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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

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DOCUMENT A/CONF.62/RCNG/2

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 1/

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1/ Circulated in accordance with the decision taken by the Conference at its 109th meeting on 15 September 1978. Not circulated separately in mimeographed form.

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

1. The First Committee held its first and only meeting (informal), at this resumed session, on 14 September 1978. The purpose was to receive reports on the work of Negotiating Groups 1, 2 and 3 set up to deal with hard-core issues relating to the Committee's mandate. These issues were outlined in document A/CONF.62/62, the same instrument that established these Negotiating Groups.

2. As the current meeting in New York is a resumption of the seventh session which commenced in Geneva last spring, this report must be read together with the one previously submitted by me on the work of the three Groups. The sum total constitutes the report on the work of the seventh session of this Conference.

3. The First Committee, in view of the tight schedule this summer, has not provided opportunity for delegations to make general comments on the package contained in the reports of the Negotiating Groups as a whole. It may be recalled that in Geneva, I reported that in spite of their inability to have an in-depth review of the package, the regional groups co-operated in raising no objections to those reports being sent forward as a basis for further negotiations.

4. At our meeting on 14 September 1978, a few delegations indicated the wish to comment on the present reports of the Negotiating Groups. In view of the lateness of the hour, it was proposed to them that perhaps the opportunity could be given for this purpose at the commencement of the next session of the Conference. I gave my personal assurance that this would be done. Despite further appeals, some of those delegations insisted that they had such opportunity on 14 September 1978. A meeting was accordingly fixed to follow scheduled night meetings of the General Committee and the Group of 77. This was so fixed in spite of the widespread feeling that such a meeting was neither necessary nor desirable.

5. Following further consultations with interested parties, I was encouraged to cancel the meeting on the clear understanding that I confirmed my personal assurances that opportunity would be made available for comment by delegations on the package of hard-core issues contained in the reports and that, accordingly, all delegations would refrain from doing so at this session. It may be recalled that my statement during the meeting of the General Committee announcing the cancellation of the proposed meeting of the First Committee made these points clear.

6. I do not myself wish to comment on the package now before us from the three Negotiating Groups. I can only announce my conclusion that progress was made. Each report contains suggestions considered by its Chairman to provide basis for further negotiations.

7. No one who has presided over deliberations at this Conference can have illusions about the acceptability of the documentation of ideas intended to foster fruitful negotiations. The final treaty we may expect from this Conference will not bear language and ideas that will be above criticism. The hope of any

Chairman at this Conference is to seek ideas and language with which delegations can survive. No one State may expect to have all it wants. It should, in that spirit, oppose only those provisions which may seriously injure particular fundamental or vital interest of its nation. This type of resistance is probably most appropriate while a package is being worked out.

8. The Chairman of Negotiating Group 2, for instance, has courageously proposed some solutions to difficult issues. He has pointed out that he knows that they will be criticized by both developed and developing countries. I believe that he took the best course, because, if his assessment is true, both sides would at the next stage of our endeavours truly negotiate in the quest for compromise. Here lies an important aspect of the value of the texts. They help foster consensus by providing new basis for negotiation. They need not hurt anyone. They should stimulate everyone to inspired negotiation and compromise.

9. We must thus refrain from acrimonious comment against either a text or its author. There is no substitute for constructive suggestions by one side to an issue for consideration by the other side. The Chairman of a negotiating effort hopes that such exchange succeeds and will gladly reflect results in his texts. We must not think that the negotiation is between the Chairmen of the Negotiating Groups on the one side and delegations with their divergencies of opinion on the other. A Chairman must not be your enemy when he does not meet 100% satisfaction of your wants in his proposals and a friend only when he does. In performing his difficult functions, he seeks to be a friend of all interests. This is particularly true now of the Negotiating Group Chairmen, as it has been with Main Committee Chairmen.

10. I sincerely hope that this will be borne in mind in our consideration of the package of proposals in the future.

11. I also wish to allude to a matter of importance, for delegations to reflect upon. We have all sought guarantees for the protection of interests in a brand new field of human endeavour. We have extracted convenient lessons from historical facts and sought to justify our appetite from these.

12. The result, as I see it, is a trend to the destruction of the very basis of our scramble: the protection of so-called interests. All sides, each in its own way, seek protection, in treaty language and ideas, from what they fear is a source of potential abuse of power. The developing countries fear the veto; the less technologically developed countries fear monopoly from the highly industrialized countries; the industrialized countries, with an inferiority only in terms of numbers, fear the force of voting power of others put together.

13. For the highly industrialized States, having failed to obtain an absolute right to naked veto, they seek refuge in detailed provisions, as a source of that protection. Written guarantees seem to be the motto. The result is that we have not only plunged our efforts into the undesirable elaboration of a mining code for sea-bed mineral exploitation, but have ourselves been dragged into adopting models and systems of calculations on fictitious data that no one, expert or magician, can make the basis of any rational determination. We get more and more engrossed with each session and have been reduced to mere spectators in the inconclusive tournament among experts.

14. I would strongly recommend that we stop this trend. I believe that this Convention should encourage detail, but only such as relate to matters that clarify the rights and duties of States and identify the beneficiaries of the common heritage. The package remains one that gives assured access to those who are capable of exploiting with the Authority for the benefit of mankind as a whole on the one hand, and on the other hand ensuring that the Authority and its business arm (the Enterprise) not only survive as a corporate institution but also are adequately equipped as viable ones with capability and ability to fulfil the functions set in the Declaration of Principles.

15. I intend to call on delegations at the next session to consider a quick resolution to the crucial question of the decision-making processes in the Council. This may well open the door to more confidence on all sides. This could be done at the same time as the process of eliminating undesirable details, which only an operating Authority and its organs would be better placed to handle. I shall welcome any new ideas or fresh over-views on existing proposals.

16. Finally, I wish to congratulate my fraternal friends, Mr. Frank Njenga of Kenya, Chairman of Negotiating Group 1 and Ambassador Tommy Koh of Singapore, Chairman of Negotiating Group 2. In doing this, I wish to thank them for the valuable contribution they have made towards the attainment of consensus in their respective spheres of responsibilities. They have once again demonstrated their dedication. I add to this my deep appreciation for the effective contribution of the Secretariat and members of the Bureau of the Committee.

NG1/14
14 September 1978

ORIGINAL: ENGLISH

Memorandum by the Chairman of Negotiating Group 1, Mr. Frank X. NJenga (Kenya) on the work of the Group during the resumed session

Negotiating Group 1, established to deal with the system of exploration and exploitation of the resources of the Area, continued its work during the resumed seventh session of the Conference in the same spirit of co-operation and understanding.

At the first meeting it was proposed that it would be better for the Group not to reopen the discussion of the issues already dealt with in Geneva but to move forward and to take up other issues in order to bring to the same level all parts of the "mini-package" within the scope of provisions entrusted to Negotiating Group 1. Nevertheless, several delegates expressed their views on the suggested compromise formula which I submitted in the first part of the seventh session in Geneva, and which is contained in document NG1/10/Rev.1. The representative of the Federal Republic of Germany on behalf of the EEC in particular, expressed the wish to reopen the discussion of the Geneva text on which the member States of the EEC had some serious reservations. Strong objections were expressed to such a course of action by many delegations and in the end it was agreed that negotiations should continue where we had left off in Geneva and to re-examine the package after all the relevant issues had been first discussed.

The meetings of the Group were devoted to a detailed discussion of some of the paragraphs of annex II. The paragraphs examined were the following:

Paragraph 1 - Title to minerals and processed substances

Paragraph 2 - Prospecting

Paragraph 3 - Exploration and exploitation

Paragraph 4 - Qualifications of applicants

Paragraph 5 - Selection of applicants

Paragraph 8 - Transfer of data

Paragraph 9 - Training programmes

Paragraph 10 - Exclusive right to explore and exploit in the contract area.

The Group decided not to touch upon paragraph 6 on "Activities conducted by the Enterprise" which relates to the examination of the problem of the applicability of annex II to the Enterprise, for the time being. Of course, it was not the intention of the Group to intrude at all in paragraph 7 which deals with the most vital issues entrusted to be negotiated within Negotiating Group 2.

Yesterday I submitted to Negotiating Group 1 document NG1/13, containing the first draft of a suggested compromise formula reflecting my personal views of what was discussed during the resumed seventh session. In this first draft I have introduced only those amendments which I believed should not raise serious problems. I tried to keep, through the few amendments I introduced, the balanced structure of these paragraphs. That is why the greater part of the formula which I submitted to the Group maintains unchanged the wording of the ICNT.

During the meeting held yesterday delegates reserved their position on the suggested compromise until such a time as intense negotiations on it are held. Unfortunately, time does not allow me to introduce new amendments in the paper I have submitted but I hope that the distinguished delegates realize that it is only the first step. I have taken due note of all observations made, as well as proposals for new provisions made during our discussions. One of these which commanded broad support was made by the delegate of India on the duty of the Authority to ensure that the Enterprise engage immediately in sea-bed mining, and it states: "The Authority shall have the discretion to ensure that the Enterprise engages in sea-bed mining effectively from the date of entry into force of this Convention". Another one was the proposal of the USSR on the anti-monopoly provision providing for the following main elements:

"(1) Limitation of a total number of contracts which may be granted to one State Party and its state enterprise and private companies;

"(2) Preference, when applications are submitted within the same time period, to those applicants which have not yet obtained any contract;

"(3) Limitation of the number of contracts, that may be granted to one State Party in a certain portion of the Area."

There was also a proposal by the United Kingdom on the anti-freeze clause relating to the banking system. If and when Negotiating Group 1 is reconvened, I intend to provide opportunity for discussing these suggestions so that I can include such proposals as command broad support in the first revision of the compromise in NG1/13.

I wish to stress the fact that the paper submitted to the Group is only a first draft which I thought might encourage further fruitful negotiations. It will need careful scrutiny, and it will need to be discussed and revised. The draft needs further elaboration which I hope to continue during the next session. On the basis of further consultations and negotiations I think that I will be able to present a new version of these and remaining paragraphs in order to complete the set of provisions relating to the system of exploration and exploitation which will serve as a basis for agreement.

Mr. Chairman, I think that it is the opinion, not only of myself but of a majority of delegates, that Negotiating Group 1 is still faced with a task of completing the examination of the over-all system of exploration and exploitation of the resources of the Area. In order to complete its task, the Group would need the same priority treatment during the next session of the Conference.

Finally, Mr. Chairman, let me express my profound gratitude to the members of the Secretariat for their untiring co-operation with me during the resumed seventh session. I do hope that I shall have the opportunity to work with this devoted team led by Mr. Felipe Paolillo at any future session of the Conference. I am also sure that I can count on the co-operation of all the delegates in NG1 to make our work a success.

NG1/13/Add.1
14 September 1978

ORIGINAL: ENGLISH

Explanatory memorandum by the Chairman of NG1, Mr. Frank X. Njenga (Kenya), to that Negotiating Group on 13 September 1978 on document NG1/13

At the 1st meeting held by this Negotiating Group during the resumed session, it was agreed that our negotiations should be taken up where we had left off in Geneva and that the Group would conduct its work in the same manner as during the first part of the seventh session.

In order to keep the same method of work which we adopted in Geneva, and which has proved to be somewhat successful, I have prepared a preliminary draft of my views of a possible compromise formula of paragraphs 1-5 and 8-10 of annex II. In this first draft I have introduced only those amendments which I believe will not raise serious problems. I have tried to keep, through the few amendments I have introduced, the balanced structure of these paragraphs. That is why the greater part of the formula which I now submit to the Group maintains unchanged the wording of the ICNT. I wish to stress the fact that the paper I am now submitting to you is only a first draft which I thought might encourage further fruitful negotiations. It will need careful scrutiny, and it will need to be discussed and revised. Therefore, it should be noted that this paper should not be equated with NG.1/10/Rev.1. The present draft needs further elaboration which I hope to continue during the next session. On the basis of further consultations and negotiations I think that I will be able to present a new version of these and remaining paragraphs in order to complete the set of provisions relating to the system of exploration and exploitation which will serve as a basis for agreement. Nevertheless, and in spite of the preliminary character of this draft, I will try to explain very briefly some of the amendments I have introduced in the text.

In paragraph 1 I think that the suggestion of deleting the reference to "processed substances" in the heading contributes to give the proper perspective of the exact scope of this provision. Consequently, I have replaced in the second sentence of the paragraph the expression "processed substances" with "refined minerals" whose meaning is, I think, closer to the intent of this Group. Indeed the expression "processed substances" has a very broad meaning covering all stages in the processing of minerals, including the final products, and I do not think that it has been in the mind of the members of N.G.1, or indeed of the First Committee, to include the later stages of processing within the scope of paragraph 1. I also thought that the deletion of the word "normally" improved the draft of this provision. In deleting this word, the manner in

which the title to the minerals shall be passed to the contractor is decided, in all cases, by the terms of the contract. This means that an agreement reflected in the contract, between the Authority and the contractor shall always be needed for the establishment of the way in which the title to the minerals should be passed to the latter. With respect to the cases of breach of contract, such situations would be dealt with either in accordance with the terms of the contract or through the dispute settlement mechanism which will be established.

The addition of the words "or any other rights" in subparagraph (b) of paragraph 2 is self-explanatory. The deletion, in the same subparagraph, of the word "minerals" is a logical consequence of applying to this provision the definitions of the word "resources" contained in article 133 (b) which clearly includes "minerals" with which we are dealing here.

The changes in the headings of paragraphs 3, 4 and 5 are really just editorial changes in order to indicate with more precision the content of each paragraph.

I agree with some delegations that the meaning of the last sentence in subparagraph (b) of paragraph 3 is rather obscure. Moreover, if we decide to maintain this sentence in this provision, some other provisions in which a similar reservation has not been made might be construed in the sense that they limit the discretion of the Enterprise. This is why I felt that its deletion would constitute an improvement. In subparagraph (c) (i) of the same paragraph the word "adopted" seems to me to be more appropriate than the word "prescribed" used in the text. For the same reason I have replaced in subparagraph (c) (ii) the words "all stages of operations" with the words "activities in the Area"; this is the expression used in article 151 to which this subparagraph refers.

I think that the additions introduced in paragraph 3 (c) (iii) clarify the meaning of this provision. We are not talking here about rights in the contract area but about the rights for the exploration and exploitation of the resources.

Following the wishes of some delegations I decided to introduce a cross-reference to paragraph 11 of annex II in paragraph 4 (a). In paragraph 4 (c) (i) the first of the two amendments concerns the reversal in the order of the words to make the sequence of ideas expressed in this provision more logical. In the second amendment to this provision I accepted the suggestion that the last part of this sentence is repetitious since the same idea is contained in (iii) of the same subparagraph as well as in other provisions of the annex and of the Convention. The new subparagraphs 4 (ii), (ii) bis, (ii) ter, (ii) quater and (ii) quinquies are the Geneva texts, introduced here so as to make it easier to refer to the annex in its entirety.

In paragraph 5 (a) I have deleted the reference to a specific date or time period for the presentation and consideration of applications for contracts. I think that this suggestion has been considered acceptable by the majority of the Group and serves to overcome some of the practical problems referred to by some delegations.

In subparagraph (b) (i) of the same paragraph, I have changed the time period to remedy difficulties in cases of non-compliance in the presentation of the application and given the applicant 45 days instead of 20.

Many suggestions were made with reference to the other subparagraphs of paragraph 5 on the selection of applicants. At this stage I have preferred to maintain the text as it is until further consultations can give me a clearer picture about the different positions and the possible avenues for conciliation of opposite views. Nevertheless, I draw the attention of the members of the Group to two amendments introduced in subparagraph (g), both of which were made to try to dispel doubts about the meaning of the expressions contained in the text, i.e. the deletion of the reference to subparagraph (c) in the second sentence which in fact has no relevance to applications by more than one applicant, and the deletion of the word "reasonable" in the fourth, which to me seems to add nothing of substance. I will refer later to the addition introduced in subparagraph (g) of paragraph 5.

In subparagraph (j) (ii) the second and third sentences were deleted. I feel that indeed, as some delegates remarked, the second sentence is superfluous as opportunity of the Enterprise to operate must be assumed. The third sentence, apart from being impractical, has no clear meaning and consequently would not seem to serve any useful purpose. In (iii) of the same subparagraph, again I have preferred the word "approved" rather than the word "determined" used in the text. Subparagraph (j) (iv) is the Geneva text. In subparagraph (k) I have replaced the word "shall" with the word "may" which gives the Enterprise greater flexibility in according financial incentives. As expressed by some delegates during our discussions, financial incentives are not always necessary, depending upon the other financial terms of the joint arrangements.

As for the anti-monopoly provision envisaged in paragraph 5 (l) of the annex, some very interesting ideas were expressed by the delegation of the Soviet Union and were commented upon favourably by other delegations. It will, however, be necessary during the next session to have intense consultations on concrete proposals on this subject before the subparagraph can be added. I have, however, introduced some elements of the issue on anti-monopoly or quota in paragraph 5 (g) dealing with the selection of applicants which reads as follows: "In conducting such negotiations, the Authority shall take into account the need to provide for all States Parties, irrespective of their social and economic systems or geographical locations, opportunities to participate in the development of the resources in the Area and the need to prevent monopolization of such activities".

In paragraph 8 relating to transfer of data, I think that it is useful to specify that the data which has to be transferred according to this provision to the Authority is the data necessary for the effective implementation of the powers and functions of the principal organs of the Authority. This seems to me to be the correct interpretation of this paragraph particularly taking into account that this provision refers to the implementation of the powers of the organs of the Authority in respect to the contract area. Therefore, it is not a case of transfer of data to make the operation of the Enterprise in the Area

possible, but of the data that the Authority will need in order to make assessments, to perform its functions of control, etc. in respect of the contract area. This is the reason why I decided to specify that we are referring here only to the powers and functions of the principal organs of the Authority.

I would like to point out the reference to article 144 made in paragraph 9 on training programmes to make the paragraph more specific. In paragraph 10 I deleted in the first sentence the expression "with the Authority" which is confusing and I did the same with the second sentence which I consider repetitious of the idea already adequately covered in the first sentence.

The distinguished delegate of India, as you will recall, proposed the addition of a new provision in subparagraph (j) which would read as follows: "The Authority shall have the discretion to ensure that the Enterprise engages in seabed mining effectively from the date of the Entry into Force of this Convention". This formula, or some variation on this formula, received considerable support from other delegations. I think, however, that at this stage we need some more consultations before introducing this idea in the text.

NG1/13 and Corr.1
12 September 1978

ORIGINAL: ENGLISH

Suggested compromise formula
(first draft)

ANNEX II

Basic conditions of exploration and exploitation

Title to minerals

1. Title to the minerals shall ~~---~~ be passed to the contractor upon recovery of the minerals pursuant to a contract of exploration and exploitation. In the case of contracts pursuant to subparagraph (b) of paragraph 3 of this annex for stages of operations, title to the minerals and refined minerals ~~---~~ shall pass in accordance with the contract. This paragraph is without prejudice to the rights of the Authority under paragraph 7 of this annex.

Prospecting

2. (a) The Authority shall encourage the conduct of prospecting in the Area. Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector shall comply with the present Convention and the relevant rules and regulations of the Authority concerning protection of the marine environment, the transfer of data to the Authority, the training of personnel designated by the Authority and accepts verification of compliance by the Authority with all of its rules and regulations in so far as they relate to prospecting. The proposed prospector shall, together with the undertaking, notify the Authority of the broad area or areas in which prospecting is to take place. Prospecting may be carried out by more than one prospector in the same area or areas simultaneously. The Authority may close a particular area for prospecting when the available data indicates the risk of irreparable harm to a unique environment or unjustifiable interference with other uses of the Area.

(b) Prospecting shall not confer any preferential, proprietary, ~~---~~ exclusive or any other rights on the prospector with respect to the resources. ~~---~~

Contracts for exploration and exploitation

3. (a) Exploration and exploitation shall be carried out only in areas specified in plans of work referred to in paragraph 3 of article 151 and approved by the Authority in accordance with the provisions of this annex and the relevant rules, regulations and procedures adopted pursuant to paragraph 11 of this annex.

(b) Contracts shall normally cover all stages of operations. If the applicant for a contract applies for a specific stage or stages, the contract may only comprise such stage or stages. ----------

(c) Every contract entered into by the Authority shall:

(i) Be in strict conformity with the present Convention and the rules and regulations adopted by the Authority;

(ii) Ensure control by the Authority of activities in the Area in accordance with paragraph 4 of article 151;

(iii) Confer on the contractor exclusive rights for the exploration and exploitation of the resources in the contract area in accordance with the rules and regulations of the Authority.

Qualifications of applicants for contracts

4. (a) The Authority shall adopt, in accordance with paragraph 11 of this annex, appropriate administrative procedures and rules and regulations for making an application and for the qualifications of an applicant. Such qualifications shall include financial standing, technological capability and satisfactory performance under any previous contracts with the Authority.

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

(c) Every applicant without exception shall:

(i) Undertake to accept as enforceable and to comply with the obligations created by the provisions of Part XI of the present Convention, the rules and regulations adopted by the Authority, and the decisions of its organs and the terms of contracts; ----------

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 quinquies) 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;

(iii) Accept control by the Authority in accordance with subparagraph (c) (ii) of paragraph 3;

(iv) Provide the Authority with satisfactory assurances that its obligations covered by the contract entered into by it will be fulfilled in good faith.

Selection of applicants for contracts

5. (a) ---------- Six months after the entry into force of ---------- the present Convention, and thereafter each fourth month ----------, the Authority shall take up for consideration applications received for contracts with respect to activities of exploration and exploitation.

(b) When considering an application for a contract with respect to exploration and exploitation, the Authority shall first ascertain whether

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

(ii) the applicant possesses the requisite qualifications pursuant to paragraph 4.

(c) Once it is established that the conditions referred to in subparagraph (b) above are met, the Authority shall determine whether more than one application has been received within the preceding time period as provided in subparagraph (a) above in respect of substantially the same area and category of minerals and whether the granting of a contract would be in conformity with the provisions of subparagraph (g) of paragraph 1 of article 150 and the relevant decisions of the Authority in implementation thereof. If no competing application has been received, and if the granting of a contract would be in conformity with subparagraph (g) of paragraph 1 of article 150, the Authority shall without delay enter into negotiations with the applicant with a view to concluding a contract.

(d) The negotiations referred to in subparagraph (c) above shall, within the framework of the provisions of Part XI of the present Convention 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, deal with:

(i) operational requirements under regulations adopted pursuant to paragraph 11 of this annex such as duration of activities, size of area, performance requirements and protection of the marine environment;

(ii) the financial contribution to be made by the applicant under the financial arrangements established in paragraph 7 of this annex, and participation in the project by developing countries, on the basis of the incentives for such participation established in paragraph 7;

(iii) transfer of technology under programmes and measures pursuant to article 144, and subparagraph (c) (ii) of paragraph 4 of this annex.

(e) In the course of the negotiations referred to in subparagraph (d) above, and prior to the conclusion of a contract, the Authority shall ensure that such contract would be in full conformity with the provisions of Part XI of the present Convention 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, in particular the provisions, rules, regulations and procedures on the issues enumerated in subparagraph (d) above, and the provisions of subparagraph (g) of paragraph 1 of article 150, and the relevant decisions of the Authority in implementation thereof.

(f) The negotiations referred to in subparagraph (d) above shall be conducted as expeditiously as possible. As soon as the issues under negotiation in accordance with subparagraph (d) above have been settled, the Authority shall conclude the corresponding contract with the applicant. In cases of a refusal of contract the Authority shall state the reasons for such refusal.

(g) If the Authority receives within the applicable time period as provided in subparagraph (a) above more than one application in respect of substantially

the same part of the Area and category of minerals, or if the applications received within that time period cannot all be accommodated within the production limits established in subparagraph (g) of paragraph 1 of article 150, selection from among the applicants shall be made on a comparative basis. Taking into consideration the requirements specified in paragraph (d) above, the Authority shall enter into negotiations with the applicants in order to make its selection on the basis of a comparative evaluation of their applications and qualifications. In conducting such negotiations, the Authority shall take into account the need to provide for all States Parties, irrespective of their social and economic systems or geographical locations, opportunities to participate in the development of the resources in the Area and the need to prevent monopolization of such activities. In so doing the Authority shall also take into account the need to give ---------- priority to applicants who are ready to enter into such joint arrangements with the Enterprise as referred to in subparagraphs (i) and (j) (iii) below. Once the selection is made, the Authority shall enter into negotiations with the selected applicant or applicants on the terms of a contract in accordance with subparagraphs (c) and (d) above.

(h) If the Contractor in accordance with subparagraph (b) of paragraph 3 of this annex has entered into a contract with the Authority for separate stages of operations, he shall have a preference and a priority among applicants for a contract for subsequent stages of operations with regard to the same areas and resources; provided, however, that where the Contractor's performance has not been satisfactory such preference or priority may be withdrawn.

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

(j) (i) The proposed contract area shall be sufficiently large and of sufficient value to allow the Authority to determine that one half of it shall be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing countries. Upon such determination by the Authority the Contractor shall indicate the co-ordinates dividing the area into two halves of equal estimated commercial value and the Authority shall designate the half which is to be reserved. The Contractor may, alternatively, submit two non-contiguous areas of equal estimated commercial value, of which the Authority shall designate one as the reserved area. The designation by the Authority of one half of the area, or of one of two non-contiguous areas, as the case may be, in accordance with the provisions of this subparagraph, shall be made as soon as the Authority has been able to examine the relevant data as may be necessary to decide that both parts are equal in estimated commerical value.

(ii) Areas designated by the Authority as reserved areas in accordance with this subparagraph, may be exploited only through the Enterprise or in association with developing countries. ----------
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(iii) In conducting activities in areas reserved in accordance with this subparagraph, the Enterprise may enter into joint arrangements of the kind referred to in subparagraph (i) above with other entities referred to in subparagraph (ii) of paragraph 2 of article 151. In such joint arrangements appropriate provision shall be made for participation by developing countries. The nature and extent of such participation shall be approved by the Authority.

(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.

(v) Nothing in this subparagraph shall be interpreted as preventing the Enterprise from carrying out activities in accordance with this annex in any part of the Area not subject to contract or joint arrangement.

(k) Contractors entering into such joint arrangements with the Enterprise as referred to in subparagraphs (i) and (j) (iii) above may receive financial incentives as provided for in the financial arrangements established in paragraph 7 of this annex.

(l) While the inclusion of a quota or anti-monopoly provision appears to be acceptable in principle, its detailed formulation has yet to be fully negotiated.

Transfer of data

8. The Contractor shall transfer in accordance with the rules and regulations and the terms and conditions of the contract to the Authority at time intervals determined by the Authority all data which are both necessary and relevant to the effective implementation of the powers and functions of the principal organs of the Authority in respect of the contract area. Transferred data in respect of the contract area, deemed to be proprietary, shall not be disclosed by the Authority, and may only be used for the purposes set forth above in this subparagraph. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment and safety shall not be deemed to be proprietary. Except as otherwise agreed between the Authority and the Contractor, the Contractor shall not be obliged to disclose proprietary equipment design data.

Training programmes

9. The Contractor shall draw up practical programmes for the training of personnel of the Authority and developing countries, including the participation of such personnel in all activities covered by the contract, in accordance with paragraph (b) of article 144.

Exclusive right to explore and exploit in the contract area

10. The Authority shall, pursuant to Part XI of the present Convention and the rules and regulations prescribed by the Authority, accord the Contractor the exclusive right to explore and exploit the contract area in respect of a specified category of minerals and shall ensure that no other entity operates in the same contract area for a different category of minerals in a manner which might interfere with the operations of the Contractor. ----------
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The Contractor shall have security of tenure in accordance with paragraph 6 of article 151.

NG2/10/Rev.1
14 September 1978

ORIGINAL: ENGLISH

REPORT BY THE CHAIRMAN OF NEGOTIATING GROUP 2 TO THE FIRST COMMITTEE

On behalf of Negotiating Group 2, I would like to make a report to the First Committee on the work done at this resumed session. Allow me, Mr. Chairman, to begin my report by expressing my profound gratitude to you for the advice, assistance and encouragement which you have given to me. I would also like to take this opportunity to thank the Rapporteur of the First Committee, Mr. John Bailey, two members of the Secretariat who worked very closely with me, Mr. Mati Pal and Mr. Shunichiro Yoshida, Mr. Eric Langevad of UNDP, and Mr. Pali Kirthisingha of UNCTAD.

At this resumed session, Negotiating Group 2 conducted its negotiations on the following questions: first, the amount of the application fee; second, whether there should be an annual fixed fee and, if so, of what amount; third, should there be a bonus or lump sum payment and, if so, of what amount; fourth, should there be two systems of financial payments, the first system consisting of production charge only and the second system consisting of a combination of production charge and share of net proceeds; fifth, assuming that there will be two systems of financial payments, how much should the contractor pay by way of production charge under the first system; sixth, under the second system, how much should the contractor pay by way of production charge and how much by way of share of net proceeds.

Negotiating Group 2 held a total of 12 meetings. I wish to take this opportunity to thank all members of the Negotiating Group for their valuable contributions. I wish, in particular, to thank Minister Jens Evensen of Norway for the new compromise proposal he made. It has helped me enormously in formulating my own compromise. Based upon the negotiations and by drawing inspiration from the various compromise proposals that were submitted to Negotiating Group 2, I have revised my compromise proposal. The revised compromise proposal is issued as an annex to this report. I wish to make some comments on the revised compromise proposal by way of explanation.

In formulating my compromise proposal, I have been guided by the five objectives set out in paragraph 7 of annex II. I have borne in mind the need to achieve a balance between these five objectives, in particular, the objective of ensuring optimum revenues for the Authority, the objective of attracting investment to sea-bed mining and the objective of enabling the Enterprise to engage in sea-bed mining as early as possible. In determining whether the financial terms will attract or deter investment, the Negotiating Group had to rely upon the concept of the internal rate of return (IROR) on investment.

Application fee

In paragraph 7 (bis), I have proposed that the application fee shall be fixed at an amount of $500,000 per application. However, if the actual cost incurred by the Authority in processing an application is less than $500,000, the Authority shall refund the difference to the applicant. I have also adopted the idea that the Council should be empowered to review, from time to time, the amount of the application fee in order to ensure that it covers the administrative cost of processing such an application.

Annual fixed fee

In paragraph 7 (ter), I have retained my proposal that a contractor shall pay an annual fixed fee from the day of entry into force of the contract. I have set the amount of the annual fixed fee at $1 million.

Bonus payment

I have not included in my compromise proposal a bonus or lump sum payment, either as an alternative to the annual fixed fee or as an addition to it. I have not done so for the following reasons: first, because it is a front-end payment. The idea of a bonus payment, whatever the amount, is not acceptable to the industrialized countries. Second, the bonus payment has a disproportionate effect on the internal rate of return. What I mean by this is that even a small bonus payment would have an appreciable effect on the internal rate of return, and would reduce the Authority's capacity to capture far larger revenues from the contractor at a later stage. Third, if the main reason for including a bonus payment is to help the Enterprise to become operational at an early stage, this objective can be realized **only if** the amount of the bonus payment were very high. But a very high bonus payment would have a devastating effect on the internal rate of return.

Choice of two systems

In addition to the annual fixed fee, a contractor must make substantial financial payments to the Authority under either the single system of production charge or the mixed system of production charge and share of net proceeds. Who should exercise the choice between the two systems? As in my previous proposal, I have left the choice to the contractor rather than to the Authority. I feel that this is logical because if the two systems are of roughly equivalent value to the Authority it should not matter whether the contractor chooses the first or **the** second system. From the point of view of the contractor, the choice is of paramount importance because the first system is preferred by delegations from one socio-economic system whereas the second system is preferred by those from a different socio-economic system. Once the contractor has made his choice, it is irrevocable.

The single system of production charge

Under paragraph 7 (quinquies), I have proposed that the production charge shall escalate in three steps. From the first to the sixth year of commercial

production, the production charge shall be fixed at 7.5 per cent of the market value of the processed metals. From the seventh to the twelfth year of commercial production, the rate is increased to 10 per cent. From the thirteenth to the twentieth year or to the end of the contract, the rate is further increased to 14 per cent.

The mixed system

The mixed system is contained in paragraph 7 (sexies). Under this system also, the production charge will escalate in three steps. From the first to the sixth year of commercial production, it is fixed at 2 per cent. From the sixth to the twelfth year, it is fixed at 4 per cent and from the thirteenth to the twentieth year at 6 per cent.

The attributable net proceeds have been fixed at 40 per cent of the contractor's total net proceeds. I have chosen the figure of 40 per cent as a reasonable compromise between two conflicting points of view. First, it has been argued that the attributable net proceeds should be computed on the basis of the ratio of development costs of the mining sector to total development costs. Following this approach, one arrives at the figure of 20 per cent. The second approach would allow the actual cost of transportation and processing to be deducted from total gross proceeds as if these latter sectors were service sectors so that the proceeds are netted back to the mining sector. Following this approach, one could arrive at a figure as high as 60 per cent. In my view, neither approach is more logical than the other. What is therefore required is a politically negotiated compromise. Viewed in this light, I think that the compromise of 40 per cent of total net proceeds, as suggested by Minister Jens Evensen of Norway, is a reasonable one.

The Authority's share of attributable net proceeds escalates in three steps. From the first to the sixth year of commercial production, the Authority's share is 40 per cent. From the seventh to the twelfth year it is 70 per cent, and from the thirteenth to the twentieth year, it is 80 per cent.

Safeguard clauses

In view of the uncertainties of this new industry, I recognize the need of the contractor to have his funds returned from the project as quickly as possible. I also recognize the contractor's need for positive cash flows, particularly in the early years of the operation. For these reasons, both the production charge and the share of net proceeds are based on three steps to safeguard the contractor's interests. Further I have included a safeguard clause in subparagraphs (b) and (f) of paragraph 7 (sexies). Under these safeguard clauses, the production charge will not be increased from 2 per cent to 4 per cent from the seventh to the twelfth year unless the contractor recoups his initial development costs by means of his cash flow. In the same way, the production charge will not be increased from 4 per cent to 6 per cent from the thirteenth to the twentieth year if the contractor fails to recoup twice the initial development costs by means of his cash flow. Similarly, the Authority's share of attributable net proceeds will not be increased from 40 per cent to 70 per cent from the seventh to the twelfth year if the contractor

fails to recoup his initial development costs by means of his cash flow. During the period from the thirteenth to the twentieth year, the Authority's share of attributable net proceeds shall not be increased from 70 per cent to 80 per cent unless the contractor recoups twice his development costs by means of his cash flow.

Members of the Group of 77 may well ask why these two safeguard clauses only take care of the concerns of the contractor and not those of the Authority? This is a legitimate question. My answer to them would be that I have already taken care of the Authority's concerns by increasing the production charge from a maximum of 4 per cent under Minister Evensen's proposal to the higher figure of 6 per cent. Similarly, the Authority's share of attributable net proceeds has been increased from a maximum of 75 per cent under Minister Evensen's proposal to 80 per cent. I have also tried to safeguard the Authority's interests by increasing the production charge from 2 per cent to 4 per cent and the Authority's share of net proceeds from 40 per cent to 70 per cent in the seventh year, instead of the eleventh year as was proposed by Minister Evensen.

If, in reality, the industry turns out to be highly profitable, my proposal ensures a fair share of the prosperity to each party. If profitability were normal, my proposal would obtain a substantially larger income, of the amount of about $300 million, for the Authority than Minister Evensen's proposal with almost no adverse effect on the contractor's internal rate of return on investment. If the conditions turn out to be bleak, my proposal would give relief to the contractor. The Authority's income will, of course, be lower which is an inevitable consequence of poor economic conditions anyway, whatever the system of net profit sharing we devise.

Income tax approach

It will be apparent from what I have said that I have moved away from the return on investment approach in my earlier proposal to an income tax approach. There are four reasons why I have done this: first, it is a simple system; second, the accounting procedures are more straightforward; third, we are more familiar with the income tax approach which is used in most of our countries than with the other approach; fourth, we have tried to take care of the concern of the contractors for flexibility through the safeguard clauses.

Contracts for mining only

Subparagraph (d) of paragraph 7 (sexies) takes account of the contractors who contract only to mine the nodules. I have provided for this contingency even though I am not convinced that in the foreseeable future there will be a free market for nodules.

Other changes

I have attempted to take into account the points raised with regard to the components of the financial terms and I have made appropriate changes to my earlier text. With these changes I hope that I have ensured that the bucket will not leak.

Evaluating the compromise proposal

There are two fundamental ways in which my compromise proposal can be evaluated. First, we can compare it with financial provisions in national mining laws and in mining contracts. Such a comparison would show that my compromise proposal is reasonable. The second way is to monetize my proposal. For the purpose of monetizing my proposal, I have looked at both the MIT Cost Model and the European Base Case. I have used the MIT model because it is a much more detailed and comprehensive study than the European Base Case. I think the majority in the Negotiating Group, both from developed and developing countries, will agree that the MIT model is the most reliable estimate we have to date of the costs, expenditures and revenues of sea-bed mining.

In using the MIT model baseline case I have altered some of its assumptions in order to conform to my proposal as well as to the general framework contained in the Informal Composite Negotiating Text. For example, the period for the recovery of development costs is 10 years; the method of recovery is 10 annual equal instalments; and prospecting, exploration and R and D costs are considered as development costs. It was not, however, possible to alter the MIT assumption of 25 years of production to 20 years because of the shortage of time. It was also not possible to exclude United States national tax for the purpose of calculating the internal rate of return, for the same reason.

Using the MIT model my compromise proposal under the single system will give the Authority an income of $740 million. The internal rate of return is approximately 15 per cent. Under the mixed system, the income to the Authority will be $1.1 billion and the internal rate of return is also approximately 15 per cent. If the internal rate of return were calculated before national taxation, it would rise well above 15 per cent.

I have no doubt that my compromise proposal will be criticized by both the developed and the developing countries. The developed countries will say that the internal rate of return of 15 per cent is too low. The developing countries will, no doubt, say that it is too high. After very serious thought on the subject I have come to the considered judgement that an internal rate of return of 15 per cent, after paying national tax comparable to that to the United States, is the golden mean. It is a figure which seems to be commonly accepted in the world of international finance.

I understand, of course, that the mineral industry is at present in the trough of an economic downswing. My compromise proposal should not be viewed by the developed countries on the unrealistic assumption that these depressed conditions will be perpetuated. It should be viewed in the correct perspective of the long-term prospects of the industry.

ANNEX

FINANCIAL TERMS OF CONTRACTS

The Chairman's Revised Compromise Proposal

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 subparagraph (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 $500,000 per application. If the cost incurred by the Authority in processing an application is less than $500,000, the Authority shall refund the difference to the applicant. The amount of the fee shall be reviewed from time to time by the Council in order to ensure that it covers the administrative cost of processing such an application.

Paragraph 7 (ter)

A Contractor shall pay an annual fixed fee of $1 million from the date of entry into force of the contract. From the commencement of commercial production, the annual fixed fee shall be deducted from the production charge provided that the production charge exceeds the amount of annual fixed fee.

Paragraph 7 (quater)

In addition to his obligation under paragraph 7 (ter) a Contractor shall choose to make his financial contribution to the Authority either (a) by paying a production charge or (b) by paying a production charge and a share of net proceeds. The choice made by the Contractor shall be irrevocable.

Paragraph 7 (quinquies)

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

(i) Years 1-6 of commercial production 7.5%

(ii) Years 7-12 of commercial production 10%

(iii) Years 13-20 of commercial production 14%

(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.

Paragraph 7 (sexies)

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

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

(i) Years 1-6 of commercial production 2%

(ii) Years 7-12 of commercial production 4%

(iii) Years 13-20 of commercial production 6%

(b) Production charge shall not be raised from 2 per cent to 4 per cent in the years 7-12 unless the Contractor's total net proceeds plus his recovery of development costs less his payments to the Authority in the preceding years are equal to the development costs incurred prior to the commencement of commercial production. Production charge shall not be raised from 4 per cent to 6 per cent in the years 13-20 unless the Contractor's total net proceeds plus his recovery of development costs less his payments to the Authority in the preceding years are equal to twice the development costs incurred prior to the commencement of commercial production.

(c) The Authority's share of net proceeds shall be taken out of an amount equal to 40 per cent of the Contractor's net proceeds to represent the net **proceeds** attributable to mining of the resources of the contract area. This amount shall be referred to hereinafter as the attributable net proceeds.

(d) In the case of contracts for mining of nodules, the Contractor's net proceeds shall be based on the gross proceeds from the sale of nodules at prices established in a recognized international market. In the absence of such a market, the price of nodules shall be the result of arm's length transactions. In no event shall the net proceeds be less than the attributable net proceeds.

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

(i) Years 1-6 of commercial production 40%

(ii) Years 7-12 of commercial production 70%

(iii) Years 13-20 of commercial production 80%

(f) The Authority's share of attributable net proceeds shall not be raised from 40 per cent to 70 per cent in the years 7-12 unless the Contractor's total net proceeds plus his recovery of development costs less his payments to the Authority in the preceding years are equal to the development costs incurred prior to the commencement of commercial production. The Authority's share of attributable net proceeds shall not be raised from 70 per cent to 80 per cent in the years 13-20 unless the Contractor's total net proceeds plus his recovery of development costs less his payments to the Authority in the preceding years are equal to twice the development costs incurred prior to the commencement of commercial production.

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

(h) The term "gross proceeds" means the gross revenues from the sale of the processed metals, and any other monies deemed to be reasonably attributable to the operations of the contract in accordance with the financial regulations of the Authority.

(i) 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 activities related thereto, in conformity with generally recognized accounting principles, including, inter alia, costs of machinery, equipment, ships, buildings, land, roads, prospecting and exploration of the contract area, construction, interest, required leases, licences, fees; and

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

Proceeds from the disposal of capital assets and the market value of those capital assets which are no longer required for operations under the contract and which are not sold shall be deducted from development costs during the relevant accounting period. When these deductions exceed the development costs the excess shall be added to the gross proceeds.

(j) The development costs referred to in subparagraph (i) (i) above shall be recovered in 10 equal annual instalments from the date of commencement of commercial production. The development costs referred to in subparagraph (i) (ii) above shall be recovered in 10 or fewer equal annual instalments so as to ensure their complete recovery by the end of the contract.

(k) The term "operating costs" means all expenditures incurred after the commencement of commercial production in the operation of the productive capacity of the contract area and activities 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.

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

(m) 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)

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

Paragraph 7 (octies)

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

(b) If an international 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) (i) All costs, expenditures and revenues referred to in this paragraph shall be the result of free market or arm's length transactions.

(ii) If the costs, expenditures 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.

(d) In order to ensure that all costs, expenditures 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 subparagraph, 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.

(e) 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.

Paragraph 7 (novies)

The payments to the Authority under paragraph 7 (quinquies) and (sexies) above may be made either in a freely convertible currency or in a currency agreed upon between the Authority and the Contractor, or at the Contractor's option, in the equivalents of processed metals at market value. The market value shall be determined in accordance with subparagraph (b) of paragraph 7 (quinquies) above.

Paragraph 7 (decies)

All monetary amounts referred to in this paragraph shall be calculated in constant terms relative to a base year.

Paragraph 7 (undecies)

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 (duodecies)

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.

NG3/5
14 September 1978

ORIGINAL: ENGLISH

REPORT BY THE CHAIRMAN OF NEGOTIATING GROUP 3 (MR. PAUL BAMELA ENGO, UNITED REPUBLIC OF CAMEROON) ON THE WORK OF NEGOTIATING GROUP 3

It was clear from the reports submitted in May 1978 on the negotiations on First Committee issues, that a consensus existed for ensuring that this resumed session should be a timely continuation of the first part, and that we should move forward rather than take the backward step of reopening issues which had been treated in Geneva. Negotiating Group 3 respected this.

With a mandate calling for negotiations on problems relating to the "Organs of the Authority, their composition, powers and functions", the Group, during the entire seventh session of the Conference, concentrated on an effort to settle the juridical nature and characteristics of the Council and its subsidiary organs, as well as the delimitation of the scope of their functions. It was imperative to do this if any measure of success were to be expected on future negotiations relating to the important issue of interrelationships between the respective powers and functions of the principal organs on the one hand, and between these and the subsidiary organs on the other.

The interrelationship between the issues in Negotiating Groups 1, 2 and 3 calls for a machinery for co-ordinating negotiations on at least overlapping issues. At this stage in our endeavours, this has not yet proved practical. The necessity for examining a package consisting of the hard-core issues falling within the mandate of all three Groups becomes clear as negotiations advance.

Participants in the work of Negotiating Group 3 showed a refreshing determination to seek consensus through constructive analyses and suggestions. I was encouraged by this spirit to draft a series of suggestions regarding the subsidiary organs of the Council, in the light of suggestions made at the meetings of the Group. The free and open discussions on each draft enabled its revision (see NG3/3 and revised versions). The text contained in document NG3/4 reflects my view of the formulations with which all sides can live.

I should like to place on record my profound appreciation for the co-operation I received from members of the Group. It is only their willingness to participate in a constructive manner that made this resumed session such a productive one. The members of the Bureau of the First Committee, especially those of the Secretariat, continued to render tremendous services at their most characteristic and best.

The ICNT proposes three subsidiary organs of the Council, namely: an Economic Planning Commission (art. 162), a Technical Commission (art. 163), and a Rules and Regulations Commission (art. 164). These articles were used as the basis for discussion.

The broad conclusions that may be reached on the discussions may be the following:

1. There appears to be general agreement: that the subsidiary organs of the Council should perform an advisory function in the technical fields; that they study problems within their respective competence; that on the basis of their specialized knowledge, make recommendations to the Council; that the Council would then make the appropriate decision or, as the case may be, make prescribed recommendations to the Assembly. Thus the role of the Council as the Authority's executive body had to be seen to be unchallenged.

Consequently, it was pointed out that some of the executive functions which the ICNT prescribes for the Technical Commission in article 163 should be transferred to the Council itself. Thus, article 163, paragraph 2, subparagraphs (vi), (vii), (x), (xi), and (xii) has now been transferred to article 160 as parts of the powers and functions of the Council in my suggested compromise (NG3/4). In the same spirit, a new paragraph 8 has been added to article 161 requiring that "each Commission shall perform its function in accordance with such guidelines and directives as the Council may adopt".

2. It was generally recognized that the structure of the Authority should not be too cumbersome, at least in its early life. The ends of efficiency and economy were overriding. Since power to create additional subsidiary bodies has already been provided for the Council to cover any functions which future experience and needs may dictate, it was thus unnecessary and perhaps undesirable to create too many statutory bodies in the Convention.

It was widely felt that while it is important that all major functions presently set out in articles 162, 163 and 164 should be maintained, the structure itself may be streamlined. It is for this reason that the functions assigned to the Rules and Regulations Commission by the ICNT (art. 164) has been transferred to the Technical Commission.

3. There was general support that the role for preparing technical studies and reports should be assigned to the Secretariat, thus avoiding the overload of activities on the subsidiary organs. It was pointed out that in any case these organs would in the normal course of things require assistance from the Secretariat. Accordingly, in the interest of economy and for the purpose of avoiding overlapping of competence, references to special studies and reports required of the subsidiary organs have now been removed. It is understood that these are the functions of the Secretariat.

4. While there appeared to be a consensus of opinion that the functions of the Rules and Regulations Commission may be combined with the Technical Commission, some delegations pointed out that the ICNT made no specific reference to the

handling of financial matters, that competence in dealing with financial matters should be adequately reflected in the text and that perhaps an additional organ could be established for that purpose. The general view was, however, that a specific provision empowering the Council to establish a subsidiary organ to deal with financial matters would be sufficient. A new subparagraph (xxiii) is now inserted in my suggestions under article 160 to reflect this.

5. Some criticism was made of article 161 in the ICNT, to the effect that it was rather heavy on details and contained provisions for procedure which could more appropriately be dealt with by the subsidiary organs themselves. It was suggested that some of the provisions could be combined, deleted or simplified. In the light of this suggestion, some adjustments have been made in article 161.

6. There was wide support regarding the size, composition and voting system presently contained in the ICNT. My suggestion reflects what I found to enjoy that support under article 161.

7. The question of the qualification of members of the Commission was the subject of lengthy but productive discussion. Taking into account all views expressed and suggestions made, I have formulated a new approach in paragraph 1 of articles 162 and 163 respectively. These are to be read in the light of article 161 (3). These provisions are intended, firstly, to provide flexibility which is required in this new field. Secondly, it emphasizes the desirability for ensuring that the Council does not elect a limited expertise to the Commissions. Taken as a whole, the membership of each Commission should fulfil the need for all appropriate qualifications.

8. With regard to the Economic Planning Commission, the view was expressed that the functions presently assigned to it by article 162 of the ICNT did not justify its name. As a planning Commission, it was argued, a function to propose economic plans upon the request of the Council should be added. It would involve, it was argued, that by giving such broad powers for general economic planning by the Authority or its organs, the exercise of which could undermine other provisions in the Convention, for example relating production ceilings. I have attempted to respond to the concerns on both sides by introducing a new first subparagraph to article 162 (2) (a): Upon request of the Council, the Commission shall propose measures to implement decisions relating to activities in the Area taken in accordance with the provisions of the Convention.

9. One final comment I wish to make concerns the foot-note referring to article 160, paragraph 1 and paragraph 2 (i) to (xviii). It notes that these have not been the subject of negotiations. That language was employed for lack of a better one. Some important issues were raised over which no agreements were immediately in sight. One such issue of importance related to paragraph 2 (x). On the one hand it falls under "the powers and functions of the Council" itself, which title was not within our universe of discourse; on the other hand, its substance touched upon the issue of interrelationship of the respective powers and functions of the Council and one of its subsidiary organs, the Technical Commission. Those who feared the erosion of the executive functions and the undermining of its authority vigorously opposed paragraph 2 (x) and called for its deletion. Others who feared the arrogance or misuse of power in the Council opposed with commensurate force the proposal to delete. The latter argued that it was a matter to be dealt with after other issues within the First Committee mandate had been settled. Prudence dictated that no language be used to raise a new controversy whether or not the discussion on this issue could be categorized as <u>negotiation</u>, detailed or not.

NG3/4
13 September 1978

ORIGINAL: ENGLISH

Compromise suggestions by the Chairman of Negotiating Group 3 regarding the subsidiary organs of the Council

Article 160. Powers and functions*

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

2. In addition, the Council shall:

(i) Supervise and co-ordinate the implementation of the provisions of this Part of the present Convention and invite the attention of the Assembly to cases of non-compliance;

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

(iii) Recommend to the Assembly candidates for appointment as members of the Governing Board of the Enterprise as well as the Director-General of the Enterprise;

(iv) Establish, as appropriate, and with due regard to economy and efficiency, in addition to the Commissions provided for in article 161, paragraph 1, such subsidiary organs as may be found necessary for the performance of its functions in accordance with the provisions of this Part of the present Convention. In the composition of such subsidiary organs, emphasis shall be placed on the need for members qualified and competent in the relevant technical matters dealt with by such organs provided that due account shall be taken of the principle of equitable geographical distribution and of special interests;

(v) Adopt its rules of procedure;

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* Paras. 1 and 2 up to subpara. (xviii) have not been the subject of negotiations during the resumed session.

(vi) Enter into agreements with the United Nations or other intergovernmental organizations on behalf of the Authority, subject to approval by the Assembly;

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

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

(ix) Issue directives to the Enterprise and exercise control over its activities in accordance with paragraph 4 of article 151;

(x) Approve on behalf of the Authority, after review by the Technical Commission, formal written plans of work for the conduct of activities in the Area, drawn up in accordance with paragraph 3 of article 151. In so doing, the Council shall act expeditiously. The plan of work shall be deemed to have been approved unless a decision to disapprove it is taken within 60 days of its submission by the Technical Commission;

(xi) Exercise control over activities in the Area in accordance with paragraph 4 of article 151;

(xii) Adopt on the recommendation of the Economic Planning Commission necessary and appropriate measures in accordance with paragraph 1 (g) of article 150 to protect against adverse economic effects specified therein;

(xiii) Make recommendations to the Assembly on the basis of advice from the Economic Planning Commission for a system of compensation as provided in subparagraph (g) (D) of paragraph 1 of article 150;

(xiv) Adopt and apply provisionally, pending final adoption by the Assembly, rules, regulations and procedures, and any amendments thereto, in accordance with the provisions of paragraph 11 of annex II, taking into account the recommendations of the Rules and Regulations Commission. Such rules, regulations and procedures shall remain in effect on a provisional basis until final adoption by the Assembly or amendment by the Council in the light of any views expressed by the Assembly;

(xv) Review the collection of all payments to be made by or to the Authority in connexion with operations pursuant to this Part of the present Convention and recommend to the Assembly the financial regulations of the Authority, including rules on borrowing;

	(xvi)	Submit to the Assembly for its approval the budget of the Authority;
	(xvii)	Make recommendations concerning the policies and measures required to give effect to the principles of this Part of the present Convention;
	(xviii)	Make recommendations to the Assembly concerning suspension of the privileges and rights of membership for gross and persistent violations of the provisions of this Part of the present Convention upon a finding of the Sea-Bed Disputes Chamber;
Formerly subpara. (vi) Art. 163	(xix)	Initiate on behalf of the Authority proceedings before the Sea-Bed Disputes Chamber in cases on non-compliance;
Formerly subpara. (vii) Art. 163	(xx)	Upon a finding by the Sea-Bed Disputes Chamber on proceedings resulting from subparagraph (xix) above, notify the Assembly and make recommendations with respect to measures to be taken unless otherwise decided;
Formerly subpara. (xi) Art. 163	(xxi)	Issue emergency orders, which may include orders for the suspension of operations, to prevent serious harm to the marine environment arising out of any activity in the Area;
Formerly subpara. (xii) of Art. 163	(xxii)	Disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of irreparable harm to a unique environment;
New	(xxiii)	Establish a subsidiary organ for the elaboration of financial rules, regulations and procedures relating to: (a) financial management in accordance with articles 170-175 inclusive; and (b) financial arrangements in accordance with paragraphs 7 and 11 (a)3 of annex II, which shall be approved by the appropriate body;
Formerly para. 2 Art. 163, subpara. (x)	(xxiv)	<u>Establish appropriate mechanisms for directing and supervising</u>* a staff of inspectors who shall inspect activities in the Area to determine whether the provisions of this Part of the present Convention, the rules, regulations and procedures prescribed thereunder, and the terms and conditions of any contract with the Authority are being complied with.

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* Underlining in substantive provisions denotes change.

Article 161. Organs of the Council

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

(a) Legal and Technical Commission;

(b) Economic Planning Commission.

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

3. Members of the Commissions shall have appropriate qualifications in the area of competence of the Commission in which they seek election.

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

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

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

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

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

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

10. Decisions of each Commission shall be by a two-thirds majority of members. Recommendations to the Council, shall, where necessary, be accompanied by a summery on the divergencies of opinion in the Commission.

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

Formerly para. 3 Art. 162

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

Article 162. Economic Planning Commission

1. Members of the Economic Planning Commission shall have appropriate qualifications such as those relevant to mining, management of mineral resource activities, international trade or economics. The Council shall endeavour to ensure that the membership fulfils the need for all appropriate qualifications in the Commission as a whole.

2. The Commission shall:

New

(a) upon request of the Council, propose measures to implement decisions relating to activities in the Area taken in accordance with this Convention;

Formerly Art. 162 para. 3

(b) review the trends of and factors affecting supply, demand and prices of raw materials which may be obtained from the Area, bearing in mind the interests of both importing and exporting countries, and in particular the developing countries among them;

Formerly para. 5 Art. 162

(c) examine any situation likely to lead to such adverse effects as referred in subparagraph (g) of paragraph 1 of article 150, brought to its attention by the State Party or State Parties concerned, and make appropriate recommendations to the Council;

Formerly para. 7 Art. 162

(d) propose to the Council for submission to the Assembly a system of compensation for developing countries who suffer adverse effects caused by activities in the Area, as provided in subparagraph (g) (D) of paragraph 1 of article 150. After adoption by the Assembly of such system of compensation the Economic Planning Commission shall make such recommendations to the Council as are necessary for the application of the system in concrete cases.

Article 163. Legal and Technical Commission

1. Members of the Legal and Technical Commission shall have appropriate qualifications such as those relevant to exploration, exploitation and processing of mineral resources; oceanology; or economic or legal matters relating to ocean mining and other

relevant fields of expertise. The Council shall endeavour to ensure that the membership fulfils the need for all appropriate qualifications in the Commission as a whole.

2. The Commission shall:

New — (a) upon the request of the Council make recommendations with regard to the carrying out of the Authority's functions;

Formerly (xiv) — (b) review formal written plans of work for activities in the Area in accordance with paragraph 3 of article 151, and submit appropriate recommendations to the Council;

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

Formerly para. 4 Art. 163 — (d) the members of the Commission shall, upon request by any State Party or other party concerned, be accompanied by a representative of such State Party or other party concerned when carrying out their functions of supervision and inspection;

(e) prepare assessments of the environmental implications of activities in the Area;

Formerly (xiii) — (f) make recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts in that field;

Formerly para. 2 Art. 164 (i) — (g) formulate and submit to the Council the rules, regulations and procedures referred to in subparagraph (xiv) of paragraph 2 of article 160, taking into account all relevant factors including assessments of the environmental implications of activities in the Area;

Formerly para. 2 Art. 164 (ii) — (h) keep such rules, regulations and procedures under review and recommend to the Council from time to time such amendments thereto as it may deem necessary or desirable.

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

1. At its 106th meeting on 19 May 1978, the Plenary Conference decided to resume the seventh session at New York from 21 August to 15 September and to maintain for the second part of the session the organization and methods of work decided upon for the first part, held in Geneva.

2. Consequently, the work of the Second Committee was organized according to the rules contained in document A/CONF.62/62, adopted by the Plenary. The Plenary, as will be recalled, established negotiating groups to deal with issues within the full or partial competence of the Second Committee, namely, Negotiating Groups 4, 6 and 7. The Plenary also established Negotiating Group 5. Although this Group deals with issues relating to the settlement of disputes which have been discussed in plenary meetings of the Conference, the subject-matter assigned to it is closely associated with an issue assigned to the Second Committee.

3. The present report refers to the work carried out by the Second Committee and by Negotiating Group 6 during the resumed seventh session and thus complements the reports which I made to the Plenary on 3 and 17 May 1978 in Geneva (at the 94th and 100th meetings respectively).

4. I must first express my gratitude to Ambassadors Nandan and Stavropoulos and to Mr. E.J. Manner, the Chairmen of Negotiating Groups 4, 5 and 7, for the co-operation which they have extended to me, thereby enabling the programme of work to be developed in the best possible way, despite the restricted services available during the second part of the seventh session.

5. As regards the work of the Negotiating Groups relating to all or some of the issues within the competence of the Second Committee during the resumed seventh session, the Second Committee has received the reports of the Chairmen of Negotiating Groups 4 and 7. As was agreed in Geneva, the substantive issues dealt with in those reports were not discussed in detail; this was in response to an appeal I made to delegations to restrict themselves to general comments in order to avoid holding the same debate on the same subject in both the Committee and the Plenary.

6. Negotiating Group 6, which I presided over, continued its work on the 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. This Group held seven informal meetings during the resumed seventh session. The work was very similar in character to that carried out in Geneva; that is to say, although the discussion was positive, it was not possible to reach a general agreement. As in Geneva, statements focused on the question of the outer limit, and some delegations defined their position for the first time on this matter. The suggestions which we discussed in this Group were: the Irish formula, document NG6/1; the Soviet proposal, document C.2/Informal Meeting/14; and the proposal of the Arab Group, document NG6/2, which advocates a maximum limit of 200 miles. In the last stage of the work, one delegation made an informal suggestion, which consisted of accepting the so-called Irish formula and amending article 82 of the ICNT concerning payments and contributions with respect to the exploitation of the shelf beyond 200 miles. In conclusion, I should like to repeat here what I said in my previous reports to the Plenary with regard to the elements for the solution of this question and its importance in reaching a general agreement on the issues dealt with by the Second Committee.

7. During this second part of the seventh session, the Second Committee held five informal meetings in order to give an opportunity to all the participating delegations to present their comments on the articles in Parts II to X of the ICNT and to explain their informal suggestions so as to overcome any difficulties that the latter might present. In the first part of the current session, it was not possible to complete this exercise owing to lack of time, and the discussion on the suggestions made had to be curtailed at article 73 of the ICNT.

8. Among the questions discussed at informal meetings of the Second Committee during the resumed seventh session were suggestions relating to two issues expressly mentioned in paragraph 6 of document A/CONF.62/62 on the organization of work of the Conference. Those issues are: (i) régime of islands; and (ii) enclosed and semi-enclosed seas. In the debate on Part VIII, some delegations emphasized the importance of the legal régime of islands in matters relating to the delimitation of maritime spaces, while others maintained that this subject should be dealt with in connexion with articles 15, 74 and 83 of the ICNT, which refer specifically to problems of delimitation and the discussion of which is assigned to Negotiating Group 7. With respect to Part IX, some delegations suggested amendments to the current text, while others expressed their support for the rules set forth in the ICNT. Yet others were of the view that Part IX could be deleted in its entirety if the text went beyond the principle of co-operation embodied in article 123 of the ICNT.

9. I should point out that some of the informal suggestions referred mainly to changes of order in the articles and it was therefore decided to defer their consideration to a later stage. Only suggestions containing substantive elements were discussed.

10. With respect to the provisions on marine mammals (articles 65 and 120 of the ICNT), consultations were held with a view to exploring the possibilities of assuring better protection to those species.

NG4/11
15 September 1978

ORIGINAL: ENGLISH

REPORT BY THE CHAIRMAN OF NEGOTIATING GROUP 4 (AMBASSADOR SATYA N. NANDAN) TO THE PLENARY ON 15 SEPTEMBER 1978

At the commencement of the seventh session in Geneva, the plenary identified the question of the participation of land-locked and geographically disadvantaged States or States with special geographical characteristics, in the living resources of the exclusive economic zone of the coastal States within a subregion or region, as one of the seven hard-core issues before the Conference. Accordingly, the plenary established Negotiating Group number IV for the purpose of resolving this issue.

This Negotiating Group began its work in Geneva on 18 April 1978. The Group worked intensively in Geneva. In addition to the scheduled meetings of the Group as a whole, consultations and negotiations were undertaken in smaller groups and at individual delegation level.

As a result of that work a series of compromise proposals were made by the Chairman, the first of which was made on 28 April 1978, and was contained in document NG4/9. It consisted of an amendment to 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. An explanatory statement of the Chairman was issued in document NG4/10 dated 3 May 1978.

After its consideration in the Group and after further consultations, the Chairman's compromise proposal was revised and issued in document NG4/9/Rev.1 dated 9 May 1978.

After further comments and suggestions in the Negotiating Group that document was further revised and the last version now appears in document NG4/9/Rev.2 which was incorporated in the informal document containing the reports of the Committees and Negotiating Groups on negotiations at the seventh session in Geneva and issued on 19 May 1978.

It is important to recall the conclusion that I had summarized as Chairman at the end of the discussion on the compromise text. This conclusion was accepted by the Group as a whole. In my summary I noted that a few delegations from both sides had reservations on certain aspects of the text. Some of these reservations were based on positions of principle. In particular, a few delegations had reservations

on the use of the term "right" in paragraphs 1 of articles 69 and 70. There were also a few delegations who expressed their reservations to the reference to surplus in those articles especially where the developing land-locked States were concerned. However, despite the reservations expressed, it was clear from a substantial number of interventions transcending both sides in the negotiations that the revised text before them was a very good basis for enhancing the prospect of final agreement on this issue.

Indeed, the Group agreed that there was widespread and substantial support prevailing in the Negotiating Group to warrant my conclusion that the text does offer a substantially improved prospect of a consensus as compared to the text on these articles now contained in the ICNT.

It is my impression that this conclusion has not changed.

At the resumed session in New York, the Negotiating Group did not work with the same intensity as it had done in Geneva. As I have already informed the Negotiating Group that at the beginning of the resumed session, I had undertaken consultations with the leaders of the two main interested groups and also with as many individual delegations as was possible, on the future work of the Negotiating Group. It was my impression from these consultations that while some further work would be necessary to seek possible ways and means to improve the compromise text, that this may not be the best time to intensify the Group's work on substantive matters. It was not my impression, however, that this in any way implied that the Group's work was necessarily concluded.

Indeed at a second meeting of the Group on 13 September 1978, several delegations referred to matters which they would wish the Group to consider at the appropriate time. It was interesting that at that meeting both sides in the negotiations also expressed a willingness to consider such matters further at the next session.

NG5/18
14 September 1978

ORIGINAL: ENGLISH

REPORT TO THE PLENARY BY AMBASSADOR CONSTANTINE STAVROPOULOS (GREECE), CHAIRMAN OF THE NEGOTIATING GROUP ON ITEM (5) OF DOCUMENT A/CONF.62/62

When reporting to the Plenary on 19 May 1978 in Geneva, as Chairman of Negotiating Group 5, I presented the compromise formula prepared by the group in document NG5/16. In his report to the Plenary on the subject of the Settlement of Disputes the same day, the President indicated that Negotiating Group 5 had "successfully concluded its mandate", but pointed out that there were other issues relating to articles 296 and 297 which had to be negotiated.

It was with this in mind that a meeting of Negotiating Group 5 was scheduled for 1 September. Several delegations expressed to the Chairman their doubts as to the need for this meeting and it was cancelled. Subsequently, at the request of one delegation that desired to make a statement, a meeting of Negotiating Group 5 was scheduled and held on 8 September.

It will be recalled that at the formal plenary meeting of 19 May a few delegations placed on record their reservations, while several others expressed their satisfaction, on a tentative basis, with the compromise formula. At the meeting of 8 September, some delegations again expressed reservations on the compromise and sought to have the issue reviewed, while other delegations wished the question held in abeyance pending negotiations on other hard core issues. At that stage, I suggested to the Group that due to the limited time and the demand for the restricted facilities by other groups which urgently needed time to continue their negotiations on other hard core issues, it would be preferable that Negotiating Group 5 not meet again this session. Accordingly, the Group decided not to have further meetings at this session and that a meeting should be scheduled for an early date of the next session to enable it to deal with any matters before it.

It must be noted that, as pointed out in foot-note 3 of document NG5/16, the compromise formula submitted by the Chairman (in document NG5/15) was accepted by the Group as being a proposal which could be used to replace the present provision of the ICNT and one on which the degree of support was so widespread and substantial as to offer a reasonable prospect of a consensus being reached. This was submitted to the Plenary along with the Chairman's report on 19 May 1978. It would appear therefore that the Group has concluded its work under the primary mandate set out for it in document A/CONF.62/62.

However, as noted by the President in his report to the Plenary, two related issues that arose during the course of negotiations on the primary mandate still remain outstanding. It might therefore be desirable for the Plenary to specifically define these issues that require further negotiation in the Group. It is also for the Plenary to decide whether the Group should go back and review the issues which have already been negotiated by it on "the question of Settlement of Disputes relating to the exercise of sovereign rights of Coastal States in the EEZ".

NG7/24
14 September 1978

ORIGINAL: ENGLISH

Report by the Chairman of Negotiating Group 7 on the work of the Group at its 17th-27th meetings

Proceeding with the work commenced during the first part of the seventh session the Group convened in 11 meetings to discuss the delimitation of maritime boundaries between adjacent and opposite States and the settlement of disputes thereon.

In its first meeting the Negotiating Group decided, during the resumption of the session, to examine the following three items still pending final solution as related to articles 74, 83 and subparagraph 1 (a) of article 297 of the ICNT:

1. The question of the criteria to be applied for the delimitation of economic zones or continental shelves adjacent or opposite to each other.

2. The question of interim measures to be applied pending final delimitation.

3. The question of the settlement of delimitation disputes.

It was, however, pointed out by several delegations that no final decisions should be taken without considering the above questions together as elements of a package.

The first item was dealt with in three, the second in four, and the third in three meetings of the Negotiating Group. No further working organs of the Group were established, but the questions of settlement of disputes were also discussed in a meeting of legal experts chaired by Professor L. B. Sohn of the United States of America.

Delimitation criteria

In the debate on delimitation criteria the main positions, already previously examined, were repeated, while also certain new approaches, including some alternatives presented by the Chairman and appearing in document NG7/22, were considered.

Although no compromise formulation could be agreed upon as between the delegations supporting the equidistance rule and those specifically emphasizing delimitation in accordance with equitable principles, several delegations

representing either of these positions underlined their wish to find the way to a consensus. During the discussions general understanding seemed to emerge to the effect that the final solution could contain the following four elements: (1) a reference to the effect that any measure of delimitation should be effected by agreement; (2) a reference to the effect that all relevant or special circumstances are to be taken into account in the process of delimitation; (3) in some form, a reference to equity or equitable principles; (4) in some form, a reference to the median or equidistance line. It was, however, pointed out by some delegations, while opposed by others, that if the median or equidistance line is to be mentioned in the articles concerned, the latter should also include reference to islands as a feature of the relevant or special circumstances.

While there appears to be general agreement as regards the two first-mentioned elements of delimitation the specific contents of, and the weight to be given to, the elements number 3 and 4 still remain subject to controversy. However, the time available proved to be too short for proceeding further towards a final compromise.

Interim measures

Though the Group did not agree upon any definite text on interim measures various elements of a possible compromise solution were considered.

The following conclusions, as presented in document NG7/23, were drawn by the Chairman from the discussions held:

There did not seem to be consensus to the effect that States should be obliged to make provisional arrangements. On the other hand, no opposition appeared to be expressed as to the encouragement of States to enter interim measures, as appropriate. Such encouragement might cover a wide range of arrangements and encompass both bilateral and national measures envisaged to be taken to avoid any aggravation of a delimitation conflict.

A number of delegations considered it important that provisional arrangements should be based upon criteria not notably different from those to be prescribed in paragraph 1 of the articles concerned for the completion of the final delimitation.

There seemed to be general agreement to the effect that any provisional arrangements shall be without prejudice to the final delimitation.

Though supported by some delegations, the idea of a moratorium to be applied to activities within conflicted areas was found unacceptable to others, who considered the very concept ambiguous. The position seemed to be generally recognized that mutual restraint should be exercised pending final agreement or settlement in order not to impede the completion of the final delimitation.

Settlement of disputes

As a basis for its discussions on settlement of marine boundary disputes (subpara. 1 (a) of art. 297) the Group used, in addition to the ICNT, a revised

version (NG7/20/Rev.1) of the paper containing a set of alternative approaches relating to the provisions concerned, issued in Geneva as a result of discussions held within the expert group led by Professor Sohn. When submitting the paper to discussion the Chairman asked the delegations to identify their preferences as to the 7 "models" and 12 "alternatives" set forth therein.

Like before, the discussions were characterized by opposing arguments on the desirability of compulsory dispute settlement procedures. Some of the models and alternatives gained a fair amount of support while others attracted but a few if any, delegations. None of the approaches did, however, receive such widespread and substantial support that would offer a substantially improved prospect of a consensus. Nevertheless, it may be hoped that by combining elements displayed in some of the models and alternatives as well as, perhaps, introducing totally new ideas, further discussions might lead to formulations acceptable to all.

Following an informal request during the discussions of the Group, the Secretariat also prepared, for delegations' use, a list of treaties, arrangements, judicial decisions, arbitral awards and pending cases concerning delimitation of maritime boundaries. Due to lack of time it was not possible to distribute the document in all the official languages nor to submit it for discussion in the Group.

There was a general feeling within the Group that, without prejudice to questions relating to the organization of future work, negotiations on the issues discussed, which are all closely linked to each other, should be continued in the next session of the Conference.

C.3/Rep.1
13 September 1978

ORIGINAL: ENGLISH

REPORT BY THE CHAIRMAN OF THE THIRD COMMITTEE

AMBASSADOR A. YANKOV (BULGARIA)

I. RESULTS OF THE NEGOTIATIONS ON PARTS XII, XIII, AND XIV OF THE ICNT

1. This report should be considered as an addition to my report submitted to the Plenary Session in Geneva and contained in the informal paper of 19 May 1978 (Reports of the Committees and negotiating groups at the Seventh Session contained in a single document), since this Session is a continuation of the first part of the Seventh Session. Most of the general observations contained in that report concerning the work of the Committee should be considered as valid for this Resumed Session.

2. First of all, I wish to emphasize that at the Resumed Session, further progress was made which gives evidence to an important feature of the work of the Third Committee: that at each session, it has made substantial progress towards a broad framework of provisions constituting a reliable basis for a compromise which could lead to a consensus. I am pleased to note that at this Session, the ICNT has been further brought to a stage of a package which indeed offers a substantially improved prospect of a consensus.

3. The negotiations and discussions which took place at the Resumed Session were concentrated on the main issues within the terms of reference of the Third Committee namely: the protection and preservation of the marine environment, which constitutes Part XII of the ICNT, the marine scientific research, constituting Part XIII of the ICNT, and the development and transfer of marine technology - Part XIV of the ICNT.

4. At this Session again the Committee conducted its work in accordance with the principle of full involvement of the delegations interested in the matters under consideration and in conformity with this principle, the 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. The negotiations were concentrated on key issues namely, on vessel's source pollution and related matters, and on the régime for the conduct of marine scientific research in the economic zone and on the continental shelf. This selective and restrictive approach has proved to be very efficient.

5. As I indicated in my previous report of 19 May 1978, significant progress was made in the Committee during the first part of the Seventh Session in Geneva. As you may recall, the results of the negotiations were placed under four categories:

(i) Provisions on which consensus was reached;

(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 no consensus was reached, since there are still some reservations and objections;

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

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

6. In my previous report during the first part of the Seventh Session in Geneva, the results of the negotiations were presented within the first three categories. They are also reflected in Annex I of this report containing the texts and amendments and informal proposals. There is also an Annex II, which contains the report of Mr. J. L. Vallarta (Mexico), Chairman of the informal negotiations on Part XII (protection and preservation of the marine environment). Both these annexes should be considered as an integral part of this report.

II. RESULTS OF NEGOTIATIONS ON PART XII (PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT)

7. Most of the time of the Resumed Session was devoted to informal negotiations on Part XII of the ICNT. The basic aim of those negotiations was to broaden the area of compromise and to try to build on those texts and amendments that already commanded a consensus or offer a substantially improved prospect of consensus.

8. I wish to point out further that the present report basically follows the same pattern of reporting as the report presented to the first part of the Seventh Session in Geneva. However, in Annex I, under Category 1 (provisions on which consensus was reached) you will see only the texts agreed to in the first part of this Session, namely:

Article 1, paragraph 5 (c)

Article 195, paragraph 5

Article 212, paragraphs 1, 3 and 6

Article 213, paragraph 1

This does not mean that no progress was made during the Resumed Session. On the contrary, as I pointed out, intensive negotiations took place at the Resumed Session with important positive results. There were some provisions on which no objections were made but there has been a general understanding that they could not be taken in isolation and transferred to Category 1 without considering all the other compromise formulae. Therefore they remain under Category II, namely:

Article 1, paragraph 5 (a) (i)

Article 211, paragraph 5

Article 212, paragraph 2 bis

Article 221, paragraphs 2, 5 and 6

Article 222

Article 227, paragraph 1

Article 231, paragraphs 1 and 2

But this should in no way be conceived as a backward step nor as a way of decreasing the area of common agreement. The provisions which emerged from the negotiations during the Resumed Session contained in informal paper MP/27 and listed under the second category in Annex 1 of this report, have, in fact significantly broadened the basis of a compromise and offer a substantially improved prospect for consensus. In my assessment this is a positive result from the Resumed Session and a constructive input into the ICNT.

9. There are some informal proposals on Part XII, on which, owing to lack of time or divided views, no compromise formulae emerged. These are:

Article 209, paragraphs 1 and 5

Article 212, paragraph 3

Article 212, paragraph 5

Article 229

Article 234

Article 236

USSR - proposals for a new Part XIV bis

10. The Committee should endeavour to broaden and consolidate this area of compromise through meaningful negotiations. At the same time, I wish to express my personal view that with respect to matters relating to the protection and preservation of the marine environment, we have reached a stage where the ICNT thus constitutes a good basis for a consensus. This does not mean that there is no room for further negotiations aiming at improving the texts. But at the same time, we should take into account the fact that we have reached a balance which should not be disturbed.

11. Finally, I should like to take this opportunity to express on behalf of the Committee, our most sincere thanks and appreciation to Señor Jose Luis Vallarta of Mexico, for his tireless efforts and devotion, exemplary patience, impartiality and competence which together with the spirit of understanding and co-operation of the entire membership of the Committee, have greatly contributed to these positive results.

III. RESULTS OF THE NEGOTIATIONS ON PART XIII (MARINE SCIENTIFIC RESEARCH) AND PART XIV (DEVELOPMENT AND TRANSFER OF MARINE TECHNOLOGY)

12. Several formal and informal meetings of the Committee were held during the Seventh Session, devoted to the consideration of the key issues contained in these two parts.

13. As indicated in my previous report, the negotiations and discussions were carried out also in line with the same selective and restrictive approach. The main effort was to try to strike a balance between the interests of coastal States and States conducting marine scientific research as well as between those of developed and developing States.

14. The work of the Committee during the Seventh Session has reaffirmed the overwhelming view that the ICNT could offer a good prospect for a compromise on the over-all package with regard to Parts XIII and XIV. There was substantial support for the view that the delicate balance achieved so far had to be preserved and that there should be restraint on any attempt to reopen the negotiations on fundamental issues especially relating to the régime for the conduct of marine scientific research in the economic zone and on the continental shelf. Of course this does not mean in any way that no effort should be made to improve the existing texts and to make them more widely acceptable as a reasonable compromise leading to a consensus. In my view any attempt to amend in substance the existing texts could be justified only if there was substantive support by delegations mostly interested in the outstanding issues, with a view to reaching new compromise formulae which will offer an improved prospect of consensus.

15. In my previous report, it was stated that critical observations and suggestions were made to a number of articles of Parts XIII and XIV. At the first part of this Session in Geneva, informal suggestions with regard to article 264 were made by a number of Arab States and Portugal as contained in document SR/1 and in Annex 1 of this report. Also in Geneva, the delegation of Pakistan submitted an informal proposal suggesting to include in the ICNT a new article 275 bis contained in document TT/1 to be found in Annex I.

16. At the Resumed Session, the delegation of the United States of America submitted a set of informal suggestions contained in document MSR/2 also to be found in Annex I of this report. These informal suggestions were considered during

several informal meetings of the Committee.

17. Only preliminary comments were made by several delegations and therefore the consideration of these suggestions proved inconclusive and a general view was expressed that some of the informal proposals would need further consideration. I submit that at the next session, we have to come back to this matter and decide on the most convenient procedure to be applied.

18. In conclusion, I wish to reiterate my understanding that with regard to the provisions of the ICNT within the terms of reference of the Third Committee, we have made progress and we have broadened the basis of a reasonable compromise which could offer a substantially improved prospect of a consensus. I hope that the negotiations to be carried in the future would further broaden and consolidate this foundation in all parts of the ICNT referred to the Third Committee.

19. I should like to add for the record that this report was considered at the 39th meeting of the Third Committee on 13 September 1978 and I am pleased to inform you that the report was received with general approval.

20. Finally, I should like to express my gratitude to all the members of the Committee for their understanding and spirit of compromise which has prevailed throughout this seventh session. I wish also to express my most sincere thanks and appreciation for the co-operation and valuable assistance rendered to the Committee by the Secretariat.

ANNEX I

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

1. Provisions on which consensus was reached during the first part of the seventh session

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".

2. Provisions which emerged from intensive negotiations during the resumed session and which offer a substantially improved prospect of consensus

Article 1

Use of terms

Paragraph 5:

(a) "Dumping" means:

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

Article 211

Dumping

Paragraph 5:

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 after due consideration of the matter with other States which by reason of their geographical situation may be adversely affected thereby.

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 2

Where there are clear grounds for believing that a vessel navigating in the territorial sea of a State has, during its passage therein, violated national laws and regulations established in accordance with the present Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels, that State, without prejudice to the application of the relevant provisions of section 3 of Part II of the present Convention, may undertake physical inspection of the vessel relating to the violation and may, when warranted by the evidence of the case, cause proceedings, including detention of the vessel, to be taken in accordance with its laws, subject to the provisions of section 7 of this Part of the present Convention.

Paragraph 5

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 conforming 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 causing or threatening 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.

Paragraph 6

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 detention 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, records or other documents 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. In situations where release has been refused or made conditional, the flag State of the vessel must be promptly notified, and may seek release of the vessel in accordance with the provisions of Part XV of the present Convention.

Article 231

Monetary penalties and the observance of recognized rights of the accused

Replace paragraph 1 of the ICNT by the following:

1. 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 the territorial sea.

2. 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 in the territorial sea, except in the case of a willful and serious act of pollution in the territorial sea.

Paragraph 2 of the ICNT becomes paragraph 3.

3. Informal proposals on Parts XII, XIII and XIV on which, owing to lack of time or divided views, no compromise formulae emerged

INFORMAL PROPOSAL BY 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).

INFORMAL PROPOSAL BY

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).

INFORMAL PROPOSAL BY THE UNITED REPUBLIC OF TANZANIA

General amendment

Wherever "competent international organization" appears substitute with "competent international organizations"

Article 212.5

Pollution from vessels (special areas)

Where international rules and standards referred to in paragraph 1 are inadequate to meet special circumstances and where coastal States have reasonable grounds for believing that a particular, clearly defined area of their respective exclusive economic zones is an area where, for recognized technical reasons in relation to its oceanographical and ecological conditions, as well as its utilization or the protection of its resources, and the particular character of its traffic, the adoption of special mandatory methods for the prevention of pollution from vessels is required, coastal States, may for that area establish laws and regulations for the prevention, reduction and control of pollution from vessels, implementing such international rules and standards or navigational practices as are made applicable through the competent international organizations for special areas. Coastal States shall publish the limits of any such particular, clearly defined area, and laws and regulations applicable therein shall not become applicable in relation to foreign vessels until 15 months after the submission of the communication to the competent international organizations. Coastal States, when submitting the communication for the establishment of a special area within their respective exclusive economic zones, shall at the same time, notify the competent international organizations if it is their intention to establish additional laws and regulations for that special area for the prevention, reduction and control of pollution from vessels. Such additional laws and regulations may relate to discharges or navigational practices but shall not require foreign vessels to observe design, construction, manning or equipment standards other than generally accepted international rules and standards and shall become applicable in relation to foreign vessels 15 months after submission of the nctification to the competent international organizations.

Article 229

Suspension and restrictions on institution of proceedings

Delete whole article. (See MP/28)

INFORMAL PROPOSAL BY SPAIN

Article 234

Safeguards with respect to straits used for international navigation

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 **PROPOSAL** 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

Responsibility and liability

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)

INFORMAL PROPOSAL BY THE 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 para. 2 of art. 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 **PROPOSAL** 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

Responsibility and liability

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).

INFORMAL PROPOSAL BY THE UNITED STATES

Amendments to the texts on marine scientific research and the transfer of technology

Article 1 (6)

Restore the following definition from the RSNT:

"Marine scientific research" means any study or related experimental work designed to increase mankind's knowledge of the marine environment.

Article 242 bis

The coastal State in the application of this part shall provide other States with a reasonable opportunity to obtain from it, or with its co-operation, information necessary to prevent and control damage to the health, safety and environment of persons not subject to the jurisdiction of the coastal State, such as research and monitoring data regarding weather, currents, pollution and other general processes and their causes and effects.

Article 244 bis

States shall establish, through competent international organizations, international rules and standards to facilitate consent for and the conduct of marine scientific research projects of importance to the international community that require the consent of several coastal States.

Article 247

Redraft paragraph 1 as follows:

Coastal States have jurisdiction to regulate, authorize and conduct marine scientific research in their exclusive economic zone in accordance with the relevant provisions of this article.

Add a new paragraph 6:

"The absence of diplomatic relations does not, in and of itself, justify the conclusion that normal circumstances do not exist between the researching State and the coastal State for purposes of applying paragraph 3 of this article."

Article 250

1. Modify paragraph 1 (d) as follows:

"if requested, provide the coastal State, as soon as practicable, with an assessment of such data, samples and research results ..."

2. Delete from paragraph 1 (e) the words "subject to paragraph 2 of this article," and redraft paragraph 2 as follows:

"The coastal State, if it decides to grant consent under Article 247 for a project of direct significance for the exploration and exploitation of natural resources, may require prior agreement on reasonable conditions for making the research results internationally available."

Article 254

1. Delete "and compliance is not secured within a reasonable period of time" in subparagraph (b), and redraft the chapeau of Article 254 to include the underlined words as follows:

The coastal State shall have the right, where it has been unable to secure compliance by other means within a reasonable period of time, to require the suspension of any research activities in progress within its exclusive economic zone, if:

2. In subparagraph (a) delete "initially".

Article 256

Redraft the article as follows:

States shall adopt appropriate measures to facilitate access to their harbours and to promote assistance for vessels engaged in marine scientific research in accordance with the present Convention.

Articles 257 and 258

Combine these two articles as follows:

States, irrespective of their geographical location, as well as competent international organizations, shall have the right, subject to and in conformity with the relevant provisions of the present Convention, to conduct marine scientific research beyond the limits of the exclusive economic zone.

Article 258 bis

1. Insert the following new article:

Articles 249 and 250 shall apply mutatis mutandis to marine scientific research that is of direct significance for the exploration and exploitation of the natural resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

2. Delete the references to the continental shelf in articles 247 to 250 and articles 254 to 256. (N.B. There would be no change in article 81, which applies to drilling "for all purposes".)

Article 265

(See art. 296 (3) (a).)

Article 274

Delete "the exploration of the Area, the exploitation of its resources and other related activities" and insert "activities in the Area".

Article 276

Redraft the opening portion of paragraph 1 as follows:

"States shall, in co-ordination as appropriate with the competent regional organizations, international organizations, the Authority and national marine scientific and technological institutions ..."

Article 296, paragraph 3 (a)

(Note: On the basis of the statement by the Chairman of the Third Committee, it is assumed that article 265 would be removed, as the subject is to be dealt with in the context of part XV of the ICNT, in particular paragraph 3 (a) of article 296.)

1. Delete the words "a right or" and add the phrase "to withhold consent" after the word "discretion".

2. Delete the words "and 254" and the clause "or a decision taken in accordance with Article 254".

Notes to marine scientific research amendments

There is no agreement on part XIII of the ICNT. In the interests of progress, the amendments contained herein are limited in their scope to improving and clarifying the relevant provisions of the ICNT without disturbing the over-all jurisdictional framework and balance now reflected in the text.

Article 1 (6). The RSNT definition of marine scientific research was omitted, apparently inadvertently, during the drafting of the ICNT when definitions were moved to article 1.

Article 242 bis. International law in principle regulates the manner in which a State may use areas subject to its jurisdiction when such use causes harm outside its jurisdiction. The specific application of this general principle depends on the subject-matter. Article 195, paragraph 2, is an application of the principle relevant to pollution. This new article would apply the same principle to marine scientific research where, for example, understanding of the monsoon may be critical to the development, and indeed the survival, of millions.

Article 244 bis. It may not be practical to conduct certain projects unless the consent of each of several coastal States is obtained. One can imagine that the conduct of a particular project might be important to many of the coastal States as well as the international community as a whole. Thus the need to balance the interests of any given coastal State with the interests of other coastal States and the international community is obvious. This article would call for the creation of international rules and standards regarding consent of the coastal State and the conduct of the research by researching States.

Article 247, paragraph 1. The addition of paragraph 1 to the text creates problems in relation to other provisions. It does not conform to the structure of the basic article on the exclusive economic zone (ICNT art. 56), which refers to "jurisdiction" over marine scientific research. When read alongside the current drafts of either article 265 or article 296, paragraph 3, the use of the term "right" in article 247, paragraph 1, may unintentionally create a total exception from dispute settlement rather than the intended exception.

Article 247, paragraph 6. The absence of diplomatic relations for many countries is more a reflection of fiscal limitations than an indication that relations between the countries are bad. In other cases, the establishment or resumption of diplomatic relations is foreseen for a later stage in a developing process that may (or may not) already constitute "normal circumstances" for purposes of this article. The important point is that absence of diplomatic relations alone should not be the determining factor - all relevant factors should be considered.

Article 250, paragraph 1 (d). This amendment is intended to clarify the nature of the researching State's obligation to the coastal State.

Article 250, paragraph (1) (e) and (2). As indicated in paragraph (1) (e) of Article 250, the purpose of adding a paragraph 2 to this article was to find some means to reach an accommodation on the question of dealing with research results from natural resource projects. This is not achieved in a readily comprehensible manner. Some coastal States have expressed the desire to have the opportunity to review and consider such results before they are generally known. The amendment would address the issue directly. It would not encourage coastal States to suppress international distribution of scientific research results, but would give them the legal right before consenting to projects to secure agreement on when it will be feasible, from the coastal State's point of view as well as the scientists', to make internationally available the results of resource research projects that are subject to the discretionary consent power of the coastal State under article 247 (4) (a). Since the necessary delay may vary from project to project, this approach would best ensure that neither undue haste nor undue delay occurs in the particular situation.

Article 254, paragraph 1. The principle currently in subparagraph (b), to the effect that a project already under way should be stopped only if compliance cannot be secured by other means in a reasonable time, is applicable to both subparagraphs. Since the function of the article is to secure compliance "suspension" is a more accurate term than "cessation".

Article 254, paragraph 2. The principle involved is that the project described and consented to is the project being conducted. Accordingly, the project should conform to all information communicated under article 249, not merely that initially communicated.

Article 256. The amendment simplifies plus clarifies the article.

Articles 257 and 258. Clarity.

Article 258 bis. A major outstanding issue in the Conference relates to the continental shelf. Article 258 bis, while affecting only a limited number of States with continental shelves beyond the exclusive economic zone, sets forth an approach designed to contribute to the over-all progress not only of Committee III but of Negotiating Group 6 as well.

Article 274. Drafting: the term "activities in the Area" is the one selected in Committee One and defined in article 1 of the ICNT.

Article 276. States should consult and co-operate as appropriate with regional organizations as well as other organizations regarding the establishment of regional marine scientific research centres.

Article 296. 1. Particularly in view of the drafting of article 247 (1), this correction is necessary to give the exclusion of dispute settlement its intended scope. The use of the term "right" may unintentionally create a total exception

from dispute settlement rather than an exception applicable to cases where the coastal State exercises its discretion to deny consent.

2. Article 254 permits the coastal State to stop a project "in progress" that was commenced with its consent under the treaty. Such a decision should be distinguished from the exercise of discretion to deny consent before the project begins. In some cases the loss of scientific knowledge might be the same, but the economic costs of and loss of valuable time in trained personnel and specialized equipment are quite different. Coastal State authority under article 254 is onerous. For practical purposes its exercise, whether or not lawful, may end a particular project. Therefore, it is both unnecessary and inappropriate to exclude such a decision from dispute settlement procedures. (See MSR/2.)

INFORMAL PROPOSAL BY 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.)

ANNEX II

REPORT BY MR. JOSE LUIS VALLARTA (MEXICO), CHAIRMAN OF THE INFORMAL NEGOTIATIONS ON PART XII (PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT)

During the second part of the current session, the Third Committee met informally to consider part XII of the Informal Composite Negotiating Text, concerning the protection and preservation of the marine environment.

The following is a summary of the work accomplished, designed to indicate which provisions were considered and also the current status of those provisions and the relevant amendments. For the purposes of this review I will follow the order which the Committee adopted for the consideration of each article.

Article 212, paragraph 2 bis, concerning pollution from vessels. I have no hesitation in describing the provision which appears in document MP/27 as the result of negotiations and a genuine compromise text which offers possibilities for a consensus. It should be emphasized that the wording is identical to that prepared at Geneva during the first part of the current session.

Article 221, paragraph 6, concerning enforcement by coastal States. The text in document MP/27 is of a compromise nature and is the result of intensive negotiations. It offers possibilities for a consensus. Paragraph 2 of this article, as it appears in document MP/27, is an integral part of this text. As will be observed, the wording of paragraph 6 is slightly different from that drafted at Geneva during the first part of the current session. I am able to state that those changes enhance the possibility of a future consensus.

Article 222 concerning measures relating to maritime casualties to avoid pollution. The wording in document MP/27 offers possibilities for a consensus because it is a compromise text and the result of negotiations. It is identical to the wording drafted at Geneva during the first part of the current session.

Article 227, paragraph 1, concerning investigation of foreign vessels. The wording in document MP/27 can be considered as having been adopted by consensus since no delegation objected to it. Consequently, any amendment to this provision should be considered as superseded.

Article 231, concerning monetary penalties and the observance of recognized rights of the accused. The wording in document MP/27 offers possibilities for a consensus because it is the result of negotiations and is of a compromise nature This text differs slightly in its wording - and, I would say, in its form - from that prepared at Geneva during the first part of the current session. Its new form was negotiated and enhances the possibility of a future consensus.

Part XIV bis, concerning general safeguards. The author of the proposal in question, the delegation of the Soviet Union, agreed that the proposal should not be considered by the Third Committee during the current session. The question remains pending.

Article 236 concerning responsibility and liability. The informal suggestion made by the delegation of Saudi Arabia and other delegations, appearing in the report of the Chairman of the Third Committee to the plenary Conference during the first part of this session (hereinafter referred to as "the previous report"), has still to be discussed and negotiated. I am not yet able to report any result, although it should be stated that the subject-matter was extensively debated.

Article 234 concerning safeguards with respect to straits used for international navigation. The proposal by Spain has yet to be discussed and negotiated; for the moment I am unable to report any result with respect to this matter.

Article 229 concerning suspension and restrictions on institution of proceedings. The proposal of the United States of America concerning paragraphs 1 and 2 which appears in "the previous report" will be withdrawn if the texts reproduced in document MP/27 are finally accepted or included in the Informal Composite Negotiating Text.

The proposal of France concerning article 229 appearing in "the previous report" was withdrawn.

Article 221, paragraph 8, concerning enforcement by coastal States. Paragraph 8 refers to enforcement in "special areas". The proposal of Kuwait and other States which appears in "the previous report" was withdrawn.

Article 221, paragraph 5. The proposal of Canada and other States which appears in "the previous report" can be considered superseded by the text in document MP/27, which offers possibilities for a consensus in that it is a compromise wording and the result of intensive negotiations.

Article 219 concerning enforcement by port States. The proposal of France in "the previous report" was withdrawn.

Article 212, paragraph 3, concerning pollution from vessels. The proposal of the Bahamas and other States, consisting of the addition of an intermediate sentence in this paragraph, is pending and will be the subject of future negotiations.

Article 211, paragraph 5, concerning dumping. The wording in document MP/27 offers good possibilities for a future consensus.

Article 209, paragraphs 1 and 5, concerning pollution from sea-bed activities. The proposal of Brazil appearing in "the previous report" is pending and will be the subject of future negotiations.

Article 1, paragraph 5, concerning use of terms. With regard to the text in document MP/27, I am able to say that although concern was expressed over the exclusion of the concept of "incineration", nevertheless there was a consensus in favour of this provision.

Towards the end of this part of the current session, the delegation of Tanzania submitted the amendments which appear in document MP/28. Those amendments have yet to be studied.

First report of the Drafting Committee*

[Original: English]

Mr. BEESLEY (Canada), Chairman of the Drafting Committee, said that the Drafting Committee had held four informal meetings during the current session. On the proposal of members of the Committee, the secretariat had been entrusted with certain specific tasks, one of which, already accomplished, was the preparation of an informal paper on internal references in the ICNT.

The secretariat was now working on the compilation of a list of words and expressions requiring harmonization. It had not yet completed that task, but was endeavouring to speed up its work. The document in question would be circulated to members of the Drafting Committee, as well as to members of delegations not represented in that Committee.

The Drafting Committee recommended that:

(i) For legal, practical and financial reasons it would be inappropriate for the Committee to hold an intersessional meeting at that stage;

(ii) In the meantime, the secretariat study would be prepared and distributed to members of the Drafting Committee in due course;

(iii) The Drafting Committee should be given adequate time during the next session or resumed session of the Conference to carry out its work, as it was quite clear that there were some tasks which it could undertake.

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* Delivered orally at the 106th plenary meeting.

Second report of the Drafting Committee*

[Original: English]

1. The Drafting Committee held nine informal meetings at this resumed seventh session.

2. At this resumed seventh session, the Committee focused its attention on the documents which had been prepared by the Secretariat at the request of the Committee. The documents were as follows:

i) a compilation of internal references in the Informal Composite Negotiating Text (Informal Paper 1/Rev.1);

ii) a paper which made a series of observations on these internal references (Informal Paper 1/Rev.1/Add.1);

iii) a preliminary list of recurring words and expressions in the Informal Composite Negotiating Text which may be harmonized (Informal Paper 2 and Add.1).

3. The work of the Drafting Committee was greatly helped by the formation of language groups representing the six official languages of the United Nations: Arabic, Chinese, English, French, Russian and Spanish. It should be noted that these language groups are open to all delegations whether members of the Drafting Committee or not.

4. On the basis of the work done by these language groups the Drafting Committee was able to arrive at certain recommendations based on Informal Paper 1/Rev.1 and Informal Paper 1/Rev.1/Add.1. These recommendations, contained in document Informal Paper 1/Rev.1/Add.2, are available to all delegations.

5. The language groups have continued working on Informal Paper 2 and have already exchanged preliminary views on the nature of recommendations which they will make to the Drafting Committee. Copies of their reports will be mailed to members of the Drafting Committee and interested observers.

6. The Committee has given the Secretariat certain clear tasks which will form the basis of the work of the Committee for its next meeting. These studies will deal, for example, with the formal organization and structure of the Convention and the arrangement of the text in such a way that each language version of a provision in the text will be placed next to each other - a format which will enable all six language versions of a provision to be seen at a glance. The results of the first study will be incorporated in this working-tool of the Committee.

7. As to the possibility of an intersessional meeting of the Drafting Committee, a general feeling was expressed that the Drafting Committee should meet intersessionally only if other Committees of the Conference were to meet intersessionally.

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* As read out by the President at the 108th plenary meeting.