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Report of the Chairman of the group of legal experts on the settlement of disputes relating to part XI of the informal composite negotiating text

Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume XI (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Eighth Session)

I cannot conclude this report without fulfilling my duty to draw attention to the clouds ahead. Negotiating group 3 has made great strides but it is definitely not on the mountain top. It would appear to me, however, that final success in the campaign is not hampered by our inability to make the final conquest. Instead, like an invading army of liberators, the members seem to have decided to halt the advance into the "capital city" in a humanitarian gesture to enable problems within, in our case in other negotiating groups, to be settled or smoothed away.

This, as I see it, is the outstanding problem posed by article 159. I personally believe that the outstanding issues of the voting system in paragraph 7, as well as numerical adjustments in the Council, are all ripe for resolution. However, perhaps that fruit may be culled from the tree at the next session.

The same applies to the nagging question of article 160, paragraph 2, x. Nothing the general agreement on the role of the subsidiary organs of the Council, and barring the motivations of strategy, it will be increasingly difficult for anyone to justify a provision which tends to undermine the comparative supremacy of such a substantive political main organ as the Council over its technical subsidiary.

Following your discussions here, I look forward to telling the plenary Conference of your great labours and the scope of the harvest. These will be placed in proper perspective, including the readable form of the suggestions and proposals. Your deliberations in the Committee are consequently of utmost importance in the process of evaluation.

The values of the system which wisdom and experience have dictated to us must be borne in mind in our stock-taking.

It is unrealistic, in a Conference dealing with such a complex and difficult mandate, to expect from any delegation or group of delegations, a public declaration of definitive approval of any text, especially while a number of issues of importance remain unresolved. Yet another truth also remains, that no delegation, however conservative, can be above admitting that well over 90 per cent of the original list of issues have been substantially resolved in a form with which delegations can live. That these may not be lost, the written word of a chairman must remain the mirror of the Conference, reflecting discord as well as concord, as he provides excuses for all and bears the weight of culpabilities alone for the statement of our advances. In the language we seem to have adopted, they provide a new and, hopefully, better basis for further negotiations. In this way, no delegation is committed thereby and flexibility for changes prevails to enhance the construction of an imperative consensus. It would be undesirable to react with inconsistency to the spirit of this revolutionary procedure which is largely responsible for the success of this Conference so far. No text can be perfect until finally adopted formally in a consensus of the Conference. The text that a Chairman produces is a working basis for further negotiations. I am sure I can rely on you to apply your characteristic wisdom to make our exchange of views this afternoon both constructive and helpful.

In closing, I wish to express my deepest gratitude to the continuing and devoted co-operation of my colleagues, Mr. Njenga, Mr. Koh and Mr. Wünsche of the working group of 21, Mr. El-Husseini and other secretariat staff of negotiating group 3, and to all the delegates who have co-operated and worked so hard in both fora.

DOCUMENT A/CONF.62/C.1/L.25 AND ADD.1*

Report of the Chairman of the group of legal experts on the settlement of disputes relating to part XI of the informal composite negotiating text

[Original: English]
[26 April and 23 May 1979]

1. The group of legal experts was constituted to conduct an initial examination of the outstanding issues regarding the settlement of disputes relating to part XI. Its terms of reference were defined as comprising, *inter alia*, the following:

- (a) The types of disputes falling under the jurisdiction of the Sea-Bed Disputes Chamber or any other forum;
- (b) Advisory opinions;
- (c) The parties having access to such proceedings;
- (d) The question of settlement of disputes relating to contractual matters;
- (e) The finality and binding force of these decisions and their execution or implementation.

The Chairman was expected to submit a working paper to the President and the Chairman of the First Committee which could form the basis of further examination of the question in an appropriate forum.

2. The group met eight times between 2 and 12 April 1979 and based its discussion on the relevant provisions of the informal composite negotiating text.⁴⁵ It had before it the Chairman's paper GLE/1 (see annex I) which contained a list of the related articles of the informal composite negotiating text divided into categories identifying the substantive issues. The group held one meeting on 20 April 1979 at which the Chairman introduced working paper GLE/2 (see annex V).

3. It became apparent that the discussions could not be restricted to the distinct categories of issues as identified in

* Document A/CONF.62/C.1/L.25/Add.1 contained the annexes to this report.

document GLE/1 and interrelated issues were accordingly dealt with simultaneously.

4. As each issue or group of issues was dealt with, the Chairman summarized the discussions without attribution. These summaries were made available only to the group in documents GLE/1/1, 1/2 and 1/3 (see annexes II, III and IV).

5. The discussion centred mainly on the categories of disputes, the jurisdiction of the Sea-Bed Disputes Chamber and who may be parties. After a preliminary examination of the issues in the group, the Chairman consulted with several of its members in an effort to prepare the working paper which was required. There are five classifications of draft articles in the working paper GLE/2. A different status is attributed to the set of articles in each classification. While the first four classifications reflect the different degrees of negotiations on the articles therein, the fifth classification does not in any way reflect the discussions of the group nor does it constitute a recommendation of the Chair.

6. Articles 187 and 189 of the informal composite negotiating text were closely scrutinized and it appeared that the problem could most appropriately be approached on the basis of the categories of disputes rather than on the basis of who may be parties as in articles 187 and 189. An attempt was made to reformulate the content of article 187 and article 189, paragraph 1 into a single article. The suggestion made for the structure of the new articles 187 and 187 *bis* is, in the view of the Chair, broadly acceptable to most members of the Group as a basis for further discussion. It would appear to be a step forward in providing a working draft on which further negotia-

tions can be conducted. The new article 187 deals with the purely procedural aspect of establishing the Sea-Bed Disputes Chamber and is substantially the same as article 187, paragraph 1, of the negotiating text. The new article 187 *bis* covers the jurisdiction of the Sea-Bed Disputes Chamber in regard to the various categories of disputes. Paragraphs 1 and 2 deal with disputes relating to the interpretation or application of the convention or violation of it, and of rules, regulations and procedures framed under it. Paragraphs 3 and 4 deal with contractual disputes. It will be noted that in paragraph 1 of the new article only States parties have access. In paragraph 2, States parties and the Authority have access in cases of violation by either the Authority or a State party. As for contractual disputes, paragraph 3 provides for access of contractors subject to the requirement of sponsorship in the case of natural or juridical persons. The Enterprise is treated as being distinct from the Authority in this context. Paragraph 4 deals with disputes regarding the refusal of a contract and disputes arising in the negotiation of a contract. There would appear to be a need to protect the interests of an applicant who has fulfilled the conditions of application which would include substantial financial payments. Paragraph 5 is intended to cover specific issues which the substantive part of the text provides as being justiciable.

7. There was little discussion on the question of advisory opinion. It appeared that article 190 of the informal composite negotiating text as presently formulated was basically acceptable, with the exception of the right of subsidiary organs of the Council to request advisory opinions. The changes made to article 190 should also be broadly acceptable as a basis for discussion and a step forward. In the new article 190 the deletion of the reference to the organs of the Council brings it in line with the general United Nations practice where only the General Assembly or the Security Council may request advisory opinions. Advisory opinions on legal questions arising within the scope of the activities of subsidiary organs of the Authority would therefore have to be requested, either through the Assembly or the Council. It is to be noted that there is no relevant provision in the informal composite negotiating text empowering the Assembly or the Council to request an advisory opinion and a provision may have to be added in article 158, paragraph 2 and article 160, paragraph 2 respectively (see the foot-note to new article 190 in document GLE/2).

8. Article 157, paragraph 10 of the negotiating text is closely interrelated with article 190. There seemed to be a discrepancy between the Spanish, French and English texts of this paragraph. It was clear in the Spanish text that an advisory opinion was to be requested by the Assembly, whereas the English and French texts were vague. The change suggested in new article 157, paragraph 10 should also be generally acceptable as it was made only to clarify this point. It may be desirable to locate the provisions of article 157, paragraph 10 empowering the Assembly to request an advisory opinion in article 158, which is a more appropriate place for it.

9. The limitations on the scope of jurisdiction granted to the Sea-Bed Disputes Chamber, as found in article 191 of the informal composite negotiating text, were closely scrutinized by the group. Its close relationship to article 187 was made clear. The title of the new article 191 has been changed as the content of that article in fact sets out the limitations of the scope of its jurisdiction. The new formulation reflects the changes made in the new article 187 *bis*. The article defines the limits of the jurisdiction of the Chamber with respect to decisions of the Authority. It clearly restrains the Chamber from questioning the discretionary powers of the Authority or from pronouncing upon or declaring invalid a rule, regulation or procedure framed by the Authority. Furthermore, the Chamber may not substitute its discretion for that of the Authority as this would be tantamount to shifting the competence or jurisdiction of the Authority to the Chamber. The jurisdic-

tion of the Chamber should be confined to determining whether the application of the regulations or procedures to an individual case would conflict with contractual or conventional obligations. Moreover, the Chamber should limit itself to claims concerning lack of competence or misuse of power. Provision has been made in the new article for the Chamber to determine whether a remedy shall be given to a party who has suffered damage by virtue of an act of the other party in violation of its conventional or contractual obligations.

10. In the examination of article 188 and article 189, paragraph 2 of the informal composite negotiating text relating to arbitration, while some preferred to leave open the possibility of arbitration for disputes between States involving the application or interpretation of the convention, others argued that the exclusive jurisdiction of the Chamber as provided in the informal composite negotiating text must be maintained. As a possible compromise, the suggestion was made that *ad hoc* chambers of the Chamber could be utilized as a substitute for arbitration, while maintaining the exclusive jurisdiction and the unity of jurisprudence of the Chamber in all sea-bed matters. This concept has been embodied in the new article 188, paragraph 1. However, due to the limited time available to the group, this suggestion was not discussed fully. The new article 188, paragraph 2 respects the principle of freedom of contract and allows for commercial arbitration procedures to be applicable when provided for in a contract. There was widespread support for the view that such procedures would be most appropriate for contractual disputes of a purely commercial nature. The option of other forms of arbitration in such cases has also been maintained. To cover cases where the parties to a dispute are unable to agree on the exact form of the procedure it may be advisable to set out in an annex a uniform set of appropriate arbitration rules.

11. With regard to the rights of a State party to intervene in a dispute when its national is a party, there were differing views. Although in general the provision of the informal composite negotiating text was considered acceptable, there was some support for the addition of a new provision which would require the sponsoring State party to intervene when it has been requested to do so by the other party, if also a State party. This has been provided in the new article 192, paragraph 2. However there was insufficient time to discuss it fully either.

12. With regard to the question of violations by the secretariat of the Authority of their obligations under the convention, the group was unable to conclude its discussions on the substantive question of the consequences of such violations. However, it was generally agreed that article 167, paragraph 1 of the informal composite negotiating text should be restructured in order to separate questions of so-called classical disciplinary violations from those of disclosure of industrial secrets or information. Paragraphs 1 and 2 of the new article 167 reflect this. In addition, a provision has been added to the effect that the responsibilities of the secretariat with respect to non-disclosure shall extend beyond the termination of their functions. This addition seemed to receive a good deal of support in the group. It was the recommendation of the group that the Chairman of the First Committee should consider it for appropriate action in redrafting part XI of the informal composite negotiating text. The preliminary examination gave rise to the possibility of including a third and fourth paragraph in article 167. The third paragraph would provide a procedure whereby an aggrieved party may request the Authority to initiate judicial proceedings in an appropriate tribunal. Upon such request, the Authority would be obliged to institute proceedings. Although the Authority would initiate proceedings, the aggrieved party is given the right to take part in such proceedings. It should be noted that a specific tribunal need not be designated as it was felt that such identification would be best made at some later point. A fourth paragraph

would provide that the elaboration of these provisions could be in the staff regulations of the Authority. The question of monetary penalties and damages arising out of improper disclosure of confidential information by a staff member would have to be considered together with the question as to whether the Authority as such may be made liable. It was questioned whether article 167, which deals with the responsibilities and liabilities of staff members, required that a staff member be a party to a proceeding in an administrative case pertaining to his employment. There is no clear provision to cover this situation, and no trend appeared. Some doubted whether the Chamber should be given this kind of administrative jurisdiction at all. Perhaps questions other than that of identifying the appropriate tribunal to deal with such matters should be left for later consideration.

13. There were a few informal drafts submitted to the Chairman of the group of legal experts, in particular concerning the question of the establishment and composition of the *ad hoc* chambers of the Chamber. These have not been discussed at all in the group but are being made available to the members for their consideration. It should be noted that the

Chair had no part in the formulation of these draft suggestions.

14. The issue of the selection of members of the Chamber was discussed somewhat in the group. It appears that this subject may need further examination at some future date. However, the impression is that there is a considerable measure of support for the proposal to the effect that the judges of the Chamber should be selected for three years by the members of the Law of the Sea Tribunal itself. The supporters of this idea argue that since the members of the Tribunal are elected by States parties to the convention, a second confirmation procedure by the Assembly, in which all States parties are represented, for members of the Chamber may be unnecessary.

15. In conclusion, I would like to thank all members of the group of legal experts for their constructive effort and their co-operation. I would also express my appreciation to the Chairman of the First Committee, Mr. Engo, for the constant co-operation and good advice he has given me. Last but not least, I must also thank the members of the secretariat, Mr. Chitty and Miss Hazou, who have worked very closely with me and I am grateful to Miss Griffin for her valuable assistance.

ANNEX I

Dispute settlement provisions relating to exploration and exploitation of the area beyond national jurisdiction*

I. WHO MAY BE PARTIES TO THE PROCEEDINGS

<i>Issue</i>	<i>Relevant provision of the informal composite negotiating text and documents of the negotiating groups</i>
(a) Organs of the Authority	<ol style="list-style-type: none"> 1. <i>Part XI, article 163, paragraph 2, vi and vii</i>: the Technical Commission may initiate proceedings in cases of non-compliance. 2. <i>NG3/4, article 160, paragraphs xix and xx</i>: the Council may initiate proceedings on behalf of the Authority in cases of non-compliance. 3. <i>Annex III, paragraph 12 b, iii</i>: the Enterprise may be a party in its own name.
(b) States parties, the Authority and other entities	<ol style="list-style-type: none"> 1. <i>Part XV, article 285</i>: the provisions of part XV apply to entities other than States parties. 2. <i>Part XV, article 291</i>: the procedures of part XV shall be open to States parties and, when provided in part XI, to entities other than States parties. 3. <i>Annex V, article 21</i>: States parties and, when provided in part XI or any other agreement, entities other than States may be parties before the Law of the Sea Tribunal. 4. <i>Annex V, article 22</i>: entities other than States parties shall have access to the Law of the Sea Tribunal when provided in part XI or any other agreement. 5. <i>Annex V, article 38</i>: the Sea-bed Disputes Chamber shall be open to States parties and, when provided in part XI, to the Authority and nationals of States parties.
(c) Juridical persons sponsored under article 151, paragraph 2, ii, or other persons not so sponsored, as <i>respondent parties</i>	<ol style="list-style-type: none"> 1. <i>Article 187, paragraph 2 c</i>: ——— no requirement of sponsorship in cases relating to contracts or regarding activities in the area, brought by the Authority against nationals of States parties. 2. <i>Article 189, paragraph 1, ii</i>: no requirement of sponsorship in cases relating to contracts or regarding activities in the area, brought by States or nationals of States parties against nationals of States parties. 3. <i>Article 192</i>: notice to be given to the sponsoring State which can intervene.

II. CATEGORIES OF DISPUTES AND WHO MAY INITIATE PROCEEDINGS

(a) Disputes between States regarding interpretation or application of the convention	<ol style="list-style-type: none"> 1. <i>Article 189, paragraph 1, i</i>: deals only with disputes relating to "activities in the Area".
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*Document GLE/1, dated 26 March 1979.

<i>Issue</i>	<i>Relevant provision of the informal composite negotiating text and documents of the negotiating groups</i>
	2. <i>Article 288, paragraph 1</i> : covers all disputes regarding interpretation or application of convention as a whole. This is coupled with choice of procedure in article 287.
(b) Disputes between the Authority and States regarding interpretation or application of the convention	No provision in the informal composite negotiating text.
(c) Disputes between the Authority and States in relation to violation of the convention, or of rules, regulations or procedures	<i>Article 187, paragraph 2 d</i> : refers to violations by States of the convention, but does not mention rules, regulations or procedures.
(d) Disputes regarding administrative acts and legislative or regulatory acts of the Authority (interrelated with item <i>e</i> below)	1. <i>Article 187, paragraph 2 a and b</i> : refers to “decisions or measures” taken by organs of the Authority. 2. <i>Article 191</i> : the Chamber cannot pronounce on the validity of rules, regulations or procedures, but has jurisdiction over their application.
(e) The question of discretionary powers of the Authority and how to determine whether an organ of the Authority is acting within the scope of its functions in accordance with the convention	1. <i>Article 191</i> : no challenge of exercise of discretion. 2. <i>Article 187, paragraph 2 a</i> : “misuse of power” could possibly include an organ of the Authority exceeding its discretion.
(f) Failure of the Authority to act:	No provision in the informal composite negotiating text
(i) When it has discretion	
(ii) When it has a duty to act and is called upon to do so in a specific instance	
(iii) When it is required to adopt rules, regulations or procedures	
(g) Matters involving violation of duties by secretariat staff	<i>Article 167, paragraph 2</i> : action may be brought by a State party or a person sponsored by a State party.
(h) <i>Locus standi</i> of parties other than States, the Authority or its organs, i.e., juridical persons when sponsored under article 151, paragraph 2, ii, or other persons not so sponsored, initiating proceedings against:	No provision in the informal composite negotiating text for a national or other person to initiate proceedings against a State party. <i>Article 187, paragraph 2 b</i> : provides for <i>locus standi</i> of nationals or persons sponsored under article 151 to initiate proceedings in cases relating to decisions or measures taken by organs of the Authority.
(i) A State party	1. <i>Article 189, paragraph 1, ii</i> : provides for <i>locus standi</i> of nationals of a State party instituting proceedings against nationals of other States parties in cases relating to any contract or relating to activities in the area. 2. <i>Article 167, paragraph 2</i> : provides for persons sponsored by a State party to bring cases of violations of duties by secretariat staff.
(ii) The Authority or its organs	
(iii) Others	
(i) <i>Locus standi</i> of the Authority and its organs in initiating proceedings against:	1. <i>Article 187, paragraph 2 c and d</i> : provides for <i>locus standi</i> of the Authority in bringing a case relating to contracts concerning activities in the area, or violations relating to such activities. 2. <i>Article 163, paragraph 2, vi and vii</i> : the Technical Commission may initiate proceedings in cases of non-compliance by a contractor. 3. <i>NG3/4, article 160, paragraphs xix and xx</i> : the Council may initiate proceedings in cases of non-compliance by a contractor.
(i) A State party	
(ii) An organ of the Authority	No provision in the informal composite negotiating text

<i>Issue</i>	<i>Relevant provision of the informal composite negotiating text and documents of the negotiating groups</i>
(iii) Other persons	<ol style="list-style-type: none"> 1. <i>Article 187, paragraph 2 c</i>: provides for <i>locus standi</i> of the Authority in bringing a case relating to a contract concerning activities in the area. 2. <i>Article 163, paragraph 2, vi and vii</i>: the Technical Commission may initiate proceedings in cases of non-compliance by a contractor. 3. <i>NG3/4, article 160, paragraphs xix and xx</i>: the Council may initiate proceedings in cases of non-compliance by a contractor.
III. COMPETENCE OF AVAILABLE TRIBUNALS	
(a) The Sea-Bed Disputes Chamber of the Law of the Sea Tribunal	<ol style="list-style-type: none"> 1. <i>Part XI, article 187</i>: in disputes between the Authority and States parties or entities other than States parties, in specific cases (see section II above). 2. <i>Part XI, article 189, paragraph 1</i>: in disputes between States parties or nationals of States parties, in specific cases (see section II above). 3. <i>Part XV, article 287, paragraph 2</i>: obligations under part XI are not affected by a declaration pursuant to part XV. 4. <i>Part XV, article 288, paragraph 3</i>: competence of the Sea-Bed Disputes Chamber governed by part XI. 5. <i>Annex V, article 41, paragraph 2</i>: the Sea-Bed Disputes Chamber shall be governed by annex V when exercising advisory jurisdiction.
(b) The arbitral tribunal provided for annex VI	<ol style="list-style-type: none"> 1. <i>Part XI, article 188</i>: by <i>ad hoc</i> agreement of the parties, for any dispute under article 187, by agreement in a contract or under a general arbitration clause. 2. <i>Part XI, article 189, paragraph 2</i>: upon election of the respondent party, for any dispute under article 189, paragraph 1. 3. <i>Part XV, article 288, paragraph 3</i>: competence of arbitral tribunal governed by part XI. 4. <i>Annex II, paragraph 5 j, iv</i>: disputes between the Authority and a contractor where all negotiations for a transfer of technology agreement have failed. 5. <i>NG1/10/Rev.1, annex II, paragraph 5 j, iv</i>: disputes between the Authority and a contractor, where he fails to transfer technology and the negotiations following upon the conciliation commissions recommendations fail.
(c) Commercial arbitration	<i>NG2/7, annex II, paragraph 7 octies and NG2/10/Rev.1, annex II, paragraph 7 duodecies</i> : upon request of either party, for questions regarding financial terms of contracts.
(d) The Conciliation Commission provided for in annex IV	<i>NG1/10/Rev.1, annex II, paragraph 5 j iv</i> : disputes between the Authority and a contractor where negotiations for transfer of technology fail, at request of either party.

IV. WHO MAY REQUEST ADVISORY OPINIONS

(a) The Assembly or the Council	<i>Part XI, article 190</i> : advisory opinions may be rendered by the Sea-Bed Disputes Chamber upon request of the Assembly, the Council or any of the organs of the Council.
(b) Members of the Assembly	<i>Part XI, article 157, paragraph 10</i> : advisory opinions may be rendered by the Sea-Bed Disputes Chamber upon request of a quarter of members of the Assembly.
(c) Other organs of the Authority	No provision in the informal composite negotiating text

NOTE. The Sea-Bed Disputes Chamber is to be governed by annex V when exercising advisory jurisdiction (annex V, article 41, paragraph 2).

V. ORGANIZATION OF THE SEA-BED DISPUTES CHAMBER

(a) Selection of members	<ol style="list-style-type: none"> 1. <i>Part XI, article 158, paragraph 2, iii</i>: by the Assembly from among the members of the Law of the Sea Tribunal.
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<i>Issue</i>	<i>Relevant provision of the informal composite negotiating text and documents of the negotiating groups</i>
(b) Privileges and immunities of members	2. <i>Annex V, article 14, paragraph 2</i> : the Law of the Sea Tribunal shall determine which members shall hear a particular dispute. 3. <i>Annex V, article 37</i> : composition of the Sea-Bed Disputes Chamber. 1. <i>Part XI, article 181</i> : members of the Sea-Bed Disputes Chamber shall have immunity. 2. <i>Part XI, article 183</i> : members of the Sea-Bed Disputes Chamber shall be accorded exemption from taxation.

VI. APPLICABLE LAW

(a) Provisions of the convention and other rules of international law not inconsistent with the convention	1. <i>Part XV, article 293, paragraph 1, and annex V, article 25</i> 2. <i>Annex II, paragraph 15</i> : the law applicable to contracts shall be, <i>inter alia</i> , the provisions of part XI.
(b) Provisions of national legislation	<i>Annex II, paragraph 15</i> : the environmental regulations of a State party which are more stringent than those imposed by the Authority shall be applicable in certain cases.
(c) Rules and regulations of the Authority	1. <i>Annex II, paragraph 15</i> : the law applicable to contracts shall be, <i>inter alia</i> , the rules and regulations prescribed by the Authority which are not inconsistent with part XI. 2. <i>Annex V, article 39</i> : the Sea-Bed Disputes Chamber shall apply rules, regulations and procedures adopted by the Assembly or Council.
(d) Terms and conditions of contracts	1. <i>Annex II, paragraph 15</i> : the law applicable to a contract shall be, <i>inter alia</i> , the terms and conditions of the contract. 2. <i>Annex V, article 39</i> : the Sea-Bed Disputes Chamber shall apply the terms of any contracts in any matter relating to such contract.
(e) <i>Ex aequo et bono</i>	<i>Part XV, article 293, paragraph 2</i> : upon agreement of the parties, the Court shall make its decision <i>ex aequo et bono</i> .

VII. LIABILITY AND SANCTIONS

(a) Responsibilities of States parties	1. <i>Part XI, article 139</i> : States parties shall be responsible to ensure that activities in the area are carried out in conformity with the convention. 2. <i>Part XI, article 186, paragraph 2</i> : the Sea-Bed Disputes Chamber shall make findings of gross and persistent violations by members. 3. <i>Part XI, article 160, paragraph 2, xviii, and NG3/4, article 160, paragraph 2, xviii</i> : upon findings of gross and persistent violations by members, the Council shall make appropriate recommendations.
(b) Rights and responsibilities of contractors	1. <i>Annex II, paragraph 16</i> : contractors shall be liable for wrongful damages caused by their activities. 2. <i>Annex II, paragraph 12 a, ii</i> : termination of rights under contract where the contractor fails to comply with a decision of the Sea-Bed Disputes Chamber. 3. <i>Annex II, paragraph 12 c</i> : the contractor must first be accorded an opportunity to exhaust his judicial remedies.
(c) Responsibilities of the Authority	<i>Annex II, paragraph 16</i> : the Authority shall be liable for wrongful damages caused by its activities.

VIII. MISCELLANEOUS PROVISIONS

(a) Procedures governing disputes	1. <i>Part XI, article 182</i> : all persons appearing before the Tribunal shall be granted immunity. 2. <i>Annex V, article 1, paragraph 2</i> : reference of disputes to the Law of the Sea Tribunal shall be governed by part XI and part XV. 3. <i>Annex V, article 15</i> : the Sea-Bed Disputes Chamber shall be established in accordance with annex V.
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<i>Issue</i>	<i>Relevant provision of the informal composite negotiating text and documents of the negotiating groups</i>
(b) Decisions of the Sea-Bed Disputes Chamber	<p>4. <i>Annex V, article 41</i>: procedure applicable in the Sea-Bed Disputes Chamber shall be governed by annex V.</p> <p>1. <i>Annex V, article 16, paragraph 5</i>: the decision of the Sea-Bed Disputes Chamber shall be considered as granted by the Law of the Sea Tribunal.</p> <p>2. <i>Annex V, article 40</i>: decisions of the Sea-Bed Disputes Chamber shall be enforceable as if rendered by highest court of the State party where enforcement is sought.</p>

IX. PROVISIONAL MEASURES

(a) Power to prescribe	<p>1. <i>Part XV, article 290, paragraph 1</i>: pending final adjudication, a tribunal with jurisdiction part XI, section 6, may prescribe provisional remedies which it considers appropriate.</p> <p>2. <i>Annex II, paragraph 12 c</i>: the Sea-Bed Disputes Chamber may order execution of a decision against a contractor regarding monetary penalties or suspension, pending final adjudication.</p> <p>3. <i>Annex V, article 27</i>: the Sea-Bed Disputes Chamber shall have power to prescribe provisional remedies.</p>
(b) Binding force of decisions	<p>1. <i>Part XV, article 290, paragraph 5</i>: provisional measures shall be promptly complied with.</p> <p>2. <i>Part XV, article 295</i>: any measures prescribed by any tribunal having jurisdiction shall be binding on the parties.</p> <p>3. <i>Annex V, article 35</i>: decisions of the tribunal shall be complied with by the parties.</p> <p>4. <i>Annex V, article 40</i>: decisions of the Sea-Bed Disputes Chamber shall be enforceable as if rendered by the highest court of the State party in which enforcement is sought.</p>

X. EXEMPTIONS FROM JURISDICTION

(a) Exemption of exercise of discretionary powers	<i>Part XI, article 191</i> : the Sea-Bed Disputes Chamber shall have no jurisdiction with regard to the exercise by the Assembly, the Council or any of its organs, of their discretionary powers.
(b) Immunity from legal process	<p>1. <i>Part XI, article 178</i>: the Authority shall be immune from legal process.</p> <p>2. <i>Part XI, article 181</i>: certain persons connected with the Authority shall be immune from legal process.</p> <p>3. <i>Annex III, paragraph 12 c</i>: jurisdiction over Enterprise limited to certain areas.</p>
(c) Immunity from search and seizure	<i>Part XI, article 179</i> : the property and assets of the Authority shall be immune from search and seizure.

XI. ENFORCEMENT

Enforcement of rights and obligations.	<p>1. <i>Annex II, paragraph 15</i>: rights and obligations of the Authority and contractors shall be valid and enforceable in each State party.</p> <p>2. <i>Annex V, article 40</i>: decisions of the Sea-Bed Disputes Chamber shall be enforceable as if rendered by the highest court of the State party where enforcement is sought.</p>
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ANNEX II

Statement by the Chairman, summing up the discussions of 27 March 1979 regarding who may be parties*

A. STATE PARTIES

States parties were considered to be the primary parties to judicial proceedings. There was little discussion and there did not seem to be an issue on the right of States to participate. In the hierarchy of par-

ties, the Authority should come thereafter and finally natural or juridical persons.

B. THE AUTHORITY

The Authority as a party to legal proceedings was also broadly accepted. However, there was a wide expression of views as to the status of organs of the Authority as possible parties. The role of the enterprise was considered to be different to that of the other organs. It appears that the Authority as one organic whole is an indivisible unit which should have legal capacity as such. Similarly, it appears that the Enterprise should also have an independent legal capacity.

* Document GLE/II/1, dated 2 April 1979.

1. *Organs of the Authority*

The role envisaged for the other organs of the Authority seems to be much more restricted. While there would be a need for individual organs to initiate proceedings, they should, however, only do so on behalf of the Authority. It is the Authority which should become the party to the proceedings as the organs should not possess an individual legal capacity.

2. *Initiating proceedings on behalf of the Authority*

The question was raised as to which organ would be empowered to initiate what proceedings. The suggestion was made without opposition that only the organ within whose competence the dispute arises should be empowered to institute an action with respect to that dispute. Article 163, paragraph 2, vi and vii, would in consequence need to be formulated accordingly. It is to be noted that this article also needs clarification as to the person or legal person against whom proceedings would be initiated and also as to the cases of non-compliance that are envisaged in it.

A case was made out for avoiding conflicts between organs of the Authority that may concurrently be empowered to initiate proceedings by having a single organ designated for the purpose, upon which the responsibility of the decision would finally fall.

3. *The Authority as a respondent*

As to how the Authority may become a respondent or defendant party was also brought up, together with the question as to who, or what organ, should be empowered to act on behalf of the Authority. The suggestion was made that some official of the Authority should be appointed or a specific organ entrusted with the responsibility to initiate or defend proceedings.

C. THE ENTERPRISE

While many felt that the Enterprise presented special problems with regard to legal capacity, those who addressed this issue confirmed the provisions of the negotiating text (annex III, paragraph 12 b, iii) that it should be able to be a party in its own name in view of its special and autonomous nature. It would, however, be limited in this capacity to cases that are necessary for the fulfilment of its functions. The issue raised in this connexion was whether the liability or responsibility of the Enterprise should be attached to the Authority. No clear trend presented itself.

D. THE ORGANS OF THE AUTHORITY *inter se*

The possibility of disputes arising between organs of the Authority with respect to their spheres of competence was mentioned. There is no provision covering such a case in the text. However, as this is more relevant to the next issue to be discussed, its consideration should be treated as preliminary and related to the work to follow.

E. ENTITIES OTHER THAN STATES PARTIES AND THE AUTHORITY

The need for State enterprises, natural and juridical persons to be parties to proceedings was clearly confirmed, subject to the limitation that the proceedings in which they are involved may only relate to contractual matters. They would not be concerned in any way with disputes regarding the interpretation or application of the convention. While the need for contractors to be parties was not questioned, there appeared to be a desire to permit natural or juridical persons who have an interest in a prospective contract to have recourse to some forum in the event of a dispute arising that relates to the conclusion of the contract.

Such an interested State enterprise, natural or juridical person may be an applicant who has been refused a contract, or an applicant faced with a legal problem in the course of negotiating. They would have paid substantial deposits and would need to have their interests protected. Some felt that the access to a tribunal of interested State enterprises, natural or juridical persons who are not yet contractors must be restricted to those who have fulfilled certain financial pre-conditions to the contract such as the payment of dues. Furthermore, for any such person to become a party, it should be sponsored by the State whose national it is. In addition, its participation in proceedings should be restricted solely to cases relating to contracts into which it has entered or for which it has applied.

F. STAFF OF THE AUTHORITY OR THE ENTERPRISE

It was questioned whether article 167, which deals with the responsibilities and liabilities of staff members, required that a staff

member be a party to a proceeding in an administrative case pertaining to his employment. There is no clear provision to cover this situation, and no trend appeared. Some doubted whether the Sea-Bed Disputes Chamber should be given this kind of administrative jurisdiction at all. Perhaps questions other than that of identifying the appropriate tribunal to deal with such matters should be left for later consideration.

G. LABOUR CONTRACTS OF THE AUTHORITY OR THE ENTERPRISE

Though mentioned in passing no discussion followed on this issue. Consideration could be given to this question also at a later stage.

H. GENERAL

It seems that in general the provisions scattered throughout the text would need to be collated in the applicable part. (For example, annex, article 38, refers to who may be parties and this needs elaboration.)

ANNEX III

Statement of the Chairman summing up the discussions of 2 to 5 April 1979 regarding who may be parties, categories of disputes and competence of available tribunals*

I. WHO MAY BE PARTIES

A. *The Authority*

Initiating proceedings on behalf of the Authority

The only new matters raised were regarding what organ of the Authority could initiate proceedings on its behalf. Whilst on the one hand the view was expressed that it should be left to the Authority to decide, on the other hand some required that a particular organ be designated to initiate proceedings. The Council was preferred in this view.

B. *The Enterprise*

The legal capacity of the Enterprise

In this connexion, contradictory views were expressed. It was argued that the Enterprise should be considered an organ of the Authority. Reference was made to article 169 which provides that the Authority has a distinct international legal personality, within the framework of which the Enterprise should perform its functions. It was also pointed out that, in the context in which it appears, annex III, article 12 b, only deals with the legal capacity of the Enterprise before national tribunals. Counter to this argument, there was further support for treating the Enterprise as an independent body with independent legal capacity.

C. *Entities other than States parties and the Authority*

1. *Sponsorship*

As regards the sponsorship of natural or juridical persons, reference was made to the two aspects of sponsorship, namely, sponsorship as regards contracts or other arrangements (article 151, paragraph 2, ii) and sponsorship for the purposes of being a party to judicial proceedings. Doubts were expressed as to the need for sponsorship before a tribunal in a case where there was sponsorship to the contract.

Since there is no provision in the informal composite negotiating text to provide for a case to be brought by a national against a State party, reference was made to the doctrine of the exhaustion of local remedies in article 294. It was pointed out that the issue of sponsorship would arise in this context. However, the point was also made that the scope of application of the doctrine in this regard was limited.

2. *Parties to contracts*

The issue of access of parties to contracts other than States parties was raised once more. It was felt that the definition of such parties should be broad enough to include prospective parties to contracts who would otherwise have no recourse to a juridical forum. Such recourse should be available to an applicant who has been refused a contract or who faced legal problems in negotiating a contract.

*Document GLE/1/2, dated 6 April 1979.

II. CATEGORIES OF DISPUTES

A. *Disputes regarding the interpretation, application or violations of part XI of the convention*

The appropriate forum for sea-bed disputes was discussed extensively. Some felt that it was absolutely necessary to provide a special forum, given the need to preserve the unity and continuity of jurisprudence with respect to activities in the area and also as it was the only forum appropriate for disputes involving the Authority. The point was made that the Sea-Bed Disputes Chamber had been accepted for these disputes. This was referred to as being part of the compromise negotiated earlier wherein alternate fora, with arbitration as a residual forum, were accepted generally for the settlement of disputes, while sea-bed matters were excluded.

One suggestion was that the acceptance of the Chamber should not be imposed upon States that do not choose to accept the Law of the Sea Tribunal in making a declaration under article 287.

The view was expressed that the provisions of part XV may be elaborated to cover part XI disputes and that therefore there was no need for special provision in part XI. To cover the possible gaps in jurisdiction it was suggested that a provision be added in article 287 permitting a declaration accepting jurisdiction of a chamber. However, this was opposed on the grounds that it could lead to a conflict between chambers of the same tribunal and even chambers of different tribunals.

In relation to article 189, paragraph 1, i, some felt that the Chamber should not have exclusive jurisdiction regarding the interpretation or application of part XI with respect to activities in the area, but rather that such disputes should be left to the general provisions of article 287. It was therefore suggested that the paragraph be deleted. Others felt that this provision was essential and should not be deleted.

Many raised the question of the appropriate forum for disputes concerning more than one part of the convention. One suggestion was that such questions should be decided on by the Tribunal but this was opposed by others who felt that such disputes should be left to the appropriate tribunal under article 287.

With regard to the jurisdiction of the Chamber the question was raised as to who should decide what disputes would be entertained by the Chamber. It was suggested that the Chamber should be empowered to decide in which cases it would have jurisdiction and that an amendment to that effect be incorporated in article 288, paragraph 4.

B. *Contractual disputes*

1. *Types of contracts*

The discussion on contractual disputes disclosed the need to consider different forums for different types of contracts, different stages of contracting, and different parties to the contract. It was suggested, for example, that:

(a) The appropriate tribunal for disputes between nationals regarding contracts to which they are parties should be a national tribunal.

(b) Commercial arbitration may be appropriate for contractual disputes where the parties have agreed to provide for it in the contract. This was based on the contention that the right of parties to a contract to agree on the method of dispute settlement arising from a contract between them should be recognized.

(c) Disputes of a contractual nature between the Authority and contractors, whether States parties or nationals, should go to an international tribunal. Contrary views were expressed as to whether this tribunal should be the Chamber or whether, failing agreement of parties, it should be arbitration. However, in this connexion too, reference was made to commercial arbitration and the rules of the United Nations Commission on International Trade Law.

In opposition to this approach of alternative forums was the view that a certain public order should prevail in the international area. This was based on the principle of *rationae loci*. Therefore all disputes regarding activities in the area should be submitted to a single tribunal. It was felt that this tribunal should be the Chamber, whatever the type of dispute. This would, in the view of its supporters, ensure the unity of jurisprudence required for the area.

A related issue was raised. Some felt that article 189, paragraph 1, ii, was too broad, as that article provided for comprehensive jurisdiction in all cases involving any contract, or in respect of activities in the area. It was pointed out that the use of the disjunctive "or" in that paragraph by implication provides jurisdiction for disputes arising

from activities in the area other than the interpretation or application of a contract. It was felt that this latter category of disputes might be more appropriately dealt with under the provisions of part XV.

2. *Disputes in which nationals are parties, and sponsorship*

It was once again pointed out that the informal composite negotiating text contained no provision for a dispute to be brought by a natural or juridical person against a State. There was some discussion on the definition, scope and implications of "sponsor" in the context of article 192 and part XI generally. Reference was made to the link between sponsorship of contracts under article 151, paragraph 2, ii, and the provisions of article 192. Some felt that the dispute should always be brought by a State on behalf of its national, while others felt that the national should be able to bring it on his own behalf. The issue of intervention under article 192 was raised. A suggestion was made to the effect that the sponsoring State should be required to intervene at the request of the other State party, while counter to this was the suggestion that the sponsoring State should be given the choice as to whether or not to intervene as provided in article 192. A desire was expressed that these issues should be clarified.

3. *Arbitration for contractual disputes*

The discussions disclosed that there is a need for a variety of arbitration forms to be considered. A particular type of arbitration might be more appropriate for one dispute than for another. Some who favoured recourse to the provisions of part XV for sea-bed matters stressed that arbitration would be available by agreement under article 287 or, failing such agreement, as a residual forum. However, it was pointed out that such arbitration under article 287 is of the traditional international type as between States, and that commercial arbitration may be more appropriate for some categories of contract disputes. It was suggested that a provision be added recommending the inclusion of an arbitration clause in contracts, and that where such clause has been included, it should be respected. Further, the inclusion of an arbitration provision in annex II and annex III was suggested. It was also suggested that even where the Chamber is provided for primarily, the opportunity to resort to arbitration by agreement of parties to the contract should be available.

4. *Violations of the convention*

Violations of the convention as referred to in article 187, paragraph 2 d, were considered as being one-sided by some as only State violations were referred to. However, this was countered by the view that article 187, paragraph 2 a and b, covered violations by the Authority. In this connexion, reference was also made to the need to delete the reference to specific organs in paragraph 2 a, while the opposing view was that the jurisdiction should only extend to violations by the subsidiary organs. Another matter referred to here but which was also opposed was the need to incorporate in paragraph 2 d the reference to gross and persistent violations found in article 186.

5. *Acts and omissions of the Authority*

The reference in article 187 to decisions or measures was considered confusing and it was suggested that reference be made to acts of the Authority instead. Omissions of the Authority where there was a failure to comply with duty should also be included here in the view of some.

Another issue raised was the question of misuse of power. Article 191 was also considered and contrary views were expressed as to the jurisdiction to declare rules, regulations or procedures invalid, as against refusing to apply such rules in a given case.

With regard to article 187, paragraph 2 a and b, another point made was that natural or juridical persons should not be able to challenge acts of the Authority unless they are directly involved in the dispute regarding a contract to which they are parties.

The exercise of discretionary powers by the Authority and whether it should be challengeable was raised. Opposing views were expressed but there seemed to be support for the provision in article 191 regarding the tribunal not being permitted to substitute its discretion for that of the Authority.

6. *Other issues*

The need to examine the alternative arbitration procedure in articles 188 and 189, paragraph 2, became evident, as the option is treated differently in each.

7. Secretariat staff and related issues

As regards articles 167 and 187, paragraph 2 *d*, and the references to the secretariat staff in the annexes it would appear that some aspects of the matter could be characterized as being appropriate for an administrative tribunal whereas other issues need to be co-ordinated with the work of negotiating group 3 and examined accordingly.

III. HARMONIZATION OF PROVISIONS

The inconsistency of the provisions of part XI and part XV was once again pointed out and many felt that the group's prime concern should be the harmonization of these provisions. In this connexion it was noted that there exists a repetition of substance as between article 291 and articles 21, 22 and 38 or annex V. It was suggested that these articles be consolidated into a single provision, preferably in article 291 of part XV incorporating therein those provisions of the annexes that are not already in article 291.

Informal ideas and suggestions were presented on the following issues:

- (a) To determine the manner of initiation of proceedings on behalf of the Authority;
- (b) To change the provisions in article 189, paragraph 2, to allow for arbitration by choice of both parties;
- (c) To clarify the term "decisions or measures", as well as "misuse of power" in article 187, paragraph 2 *a*;
- (d) To broaden jurisdiction under article 187, paragraph 2 *d*, to allow for violations by either the Authority or a State party;
- (e) To clarify the manner in which sponsorship and intervention would take place under article 192;
- (f) To narrow the jurisdiction provided for under article 189, paragraph 1, *ii*;
- (g) To clarify the scope of jurisdiction to review rules, regulations or procedures enacted by the Authority;
- (h) To provide for the setting up of special chambers within the Sea-Bed Disputes Chamber;
- (i) To specify that natural or juridical persons may only be parties to proceedings relating to a contract in which they are directly concerned;
- (j) To harmonize the relationship of the provisions of part XI and those of part XV;
- (k) To determine the manner in which disputes would come before the Sea-Bed Disputes Chamber.

There was a fruitful exchange of views during the course of the five meetings which have been summarized. No doubt there will be points that may not have been referred to in this summary. The Chair will, however, take them into account in the final report.

ANNEX IV

Statement of the Chairman summing up the discussions of 6, 9 and 10 April 1979 regarding organization of the Sea-Bed Disputes Chamber, applicable law, liability and sanctions, provisional measures, exemptions from jurisdiction, enforcement and labour disputes*

A. ORGANIZATION OF THE SEA-BED DISPUTES CHAMBER

1. Composition and selection of members

In the discussion on the composition of the Chamber a suggestion was made that the number of judges provided for in the informal composite negotiating text should be reduced to bring its status and size in line with the classical *ad hoc* chamber of the International Court of Justice. The reason adduced for this suggestion was that it would promote the more efficient functioning of the Chamber. It was admitted, however, that a preconstituted chamber would be required for certain matters such as advisory opinions. Contrary to this was the view of the group of legal experts that expressed the need to preserve the autonomy and integrity of the Chamber, the status of which should not be watered down.

The members of the Chamber should be selected by the Law of the Sea Tribunal, instead of by the Assembly, in the opinion of some. Others who strongly opposed this idea pointed out that the Assembly is the main body charged with the management of the common heritage of mankind and therefore the selection of members of the

Chamber by the Assembly is appropriate. This is especially so, in their view, on account of the need to preserve, *inter alia*, the principle of equitable geographical distribution. It was suggested that since the members of the Tribunal are elected by States parties, a second confirmation procedure by the Assembly, in which all States parties are represented, for members of the Chamber may be unnecessary. Those who supported the selection by the Assembly and the maintenance of the size of the Chamber indicated that it would disturb the equilibrium of the present text if any change was made. The creation of the Chamber was a compromise between those who wanted a separate tribunal for the sea-bed and those who wanted a single tribunal covering all aspects of the convention. The willingness to accept the Chamber as a compromise was dependent upon the Chamber being large enough to provide for adequate geographical representation and diverse legal systems of the participants. It was only through selection by the Assembly that this geographic representation could be safeguarded, it was felt.

In this connexion, it was pointed out that the convention contained no provision regarding the powers and functions of the Assembly for the selection of judges of the Tribunal by the Assembly. A suggestion was made to include such a provision in order to clarify the situation.

2. Privileges and immunities of members of the Chamber

It was suggested that all the relevant provisions concerning privileges and immunities were scattered and should be consolidated into one provision, preferably in annex V.

Further, the provisions should be broadened to apply not only to the Chamber but to the Law of the Sea Tribunal generally, as the Chamber is a part of the Tribunal and is composed of the same members. It was felt by some that further discussions on privileges and immunities may be necessary.

B. APPLICABLE LAW

Some felt that the sources of law enumerated in article 293 and in annex V, articles 25 and 39, are not exhaustive. Other law may be applicable in certain cases. It was suggested that both national legislation and the general principles of law should be provided for, but that these should not have priority over the sources already listed. Others felt that the international characteristics of the international forum must be maintained and that therefore only international law is properly applicable. A suggestion was made to include the rules and regulations of the Authority as a source of law, but it was felt that this was not strictly required since application of the provisions of the convention encompasses this.

In the commercial sphere, it was felt that different sources of law may be appropriate for different types of disputes. Therefore, it was suggested that where a contract designated the sources of law that should be applied in a dispute involving that contract, such provision should be respected.

C. LIABILITY OR SANCTIONS

The liability of the Authority, in the view of some, needs to be clarified. Its liability should be analogous to that of a State and the same sanctions should apply to both. In this regard, it was pointed out that the responsibility for damage caused by a natural or juridical person who is sponsored, rests with the sponsoring State and should not shift to the Authority merely because the sponsoring State has taken adequate precautions. Furthermore, it was suggested that in the contractual sphere, the contract itself should designate who would bear the liability.

In dealing with annex II, paragraph 16, there was a hesitance to discuss the substantive questions of liability, for the reason that it was outside the mandate of the group. However, some comments were made. The reference to liability in paragraph 16 was not needed, in one view, because such liability would result from an act of the contractor or of the Authority and jurisdiction over such matters was provided for in article 187. The possible defence available to the Authority or a contractor set out in paragraph 16 was, in the view of some, a statement of the obvious as it is generally a defence available in any question of damages but should not be considered the only defence available. Another view expressed was that this paragraph does not provide for the determination of liability but merely indicates who should be sued and in what sphere.

D. PROVISIONAL MEASURES

There was no discussion of this issue as any points to be made on the subject had already been dealt with in the previous discussions.

* Document GLE/1/3, dated 12 April 1979.

E. EXEMPTION FROM JURISDICTION

This issue too had been covered in the earlier discussions on the jurisdiction of the tribunals.

F. ENFORCEMENT

There was some discussion on the provision regarding enforcement of decisions of the Sea-Bed Disputes Chamber. The point was made that there should be an enforcement provision covering all the alternative forums in the text. On the question of the decisions of the Chamber being enforced in the territories of a State party in the same manner as the decision of the highest court of that State, the first matter raised was that the reference to "territories" in annex V, article 40, was inappropriate. The other question was the reference to "the highest court". The suitability of this reference was questioned, as in some cases, depending upon the legal system of the State in question, it may not be a court that enforces decisions. In any event, it might result in the need for protracted litigation merely to enforce the decision. In one view, enforcement would be automatic as some constitutions provided for it in the case of ratified treaties. A suggestion was also made that the reference to "the manner" of enforcement should be deleted.

G. LABOUR DISPUTES

In the course of the discussion on article 167 regarding violations by staff members of the Authority, a further question was raised on the settlement of labour disputes, including questions of workmen's compensation, in relation to the labour force of the Enterprise. The view was expressed that these matters could not come within the competence of an administrative tribunal.

H. CONCLUSION

The Chairman indicated that the group had completed its initial examination of the questions before it and that he would attempt to formulate suggestions for a working paper on those issues which appeared to be controversial and where he felt an acceptable basis for further negotiations in an appropriate forum could be reached. For this purpose he intended to consult with a representative selection of the legal experts in the group. These formulations would be placed before the group at its next meeting to assess preliminary reactions before proceeding further with the preparation of a working paper, which would be discussed in accordance with the mandate of the group in an appropriate forum.

ANNEX V

Working paper submitted by the Chairman of the group of legal experts on the settlement of disputes relating to part XI*

The working paper contains the following categories of suggestions and ideas:

1. Suggestions which in the light of the discussions may, in the Chairman's view, provide a good basis for further negotiations.

New articles: 187, 187 bis, 190, 157, paragraph 10.

2. Suggestions taking account of proposals which were submitted in the course of the discussions within the group of legal experts which may need further examination.

New article 191

3. Suggestions taking account of proposals which were submitted in the course of the discussions within the group of legal experts which, however, on account of the limited time available, were not discussed completely.

New articles: 188, 192, 167, paragraph 3, 167, paragraph 4.

4. Recommendations to the Chairman of the First Committee concerning modifications that may be taken into account in redrafting part XI of the informal composite negotiating text.

New article 167, paragraphs 1 and 2.

5. Drafts submitted to the Chairman of the group of legal experts which are made available to the group for its consideration.

New articles of annex V: 15, 37, 37 bis.

Article 187. The establishment of the Sea-Bed Disputes Chamber of the Law of the Sea Tribunal

The establishment of the Sea-Bed Disputes Chamber, and the manner in which it shall exercise its jurisdiction, shall be governed by the

provisions of this section, part XV, and of annex V of the present Convention.

Article 187 bis. Jurisdiction of the Sea-Bed Disputes Chamber

The Chamber shall have jurisdiction under this Part of the present Convention with respect to activities in the Area regarding:

1. Disputes between States Parties concerning the interpretation or application of this Part of the present Convention.

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

3. Disputes between parties to a contract, being State Parties, the Authority, the Enterprise, State entities or natural or juridical persons, as referred to in article 151, paragraph 2, ii, concerning:

- (i) The interpretation or application of a relevant contract or a plan of work;
- (ii) Acts or omissions of a party to the contract relating to activities in the Area and directed to the other party or directly affecting its legitimate interests.

4. Disputes between the Authority and a prospective contractor who has been sponsored by a State as provided in article 151, paragraph 2, ii, and has duly fulfilled the conditions of application, concerning the refusal of a contract, or a legal issue arising in the negotiation of the contract.

5. All matters specifically provided for in the present Convention.

Article 190. Advisory opinions

The Sea-Bed Disputes Chamber of the Law of the Sea Tribunal shall give advisory opinions when requested to do so by the Assembly or the Council on legal questions arising within the scope of their activities. Such advisory opinions shall be rendered as a matter of urgency.⁴⁷

Article 157. Composition, procedure and voting

10. Upon request in writing to the President sponsored by not less than one quarter of the members of the Authority for an advisory opinion on the conformity with the present Convention of a proposed action before the Assembly on any matter, the Assembly shall defer its vote on that matter and shall request the Sea-Bed Disputes Chamber for an advisory opinion thereon.⁴⁸ Voting on that action shall be deferred pending delivery of the advisory opinion by the Chamber. If the advisory opinion is not received by the final week of the session in which it is requested, the Assembly shall decide when it will meet to vote upon the deferred matter.

Article 191. Limitation on jurisdiction with regard to decisions of the Authority

The Sea-Bed Disputes Chamber shall have no jurisdiction with regard to the exercise by the Authority of its discretionary powers in accordance with this part of the present Convention; in no case shall it substitute its discretion for that of the Authority. Without prejudice to article 190, in exercising its jurisdiction pursuant to article 187 bis, the Sea-Bed Disputes Chamber shall not pronounce itself on the question of whether any rules, regulations or procedures adopted by the Authority are in conformity with the provisions of the present Convention, nor declare any such rule, regulation or procedure invalid. Its jurisdiction shall be confined to determining whether the application of any rules, regulations or procedures to individual cases would be in conflict with the contractual and conventional obligations of the parties to the dispute, and to claims concerning lack of competence or misuse of power, as well as claims for damages to be paid or other remedy to be given to the party concerned for the failure of the other party to comply with its conventional or contractual obligations.

⁴⁷ Provision will have to be made for the Assembly or the Council (in article 158, paragraph 2, and in article 160, paragraph 2) to request an advisory opinion on any legal question arising in the scope of its activities. The provisions of article 157, paragraph 10, could also be incorporated in article 158 rather than as presently located.

⁴⁸ The Spanish text of the informal composite negotiating text clearly provides that advisory opinions are to be requested by the Assembly, although the English and French texts are not clear.

* Document GLE/2, dated 19 April 1979.

Article 188. Submission of disputes to ad hoc chambers of the Sea-Bed Disputes Chamber and to binding arbitration

1. Disputes between States Parties referred to in article 187 *bis*, paragraph 1, shall be submitted to an *ad hoc* chamber of the Sea-Bed Disputes Chamber, as provided in article . . . of annex V, at the request of any party to the dispute.

2. Disputes referred to in article 187 *bis*, paragraph 3, shall be submitted to binding commercial or other arbitration in so far as provided in any contract between the parties to the dispute at the request of any party thereto. Failing agreement of the parties, the procedure in accordance with . . .⁴⁹ shall apply.

Article 192. Rights and duties of States Parties to intervene

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

2. In any dispute referred to in article 187 *bis*, paragraph 3, between a State Party and a natural or juridical person, the State Party sponsoring that person at that time shall have the duty to intervene in the proceedings if the other State Party so requests, unless the parties to the contract otherwise agree.

Article 167. International character of the secretariat

1. In the performance of their duties, the Secretary-General and the staff shall not seek or receive instructions from any Government or from any other source external to the Authority. They shall refrain from any action which might reflect on their position as international officials of the Authority responsible only to the Authority. Each State Party undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

2. The Secretary-General and the staff shall have no financial interest whatsoever in any activity relating to exploration and exploitation in the Area. Subject to their responsibilities to the Authority, they shall not disclose, even after the termination of their functions, any industrial secret or data which is proprietary in accordance with annex II, paragraph 8, of the present Convention, or other confidential information coming to their knowledge by reason of their official duties for the Authority.

3. Any violation of the responsibilities of a staff member of the Authority set forth in paragraph 2 shall, on the request of a State Party or a natural or juridical person sponsored by a State Party and affected by such violation, be submitted by the Authority against the staff member concerned to an appropriate tribunal. The party affected shall have the right to intervene in the proceedings. If the tribunal so recommends, the Secretary-General shall dismiss the staff member concerned.

4. The elaboration of the relevant provisions of this article shall be included in the staff regulations of the Authority.

ANNEX V

Article 15. Establishment of a Sea-Bed Disputes Chamber and ad hoc chambers thereof

A Sea-Bed Disputes Chamber or its *ad hoc* chambers shall be established in accordance with the provisions of section 4 of this annex. Their jurisdiction, powers and functions shall be as provided for in part XI, section 6, of the present Convention.

⁴⁹ Commercial arbitration rules, to be specified.

Article 37. Composition of the Chamber

1. The Sea-Bed Disputes Chamber shall be established in accordance with article 15 of this statute and shall be composed of 11 members, selected from among the members of the Tribunal.

2. The Assembly shall assure the representation of the principal legal systems of the world and equitable geographical distribution in the Chamber.

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

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

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

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

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

Article 37 bis

1. An *ad hoc* chamber of the Sea-Bed Disputes Chamber shall be established in accordance with article 188, paragraph 1, of the present Convention if a party to the dispute shall so request within 20 days of the institution of proceedings in the Sea-Bed Disputes Chamber.

2. An *ad hoc* chamber shall be composed of five members. Each party to the dispute shall appoint one member, who shall be chosen from among the members of the Tribunal. Except as provided in paragraphs 3 to 5, the other three members shall be appointed by agreement of the parties and shall be chosen from among the members of the Tribunal.

3. Should a party to the dispute fail to appoint a member within 40 days of the institution of proceedings, the appointment shall be made in accordance with paragraph 5.

4. If, within 60 days from the institution of proceedings, the parties are unable to reach agreement on the appointment of the three members of the *ad hoc* chamber to be appointed by agreement, each party shall appoint a second member and the remaining appointment shall be made in accordance with paragraph 5. Should a party fail to appoint a second member within 80 days from the institution of proceedings, the appointment shall be made in accordance with paragraph 5.

5. Any appointment of members of the *ad hoc* chamber to be made in accordance with this paragraph shall be made by the Chairman of the Sea-Bed Disputes Chamber. Any such appointment shall be made in consultation with the parties within 20 days from the expiration of the periods specified in paragraphs 3 and 4. If the Chairman is unable to act under this paragraph or is a national of or of the same nationality as one of the parties to the dispute he shall be replaced for the purposes of this paragraph by the next senior member of that Chamber who is available and is not a national of or of the same nationality as one of the parties.

6. The *ad hoc* chamber shall elect its Chairman from among its members.

7. Any vacancy in the *ad hoc* chamber not filled within 20 days in the manner provided for in the original appointment shall be filled in accordance with paragraph 5.