.

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

Paragraph 7 (sexies)

(a) If a Contractor chooses to make his financial contributions to the Authority by paying a combination of a production charge and a share of net proceeds, the production charge shall be fixed at .... per cent of the market value of the processed metals produced from the nodules extracted from the contract area. The Authority's share of net proceeds shall be taken out of an amount equal to ... 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. The Authority's share of the attributable net proceeds shall be determined in accordance with sub-paragraphs (b) and (c) below.

(b) In each year, the share of the attributable net proceeds to be received by the Authority shall be determined according to the rate of return on the Contractor's development costs. The rate of return on the Contractor's development costs shall be calculated by dividing by five the sum of the Contractor's portions of net proceeds, including his share of the attributable net proceeds in the five most recent accounting periods and expressing this average as a percentage of the total development cost at the end of that year. During the initial five years of commercial production, this average shall be based on the number of years for which the data are available.

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

Contractor's Rate of Return	Authority's Percentage
Below 10% :	%
10% or more but below 14% :	%
14% " " " " 18% :	%
18% " " " " 22% :	%
22% " " " " 26% :	%
26% " " " " 30% :	%
30% " " " " 35% :	%
35% or more :	%

(d) the term "net proceeds" means gross proceeds less operating costs and less the recovery of development costs as set out in sub-paragraph (g) below.

(e) The term "gross proceeds" means the gross revenues from the sale of the processed metals, recoveries under insurance policies and any other money received which is reasonably attributable to the operations under the contract.

(f) The term "development costs" means:

(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 operation 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 of equipment and machinery.

Proceeds from the disposal of capital assets shall be deducted from development costs during the accounting period in which they are received.

(g) The development costs referred to in sub-paragraph (f)(i) above shall be recovered in 10 equal annual instalments from the date of commencement of commercial production. The development costs referred to in sub-paragraph (f)(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.

(h) The term "operating costs" means all expenditures incurred in the operation of the productive capacity of the contract area and the operation related thereto, in conformity with generally recognized accounting principles, including, inter alia, the fixed annual fee, the production charge, 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 operations of the contract area and any net operating losses carried forward from prior accounting periods.

(i) The costs referred to in sub-paragraphs (f) and (h) above in respect of interest paid by the Contractor may only be allowed if, in all the circumstances, the Authority approves, pursuant to para. 4(a) of Annex II, the debt-equity ratio and the rates of interest as reasonable, having regard to existing commercial rates.

(j) (i) All costs and revenues referred to in this paragraph shall be the result of free market or arm's length transactions;

(ii) If the costs and revenues are not the result of free market or arm's length transactions, they shall be computed by the Authority as though they took place at arm's length or were the result of free market transactions;

(iii) In determining the value of any arm's length transactions or free market transactions, the Authority shall use the value of a similar transaction taking place in other markets where free market forces or arm's length transactions have prevailed;

(iv) In order to ensure that all costs and revenues are the result of free market transactions or take place at arm's length and to ensure enforcement of and compliance with the provisions of this sub-paragraph, the Authority shall adopt rules and regulations specifying uniform and generally acceptable accounting rules and procedures to be followed by the Contractor and the means of selection by the Contractor of certified independent accountants acceptable to the Authority for the purpose of auditing in compliance with said rules and regulations; and

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

(k) The costs referred to above 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)

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 above.

Paragraph 7 (octies)

In the event of a dispute between the Authority and a Contractor over the financial terms of a contract, either party may request resolution of the dispute through compulsory and binding commercial arbitration.

Paragraph 7 (novies)

The payments to the Authority under paragraphs 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 in the equivalents of processed metals at current market value. The market value shall be ascertained in accordance with sub-paragraph (b) of paragraph 7 (quinquies) above.

(ii) The Chairman's Explanatory Memorandum on document NG2/7

1. Do the Financial Terms of Contracts Apply to the Enterprise?

Several industrialized countries have raised the point that plans of work of the Enterprise should contain the same financial terms as contracts of exploration and exploitation. They have therefore suggested that wherever the term "contracts" is used, it should be replaced by the term "plans of work". I have not done so because the question falls outside the terms of reference of Negotiating Group No. 2. The questions whether the same financial terms should apply to the Enterprise and if not, what other financial terms should apply, should however be discussed by the First Committee.

2. The Objectives in Paragraph 7

Paragraph 7(a) of Annex II of the ICNT sets out five objectives which should guide the Authority in adopting rules, regulations and procedures concerning the financial terms of contracts and in negotiating those terms. I have reproduced the five objectives in my redraft of paragraph 7. The first three of the five objectives seem to be acceptable to all delegations. Some industrialized countries have, however, objected to the fourth and the fifth objectives and have asked for their deletion. I have retained the fourth and the fifth objectives because I consider them part of the package offered by the developed countries to the developing countries for the acceptance of the parallel system of exploration and exploitation.

3. Is it Possible to Negotiate the Financial Terms Now?

In the negotiating group two different views were expressed on the question whether it is possible for us to negotiate the financial terms of contracts now. The first view was that it is not possible to hold a meaningful negotiation now on the financial terms of contracts. It was pointed out that we are trying to write the detailed financial terms of contracts of an industry which does not now exist. It was pointed out that the various assumptions about the development costs of a mining project, about annual operating costs, about gross proceeds, about net proceeds, may turn out to be false in practice. The tremendous cost overruns of the Alaska pipeline project and the North Sea oil exploration were referred to in this connexion. Those who held the first point of view therefore argued that paragraph 7 of Annex II should only contain a framework of principles and objective criteria which will govern subsequent negotiations on financial terms between the Authority and applicants for contract.

The second point of view was that although the task is difficult, it is not impossible to negotiate the financial terms of contracts now. The negotiating group agreed to try the second approach and for this purpose, established an open-ended group of financial experts.

4. The Data Problem

In the group of financial experts we were immediately confronted with the need to agree on a set of assumptions. Without an agreed framework of assumptions it would not have been possible for us to carry on with our discussions. We agreed that the best study to date was that undertaken by the Massachusetts Institute of Technology, entitled, "A Cost Model of Deep Ocean Mining and Associated Regulatory Issues", hereinafter referred to as the MIT Study.

The MIT Study estimates the total development costs of a mining project at $559 million, the annual operating costs at $100 million and the annual gross proceeds at $258 million.

Although all delegates agreed that the MIT Study appears to be a very good study, some delegates questioned some of its assumptions. For example, the estimated annual gross proceeds of $258 million is based upon the assumption that nodules will have an average metal content of 2.8 per cent. Several delegations pointed out that more recent studies suggest that the average metal content of nodules is about 2.4 per cent not 2.8 per cent. On the other hand, if metal prices go up from their present depressed levels, this will boost the estimated gross proceeds. The point I wish to make here is that we have had to make many assumptions about costs and revenues and that reality may look very different from our assumptions.

5. The Application Fee

It is agreed by all that an applicant for a contract should pay an application fee. It is also agreed that the fee should cover the cost of processing such an application and that the amount be reviewed every five years. We are, however, unable to agree on what the amount should be in the first instance. Some say it should be $100,000. Others say it should be $500,000. My suggestion of $250,000 does not seem to have been well received by the two sides. Consequently, I have left the amount blank in paragraph 7(bis).

6. The Annual Fixed Charge to Mine or Bonus Payment

Paragraph 7(d)(i) of Annex II of the ICNT proposes an annual fixed charge to mine. Some delegations have argued that the annual fixed charge to mine is to deter a Contractor from sitting on his mine site without commencing operations after three years. Members of the Group of 77 said that the purpose of the annual fixed charge is not merely deterrent. It is also a source of revenue for the Authority payable at the front-end of the operation. It is a payment the Contractor must make for his right to mine. Instead of an annual payment, the delegation of India proposed a lump sum of $60 million.

The industrialized countries are opposed to the proposal of India. They also oppose the fixed annual charge to mine for two reasons. First, they argue that it is not necessary to have a deterrent against delay because the Contractor has very strong incentives to commence his production as soon as possible. Secondly, they oppose it because it increases the front-end burden on the Contractor. The Soviet Union argued that since a State Party is a part of mankind, it therefore has an inherent right to mine the resources of the Area, and should not be asked to pay for that right.

My proposal is contained in paragraph 7(ter). I propose that a Contractor should pay an "annual fixed fee" of an amount to be negotiated. The fee is payable from the commencement of the contract. This will ensure that the Authority will receive some revenues even before the commencement of commercial production. In order to avoid conceptual problems, I have changed the name from "annual fixed charge to mine" to "annual fixed fee". In lieu of an annual payment, a Contractor may choose to pay the Authority, at the signing of the contract, a lump sum the amount of which is to be negotiated. The annual fixed fee is deductible as a development cost, if incurred before the commencement of production, and from the operating cost, if incurred after the commencement of production.

7. <u>One System or Two Systems of Financial Payments</u>?

In addition to the fixed annual fee, the Contractor must make financial payments to the Authority. Should there be a single system of financial payments only? I have come to the conclusion that we need more than one system of financial payments. The Soviet Union, as well as some other developed and developing countries, prefer the system of production charge. The United States, the EEC and Japan cannot accept a single system of production charge. They would prefer the Contractor to make his financial payments to the Authority by way of a mixture of production charge and share of net proceeds.

In paragraph 7 (quater) I have therefore proposed two systems of payments. The first is by way of the production charge alone. The second is by a combination of the production charge and share of net proceeds. I have given the choice to the Contractor. One delegation has suggested that the choice should lie with the Authority. I feel that the choice should be with the Contractor because he should choose the system of payment which is most compatible with the social and economic system to which he belongs. As long as the two systems of payments are of equal advantage to the Authority, it does not really matter which one the Contractor chooses.

8. The Production Charge System of Payment

Paragraph 7 (quinquies) provides for the first system of payment. The Contractor shall pay to the Authority a sum equal to the market value of a certain percentage of the processed metals produced from the nodules extracted from the contract area. The Contractor may alternatively pay the Authority in kind i.e. by giving the Authority a certain percentage of the amount of the processed metals produced from the nodules extracted from the contract area. Why have I given this alternative to the Contractor? I have done so in order to accommodate those States whose currencies are not freely convertible.

The production charge system of payment has several merits. First, it is a constant payment of a fixed percentage of the gross proceeds from the time of commencement of production and would be especially helpful to the Authority in the earlier years. Second, it assures the Authority of revenues irrespective of the profitability of the Contractor's project. Third, it frees the Authority of the necessity to verify the accounts of the Contractor. Fourth, it does away with the troublesome question what percentage of the Contractor's gross proceeds or net proceeds is attributable to the mining of the resources of the contract area.

Does this system have any shortcomings? It has at least two disadvantages. First, the heavy obligations may be difficult if not impossible for some Contractors to bear at the outset of their commercial production. Second, under this system, the revenues to the Authority do not vary with the profitability of the Contractor's operation.

9. The Proposals of the USSR and Norway

The USSR made a specific proposal under the production charge system of payment. It offered to pay 7.5 per cent of the market value of the processed metals. Assuming that gross proceeds are $260 million per annum, the Soviet offer would give the Authority an income of $19.5 million per annum or a total of $390 million over a period of 20 years.

The Norwegian delegation proposed that under this system, a Contractor should pay 8 per cent of the market value of processed metals during the first five years and 16 per cent during the next fifteen years. Under the Norwegian proposal the Authority would receive $104 million during the first five years and $624 million during the next fifteen years, making a total of $728 million over a period of 20 years.

10. The Second System of Payment

The Second system of payment is a combination of a production charge and a share of net proceeds. This system of payment is set out in paragraph 7 (sexies) and was embodied in the ICNT. It is a system that reflects a compromise between those delegates who wanted a system of production charge as the sole major system

of payments to the Authority and those who wanted a share of net proceeds as the sole major system of payments to the Authority.

What are the advantages of this combined system over the first system? There are several advantages. First, it places less burden on the front-end than the first system does. Second, if the Contractor prospers, the Authority shares his prosperity. The Authority's revenues rise with the rising level of the Contractor's profitability.

Does this system have any disadvantages compared with the first system? It does. First, it is much more complicated than the other system and is more difficult to administer. Second, the back-end payment to the Authority is not assured. If the Contractor does poorly, the Authority does poorly too.

Under sub-paragraph (a) of paragraph 7 (sexies), the Contractor shall pay a percentage of the market value of the processed metals. The percentage is blank in the text. In addition, the Contractor must pay a certain portion of his net proceeds to the Authority. How is this to be determined?

To do so, we begin with the Contractor's gross proceeds. His gross proceeds will come mainly from the sale of the processed metals. According to the M.I.T. Study, his gross proceeds per annum will be around $260 million. We then deduct from the Contractor's gross proceeds his operating costs. According to the M.I.T. Study, his operating costs per annum will be around $100 million. This gives us a remainder of $160 million. Next, we deduct one-tenth of his development costs.

The reasons why I have chosen a 10-year period for the recovery of his development costs is that it is a compromise between several proposals that were made. These varied from a recovery period over the whole period of the contract to one as short as five years. This latter suggestion would, of course, leave little, if any, profits for sharing with the Authority during that first five years, but it would certainly give the Contractor an enhanced profitability. I feel that this compromise proposal for a recovery over 10 years is reasonable in the light of the life of the equipment and the treatment of maintenance costs as a development cost and this is in line with commercial practice.

According to the M.I.T. Study, the Contractor's development costs are about $560 million. One-tenth of this is $56 million. If we subtract $56 million from $160 million, we are left with $104 million. This amount is called the Contractor's net proceeds.

At this point, we confront a difficult issue. According to some delegations, the Authority is entitled to a share of the Contractor's total net proceeds. Other delegations, however, hold a different view. They said that the Contractor's net proceeds are derived from mining the nodules, from transporting them, from processing and marketing them. They stated that transportation, processing and marketing are activities subject to national jurisdiction and to national taxation. They argued that the Authority has no right to tax the profits derived from processing and marketing. Therefore, it is argued that it is necessary to

apportion a part of the Contractor's total net proceeds which is attributable to mining of the resources of the contract area. I have called this portion of the Contractor's net proceeds the "attributable net proceeds".

What percentage of the net proceeds should constitute the attributable net proceeds? Opinions differed greatly, ranging from 20 per cent to 100 per cent. Is there any rational or objective way in which this question can be resolved? Some delegations argued that the percentage should be determined by the ratio between the capital invested in the mining stage and the capital invested in the other stages. Other delegations objected to this approach on the ground that it assigns no value or an inadequate value to the nodules. In the absence of any agreed criterion for dividing net proceeds between the mining sector and the other sectors it becomes a question to be settled by negotiation. In sub-paragraph (a) of paragraph 7 (sexies) I have left the percentage blank.

The Authority's share of the attributable net proceeds shall be determined in accordance with sub-paragraphs (b) and (c) of paragraph 7 (sexies). The scheme is similar to what in national law is called progressive taxation. The Authority's share of the attributable net proceeds depends upon the Contractor's rate of return on his investment. The higher the Contractor's rate of return on investment, the higher the Authority's percentage of the share of the attributable net proceeds. In sub-paragraph (c) I have set out eight steps of profitability and I have left blank the Authority's percentage in respect of each step.

11. <u>The Different Proposals Monetised</u>

Proposals were received, under the second system of payment, from India, the United States of America, EEC, Norway and Japan. India proposed a production charge of 10 per cent of gross proceeds together with 50 per cent of net proceeds. After the Contractor has recovered 200 per cent of his development costs, the Authority's share of net proceeds is increased to 60 per cent. Over a period of 20 years the Authority will receive a total of $1,600 million from the Contractor.

The delegation of Norway proposed that the Contractor shall pay a production charge of 3 per cent during the first 10 years and 5 per cent during the next 10 years, together with 50 per cent of the attributable net proceeds during the first 10 years and 80 per cent during the following 10 years. Attributable net proceeds shall be 50 per cent of total net proceeds. Over a period of 20 years the Authority will receive a total of $1,050 million from the Contractor.

The delegation of the United States proposed that the Contractor shall pay a production charge of 2 per cent and 30 per cent of attributable net proceeds if the rate of return is between 0 and 7 per cent, and 60 per cent of attributable net proceeds if the rate of return is between 7 and 20 per cent and 75 per cent of the attributable net proceeds if the rate of return is over 20 per cent. Under the United States proposal, the attributable net proceeds are 20 per cent of total net proceeds. Over a period of 20 years, the Authority, under normal profit conditions, will receive $335 million from the Contractor. Under high profit conditions, the Authority will receive $372 million.

The Japanese delegation proposed a production charge of 0.75 per cent together with 25 per cent of attributable net proceeds during the first 10 years and 50 per cent of attributable net proceeds during the following 10 years. Attributable net proceeds is defined as 20 per cent of total net proceeds. Under the Japanese proposal the Authority will receive a total income of $240 million over 20 years under normal conditions of profitability.

The EEC proposed a production charge of 0.75 per cent together with a share of attributable net proceeds which varies depending upon the Contractor's rate of return. The EEC has proposed seven levels of profitability ranging from 10 to 30 per cent. Corresponding to these levels of profitability, the Authority's share will range from 10 to 58 per cent. Under the EEC's proposal, attributable net proceeds are 20 per cent of total net proceeds. Under normal conditions of profitability the Authority will receive $151 million. Under conditions of high profitability the Authority's income will increase to $315 million. Under conditions of low profitability, the Authority's income will be $75 million.

(iii) EXPLANATORY NOTES ON THE TECHNICAL TERMINOLOGY

1.	Application Fee:	A fee that is charged by the Authority at the time an application is lodged. It is usually for the purpose of helping to pay some of the administrative costs and to discourage frivolous applications.
2.	Bonus Payment:	A payment that is charged by the Authority on the signing of a contract for the award of the contract. It is usually a once-and-for-all payment. This may be one of the sources of revenue for the Authority before the commencement of production.
3.	Annual Fixed Charge:	An annual fixed amount that is charged following the signing of a contract. One of the purposes of this charge is to deter the Contractor from "sitting" on the mine site without exploiting it. This may be one of the sources of revenue for the Authority before the commencement of production. It is usually withdrawn or deducted from the production charge when the Contractor starts his operation.
4.	Production Charge:	A charge, often referred to as a Royalty, which is levied on the gross proceeds of production */ in each accounting period, irrespective of the profitability of the production. The amount of the charge can be determined without the verification of detailed profit-and-loss accounts of the Contractor. This fixed charge can be levied only after the commencement of production.
5.	Proceeds of Operation:	The sum total of the gross proceeds of production */ and the receipts from sales of assets.

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*/ I.e. the total receipts from the sale of the products before any deduction for costs of production.

Market Value of the Processed Metals: The value determined by the price that would be received if the finished metals - nickel, copper and cobalt (manganese if produced) were sold in a market in which international and open bidding takes place. At present, copper is the only one of these metals so traded.

Costs of the Contractor: The total costs incurred by the Contractor in developing and operating the project which he will expect to recuperate by the end of the life of the project. These are easier to envisage when divided into two sub-divisions of Development Costs and Operating Costs.

Development Costs: These are often referred to as the capital costs or the investment costs and are the original costs of getting a project into operation, i.e. exploration, research and construction etc., as detailed in sub-paragraph (d) (iii) B1 of paragraph 7 of the ICNT. Most of these costs are incurred prior to the commencement of production. After commencement of production, new capital may be invested to expand or improve the machinery and equipment and such costs are also included in development costs.

Operating Costs: These are the costs which are continually occurring during the production life of a project and are detailed in sub-paragraph (d) (iii) B2 of paragraph 7 of the ICNT.

Adjusted Development Costs: The term is used in the ICNT to mean the remainder of the development cost that has not been recovered at the particular accounting period in question. The adjusted development costs at any particular accounting period can be arrived at by deducting from the development costs the sum of all the amounts recovered by the Contractor up to the year in question in accordance with the schedule of recovery of the development costs.

8. **Interest Expenses:** This is the interest that will be charged on loans incurred in developing and operating the project.

9. **Debt-Equity Ratio:** The ratio of the Contractor's borrowed portion of the capital (debt) to his own capital (equity).

10. Investment Recovery: The process mentioned under "Adjusted Development Costs" whereby the Contractor recovers his investment, i.e. development costs in accordance with a recovery schedule.

11. Net Proceeds: The net proceeds are the proceeds of operation less the operating costs and the recovery of development costs as defined in paragraphs 7 and 10, respectively.

12. Cash Flow: The proceeds of operation less the Contractor's current operating costs and any other payments expressed in cash amount. The cash flow is not a true profit because it includes the money which has been allowed as recovery of development costs.

13. Rate of Return on Investment: The rate of return on investment is the Contractor's share of net proceeds divided by the development costs at the commencement of production. The rate of return on adjusted development cost is the Contractor's share of net proceeds divided by the adjusted development cost, which is the remainder of the development cost that has not been recovered at the particular accounting period in question. The ICNT rate of return is the average of the Contractor's shares of net proceeds in previous years divided by the adjusted development cost.

All these rates are different from the internal rate of return or discounted cash flow rate of return. Common practice regards a future cash payment as less valuable than a current (present) payment; future payments, therefore, are discounted to a smaller present value according to an interest rate. The internal rate of return is the interest rate which makes the present value of the outgoing cash payments equal to the present value of the incoming cash payments. It should be noted that the outgoing cash payments include the development costs so the internal rate of return is such as to allow for recovery of the development costs.

14. Imputed Value of Assessed Metal Content of Nodules: In the light of the fact that there is no international market for nodules, the value of nodules must be arrived at firstly, by assessing the metal content of nodules, then imputing the value of assessed metal content from the market price of processed metals.

15. Deemed Profit:	Deemed percentage of imputed value of assessed metal content of nodules. (In the ICNT the Authority may receive a share of the deemed profits, rather than share of net proceeds calculated in accordance with sub-paragraph (d) (iii) of paragraph 7 of Annex II.)
16. Production Sharing:	This is not conceptually different from profit sharing or revenue sharing. It is merely expressing the essential money elements (revenue, cost and profit) in terms of metal and the result is that the Contractor receives metals in lieu of his costs and his profits, and the Authority receives metals in lieu of the charges. This is share of net proceeds in kind, i.e. the produced metals.
17. Arms-length Transactions:	This is an attempt to place a market value on a transfer which may take place in a non-market situation. Such a transfer could occur between two branches of a company or between affiliated companies.

Report to the First Committee on the work of Negotiating Group 3

General

It may be recalled that Negotiating Group 3 was set up to negotiate problems relating to the "Organs of the Authority, their composition, powers and functions".

The Negotiating Group identified three fundamental questions as constituting the basis of the outstanding problems on this core issue before the Conference:

(1) The composition of the Council, contained in paragraph 1 of Article 159 of the ICNT;

(2) The voting system proposed by the ICNT under paragraph 7 of the same article; and

(3) The inter-relationship between the respective powers and functions of the Assembly and the Council.

I intend to make some commentary with a view to giving a clear picture of our endeavours. The Annex to this report
159 over which it is possible for me to recommend specific language reflecting improvements that appear to enjoy wide and substantial support in the Negotiating Group. For the convenience of delegations, it was released as a document of the Negotiating Group. It is my conviction that it would serve no useful purpose at this stage to introduce new formulations on delicate issues over which there is clearly no fundamental agreement. The issues here are clear-cut and present difficulties which cannot be resolved by mere changes in language or figures. They call for political decisions and we cannot be above owning that the interested parties have not demonstrated their joint resolve or political will to agree.

I wish to seize this opportunity to express to all participants in the endeavours of the Negotiating Group my gratitude for the co-operation and dedication they showed throughout. I felt a particular sense of pride for the co-operation of the Members of the Bureau of the First Committee who assisted me in the specific tasks in Negotiating Group 3. This includes, of course, members of the Secretariat. I wish to recognise specially the valuable help rendered me by Vice-Chairman Porfessor Harry Wuensche of the German Democratic Republic.

Issues

The commentary will deal with the questions in the order in which they were taken.

1. Composition of the Council

The composition of the Council presented rather sensitive interest problems of a political nature. It would appear that the arguments advanced dictated the following conclusions:

(a) All States participating in this Conference have an interest and thus qualify for some categorisation in the executive organ which is the Council. There appeared to be some broad agreement for the proposition that the principle of equitable geographical distribution of seats must be pragmatically maintained. There appears also to be a recognition that the realities of circumstance and time demanded an acceptance of categories of special interests which arose mainly from considerations of an economic and financial character touching upon the immediate well-being of certain States. In spite of strongly held views on this matter, the fact appears to have been recognized in a spirit of compromise and understanding;

(b) It would appear further that the over-all balance between the special interests under paragraphs (a) - (d) and the comparatively general interests under sub-paragraph (e) must be maintained as in the ICNT, i.e. 50% in each case. However, some expressed flexibility on the latter being greater in size than the former, provided that this was not over-stretched;

(c) There should be no radical departure from the categorisation of special interests adopted by the ICNT. In fact, it would appear that the only departure which did not present major difficulties related to the request by the Group of 77, that the word "major" be dropped from paragraph (c). In other words, the reference to "major exporters" was hardly appropriate in its descriptive approach to the participation of the developing land-based producing countries under that category. A solution emerged from a suggestion for dropping opposition to the word "major" and adding to the end of paragraph (c) the words "whose exports of such minerals have a substantial bearing upon their economies". This solution to the problem was agreed upon and has been incorporated in the annex (Art.159, para.1(c));

(d) It would appear that a general feeling existed that the size of the Council, as presently prescribed by the ICNT, i.e. 36, ought to be maintained. However, an important issue arose relating to the numbers to be adopted for each category of special interests. We were faced with the insistence on the part of highly industrialized countries of the Western European and Others Group that the first category (a) should

be increased to six. On the other hand, an appeal was launched by some of the lesser industrialized or developed countries, for provisions ensuring that they were not excluded altogether from representation of the Council. They pointed out that seats would be taken up by the highly industrialized countries in the same geographical region to which they belonged. The concrete suggestion for curing this, in their opinion, was to provide in paragraph 1 (e) that each geographical region should have at least TWO instead of the ONE seat stipulated in the ICNT.

My early consultations revealed that neither of these two suggestions, as they stood (i.e. six in (a) and at least TWO in (e) would be attained because of politically unacceptable consequences in the other categories. The resultant "numbers game" led to more complications, without resolving the difficulties. With the negotiations, one threat became evident, i.e. that the Council would have to be enlarged to accommodate them. The extent of that enlargement, within desirable limits, was unclear. This appeared to be because of the door it would open to other claims of similar injustices elsewhere. One example was to be found in a representation by some members of the African Group that if this matter were to be considered at all, then due regard had to be given to the consequence that the maximum number they (Africans) could expect in the Council was very limited. There were currently about 50 States in the African region and this number may be expected to increase in the future. It meant that 50 of them would have to rotate over a few seats, bearing in mind the limited number of them that would qualify under the special interests categorisations. The response of the lesser industrialized developed States of the Western European and Other States Group was that their ratio ("one in fourteen") was worse than the African. The point remained that the problem existed elsewhere in an equally serious form. Another example given was the request by the archipelagic States as a special interest group.

Some delegations were of the opinion that the matter would give more troubles than it would resolve. They argued, inter alia, that those 14 countries involved either qualified under existing special interests categorisations or would qualify in the near future. It was also argued that they complicated the numbers-game still further.

Others preferred to heed my appeal that its implications and possible solutions should be examined objectively. One could not brush aside the request of a number of developed countries who feared permanent exclusion from membership of the Council over excessive intervals of time.

Considerable time was consequently spent endeavouring to find some general formula by which this problem which originated in the Western European and Other States Group, both internal and external, may be resolved without destroying the overall balance and the principle of equitable geographical distribution.

It became clear that merely introducing a minimum of two instead of one in the provisions of paragraph 1 (e) would complicate, not resolve, the problem. It was also clear that only an increase, substantial as the calculations showed, would resolve the problem. The formula proposed by the principal aggrieved would result in a Council of 46.

I am unable to recommend any formulations at this stage only because it was impossible to obtain any figures and variations acceptable to any significant number of delegations. It would appear to me therefore that further reflection by the First Committee may be desirable, especially if it is agreed that:

(i) this problem is indeed important and the case for its resolution valid, having regard to the arguments advanced in support of the countries affected; and

(ii) a minimal increase in the size of the Council to accommodate them is not harmful.

There was feeling among a significant number of delegations that increases ranging from two to six would be the very maximum acceptable. If it is possible in the interim to find a solution to this problem, then it is my view that it ought to be included in my report to the Plenary next week.

2. Voting system

The second subject related to the voting system proposed by the ICNT under paragraph 7 of article 159.

It appeared to be equally important and had its close political relationship with the first.

Our negotiations focused on the decision-making process. With regard to questions of substance, the ICNT prescribes a 3/4 majority of members present and voting and also requires that such a majority must include "a majority of the members participating in that session".

There appeared to be general recognition that the process itself should not complicate or impede decisions of the Council in the performance of its executive functions. Reference was made, as an example, to the danger that could result in the application of Article 160, paragraph 2 (x), in a manner that undermined the powers and functions of the Council.

The crux of the problem appeared to have centered on the role of special interest groups in the decision-making process. It is not necessary to repeat the well-known arguments for and against the weight to be attached to their vote. It would appear to me that there is now general agreement that the traditional "veto system" as known in the United Nations Security Council cannot ever receive agreement here. Other terminologies have arisen but met similar fate.

We took a wise decision, in my view, not to follow terminology to oblivion. The problem was cleary one of giving reassurances to both the so-called "majority and minorities", perhaps not to much on the basis of principles as on that of reality and understanding.

We thus considered the following approaches:

(a) the attempt of the ICNT, which at first was thought to give difficulties to both sides, perhaps because of mutual concern that it might make the process more difficult;

(b) the suggestion that a certain majority must, in addition to the overall, be attained in each of a number of the special interest categorisations;

(c) the suggestion that maybe a compromise lay in setting such majorities in each of the two broad interest categorisations to which I have alluded, i.e. special interests and general interests represented by paragraph 1 (e);

(d) there is also an idea that a fixed number of affirmative votes should be accepted for a decision on a question of substance. In other words, it would be necessary to consider all interests and the question of their protection in arriving at such a figure, e.g., 25, 26, 27 or 28. The purpose of this appears to be to remove the psychological phobia for vetoes

masquerading under other terminologies:

(e) that if we could work out an agreeable ratio among the interest groups, perhaps there would be some basis for agreement in maintaining an overall 2/3 majority on such decisions.

The negotiations on this issue were perhaps the most intense and illuminating. The conclusion to be drawn was perhaps that all arguments had been adequately advanced in favour of each approach but that nothing productive of concrete success would be expected at the level of Negotiating Group 3. In spite of the arguments, I firmly believe that each side to the negotiating battle does not wish to give in or accept compromise until the rest of the package of core issues in the First Committee mandate is considered together. I am not swayed by the feeling that there is a deadlock; the situation appears to be that no useful purpose would be served by isolating items of a common package at this stage. If my assumption is correct, then efforts must be made in the First Committee to examine the results of Negotiating Groups 1, 2 and 3 together.

Some useful indications were evident. There is a general feeling that the overall majority required for decisions of substance in the Council should be two-thirds, not three-fourths. There is support for a compromise on protecting the interests of all States, special and general, while ensuring the effective operation of the Council.

The Western industrialized countries demand "adequate protection" which in effect involves being granted a blocking vote. They propose a concurrent majority system in which an overall majority (which some of them will accept as simple majority) must be coupled with qualified majorities in at least each of categories (a) and (b). They would accept as "compromise" the aspect of an informal proposal that would require an overall two-thirds majority which includes a two-thirds majority of the members present and voting in the categories under sub-paragraphs (a), (b), (c) and (d) of paragraph 1 taken as a whole, and in the category elected under sub-paragraph (e)".

The developing countries view this system as little different from the collective veto or weighted vote system. They raised, as an illustration, one danger of the system relating to the powers and functions of the Council. Article 160 (2)(x) provided a procedure whereby the plan of work submitted

by the Technical Commission to the Council would automatically be deemed to have been approved if the Council failed to take a decision on it within 60 days. It was argued that the exercise of the right of the blocking vote by six members in the Council could undermine the authority of that executive organ of the Authority.

An examination of how to cure such defect led to no fruitful results. Paragraph 7 of Article 159 thus remains unresolved.

3. Inter-relationship between Assembly and Council

The third question related to the inter-relationship between the respective powers and functions of the Assembly and the Council.

The general impression appeared to be that if our negotiation did underline anything, it was the fact that (i) there was nothing in the ICNT which seriously hurt anyone's position; (ii) it was difficult to obtain anything near consensus on changes; and (iii) in any case, a satisfactory resolution of the problems involved in the questions relating to the composition and decision-making process in the Council would probably ease the situation under this head.

4. Article 159, paragraph 2

A question was raised by some coastal States concerning the desirability of keeping what they considered to be an imbalance under this paragraph. A proposal was made to include coastal States which do not qualify under the special interests categorisation in the consideration for adequate representation.

The Conference has perhaps for the first time achieved a compromise proposal jointly sponsored by the members from the Group of Coastal States and the Group of Land-locked and Geographically Disadvantaged States. It is reflected in the annex to this report. I wish to record my appreciation for the co-operative effort.

Paul Bamela Engo
Chairman

ANNEX A

Possible Improvements*/

ARTICLE 148

Participation of developing countries in activities in the Area

The effective participation of developing countries in the activities in the Area shall be promoted as specifically provided for in this Part of the present Convention, 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 in overcoming obstacles arising from their disadvantaged location, including remoteness from **/ and access to and from the Area.

ARTICLE 159

Composition, procedure and voting

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

(a) four members from among countries which have made the greatest contributions to the exploration for, and the exploitation of, the resources of the Area, as demonstrated by substantial investments or advanced technology in relation to resources of the Area, including at least one State from the Eastern (Socialist) European region.

(b) four members from among countries which are major importers of the categories of minerals to be derived from the Area, including at least one State from the Eastern (Socialist) European region.

(c) four members from among countries which on the basis of production in areas under their jurisdiction are major exporters of the categories of minerals to be derived from the Area, including at least two developing countries **/ whose exports of such minerals have a substantial bearing upon their economies.

(d) six members from among developing countries, representing special interests. The special interests to be represented shall include those of States with large populations, States which are land-locked or geographically disadvantaged, States which are major importers of the categories of minerals to be derived from the Area, and least developed countries.

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*/ A formal report to the Chairman of the First Committee will contain an explanatory note on this Article.

**/ Underlining denotes changes.

(e) eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose the geographical regions shall be Africa, Asia, Eastern Europe (Socialist), Latin America and Western Europe and others.

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

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

(b) Coastal States, especially developing countries, which do not qualify under sub-paragraphs (a), (b), (c) and (d) of paragraph 1 are represented to a degree which is reasonably proportionate to their representation in the Assembly.

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

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

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

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

7. All decisions on questions of substance shall be taken by a three-fourths majority of the members present and voting, provided that such majority includes a majority of the members participating in that session. When the issue arises as to whether the question is one of substance or not, the question shall be treated as one of substance unless otherwise decided by the Council by the majority required for questions of substance. Decisions on matters of procedure shall be decided by a majority of the members present and voting.

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

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

REPORT TO THE PLENARY BY AMBASSADOR AGUILAR (VENEZUELA), CHAIRMAN OF THE SECOND COMMITTEE

1. As I stated at the 94th plenary meeting of the Conference, held on Wednseday, 3 May 1978, the Second Committee carried out its work at this session on the basis of the rules contained in document A/CONF.62/62 on organization of work, which was approved by the Plenary. In accordance with the rules established by this document, a number of negotiating groups were established by the Plenary to deal with matters wholly or partly within the competence of the Second Committee; I refer to Negotiating Groups 4, 6 and 7, which dealt wholly or in part with Second Committee matters.

2. The Plenary also established Negotiating Group 5 which, although dealing with problems connected with the settlement of disputes - a Plenary matter - has also been concerned with a question closely connected with matters within the Second Committee's competence. For this reason I sought at all times to maintain close co-ordination with the Chairmen of Negotiating Groups 4, 5 and 7 in order to avoid simultaneous meetings on subjects of particular interest to certain delegations. I wish here, to express my gratitude to Ambassadors Nandan and Stavroupoulos and Judge Manner, the Chairmen of Negotiating Groups 4, 5 and 7, respectively, for the spirit of co-operation they always showed, which enabled us to organize our work schedule in such a manner that simultaneous meetings were not held on subjects in whose discussion certain delegations considered it important to participate.

3. In referring to the work of the Negotiating Groups which dealt wholly or partly with matters within the mandate of the Second Committee, I must first mention that, at its meeting yesterday afternoon, the Second Committee received the reports submitted by the Chairmen of Negotiating Groups 4 and 7, presided over by Ambassador Nandan of Fiji and Judge Manner of Finland, respectively. No detailed discussion took place on the substance of the matters dealt with in these reports because delegations were kind enough to accept the suggestion I made to them that they should confine themselves to general comments in order to avoid repetition of a debate on the same question in the Commission and then in the Plenary. Delegations very kindly heeded my appeal and refrained from referring to the substance of the questions dealt with in the two reports.

4. I shall also not comment on the outcome of negotiations held in the two Groups, since Judge Manner was able to submit his report this morning in the plenary meeting and I understand that Ambassador Nandan will also be called upon by you to submit his report this evening. I wish only to say at this time that both of them worked in a most praiseworthy fashion and well deserved the congratulations they received from the members of the Committee and from all the participants in those Negotiating Groups for the perseverance, tact, prudence and wisdom they showed in guiding the work on those highly difficult and controversial questions. I wish to express to them once again my most sincere congratulations and my gratitude for their contribution to the work of the Committee and therefore also to that of the Conference.

5. I should now like to report on the work of Negotiating Group 6, over which, by decision of the Second Committee, I had the honour to preside. Negotiating Group 6 had to consider what the Plenary of the Conference regarded as one of the core issues: "Definition of the outer limits of the continental shelf and the question of Payments and Contributions with respect to the exploitation of the continental shelf beyond 200 miles". I shall not repeat all that I said concerning the work of this Group when I presented my preliminary report, as it is reflected in the summary record of the 94th plenary meeting of the Conference.

6. Beginning on 21 April, Negotiating Group 6 held seven informal meetings which were attended by a large number of delegations. I draw attention to the fact that this was an open negotiating group without any nuclear membership, unlike other negotiating groups. The discussion in the Group was mainly concerned with suggestions made by the delegations of Ireland and the Soviet Union and the second question the Group had to consider, namely the question of payments and contributions, was not the subject of major discussion. I do not propose to analyse here in detail the two proposals concerning article 76 which I have just mentioned. I shall simply point out that one of the features of the so-called Irish formula, which is one of these proposals, is that wherever the continental margin extends beyond 200 nautical miles there shall be adopted, or should be adopted, two criteria for establishing the outer edge of the continental margin, both of which should be taken as the starting point of the foot of the continental slope. The first criterion would be based on the thickness of sedimentary rocks and would consist in determining the outer limits of the shelf by linking the outermost fixed points at each of which this thickness is at least 1 per cent of the shortest distance from such point to the foot of the slope. The second criterion would take points not more than 60 miles from the foot of the continental slope.

7. The other proposal which was the main subject of discussion in Negotiating Group 6 was, as I said earlier, a proposal by the Soviet Union which would consist in limiting the natural prolongation of the land territory under water to 100 nautical miles from the outer limit of the 200-mile economic zone. In other words, where the continental margin does not extend beyond the confines of the 200-mile zone, the edge of the shelf would lie along the outer limit of the economic zone. If the edge of the margin extends less than 100 miles beyond the 200-mile zone, the outer limit of the shelf would be determined on the basis of scientifically sound geological and geomorphological data. Finally, where the margin extends beyond the 100-mile strip adjacent to the economic zone, the edge of the shelf would be fixed at a distance not exceeding 100 miles from the outer limit of the economic zone. In other words, under this proposal, a criterion of distance would determine the maximum possible extent of the continental margin.

8. Despite the efforts which were made, it did not prove possible, at this session, to reach general agreement on this important issue. The work done was nevertheless valuable and the discussion was focused on clarifying the definition in article 76, which is certainly one of the most important aspects of this problem.

I should add that the text prepared by the Secretariat at the Committee's request, namely document A/CONF.62/L.98 and Add.1 and 2, helped to facilitate the discussion of this question.

9. I still believe that recognition of the rights invoked by States whose continental shelf extends more than 200 miles, together with the system of payments and contributions provided for in article 82 of the Composite Text, and a solution of the aspirations of the group of land-locked and geographically disadvantaged States, constitutes an essential element of the general agreement on the matters referred to the Second Committee.

10. I now wish to inform the Plenary concerning the informal meetings of the Second Committee which were held to enable all the participating delegations to give their comments on the articles of the Composite Text contained in Parts II to X, and to explain their informal suggestions for overcoming the difficulties they might present.

11. In order to facilitate the Committee's discussion of these matters, I decided, with the Committee's agreement, to take the articles in the order in which they appear in the Composite Text. Some of the suggestions made had been submitted earlier at previous sessions. Others, however, consisted of new formulas for several of the points discussed at earlier sessions. Despite the limit imposed on the length of statements during this exercise, which extended over nine meetings, it unfortunately proved impossible to discuss all the suggestions submitted. In the case of some questions that were of interest to a number of delegations, such as the régime of islands and enclosed and semi-enclosed seas, to which reference is made in paragraph 6 of document A/CONF.62/62, it was not possible to devote the consideration they deserved to the informal suggestions submitted by several delegations on these matters. There was time only for us to hear the presentation of the informal suggestions on these questions.

12. I wish to point out, however, that, during the informal meetings devoted to these points, we were able to consider virtually all the suggestions up to article 73 inclusive and, as I have already mentioned, there was at least an opportunity for delegations interested in the questions of the régime of islands and enclosed and semi-enclosed seas to make informal suggestions concerning possible changes in those parts of the Composite Text.

13. Yesterday afternoon at an informal meeting of the Second Committee, I presented my report on this part of its work. I indicated in the report the suggestions which seemed to me to have received widespread support and had not been opposed by any of the delegations. I also indicated other proposals that were of concern to a particular group of delegations and were supported by the delegations with a direct interest in them. In the light of the discussion on the report, I consider that I can recommend to the Plenary the inclusion of some of these suggestions in the Informal Composite Negotiating Text for the review negotiations, whenever it is decided to undertake the review, and more specifically the following: first, the suggestion made by the delegation of Indonesia in relation to article 18 on the meaning of passage, which simply consists in inserting the word "or" in the English text of paragraph 1 (b) between

the words "roadstead" and "port facility". Secondly a suggestion by the same delegation to delete the word "safe" in paragraph 1 of article 53 on the right of archipelagic sea lanes passage. Lastly, a revised text for paragraphs 2 and 3 (a) of article 66 on anadromous stocks, on the basis of a text agreed upon by the delegations of Canada, Denmark, Iceland, Ireland, Japan, Norway, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The agreed amendments to article 66 are to redraft paragraph 2 as follows: "The State of origin of anadromous stocks shall ensure their conservation by the establishment of appropriate regulatory measures for fishing in all waters landwards of the outer limits of its exclusive economic zone and for fishing provided for in subparagraph (b) of paragraph 3. The State of origin may, after consultations with other States referred to in paragraphs 3 and 4 fishing these stocks, establish total allowable catches for stocks originating in its rivers". Paragraph 3 (a) would read: "Fisheries for anadromous stocks shall be conducted only in waters landwards of the outer limits of exclusive economic zones, except in cases where this provision would result in economic dislocation for a State other than the State of origin. With respect to such fishing beyond the outer limits of the exclusive economic zone, States concerned shall maintain consultations with a view to achieving agreement on terms and conditions of such fishing giving due regard to the conservation requirements and needs of the State of origin in respect of these stocks".

14. To complete this report, which has been longer than I would have wished, I have to report that it was not possible, at the meetings of the Second Committee held yesterday morning and afternoon, to discuss the substantive part of the reports submitted by the Chairmen of Negotiating Groups 4 and 7. Nor was it possible to discuss the report which I myself submitted as Chairman of Negotiating Group 6. Owing to lack of time, it was not possible to examine thoroughly the recommendations which I made concerning the possibility of incorporating in a Revised Text of certain suggestions which were received on some of the questions which were termed the core issues. I believe I should point out that delegations agreed with my suggestion that they should reserve for the plenary meeting their statements on the substance of these matters. The sole purpose of my suggestion was to avoid repetition of discussion of these points in the Committee and then in the plenary Conference, and I therefore believed it necessary, in keeping with the spirit of co-operation shown by all delegations without exception, that they should confine themselves to general comments as they would now have, in Plenary, an opportunity to give their views on the substantive questions dealt with in the reports of Negotiating Groups 4 and 7 and in the reports of Negotiating Group 6 and of the Second Committee.

15. In conclusion, I must again express my thanks to the Chairmen of Negotiating Groups 4, 5 and 7, to the members of the delegations which participated in the work of the Second Committee, to the staff of the Secretariat and, finally, to each and every one of those who, in one way or another, made possible

for the work of the Second Committee to proceed in normal fashion at this session. Although all these efforts were not crowned with the final and complete success for which we had hoped, there was clearly an animus negotiandi and genuine negotiation did take place. The meetings of the Negotiating Groups and of the Committee concentrated on really important issues and were directed towards finding suitable formulas for reaching compromise solutions by consensus. To sum up, therefore, I consider that the work of the Second Committee, and of the Negotiating Groups which, in one way or another, were connected with its efforts, produced satisfactory results. Even in those cases where the positions remained apart, there was a genuine effort to explore the possibilities of bringing together different viewpoints. I believe I can state that we worked in a serious manner and strove to achieve the best possible results. In my view, we did, in fact, achieve results which justify the arduous discussions and long debates we held during this session.

EXPLANATORY MEMORANDUM ON THE PROPOSALS (NG4/9/Rev.2) BY THE CHAIRMAN OF NEGOTIATING GROUP 4 - AMBASSADOR SATYA NANDAN (FIJI)

You will recall that Negotiating Group 4 was established by the plenary to negotiate the problems arising out of Articles 69 and 70 of the ICNT dealing with access to the living resources of the exclusive economic zones of coastal States by the land-locked and geographically disadvantaged States.

I think all of us realize the importance of resolving this difficult problem to which the Conference has given priority as one of the hard core issues.

When the Negotiating Group concluded its discussion of the different aspects of this issue at our last meeting, I stated that I would undertake consultations with as many of you as possible and suggest to you a draft formulation which in my assessment could be the basis of a compromise. I have since undertaken very intensive consultations with as broad a spectrum of the membership of the Negotiating Group, particularly those parties most concerned, as was possible in the limited time at my disposal.

As a result of these consultations, and after considering the various factors raised in the Negotiating Group and in the text that we had before us, I am today able to present my suggestions for a solution to the problem. I submit these suggestions with some diffidence but as my humble contribution towards reaching a compromise on this vexed issue which has thus far eluded acceptable resolution.

The compromise proposals I am suggesting consist of an amendment of article 62, paragraph 2 of the ICNT, a redraft of article 69, on land-locked States, and a redraft of article 70 dealing with States with special characteristics.

The proposals have been circulated in document NG4/9 dated 28 April 1978.

Let me now turn to the major areas of difficulty which had to be considered in the formulation of these proposals. First of all, it will be recalled that the land-locked and geographically disadvantaged States stated that their participation in the neighbouring exclusive economic zones should be on a preferential or priority basis. Accordingly, they suggested that amendments be made to articles 69 and 70 to expressly include a reference to priority or preference in order to make those articles more meaningful. Many coastal States felt that such explicit wording was not necessary and contended that preference for these States was implicit in the special provisions contained in articles 69 and 70.

While I can understand the views expressed by some of the coastal States on this matter, I am convinced that there is need for some clarification of the relationship between the provisions of articles 69 and 70 and those of article 62. In my assessment, the best way to achieve this is to amend article 62, paragraph 2, by providing that the coastal State in giving access to the surplus of the allowable catch to other States shall have particular regard to the provisions of articles 69 and 70*/ especially with respect to the developing States referred to in these articles.

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*/ **The provisions referred to in this paragraph appeared in document NG4/9. These were later replaced by new provisions which appear in document NG4/9/Rev.2 which is appended as Annex A to this memorandum.**

This amendment has the merit of avoiding the use of the term "priority" or "preference" in articles 69 and 70, while, at the same time, bringing out more clearly the need for special consideration to be given to the States mentioned in those articles. In my view this is a fair and reasonable compromise between the position of the land-locked and geographically disadvantaged States which sought to include reference to priority or preference and that of those coastal States who wished to suppress any such reference.

It will be noted that in this proposal special emphasis has also been given to accommodate the developing land-locked and geographically disadvantaged States. This, of course, is consistent with the almost unanimous view that the interests of developing land-locked and geographically disadvantaged States must be put on a higher footing than those of developed land-locked and geographically disadvantaged States. In this regard, I might mention that in the substantive provisions of articles 69 and 70, the distinction between developed and developing land-locked and geographically disadvantaged States has been made even clearer.

Let me now turn to a second important problem which relates to the concern of the land-locked and geographically disadvantaged States of being excluded from participation where the coastal State has the capacity to harvest the entire allowable catch. It was the contention of the coastal States that participation by the land-locked and geographically disadvantaged States in such a situation could have a detrimental effect on their own fishing communities and would lead to discrimination against their own nationals by giving the land-locked and geographically disadvantaged States priority over them.

On the other hand, the land-locked and geographically disadvantaged States expressed serious apprehension that a coastal State through joint ventures with advanced fishing nations would harvest the entire allowable catch. They argued that their exclusion from participation in this situation would not be equitable and would be contrary to the special consideration for land-locked and geographically disadvantaged States which underlies the provisions of articles 69 and 70.

I do not think that the two viewpoints are irreconcilable if each side tries to understand the other's genuine preoccupations. In my view, if the coastal State is able to harvest the entire allowable catch on its own, the land-locked and geographically disadvantaged States do not have a strong basis for insisting on participation in such a situation. To allow such participation in these circumstances might well bring about the kind of detrimental effect which the coastal State wishes to avoid. At the same time if the harvesting of the entire allowable catch by the coastal State is the consequence of joint ventures or other similar arrangements with third parties, I think the land-locked and geographically disadvantaged States have a point when they say that their exclusion then would not be equitable.

The solution that I am therefore suggesting is the inclusion in articles 69 and 70 of a new provision to deal with this situation. This is to be found in paragraph 3 of article 69 and paragraph 4 of article 70. Under this new provision, in the kind of situation I have just mentioned the coastal State shall take appropriate measures to enable the developing land-locked and geographically disadvantaged States to have adequate participation in such joint ventures or other similar arrangements on terms satisfactory to the parties concerned.

There are three important points to be noted about this new provision. First, it provides for a very special and limited situation and not to all cases where the coastal State is able to harvest the entire allowable catch. Secondly, it does not apply to developed land-locked and geographically disadvantaged States to have any claim to participation in such a situation. Thirdly, emphasis is put on the developing land-locked and geographically disadvantaged States which have actually been fishing in the particular exclusive economic zone at the time when the situation arises.

Let me now turn to some aspects of terminology and definition.

One point of special discussion has been the use of the term "geographically disadvantaged States". The land-locked and geographically disadvantaged States raised several arguments in favour of using this term in preference to any other description. The coastal States, however, maintained their reservations and objections to the use of the term pointing to the difficulty of having a precise definition of the term. In the face of this impasse, I do not believe we will be advancing our work if we remain wedded to one terminology or another. It was to overcome this impasse that in 1976 I had, in the Group of 21, suggested that we might usefully employ the term "States with special characteristics". This I still believe is a compromise between the term geographically disadvantaged States and the ICNT which does not use any term or appellation at all. As many from both groups have already said, what is more important is the content and not the label.

A related point, therefore, is the States which are to be covered by article 70. Several geographically disadvantaged States have expressed concern as to whether they were covered by the description in article 70, paragraph 2. Accordingly, they suggested elements additional to the two now contained in article 70. The difficulty here was that many States felt that these new elements would open the door to many other States for whom article 70 was not intended. I have made a serious attempt to improve upon the description by carefully considering several of the proposals that were made as well as some of my own formulations. Regretfully, I have not been able to find any additional criterion that is widely acceptable. Let me say however to those States who wanted additional concessions that it is my view that they are indeed covered in article 70, paragraph 2. The only change I could make was to clarify that States mentioned in the first limb or criterion include States bordering enclosed or semi-enclosed areas. It should be noted that this is not a new criterion but a clarification of the existing provision.

Just as much as the inclusion of the term "geographically disadvantaged States" was opposed, so also was there opposition to the proposal to delete the term "right" which appears in articles 69 and 70. The arguments for and against the use of the term "right" are well known to us all. Here again I would suggest that the proper approach would be for delegations to analyse the context and the content of the use of the term. In my view there is no inconsistency in the use of the term in this context and the sovereign rights of the coastal State over the resources in the exclusive economic zone. Accordingly, I have retained the use of the term which already appears in the ICNT.

I would now like to turn to one other matter of importance, and that is the distinction between developed and developing land-locked and geographically disadvantaged States which many delegations felt should be made. I would like to point out that the proposal before you does make this distinction in several places, such as in the amendment I have already referred to in paragraph 2 of article 62, as well as in the new provisions I have suggested in article 69, paragraph 3 and article 70, paragraph 4. Furthermore, both articles 69 and 70 provide for the participation of the developed land-locked and geographically disadvantaged States only in the exclusive economic zone of developed coastal States. Recognition is also given to those States which have habitually fished in those zones to avoid adverse economic effects on them.

Finally, to facilitate your consideration of these new suggestions I should mention that I used the "anonymous text" reference NG4/2 as a basis for my approach to articles 69 and 70.

That, distinguished representatives, concludes my summary of the most important features of this compromise proposal. Of course, in the course of negotiations and consultations various other points and changes were suggested by both sides. However, I think our duty is to focus on the fundamental issues that I have mentioned.

I am fully aware that there are delegations on both sides who have strongly held views on one or other of these fundamental aspects. I am fully aware, therefore, that these delegations will have reservations over aspects of the various compromises that I am offering.

Because of this I know that if delegations see these suggestions from the viewpoint of whether or not it reflects their maximum positions they will be tempted to find many reasons to reject the paper. I can only hope that delegations from both sides do not approach these proposals from that viewpoint. Only the other day in this negotiating group we heard a stirring call by the distinguished delegate of Tanzania asking us to really demonstrate a spirit of compromise - a spirit of give and take. I was very much heartened in my intensive consultations by the fact that an overwhelming number of the delegations I spoke to did demonstrate that spirit.

I hope you will maintain this spirit when you now consider these proposals. If you have reservations I can only appeal to you to seriously consider if you can accept these proposals in the same spirit as others who may have different reservations are prepared to accept it nevertheless. Above all, I think all of us realize that this may be the last opportunity we have to solve this problem. For I honestly believe that if we should forego this opportunity, it may not easily return again.

This concludes, distinguished delegates, my explanatory remarks to the proposal. It only remains for me to express to you my gratitude for the very generous co-operation that all of you have extended to me over the past weeks. I am certain that I can count on your continued co-operation.

In view of the fact that the proposals were distributed to you only today and in the light of my explanatory statement just made, I am sure that you would need some time to study them. I would, therefore, suggest that we avoid substantive discussion this afternoon although I would be prepared to give the floor to any delegation that might wish to speak. I shall of course make appropriate arrangements for further meetings and in any case I will be available to any delegation which might wish to discuss these proposals further.

Annex A

COMPROMISE SUGGESTIONS BY THE CHAIRMAN OF NG.4

Amend para.(2) of Art.62 to read as follows:

"The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States mentioned therein."

Article 69
Right of land-locked States

1. Land-locked States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.

2. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account inter alia:

(a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;

(b) the extent to which the land-locked State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;

(c) the extent to which other land-locked States and States with special geographical characteristics are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;

(d) the nutritional needs of the populations of the respective States.

3. The terms and modalities of such participation shall be established by the States concerned through bilateral, sub-regional or regional agreements taking into account inter alia:

(a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;

(b) the extent to which the State with special geographical characteristics, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, sub-regional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;

(c) the extent to which other States with special geographical characteristics and land-locked States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;

(d) the nutritional needs of the populations of the respective States.

4. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall co-operate in the establishment of equitable arrangements on bilateral, sub-regional or regional basis to allow for participation of developing States with special geographical characteristics of the same sub-region or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the sub-region or region as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of this provision the factors mentioned in paragraph 3 shall also be taken into account.

5. Developed States with special geographical characteristics shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same sub-region or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.

6. The above provisions are without prejudice to arrangements agreed upon in sub-regions or regions where the coastal States may grant to States with special geographical characteristics of the same sub-region or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

3. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall operate in the establishment of equitable arrangements on bilateral, sub-regional or regional basis to allow for participation of developing land-locked States of the same sub-region or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the sub-region or region, as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of this provision the factors mentioned in paragraph 2 shall also be taken into account.

4. Developed land-locked States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same sub-region or region having regard to the extent to which the coastal State in giving access to other States to the living resources of its exclusive economic zone has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.

5. The above provisions are without prejudice to arrangements agreed upon in sub-regions or regions where the coastal States may grant to land-locked States of the same sub-region or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

Article 70
Right of States with special geographical characteristics

1. States with special geographical characteristics shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same sub-region or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.

2. For the purposes of the present Convention, "States with special geographical characteristics" means coastal States, including States bordering enclosed or semi-enclosed seas, whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other States in the sub-region or region, for adequate supplies of fish for the nutritional purposes of their populations or parts thereof, and coastal States which can claim no exclusive economic zones of their own.

REPORT TO THE PLENARY BY THE CHAIRMAN OF THE THIRD COMMITTEE AMBASSADOR A. YANKOV (BULGARIA)

INTRODUCTORY NOTES

1. At its 38th meeting on 12 May 1978, the Committee considered the report on the informal negotiations which took place during the seventh session and indeed completed its work.

2. Even a very brief assessment of the work done by the Third Committee and its achievements could, with no exaggeration, emphasize an important feature: that at each session it has made substantial progress. This was especially the case during the last three sessions of the Conference. I am pleased to note that at this session further progress was achieved on the main issues within the terms of reference of the Committee. It has brought the ICNT to a stage of a package which may offer a reliable basis for consensus.

3. I would like further to note that at this session intensive negotiations took place, especially on Part XII of the ICNT (protection and preservation of the marine environment) on which a number of informal written proposals were submitted. They were considered in informal meetings of the Committee, and the Committee conducted its work in accordance with the principle of full involvement of the interested delegations. The informal negotiations were carried out in open-ended meetings with flexible use of different means of negotiation, but always on the condition that the results should be brought to the attention of the Committee as a whole. It has always been the strategy of the Third Committee from the very beginning with respect to its procedure, and especially during the last two sessions, to concentrate negotiations on the key issues within its terms of reference, allocating to their consideration most of the time available on the basis of a selective and restrictive approach. Having made these general observations on the work of the Committee, I would like now to report on the results of the negotiations on Parts XII, XIII and XIV.

I. RESULTS OF THE NEGOTIATIONS ON PART XII
(Protection and Preservation of the Marine Environment)

1. As I pointed out, during this session intensive and meaningful negotiations took place in a spirit of understanding and co-operation with the common objective of reaching a compromise.

On Part XII the negotiations were concentrated on key issues relating to vessel source pollution. We had to take into consideration some new developments in the field of marine pollution control and the Amoco Cadiz disaster has increased the awareness and the concern of the magnitude of possible hazards and the need to improve preventive measures by strengthening both the standard setting procedure and the enforcement measures.

During the deliberations there has been an earnest effort to keep a viable balance between the ecological considerations and the legitimate demands of expanding international navigation, between national legislation and enforcement

measures on the one hand and the international rules, standards and regulations on the other, between coastal State and flag State jurisdiction, between the interests of developed maritime powers and developing countries.

I would like to take this opportunity to express my thanks and appreciation to all delegations for their co-operation and to reiterate my gratification to Sr. José Luis Vallarta of Mexico for his most valuable contribution in conducting the informal negotiations on Part XII.

2. Main results of the negotiations

The results of the negotiations could be placed into four categories, namely:

(a) Provisions on which a consensus was reached;

(b) Provisions emerging from intensive negotiations resulting in compromise formulae with a substantial degree of support as to provide a reasonable prospect for a consensus, but on which no consensus was reached, since there are still some reservations and objections;

(c) Informal proposals submitted for consideration by the Committee on which, owing to lack of time or divided views, no compromise formulae emerged and therefore require further intensive negotiations; and

(d) Provisions of the ICNT which were not challenged and on which no proposals were made for substantive modifications. Therefore my assumption would be that they should remain as they stand.

These provisions and informal written proposals are reproduced in an informal document, MP/24, for the purpose of facilitating delegations future references. The contents of MP/24 were considered in the 38th meeting. The document retains its informal character, though considered in a formal meeting. It covers only the results of the informal negotiations on Part XII. Three categories of provisions have emerged.

PROVISIONS UNDER THE FIRST CATEGORY (that is, on which a consensus was reached)

Article 1 - Use of terms
Paragraph 4:

There is no change in this paragraph, but it was understood that the term "marine environment" includes "marine life".

Article 1
Paragraph 5:

Delete subparagraph (c).

Article 195 - Measures to prevent, reduce and control pollution of the marine environment.

Add new Paragraph 5:

"The measures taken in accordance with the present Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened, or endangered species and other marine life."

Article 212 - Pollution from vessels

Paragraph 1:

Add the following at the end of the first sentence:

"... and promote the adoption, in the same manner, wherever appropriate, of routing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline and related interests of coastal States".

Paragraph 3:

Add the following at the end of the first sentence:

"... including vessels exercising the right of innocent passage".

Paragraph 6:

Add a new paragraph which reads as follows:

"The international rules and standards referred to in this Article should include inter alia those related to prompt notification to coastal States, whose coastlines or related interests may be affected by incidents including maritime casualties which involves discharges or probability of discharges."

NOTE: It should be pointed out further, that on Article 212, paragraph 6, it was agreed that the addition of this new paragraph did not limit in any way the meaning, in this or other Articles in Part XII, of the term "international rules and standards".

Article 213 - Pollution from or through the atmosphere

Paragraph 1:

Change the period at the end of the paragraph to a comma and add the following: "and the safety of air navigation".

PROVISIONS UNDER THE SECOND CATEGORY (that is, provisions emerging from intensive negotiations resulting in compromise formulae with a substantial degree of support as to provide a reasonable prospect for a consensus, but on which there are still some reservations and objections)

Article 212 - Pollution from vessels

Paragraph 2 bis:

Insert the following:

"States which establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessels into their ports or internal waters or a call at their off-shore terminals shall give due publicity to such requirements and shall communicate them to the competent international organization. Whenever such requirements are established in identical form by two or more coastal States in an endeavour to harmonize policy, the communication shall indicate which States are participating in such co-operative arrangements. Every State shall require the master of a vessel flying its flag or of its registry, when navigating within the territorial sea of a State participating in such co-operative arrangements, to furnish, upon the request of that State, information as to whether it is proceeding to a State of the same region participating in such co-operative arrangements and, if so, to indicate whether it complies with the port entry requirements of that State. The provisions of this article shall be without prejudice to the continued exercise by a vessel of its right of innocent passage or to the application of paragraph 2 of Article 25."

NOTE: There were reservations and objections on this Part with regard to the fourth sentence, starting with the words "Every State shall require the master of a vessel, etc. ..." In fact, this provision is on the basis of existing international law but observations and objections were made with regard to the competence of every State to require the master of a vessel flying its flag or of its registry, when navigating within the territorial sea of a State participating in co-operative arrangements, to furnish, upon the request of that State, information as to whether it is proceeding to a State of the same region participating in such co-operative arrangements and, if so, to indicate whether it complies with the port entry requirements of that State.

Article 221 - Enforcement by coastal States

Paragraph 6:

Redraft the text as follows:

"Where there is clear objective evidence that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation of applicable international rules and standards or national laws and regulations conforming and giving effect to such international rules and standards for the prevention, reduction and control of pollution from vessels, resulting in discharge

causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive economic zone, that State may, subject to the provisions of Section 7 of this Part of the present Convention provided that the evidence so warrants, cause proceedings, including arrest of the vessel, to be taken in accordance with its laws."

NOTE: Objections were made on the use of the word "objective" in the expression "clear objective evidence" and on the words "arrest of the vessel".

Article 222 - Measures relating to maritime casualties to avoid pollution

Replace Article 222 by the following text:

"1. Nothing in this Part of the present Convention shall prejudice the right of States, pursuant to international law, both customary and conventional, to adopt and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline and related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.

"2. For purposes of this article, "maritime casualty" means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo."

NOTE: On this article widespread and substantial support emerged during the negotiations, but there were some reservations and objections on the use of the words "both customary and conventional", international law.

Article 227 - Investigation of foreign vessels

Paragraph 1:

Redraft as follows:

"1. States shall not delay a foreign vessel longer than is essential for purposes of investigation provided for in Articles 217, 219 and 221 of this Part of the present Convention. Any physical inspection of a foreign vessel shall be limited to an examination of such certificates and records as the vessel is required to carry by generally accepted international rules and standards or of any similar documents which it is carrying. Following such an examination, an inspection of the vessel may be undertaken only when there are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially with the particulars of those documents or when the contents of such documents are not sufficient to confirm or verify a suspected violation or when the vessel is not carrying

valid certificates and records. If the investigation indicates a violation of applicable laws and regulations or international rules and standards for the preservation of the marine environment release shall be made promptly to reasonable procedures such as bonding or other appropriate financial security. Without prejudice to applicable international rules and standards relating to the seaworthiness of ships, the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard."

NOTE: On this Article there are still some other outstanding issues which are referred to under the third category, namely informal proposals submitted for consideration by the Committee on which, owing to lack of time or divided views, no compromise formula emerged and therefore require further intensive negotiations.

Article 231 - Monetary penalties and the observance of recognized rights of the accused

Paragraph 1:

Redraft as follows:

"Only monetary penalties may be imposed with respect to violations of national laws and regulations or applicable international rules and standards, for the prevention, reduction and control of pollution of the marine environment from vessels, committed by foreign vessels beyond internal waters, except in case of a wilful and serious act of pollution in the territorial sea."

NOTE: Reservations and objections were made by some delegations on the use of the term "internal waters" and preference was expressed for the words "territorial sea or archipelagic waters". But even with these reservations and objections, this provision is a step further to compromise than the existing text in the ICNT.

PROVISIONS UNDER THE THIRD CATEGORY (that is, informal proposals submitted for consideration by the Committee on which, owing to lack of time or divided views, no compromise formulae emerged and therefore require further intensive negotiations)

These proposals refer to the following Articles:

Article	1,	para.	5(a)(i)
"	209	"	1 and 5
"	211	"	5
"	212	"	3
"	219	"	1, 2 and 4
"	221	"	5 and 8
"	227		
"	229	"	1
"	234		
"	236		

NOTE: There was an informal proposal contained in document MP/16 which suggests a new Part XIV bis on General Safeguards relating to Articles 225, 226, 228 and 231, paragraph 2, 232 and 233, while in Section 7 of Part XII will remain the following Articles: 224, 227, 229, 230, 231 paragraph 1 and 234, entitled Safeguards in Respect of Pollution Control. The suggestion to have a new Part XIV bis is beyond the terms of reference of the Third Committee, for it covers matters relating to general safeguards, mainly concerning navigation and other uses of the sea and not merely protection and preservation of the marine environment. In this field Section 7 covers the safeguards with respect to the part on protection and preservation of the marine environment.

II. RESULTS OF THE NEGOTIATIONS ON PART XIII (Marine Scientific Research) and PART XIV (Development and Transfer of Marine Technology)

On these two Parts there was an informal meeting under the chairmanship of the Chairman of the Third Committee. Comments and observations were made by delegations also during the 35th, 36th, 37th and 38th meetings of the Committee held during this session.

The main effort on these two Parts was to strike a balance between the interests of coastal States and States conducting marine scientific research, as well as between developed and developing States. It has also been emphasized that international co-operation and the contribution of international organizations in promoting marine scientific research are playing an increasing role.

Critical observations and suggestions were made particularly with regard to the following articles:

Article 247 - Marine scientific research in the exclusive economic zone and on the continental shelf.

Article 248 - Research project under the auspices of, or undertaken by, international organizations.

Article 250 - Duty to comply with certain conditions.

Article 253 - Implied consent.

Article 255 - Right of neighbouring landlocked and geographically disadvantaged States.

Article 264 - Responsibility and liability.

Article 265 - Settlement of disputes relating to marine scientific research with special reference to Article 296(3)(a).

Article 274 - Co-operation with international organizations and the Authority in the transfer of technology to developing States.

Article 275 - Objectives of the Authority with respect to transfer of technology.

Article 276 - Establishment of regional centres.

A proposal was made for a new Article 276 bis on the establishment of national marine scientific and technological centres in developing States.

The results of the discussions were encouraging and show that the disagreements that have repeatedly been witnessed by us during previous sessions regarding marine scientific research and transfer of technology have yielded to the expression of a desire for possible improvements which could offer not only a good basis for further negotiations, but a substantially improved prospect of a compromise which could lead to a consensus on the overall package of marine scientific research.

Of course, there were certain reservations, objections and new proposals particularly on the above-mentioned Articles. However, in my view there was an overwhelming support for the suggestion to keep the package of Parts XIII and XIV as they stand in the ICNT without proceeding to further substantive modifications. This was indeed the predominant trend that emerged from our informal and formal negotiations without prejudice to the different positions taken by some delegations to the effect that there was a need for further negotiations in order to agree on some substantive changes of the text. But it was pointed out that these might lead to re-opening the negotiations on basic issues relating to the regime for the conduct of marine scientific research in the economic zone and on the continental shelf. Such a course of action could be justified only with substantive support by delegations mostly interested in the consideration of the outstanding issues with a view to reaching a new compromise formula, which has to be considered by the Third Committee.

In conclusion, I should like to make the following suggestions:

First, to incorporate in the revised Part XII of the ICNT the provisions placed under the first category, that is provisions on which a consensus was reached.

Secondly, to consider the possibility of incorporating in the revised ICNT most, if not all of the suggestions under the second category taking into account the views expressed during the meetings of the Third Committee and at the Plenary meeting.

And thirdly, to undertake further intensive negotiations on the other outstanding issues as indicated under the third category.

Finally, I should like to take this opportunity once again to express my appreciation to all the delegations for their co-operation and to the Secretariat for its most valuable assistance.

RESULTS OF NEGOTIATIONS IN THE THIRD COMMITTEE ON PARTS XII, XIII, AND XIV DURING THE SEVENTH SESSION

I. PROVISIONS ON WHICH CONSENSUS WAS REACHED

ARTICLE 1

Use of terms

Paragraph 5: Delete subparagraph (c).

ARTICLE 195

Measures to prevent, reduce and control pollution of the marine environment

Paragraph 5: Add a new paragraph 5:

The measures taken in accordance with the present Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened, or endangered species and other marine life.

ARTICLE 212

Pollution from vessels

Paragraph 1: Add the following at the end of the first sentence:
"...and promote the adoption, in the same manner, wherever appropriate, of routing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline and related interests of coastal States".

Paragraph 3: Add the following at the end of the first sentence:
"...including vessels exercising the right of innocent passage".

Paragraph 6: Add a new paragraph which reads as follows:

The international rules and standards referred to in this Article should include inter alia those related to prompt notification to coastal States, whose coastlines or related interests may be affected by incidents including maritime casualties which involves discharges or probability of discharges.

ARTICLE 213

Pollution from or through the atmosphere

Paragraph 1: Change the period at the end of the paragraph to a comma and add the following: "and the safety of air navigation".

II. PROVISIONS EMERGING FROM INTENSIVE NEGOTIATIONS RESULTING IN COMPROMISE FORMULAE WITH A SUBSTANTIAL DEGREE OF SUPPORT AS TO PROVIDE A REASONABLE PROSPECT FOR CONSENSUS, BUT ON WHICH THERE ARE STILL SOME RESERVATIONS AND OBJECTIONS

ARTICLE 212

Pollution from vessels

Paragraph 2 bis: Insert the following:

States which establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessels into their ports or internal waters or a call at their off-shore terminals shall give due publicity to such requirements and shall communicate them to the competent international organization. Whenever such requirements are established in identical form by two or more coastal States in an endeavour to harmonize policy, the communication shall indicate which States are participating in such co-operative arrangements. Every State shall require the master of a vessel flying its flag or of its registry, when navigating within the territorial sea of a State participating in such co-operative arrangements, to furnish, upon the request of that State, information as to whether it is proceeding to a State of the same region participating in such co-operative arrangements and, if so, to indicate whether it complies with the port entry requirements of that State. The provisions of this article shall be without prejudice to the continued exercise by a vessel of its right of innocent passage or to the application of paragraph 2 of article 25.

ARTICLE 221

Enforcement by coastal States

Paragraph 6: Redraft the text as follows:

Where there is clear objective evidence that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation of applicable international rules and standards or national laws and regulations conforming and giving effect to such international rules and standards for the prevention, reduction and control of pollution from vessels, resulting in discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive economic zone, that State may, subject to the provisions of Section 7 of this Part of the present Convention provided that the evidence so warrants, cause proceedings, including arrest of the vessel, to be taken in accordance with its laws.

ARTICLE 222

Measures relating to maritime casualties to avoid pollution

Replace article 222 by the following text:

1. Nothing in this Part of the present Convention shall prejudice the right of States, pursuant to international law, both customary and conventional, to adopt and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline and related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.

2. For purposes of this article, "maritime casualty" means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo.

ARTICLE 227

Investigation of Foreign Vessels

Redraft paragraph 1 as follows:

1. States shall not delay a foreign vessel longer than is essential for purposes of investigation provided for in Articles 217, 219 and 221 of this Part of the present Convention. Any physical inspection of a foreign vessel shall be limited to an examination of such certificates and records as the vessel is required to carry by generally accepted international rules and standards or of any similar documents which it is carrying. Following such an examination, an inspection of the vessel may be undertaken only when there are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially with the particulars of those documents or when the contents of such documents are not sufficient to confirm or verify a suspected violation or when the vessel is not carrying valid certificates and records. If the investigation indicates a violation of applicable laws and regulations or international rules and standards for the preservation of the marine environment release shall be made promptly subject to reasonable procedures such as bonding or other appropriate financial security. Without prejudice to applicable international rules and standards relating to the seaworthiness of ships, the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard.

ARTICLE 231

Monetary penalties and the observance of recognized rights of the accused

Paragraph 1: Redraft as follows:

Only monetary penalties may be imposed with respect to violations of national laws and regulations or applicable international rules and standards, for the prevention, reduction and control of pollution of the marine environment from vessels, committed by foreign vessels beyond internal waters, except in case of a wilful and serious act of pollution in the territorial sea.

III. INFORMAL PROPOSALS ON WHICH, OWING TO LACK OF TIME OR DIVIDED VIEWS, NO COMPROMISE FORMULAE EMERGED

PORTUGAL

ARTICLE 1

Use of terms

Replace sub-paragraph 5(a)(i) by the following:

"Dumping" means:

(i) any deliberate disposal at sea of wastes or other matter from vessels, aircrafts, platforms or other man-made structures at sea,

Add the following sub-paragraph 5(d):

"Incineration at sea" means:

The deliberate combustion of wastes and other matter on board of vessels, platforms or other man-made structures at sea for the purpose of their thermal destruction.

Add the following phrase "dumping and incineration at sea" whenever a reference of dumping is made in article 195, sub-paragraphs 3(a)(iii), article 211, paragraphs 1, 2, 4, 5 and 6 and article 217 (see MP/11).

BRAZIL

ARTICLE 209

Pollution from sea-bed activities

Replace the present paragraph 1 by the following:

1. Coastal States shall establish national laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connexion with all activities, artificial islands, installations and structures in the sea-bed under their jurisdiction.

Replace paragraph 5 by the following:

5. States, acting in particular through competent international organizations or diplomatic conference, shall establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment arising from or in connexion with all activities, artificial islands, installations and structures in the sea-bed under their jurisdiction. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary (see MP/4).

ARTICLE 211

Dumping

Replace the present paragraph 5 by the following:

5. Dumping within the territorial sea and the exclusive economic zone or onto the continental shelf shall not be carried out without the express prior approval of the coastal State, which has the right to permit, regulate and control such dumping, pursuant to paragraph 2 of article 195 (see MP/4).

BAHAMAS, BARBADOS, CANADA, ICELAND, KENYA, NEW ZEALAND, PHILIPPINES, PORTUGAL, SOMALIA, SPAIN AND TRINIDAD AND TOBAGO

ARTICLE 212

Pollution from vessels

Insert the following sentence between the first and second sentences

3. Such laws and regulations, inasmuch as they concern design, construction, manning or equipment of foreign ships, shall be in conformity with generally accepted international rules where such rules exist (see MP/8).

FRANCE

ARTICLE 219

Enforcement by port States

(Changes made to the existing text are underlined)

1. When a vessel is voluntarily within one of the ports or at one of the offshore terminals of a State, that State may undertake investigations and, where warranted by the evidence of the case, cause proceedings to be taken as provided in paragraph 2 in respect of any discharge from that vessel in violation of applicable international rules and standards established through the competent international organization or general diplomatic conference, outside the internal waters, territorial sea, or exclusive economic zone of that State.

2. No proceedings pursuant to paragraph 1 shall be taken in respect of a discharge violation in the internal waters, the territorial sea or exclusive economic zone of another State unless requested by that State, or outside the economic

zone of a State unless requested by the flag State, or unless the violation has caused or is likely to cause pollution in the internal waters, territorial sea or exclusive economic zone of the State instituting the proceedings.

4. The records of the investigation carried out by a port State pursuant to the provisions of this article shall be transferred to the flag State or to the coastal State at their request. Any proceedings taken by the port State on the basis of such an investigation, subject to the provisions of section 7 of this Part of the present Convention, may be initiated only at the request of a flag State or coastal State when the violation has occurred outside the economic zone or within the internal waters, territorial sea or exclusive economic zone of that coastal State and the evidence and records of the case and any bond posted with the authorities of the port State shall be transferred to the flag State or to the coastal State making such a request (see MP/6).

CANADA, ICELAND AND TRINIDAD AND TOBAGO

ARTICLE 221

Enforcement by coastal States

Redraft paragraph 5 as follows:

Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, violated applicable international rules and standards or national laws and regulations confirming and giving effect to such international rules and standards for the prevention, reduction and control of pollution from vessels and the violation has resulted in a substantial discharge into or significant pollution or threat of significant pollution of the marine environment, that State may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection (see MP/12).

KUWAIT, LEBANON, LIBYAN ARAB JAMAHIRIYA, MOROCCO, QATAR, TUNISIA AND UNITED ARAB EMIRATES

ARTICLE 221

Delete paragraph 8 of this article (see MP/20).

KUWAIT, LEBANON, LIBYAN ARAB JAMAHIRIYA, MOROCCO, QATAR
SYRIAN ARAB REPUBLIC AND TUNISIA

ARTICLE 227

Investigation of foreign vessels

The text is to read as follows:

"1. States may not delay a foreign vessel longer than is essential for the purposes of investigation provided for in articles 217, 219 and 221. If the investigation indicates a violation of applicable laws and regulations or international rules and standards for the preservation of the marine environment release shall be made subject to reasonable procedures such as bonding or other appropriate financial security. Without prejudice to applicable international rules and standards relating to the sea-worthiness of ships, the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard. In this latter case, the flag State or the State of registry of the vessel must be notified, and either may object to such a refusal according to the provisions of Part XV of the present Convention.

"2. States shall co-operate to develop procedures for the avoidance of unnecessary physical inspection of vessels at sea." (See MP/19).

JAPAN

ARTICLE 227, para.1

Investigation of foreign vessels

Line 6, in compliance with Article 292, after "release shall be made" add "promptly" (see MP/22).

FRANCE

ARTICLE 29

Suspension and restrictions on institution of proceedings

(Changes made to the existing text are underlined)

1. Penal proceedings in respect of any violation of applicable laws and regulations or international rules and standards relating to the prevention, reduction and control of pollution from vessels committed by a foreign vessel beyond the territorial sea of the State which has established the violation shall not be instituted by that State before the expiry of a period of two months from the date on which that State has notified the flag State, supplying it with a report and all pertinent information, unless those proceedings relate to a case of major damage to the coastal State or the flag State has on at least three occasions in the preceding five years disregarded its obligation to enforce effectively the applicable international rules and standards in respect of violations committed by its vessels or unless the violation involves discharges

of which there is clear and objective proof. The flag State shall make known to the State which has established the violation, within a period of two months from the date of notification, the decision taken by its judicial authorities to institute or not to institute penal proceedings. When proceedings by the flag State have been brought to a conclusion, the flag State shall address the delivered judgement to the first State, which cannot thereafter take further penal proceedings. Any bond posted or other financial security provided shall be released by the coastal State (see MP/6).

UNITED STATES OF AMERICA

ARTICLE 229

Suspension and restrictions on institution of proceedings

Paragraph 1

1. Substitute the clause, "committed by a foreign vessel beyond the exclusive economic zone of the State instituting proceedings ..." for the opening clause "committed by a foreign vessel beyond the territorial sea of the State instituting proceedings."

2. Substitute the clause "unless those proceedings relate to a case of serious pollution affecting the coastal State or" for the clause "unless those proceedings relate to a case of major damage to the coastal State or". (see MP/9)

SPAIN

ARTICLE 234

Delete, or replace by the following:

Nothing in sections 5, 6 and 7 of this Part of the present Convention shall affect the legal régime of transit passage through straits used for international navigation (see MP/3).

INFORMAL SUGGESTION BY BAHRAIN, DEMOCRATIC YEMEN, EGYPT, IRAQ, KUWAIT, LEBANON, LIBYAN ARAB JAMAHIRIYA, MAURITANIA, MOROCCO, OMAN, PORTUGAL, QATAR, SAUDI ARABIA, SOMALIA, SUDAN, SYRIAN ARAB REPUBLIC, TUNISIA, UNITED ARAB EMIRATES AND YEMEN

ARTICLE 236

Amend the text to read:

"1. Any damage to the marine environment or to properties or persons therein that is caused by pollution shall give rise to a claim for compensation for such damage.

"2. Should such damage result from acts of a particular State, that State shall be liable:

(a) In accordance with the rules of international law, in cases where that State has carried out an act of sovereignty;

(b) In accordance with private law, in cases where that State has carried out any other act, such as a commercial transaction. States shall have an obligation to provide compensation for or to repair such damage, and for this purpose, the State concerned shall designate the party to represent it in any legal proceedings.

"3. Should such damage result from acts of other natural or juridical persons, such persons shall be held responsible in accordance with the rules of private law and shall have an obligation to provide compensation for or to repair such damage.

"4. States shall fulfil the necessary legislative and organizational requirements to provide the injured party with recourse to their courts or national authorities, in order that that party may obtain compensation for or the repair of the damage, whenever such acts take place or such damage occurs within areas under their sovereignty or jurisdiction or through non-sovereign acts on their part or through acts by natural or juridical persons under their jurisdiction. The injured party shall be entitled to choose the party from which compensation for or repair of damage is to be claimed in any case where there is more than one such party.

"5. States shall establish regional and international financial and technical institutions to which claims for compensation for, or for the repair of, damage may be addressed in any case where those responsible for the damage remain unknown or are unable, partially or wholly, to provide compensation for or to repair such damage. Such institutions shall generally co-operate in developing the international law relating to the protection and preservation of the marine environment, the assessment of damage thereto, the payment of compensation and the settlement of disputes arising in any such cases." (See MP/18)

UNION OF SOVIET SOCIALIST REPUBLICS

Articles 225, 226, 228, 232, paragraph 2 of article 231 and article 233 should be taken out to form a separate Part of the Convention, reading as follows:

"PART XIV bis. GENERAL SAFEGUARDS

ARTICLE ... (previously 225)

Exercise of powers of enforcement

The powers of enforcement against foreign vessels under the present Convention may only be exercised by officials or by warships or military aircraft or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

ARTICLE ... (previously 226)

Duty to avoid adverse consequences in the exercise of the powers of enforcement

In the exercise of their powers of enforcement against foreign vessels under the present Convention, States shall not endanger the safety of navigation or otherwise cause any hazard to a vessel, or bring it to an unsafe port or anchorage, or cause an unreasonable risk to the marine environment.

ARTICLE ... (formerly 228)

Non-discrimination of foreign vessels

In exercising their right and carrying out their duties under the present Convention, States shall not discriminate in form or in fact against vessels of any other State.

ARTICLE ... (formerly 232)

Notification to the flag State and other States concerned

States shall promptly notify the flag State and any other State concerned of any measures taken pursuant to the present Convention 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 when proceedings are instituted. The consular officers or diplomatic agents, and where possible the maritime authority of the flag State, shall be immediately informed of any such measures.

ARTICLE ... (formerly paragraph 2 of article 231)

Observance of recognized rights of the accused

In the conduct of proceedings to impose penalties in respect of such violations committed by a foreign vessel, recognized rights of the accused shall be observed.

ARTICLE ... (formerly 233)

Liability of States arising from enforcement measures

States shall be liable for damage or loss attributable to them arising from measures taken pursuant to the present Convention, when such measures were unlawful or exceeded those reasonably required in the light of available information. States shall provide for recourse in their courts for actions in respect of such damage or loss."

* * *

In consequence of the introduction of a Part common to the whole Convention on the procedure for enforcement measures (Part XIV bis, General Safeguards), duplicating provisions should be deleted from a number of articles, namely: paragraph 4 of article 73; articles 106 and 107 in full, paragraphs 5 and 8 of article 111. The deleted paragraphs should be replaced by reference to the corresponding articles in Part XIV bis.

As a result, the articles remaining in Section 7 of Part XII will be the following: 224, 227, 229, 230, 231 (para.1) and 234. Section 7 of Part XII should be entitled "Safeguards in respect of pollution control". (See MP/16).

INFORMAL SUGGESTION BY BAHRAIN, DEMOCRATIC YEMEN, EGYPT, IRAQ, JORDAN, KUWAIT, LEBANON, LIBYAN ARAB JAMAHIRIYA, MAURITANIA, MOROCCO, OMAN, PORTUGAL, QATAR, SAUDI ARABIA, SOMALIA, SUDAN, SYRIAN ARAB REPUBLIC, TUNISIA, UNITED ARAB EMIRATES, YEMEN

Article 264

Amend the text to read:

"1. Any damage to the marine environment, or to property or persons therein resulting from scientific research shall give rise to a claim for compensation for such damage.

"2. Should such damage result from the acts of a particular State, that State shall be held responsible:

(a) In accordance with the rules of international law, if it carried out an act of sovereignty;

(b) In accordance with the rules of private law if it was carrying out any other act, such as a commercial transaction. States shall have an obligation to provide compensation for or to repair such damage, and for this purpose, the State concerned shall designate the party to represent it in any legal proceedings.

"3. Should such damage result from acts of other natural or juridical persons, such persons shall be held responsible in accordance with the rules of private law and shall have an obligation to provide compensation for or to repair such damage.

"4. States and specialized international organizations shall fulfil the necessary legislative and organizational requirements for the prevention of any marine scientific research in violation of the provisions of the present Convention within the areas under their sovereignty or jurisdiction. They shall also fulfil the same requirements with respect to natural or juridical persons who are their nationals or to persons under their jurisdiction and prescribe the penalty applicable for such violations.

"5. States shall fulfil the necessary legislative and organizational requirements with a view to providing the injured party with recourse to their courts or national authorities in order that that party may obtain compensation for or the repair of damage in any case where such acts take place, or such damage occurs, within areas under their sovereignty or jurisdiction or through non-sovereign acts on their part or through acts by natural or juridical persons under their jurisdiction. The injured party shall be entitled to choose the party from which compensation for or the repair of the damage is to be claimed, if there should be more than one such party.

"6. States shall establish regional and international financial and technical institutions to which claims for compensation for, or for the repair of, damage may be addressed in cases where those responsible for the damage remain unknown or are unable, partially or wholly, to provide compensation for or to repair such damage. Such institutions shall generally co-operate in developing the international law relating to the protection and preservation of the marine environment, the assessment of damage, the payment of compensation and the settlement of disputes arising in such cases." (see SR/1).

PAKISTAN

New Article 275 bis

New Section 3: Establishment of National Centres

"States, competent international organizations and the Authority shall, individually or jointly, promote the establishment, specially in developing coastal States, of national marine scientific and technological research centres and strengthening of the existing national centres, in order to stimulate and advance the conduct of marine scientific research by developing coastal States and for strengthening their national capabilities to utilize and preserve their marine resources for their economic benefit.

2. Competent international organizations and the Authority shall make adequate financial provisions to facilitate the establishment and strengthening of such national centres: for the provision of advance training facilities and necessary equipment, skills and know-how as well as to provide technical experts to such States which may need and request such assistance." (see TT/1).

REPORT TO THE PLENARY BY THE PRESIDENT ON THE SETTLEMENT OF DISPUTES

In the area of dispute settlement there would appear to be some issues that need to be resolved. Two of these issues were selected as hard-core issues and dealt with in Negotiating Groups 5 and 7. The report of the Chairman of Negotiating Group 5, his compromise formula and the report of the Chairman of Negotiating Group 7 are before you as documents NG5/17, NG5/16 and NG7/21 respectively.

Negotiating Group 5 considered the question of "disputes relating to the exercise of sovereign rights by coastal States in the exclusive economic zone". Under the chairmanship of Ambassador Stavropoulos of Greece the group has arrived at a compromise formula which according to his report enjoyed widespread and substantial support amounting to a conditional consensus and has successfully concluded its mandate.

The principal issue dealt with by the Group and reflected in paragraph 3 of the new draft of Article 296 provides for the submission to a compulsory conciliation procedure of any of the categories of disputes referred to in that article.

Negotiating Group 7 has considered disputes concerning sea boundary delimitations between adjacent and opposite States and although it has not come up with a compromise there has been an exchange of views within the group. According to the Chairman of that group, Judge Manner of Finland, the sub-group dealing with settlement of disputes aspects of the question chaired by Professor L.B. Sohn (United States of America) has produced a paper on possible approaches to a compromise solution. Undoubtedly any provision for the settlement of disputes must necessarily be dependent upon the substantive part of Articles 74 and 83. However this does not preclude us from examining the alternative compromise formulae.

In the circumstances delegations should address themselves to the specific formulations in the compromise text of the Chairman of Negotiating Group 5. On the subject-matter of Negotiating Group 7 delegations should address themselves to the specific concepts on the settlement of disputes provision within the mandate of Negotiating Group 7 in relation to Article 297 (1) (a) of the ICNT.

There are other issues raised in relation to Articles 296 and 297 which have not yet been discussed. This would also apply to the dispute settlement provisions in Part XI of the ICNT dealing with the international area. It will no doubt be necessary to consider this, although perhaps the appropriate time would be later, after the negotiations have proceeded further on the substantive part of Part XI.

RESULTS OF THE WORK OF THE NEGOTIATING GROUP ON ITEM (5) OF DOCUMENT A/CONF.62/62

REPORT TO THE PLENARY BY THE CHAIRMAN, AMBASSADOR CONSTANTIN STAVROPOULOS (GREECE)

The matter referred to the Negotiating Group by the Plenary under item 5 is: "The question of the settlement of disputes relating to the exercise of the sovereign rights of coastal States in the exclusive economic zone". There were 36 members within the nucleus, the composition of which is set out in document A/CONF.62/63. As decided by the Plenary, the Group was open-ended in the sense that any participant not included in the original nucleus was free to join the Group with the same status as the original members. There were six meetings of the main Negotiating Group and several meetings of a smaller working group established within the framework of the main Group on the proposal of the Chairman, to facilitate the negotiations and to assist him. Its main task was to draft a compromise text for the content of paragraph 4 of article 296 of the ICNT. In addition, it had to consider paragraph 1 dealing with the procedural safeguards, the substance of which is closely linked to paragraph 4. In this connexion it should be noted that it had implications on other paragraphs of article 296 that did not fall within the mandate of the Group.

The main Negotiating Group heard general statements at three of its meetings. Thereafter the small group worked long and arduously and arrived at a new formulation of the provisions of paragraph 4 of article 296 of the ICNT (paragraph 3 of the redrafted article), which the Chairman presented to the main Negotiating Group.

At the outset there was a clear divergence of positions and strong statements were made, expressing those positions. On the one hand, there were those who wanted all rights granted under the Convention protected by effective dispute settlement provisions and, on the other hand, there were those who felt that their sovereign rights and discretions could not be effectively exercised if they were to be harrassed by an abuse of legal process and a proliferation of applications to dispute settlement procedures. Those delegations that feared an abuse of legal process were unwilling to accept compulsory adjudication, while those who desired an effective protection of all rights insisted upon it. In examining the various alternatives, the concept of compulsory recourse to conciliation procedure emerged as a possible compromise. The application of such a conciliation procedure was scrutinized in respect of each category of disputes to which it could be applied.

The constructive negotiating spirit within the small group made possible a compromise formula involving the use of a compulsory conciliation procedure. When it was presented to the main Negotiating Group (document NG5/15), although reservations were expressed, the final formula received widespread and substantial support amounting to a "conditional consensus": that is, a consensus conditional upon an over-all package deal. In any event, consensus should be achievable on this issue as part of the package.

The compromise text (document NG5/15; also incorporated in paragraph 3 of the new article 296, document NG5/16) provides that there would be no compulsory and binding adjudication for disputes relating to the exercise of sovereign rights of a coastal State. However, a coastal State would be obliged to submit to a compulsory conciliation procedure in certain types of disputes.

There are three categories of disputes for which such conciliation may be resorted to, as embodied in subparagraphs (i), (ii) and (iii) of paragraph 3 of the new draft article 296. Subparagraph (i) deals with disputes where the living resources are endangered by inadequate conservation and management measures; subparagraph (ii) deals with the refusal to determine the surplus of the living resources that may be allocated; and subparagraph (iii) deals with an arbitrary refusal to make an allocation of the surplus.

Subparagraph (e) obliges the parties to an agreement regarding the allocation of surplus to make provision in such agreement for the settlement of any dispute regarding its interpretation or application.

After the Negotiating Group had completed its consideration of paragraph 4 of article 296 the results were brought before the Plenary. The Group was then given more time to carry on its work on the consideration of procedural aspects contained in paragraph 1 of that article, and the remaining matters that had arisen during the discussions in the main Negotiating Group. These matters were: (1) restructuring the whole of article 296; (2) the insertion of a general provision dealing with abuse of rights; and (3) the substance of article 297.1(b).

Due to the limited time and facilities available, the Negotiating Group decided to reconvene the small group, which was to be open-ended in this instance, to deal with the remaining matters. It also decided that the results of these negotiations should be reported directly to the Plenary by the Chairman.

With regard to the restructuring of article 296 of the ICNT, it was agreed by the small group that the provisions regarding the application of compulsory adjudication procedures should appear first, to be followed by the compromise text, NG5/15, dealing with compulsory recourse to conciliation. These provisions now appear as paragraphs 1, 2 and 3. It must be noted that the small group's consideration of the restructuring was strictly limited to reorganization of the provisions of article 296, without touching upon questions of substance. It was pointed out that there might be a question of co-ordination involved in paragraph 2 of the new article, which is explained in footnote 2 of document NG5/16.

The discussion of paragraph 1 of article 296 of the ICNT was based on several informal proposals that had been presented in the main Negotiating Group. It was strongly felt that the new formula dealing with procedural aspects should be separated into a new article, and now appears in article 296 bis of document NG5/16. The relationship of this new article to paragraphs 1 and 2 of the restructured article 296 would have to be considered by the appropriate Committee and the informal Plenary dealing with the settlement of disputes, as the case may be.

Another matter which was considered by the small group was the introduction of a general provision on abuse of rights. During the discussion in the main Negotiating Group, some delegations had insisted upon having recourse to compulsory adjudication in cases where a coastal State had abused its rights. The coastal States were strongly opposed to the idea of compulsory adjudication in this instance, but were willing to accept it as a general provision in the Convention. A proposal to that effect had been presented by the delegation of Mexico in the main Negotiating Group. The idea of including in the Convention a provision on the notion of abuse of rights was accepted without objection. It was decided that a recommendation in that sense be made to the informal Plenary.

Finally, some delegations felt that the content of subparagraph (1)(b) of article 297, which is related to the matters under discussion, should be reconsidered. Informal suggestions were made for the redrafting of that article. However, it was decided that this subparagraph could be considered at a later stage of the negotiations.

The footnotes that have been attached to the draft compromise formula are intended to explain the status and implications of each provision.

As Chairman of the Negotiating Group, it gives me great pleasure to present to the Plenary this compromise formula prepared by the Group (document NG5/16). I would like to express my thanks to all representatives, whether from coastal or land-locked and geographically disadvantaged States, who co-operated with me in the drafting of this document with their special expertise and ability. They showed great patience, perseverance and, last but not least, a true desire to negotiate in a spirit of conciliation, which permitted the Group to fulfil its mandate. A very special mention should be made of the members of the Secretariat who were attached to the Group. I have to admit that, without the assistance of the representatives who participated and the members of the Secretariat, I would not have been able to submit this report today.

ANNEX A

CHAIRMAN'S SUGGESTION FOR A COMPROMISE FORMULA

Introductory Note

This document contains three Articles:

(1) Article 296, dealing with limitations on applicability of Section 2. It received, within Negotiating Group 5, such a widespread and substantial degree of support as to offer a reasonable prospect of a consensus being reached;

(2) Article 296 bis, dealing with preliminary proceedings. It received the same degree of support, but is yet to be considered in relation to paragraphs 1 and 2 of the new draft Article 296;

(3) A general provision on the abuse of rights, to be included in the Convention in an appropriate place. This is an issue upon which a consensus has been reached within the Group.

Article 296

Limitations on applicability of this section

1. Notwithstanding the provisions of Article 286, disputes relating to the interpretation or application of the present Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in the present Convention, shall be subject to the procedures specified in Section 2 of this part in the following cases. 1/

(a) When it is alleged that a coastal State has acted in contravention of the provisions of the present Convention in regard to the freedoms and rights of navigation or overflight or of the laying of submarine cables and pipelines and other internationally lawful uses of the sea specified in article 58; or

(b) When it is alleged that any State in exercising the aforementioned freedoms, rights or uses has acted in contravention of the provisions of the present Convention or of laws or regulations established by the coastal State in conformity with the present Convention and other rules of international law not incompatible with the present Convention; or

(c) When it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State and which have been established by the present Convention or by a competent international organization or diplomatic conference acting in accordance with the present Convention.

1/ The chapeau of paragraph 1 is a new draft. Sub-paragraphs (a), (b) and (c) of paragraph 1 are the same as sub-paragraphs (a), (b) and (c) respectively of paragraph 2 of Article 296 of the ICNT.

2. 2/ No dispute relating to the interpretation or application of the provisions of the present Convention with regard to marine scientific research shall be brought before such court or tribunal unless the conditions specified in Article 296 bis have been fulfilled; provided that:

(a) when it is alleged that there has been a failure to comply with the provision of articles 247 and 254, in no case shall the exercise of a right or discretion in accordance with article 247, or a decision taken in accordance with article 254, be called in question; and

(b) the court or tribunal shall not substitute its discretion for that of the coastal State.

3. 3/(a) Unless otherwise agreed or decided by the parties concerned, disputes relating to the interpretation or application of the provisions of this Convention with regard to fisheries shall be settled in accordance with Section 2 of Part XV of this Convention, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management regulations.

(b) Where no settlement has been reached by recourse to the provisions of Section 1 of Part XV of this Convention, a dispute shall, notwithstanding paragraph 3 of Article 284, be submitted to the conciliation procedure provided for in Annex IV, at the request of any party to the dispute, when it is alleged that:

(i) a coastal State has manifestly failed to comply with its obligations to ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not seriously endangered;

2/ It appears necessary for the competent organ of the Conference to co-ordinate and unify the provisions of paragraph 3 of Article 296 of the ICNT with Articles 265 and 266, the settlement of disputes provisions in Part XIII of the ICNT, as they deal with the same subject matter. Account has been taken of the reference to "paragraph 1" in the chapeau of paragraph 3 of Article 296, as the new draft Article 296 bis corresponds to paragraph 1 of Article 296 of the ICNT.

3/ The provisions of this paragraph are reproduced from the compromise formula submitted by the Chairman of the Negotiating Group to the Group (document NG5/15) and accepted by it as being a proposal that could be used to replace the present provision of the ICNT and one on which the degree of support is so widespread and substantial as to offer a reasonable prospect of a consensus being reached.

(ii) a coastal State has arbitrarily refused to determine, upon the request of another State, the allowable catch and its capacity to harvest the living resources with respect to stocks which that other State is interested in fishing;

(iii) a coastal State has arbitrarily refused to allocate to any State, under the provisions of Articles 62, 69 and 70 and under the terms and conditions established by the coastal State consistent with the present Convention, the whole or part of the surplus it has declared to exist.

(c) In any case the conciliation commission shall not substitute its discretion for that of the coastal State.

(d) The report of the conciliation commission shall be communicated to the appropriate global, regional or sub-regional intergovernmental organizations.

(e) In negotiating agreements pursuant to Articles 69 and 70 the parties, unless they otherwise agree, shall include a clause on measures which the parties shall take in order to minimize the possibility of a disagreement concerning the interpretation or application of the agreement, and on how the parties should proceed if a disagreement nevertheless arises.

4. 4/ Without prejudice to the provisions of paragraph 3, any dispute excluded by the previous paragraphs may be submitted to the procedures specified in section 2 only by agreement of the parties to such dispute.

Article 296 bis 5/

Preliminary proceedings

1. A court or tribunal provided for in Article 287 to which an application is made in respect of a dispute referred to in Article 296 shall determine at the request of a party, or may determine on its own initiative, whether the claim constitutes an abuse of legal process or whether it is established prima facie to be well founded. If the court or tribunal determines that the claim constitutes an abuse of legal process or is prima facie unfounded, it shall take no further action in the case.

4/ The text of this provision is substantially the same as paragraph 5 of Article 296 of the ICNT with the appropriate changes (as underlined in the text) to bring it into conformity with paragraph 3 above.

5/ Paragraph 1 of Article 296 of the ICNT is closely related to paragraph 4 of that Article. Paragraph 4 of Article 296 was reformulated and embodied in paragraph 3 of the redrafted Article 296. Paragraph 1 of Article 296 of the ICNT has also been redrafted and reproduced as a separate Article 296 bis. The relationship of the new draft Article 296 bis to paragraphs 1 and 2 of redrafted Article 296 have yet to be considered by the appropriate Committee and by the Informal Plenary.

2. On receipt of such an application, the court or tribunal shall immediately notify the other party or parties to the dispute of the application, and shall fix a reasonable time-limit within which the other party or parties may request such a determination.

3. Nothing in paragraph 1 or 2 affects the right of any party to a dispute to raise preliminary objections in accordance with the applicable rules of procedure.

General provision on abuse of rights

Article ....

Abuse of rights 6/

All States shall exercise the rights and jurisdictions recognized in this Convention in such a manner as not to harm unnecessarily or arbitrarily the rights of other States or the interests of the international community.

6/ This is a new provision which is to be inserted in an appropriate place in the Convention. It has received consensus within the Group.

Report by the Chairman of Negotiating Group 7 on the Work of the Group

During its work the Group, which consisted of some 100 delegations, held 16 meetings. All the meetings were held "in plenary", because the Group could not agree upon the establishment of any smaller working organs. However, several consultations took place within the Group, and during the last few days small private consultation groups convened to informal meetings in order to examine possibilities for consensus solutions.

Within its mandate the Group had to deal with Articles 15, 74 and 83 as well as sub-paragraph 1 (a) of Article 297 of the ICNT. Twenty working documents were distributed during the work of the Group.

Article 15

As regards Article 15 (concerning delimitation of the territorial sea between States with opposite or adjacent coasts) there seems to be widespread support to the retention of its present formulation in the ICNT with two drafting amendments suggested by the Chairman in the light of discussions held. Accordingly the text would read as follows:

> "Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith."

Articles 74/83 and Article 297, sub-paragraph 1 (a)

Articles 74/83, paragraph 1

Like before, the positions of the delegations differed markedly between those in support of the equidistance solution and those favouring delimitation in accordance with equitable principles. The main proposals on this basic issue are contained in working documents NG7/2, sponsored by 22 States advocating the employment of the median or equidistance line as a general principle, and NG7/10, sponsored by 29 States emphasizing equitable principles as the basic premise for any measures of delimitation. No compromise on this point did materialize during the discussions held, although one may note, that there appears to be general agreement as regards two of the various elements of delimitation: first, consensus seems to prevail to the effect that any measure of delimitation should be effected by agreement, and second, all the proposals presented refer to relevant or special circumstances as factors to be taken into account in the process of delimitation. As a whole, however, no approach or formulation received such widespread and substantial support that would offer a substantially improved prospect of a consensus in the Plenary. On the other hand, the discussions clearly indicated that consensus could not, either, be reached upon the present formulation in the ICNT.

Articles 74/83, paragraph 2 and Article 297, sub-paragraph 1 (a)

The discussions on paragraph 2 of Articles 74/83 as well as the related provisions of Article 297, sub-paragraph 1 (a), were still characterized by opposing arguments on the desirability of compulsory dispute settlement procedures. Suggestions were made both as to emphasize the well-established positions and for finding a compromise solution. Despite intensive efforts within the Negotiating Group itself, no solution offering a substantially improved prospect of a consensus could be arrived at. However, a paper setting out a number of alternative approaches relating to sub-paragraph 1 (a) of Article 297 (Disputes to be Excepted from Compulsory Procedure) was issued as a result of discussions held within an informal consultation group led by Professor L.B. Sohn (United States of America). Due to shortage of time it was not possible to submit this document (later distributed as NG7/20) to discussion within the Negotiating Group, but it was hoped that it might offer a useful framework for further discussions on the subject.

Articles 74/83, paragraph 3

There seems to be general agreement to the effect that the Convention should contain a specific provision on interim measures to be applied pending agreement or settlement in delimitation cases. As the question of provisional arrangements, by its very nature, is directly related to the basic criteria of delimitation laid down in paragraph 1, positions adopted thereto were reflected in the discussions on paragraph 3, as well. A fair amount of interest was awarded to certain new suggestions attempting to find a course characterized by some objective elements aimed to regulate the economic and other activities of the States concerned. The discussions on these suggestions remained, however, of preliminary character and did not lead to definite formulations receiving such widespread and substantial support that would offer a substantially improved prospect of a consensus.

Article 74, paragraph 4

With respect to the definition of the equidistance method included in paragraph 4 of Article 74 of the ICNT, but absent from Article 83, it was pointed out that, if such a definition were deemed to be necessary, its proper place would perhaps be with other definitions in Article 1 dealing with the "use of terms" employed in the Convention. The Chairman's view that the matter could be left to the Drafting Committee was not opposed.

Article 74, paragraph 5, Article 83, paragraph 4

No major objections were recorded to these paragraphs which thus could remain unchanged.

* * *

There was a general feeling within the Group that negotiations on the delimitation problems concerned should be continued at a later stage of the Conference and that the rules of delimitation and the settlement of disputes thereon should not be separated from each other.