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Report by the Chairman of negotiating group 1

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For over a year I have conducted negotiations on the system of exploration and exploitation, first as Chairman of the negotiating group created during the intersessional meeting held in February 1978 in New York, and afterwards as Chairman of negotiating group 1. During that time I have not only conducted negotiations from the podium; I have also carried out consultations with delegations of individual countries and with groups of countries with special interests, encouraged consultations amongst them, promoted restricted meetings to deal with specific problems at a technical level, and presented and encouraged the presentation of drafts and proposals.

The result of all this activity is reflected in document NG1/16/Rev.1 (annex III). As you see, this document contains provisions related to almost every aspect of the system of exploration and exploitation, from general principles governing the area such as those in article 140 on benefit of mankind, article 143 on marine scientific research and article 144 on transfer of technology, to the detailed provisions of annex II on approval of plans of work or selection of applicants. Some formulations have been maintained without substantially changing their structure from the informal composite negotiating text[14] such as that defining the basic elements of the system in article 151. Some other provisions contain new ideas developed during the negotiations in negotiating group 1, such as those related to technology transfer or to the anti-monopoly clause.

On the whole, the set of articles I am submitting now is a new attempt to answer the questions of who will exploit the resources of the area, and how the area has to be exploited in order to ensure that all mankind, not some States or persons, will benefit.

The problems we had to face were particularly difficult because our objectives were twofold: on the one side to agree on a system of exploration and exploitation satisfactory to developed as well as developing countries, to producers as well as consumers. I think that the setting up of the system was the easiest part of our task, because we worked on the already accepted assumption that the exploitation of the area should be carried out both by the Enterprise on behalf of the Authority and by other entities in association with the Authority, at least for the interim period until the review conference reaches an agreement on a new system.

But the second objective proved to be far more difficult or at least more complex than the first. This second objective was to ensure that the system of exploration and exploitation will operate in reality in the manner which has been devised in the text, in other words, that which is known in the jargon of the Conference as the "parallel system" will indeed be parallel once the régime comes into force. This was an enormous task since we had to imagine ways and means to equalize two different kinds of entities: the powerful consortia with all their capital and credit, technology and organization, some of which are already engaged in sea-bed operations; and the Enterprise, an entity so far existing only in our imagination, a creature to be born without the necessary tools to fulfil the purpose for which it is created. Indeed, the most extensive discussions in our group focused on the availability for the Enterprise of one of those tools, namely, technology. I know that in negotiating group 2 discussions about the other fundamental tool, finance, have been equally arduous.

Thus considerable time was devoted during the negotiations to the analysis and discussion of proposals providing mechanisms to ensure that the parallel system will operate as such, that is to say, to ensure that the Enterprise will be an effective operator in the exploitation of the resources of the area. The detailed provisions in annex II, paragraph 4 *bis*, on transfer of technology, constitute a considerable expansion of paragraph 4 (*c*) (iv) of annex II of the informal composite negotiating text, and may be seen, I think, as the most important outcome of the work of negotiating group 1. Trying to reconcile the opposite views of different interest groups on this extremely sensitive subject has required strenuous efforts and has forced me to review my proposals many times. The last version of paragraph 4 *bis* of annex II may be found in document NG1/16/Rev.1. I decided to present a new version of this paragraph including some important additions to the text contained in document NG1/16 in view of the very useful comments made during the last meeting of negotiating group 1 and the deliberations in the working group of 21. In subparagraph (i) I have added a sentence according to which the applicant has the obligation to inform where the technology to be used by him is available on the open market. In subparagraph (ii) I have inserted a provision to reinforce the assurance given by the owner of the technology concerning the availability of such technology. In subparagraph (iii) I have clarified the scope of the undertaking of the applicant in establishing that the Enterprise may invoke it only if it finds that it is unable to obtain the same or similar technology on the open market on fair and reasonable terms and conditions. Subparagraph (*c*) is new and deals with the intricate problem of the transfer to the Enterprise of technology for processing minerals. I hope that it will command acceptance by all interested groups. This new provision not only acknowledges the right of and the need for the Enterprise to engage in processing activities but also puts on State parties operating in the area some concrete obligations relating to the transfer of technology for processing. Finally, article 4 *bis* (*b*) has been redrafted to meet some objections expressed in negotiating group 1.

Some comments made on paragraph 4 *bis* by members of negotiating group 1 and also by members of the working group of 21 convinced me that the inclusion of a definition of "technology" was necessary in order to make more precise the undertaking of the applicants in this field. Therefore, I decided to add a new subparagraph at the end of paragraph 4 *bis* establishing what is the meaning of "technology" for the purpose of the application of annex II.

The text of the definition is as follows:

> "For the purposes of this paragraph, 'technology' means the equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance necessary to assemble, maintain and operate a system for the exploration and exploitation of the resources of the Area and the non-exclusive legal right to use these items for that purpose".

The other amendments that appear in document NG1/16/Rev.1 are mainly drafting changes. I will simply point them out because they are self-explanatory. In article 143, at the beginning of paragraph 3, the words "and their nationals" have been deleted. It is understood that reference to "States" incorporates their nationals.

Article 153, paragraph 2, has been redrafted so as to express the same idea in a clearer way. In annex II, paragraph 2 (*a*) (ii), I have adopted a simpler way to express the prospector's acceptance of the Authority's right to verify that he

*Also circulated as document A/CONF.62/C.1/L.24.

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

s complying with his obligations. In paragraph 3 (*a*) and (*c*) i), I have introduced some editorial changes. The wording of aragraph 5 *ter* (*d*) has been changed in order to establish learly that the Enterprise can carry out activities in the on-reserved areas not previously allocated. And finally, in aragraph 5 *ter* as well as in paragraphs 8 and 10 I have re-laced "contractor" with "operator", the word "contract" ith the words "plans of work" and the expression "con-ract area" with "area covered by the plans of work".

Many substantial amendments on other questions related o the system of exploration and exploitation have been dis-ussed and clarified during these negotiations, and alterna-ive solutions for them have been carefully considered. Im-ortant changes were made on the provisions concerning the eview conference, in particular the application of a noratorium under paragraph 6 in case the review conference loes not agree on a new system. While this remains the most ontroversial provision, I still am firmly convinced that it is he only way to exert maximum pressure on both sides so as o ensure that the Conference reaches a mutually satisfac-ory conclusion in a reasonable time. In article 153, para-graph 3, and in annex II, paragraphs 5 and 5 *bis*, I have in-cluded provisions aimed at the prevention of monopolization of activities in the area. There are new rules of procedures and criteria for the approval of plans of work and for the selection of applicants in paragraphs 5 and 5 *bis*. I will not bother the delegations by going through the detailed explana-tion for each amendment again. Each time I submitted a compromise formula to the group I gave a detailed account as to where and why the changes were made. I refer this Committee to my previous reports presented during the seventh session, and in particular to the last explanatory memorandum contained in document NG1/17 of 17 April 1979, which I request to be added to this report as an annex (annex II).

In most of the above-mentioned areas, the text I am now proposing as a compromise formula significantly departs from the informal composite negotiating text. I can only see these changes as being steps forward and as bringing the negotiations considerably closer to a final solution.

As in the case of my previous compromise formula which I submitted to the group, I must stress that this formula does not reflect the decision of any particular country or any particular group of countries, and therefore does not prejudge the position of any delegation which participated in the negotiations. I should also add that this text is my personal view of what I see as the fairest, most balanced and most feasible compromise attainable at this stage on the basis of the negotiations that we have held. However, I hope that it will be more than that, since this text does, to a large extent, reflect the concessions made and the gains obtained by each interest group. I assume that although it is a compromise not completely satisfactory to anyone, it will be of benefit to all in reaching consensus.

As I said in my explanatory memorandum of 17 April I do not rule out the possibility, nor even the convenience, of introducing certain secondary changes in this text. But I believe that any drastic changes may jeopardize this compromise proposal unless there is a general agreement within the Conference to introduce them. If any substantive amendments are to be made in order to improve the text, it is my view that the best course of action could be to provide opportunity during the next session for the negotiating group 1 to meet again.

I do not want to finish my report without thanking all those who have been involved in these negotiations, in the first place the Chairman who has so greatly encouraged us and co-operated in all respects to facilitate our task. I can never praise enough the co-operation of the members of negotiating group 1 who devoted so much time, patience, intelligence and understanding to make our work fruitful.

Finally, I wish to thank the staff of the secretariat assigned to negotiating group 1 for their untiring efforts in making the work of the group progress, often in very difficult circumstances. Without their devotion to their duties, I can assure you that such progress would have been impossible.

With respect to article 150 *bis*, in my capacity as Chairman of negotiating group 1, I requested Mr. Satya Nandan of Fiji to conduct intensive consultations between the parties most directly interested in the subject of production limitation policies, i.e., the major land-based producers and the major consumers. I am happy to inform you that he has done very useful work. He will now make a brief report which I am sure will be useful to the work of the First Committee in this field (annex I).

ANNEX I

Report to the Chairman of negotiating group 1 by Mr. Nandan on negotiations relating to production policies

1. The group was assigned the task of examining the provisions relating to production policies. It agreed to do so on the basis of article 150 *bis* contained in document NG1/16. The group identified a number of issues which required further consideration and endeavoured to find solutions to some of them.

2. Two meetings of delegates from about 30 most interested countries were convened to discuss the matters of production policies. In addition to this, I had separate meetings with producers on the one hand, and consumers on the other, as well as numerous consultations with individual delegations. Finally, I had six meetings with a group of producer and consumer delegations.

3. The group examined, in particular, seven problem areas that had been identified by various delegates during the meetings. The discussions were carried out with frankness and in a constructive spirit. Unquestionably, one of the important outcomes of the discussions was a clearer understanding by delegates of the difficulties that other delegations had with the text.

4. The seven matters discussed, in particular, were as follows:

(*a*) The limitation of production formula is linked to nickel only. This has given rise to some concern for producers of other minerals in that under certain circumstances, the ceiling may be circumvented by non-production of nickel and enhanced production of other minerals which are derived from nodules, such as copper.

(*b*) The lack in the present text of a provision to permit flexibility in the production level of the contractor or the Enterprise to allow for production contingencies and uncertainties in the designed capacity of the plants.

(*c*) The need for clarification of the text to ensure that notional or speculative production of minerals is not counted against the ceiling but rather only actual or firmly committed production amounts.

(*d*) Synchronization of the date from which the interim period under article 150 *bis* is calculated with the date from which the period before the review conference is calculated in article 153. This would mean that both periods would be related to the commencement of first commercial production.

(*e*) The effect of commodity agreements on production limitation during the interim period and the participation of the Authority in such agreements.

(*f*) The need to provide the Authority with powers to revise the over-all production ceiling in cases of exceptional changes in world demand for metals.

(*g*) The level of the ceiling referred to in article 150 *bis*, paragraph 2, and the questions related thereto.

5. The numerous discussions that ensued suggested that agreement could be achieved in several areas. These include the following:

(*a*) The production ceiling formula could be improved to ensure that metals other than nickel produced from nodules are clearly regulated by these provisions.

(*b*) A provision could be incorporated into the text to allow for any needed flexibility in the Contractor's annual production level and, at the same time, to preclude the misuse of such a provision to obtain unfair and unjustified advantage. Such flexibility, however, should not result in the breaching of the over-all ceiling.

(*c*) Clarification could be made in the text to emphasize that the tonnage of nickel to be counted towards the production ceiling

would only be that tonnage actually produced or firmly committed for production under plans of work. This would preclude notional or speculative figures being counted against the ceiling and would ensure that full and effective use is made of the allowable production tonnage.

(*d*) Synchronization is possible between the provisions of article 150 *bis* on production control and article 153 on the review conference, to provide for the periods referred to in those articles to be counted from the same commencement date, which would be related to the date of commencement of the first commercial production.

(*e*) The question of the relationship between any commodity agreement affecting metals produced from the area and the interim production control formula in this article do not appear to pose any great difficulty. The text already envisages that such agreements would supersede the provision of this article. The related question of the role of the Authority in negotiations for commodity agreements was also discussed. This appertains to the present provisions of article 150 *bis*, paragraph 1, which states that "the participation by the Authority in any organs established under the arrangements or agreements referred to above shall be in respect of the production in the area and in accordance with the rules of procedure established for such organs". I am hopeful that further discussions on this matter may bring about a better understanding on the point involved.

(*f*) It was generally accepted that sudden and exceptional changes of world demand for the metals produced from the area could be considered a *force majeure* situation and thus the Authority should have the power to adjust the over-all level of production to meet such a situation. It appears that a solution to this question is possible but the appropriate placement of such a provision, whether in article 160 (Powers and functions of the Council) or in some other article, requires to be considered further.

(*g*) Finally, extensive discussion took place on what I consider to be the most difficult issue, i.e. the question relating to the level of ceiling referred to in article 150 *bis*, paragraph 2 and the related question of the available number of mine sites during the initial and subsequent periods. In the discussions on the issues involved both sides explained their concerns and apprehensions. As a result there was a better understanding of the position of the other on this matter. I do believe that in the light of the exchange of views that has taken place there is sufficient basis for an understanding which should allay concerns and apprehensions. I feel confident that further consultations on this will result in a concrete solution satisfactory to all.

6. The following drafts have already been suggested to me by the group as a basis for further discussion:

(*a*) The nickel production ceiling referred to in article 150 *bis*, paragraph 2, establishes the level of production of other metals that could be extracted from that tonnage of nodules which would allow for the production of the quantity of nickel specified by the ceiling, irrespective of whether the production of nickel takes place.

(*b*) The review conference shall begin 15 years after the date of first commercial production.

(*c*) The Authority shall reserve the level of planned production referred to in article 150 *bis*, paragraph 2 only when an operator informs the Authority that a mineral deposit exists, that adequate financial resources are available for its development, and that it is technologically feasible to achieve commercial production from that deposit by a specified date, not later than five years following the approval of that plan of work covering exploitation. In the event that commercial production from that deposit is not achieved by the date specified, the Authority shall review the situation and if no sufficient cause can be shown for the delay, the reservation of that level of planned production shall be cancelled. It is understood that only actual production counts towards the ceiling, irrespective of whether the production comes from under a contract or a plan of work of the Enterprise.

(*d*) Any year during the interim period the Authority may allow any contractor to exceed his planned level of annual production as approved under a plan of work covering exploitation, if in so doing the total production ceiling for that year, as calculated in article 150 *bis*, paragraph 2, is not exceeded.

or

An operator may in some years produce up to . . . more than that level of annual production of minerals from nodules as specified in his approved plan of work covering exploitation. Any increase over . . . and up to . . . or a continuous increase for more than two years of any percentage exceeding that specified in his plan of work shall be negotiated with the Authority which will be guided by the principle of not exceeding the total production allowed under calculations in article 150 *bis*, paragraph 2.

(*e*) The Authority may allow a temporary increase or decrease in the level of production of existing sea-bed operators provided that, and only so long as, a cause of *force majeure* exists among other producers creating a significant imbalance in the relationship between world supply and demand.

7. In concluding this report I wish to state that it is my belief that a package solution will eventually be found for all issues pertaining to article 150 *bis*. I regret that lack of time during this session did not permit the group to achieve this objective.

8. May I take this opportunity to express my gratitude to the group for its co-operation and workman-like attitude and also to the members of the secretariat who so generously assisted me and to Mr. Njenga for his encouragement and guidance.

ANNEX II

Explanatory memorandum by the Chairman of negotiating group 1 concerning document NG1/16*

I should first like to make two general remarks about documents NG1/16 and Rev.1 that I have submitted to you. The first is on the method of underlining that I have adopted to indicate the amendments introduced in the present text. In order to make the task easier to compare this document with the preceding ones, I have indicated by italics the changes introduced in respect to the informal composite negotiating text, and by bold type the changes in respect to previous NG1 documents, that is NG1/10/Rev.1,[15] and NG1/13 and Corr.1.[16] In some cases, when the whole provision is new, I have so indicated by preceding each provision with the word "new".

The second remark is that the numbering of articles, paragraphs and subparagraphs is a provisional one. At a later stage, the provisions will be renumbered and the references in the text changed accordingly.

Now, turning to the substance of the new compromise formula, I will explain some of the amendments that I have introduced at this latest stage and that I consider to be the most important.

Article 140 seems to be acceptable as it is in NG1/10. For this reason I did not introduce any substantial amendment to it; only the first words of paragraph 2, "to this end", were deleted, which does not affect the content of the provision.

In paragraph 1 of this article, I have kept unchanged the expression "and peoples who have not achieved full independence or other self-governing status" because this was the language worked out by the Group of 77, and therefore may be considered as compromise language.

In article 143 on marine scientific research, the replacement in the second paragraph of the word "shall" with the word "may" clearly gives more flexibility to the Authority and to States in the field of marine scientific research. The changes introduced in paragraph 3 of the same article are intended to clarify the powers and the duties of States parties in this field.

In article 144 on transfer of technology, the addition of the words "to developing countries" and "parties" in paragraph 1 *b* and paragraph 2 are self-explanatory.

Article 150, paragraph *d* has been one of the most controversial provisions that has been discussed in this negotiating group. Many formulae have been suggested and amongst them I have chosen the one that I think most clearly reflects the idea that we are trying to express in this provision, namely that the production of minerals, those produced from the resources of the sea as well as those produced from other sources, has to satisfy the consumption of such minerals in a way compatible with the other objectives set forth in the remaining paragraphs of this article. The amendments to paragraph *e* of the same article have been introduced with a view to harmonizing its wording with the wording used in other parts of the article. In paragraph *g* the addition of the word "export" reflects some suggestions that I felt were well founded.

No attempt was made at this stage to make any changes in article 150 *bis* because this provision is still, as you know, subject to ongoing consultations.

*Document NG1/17, dated 17 April 1979.

[15] *Ibid.*, vol. X (United Nations publication, Sales No. E.79.V.4), p. 21.

[16] *Ibid.*, p.137.

After hearing the comments made by several delegates on article 150 *ter* I was convinced that paragraph 3, referring to the safeguard of all rights granted by the convention, was unnecessary and I therefore decided to delete it. In paragraph 2 of the same article I preferred to put the same idea in a positive rather than negative fashion. This is why I propose adopting the expression "shall be permitted" instead of the existing expression "shall not be deemed to be discrimination" which some delegates rightly considered quite misleading.

In the important article 151, I only deleted two references in paragraphs 1 and 4 which I consider superfluous.

In article 153 on the review conference, I reinserted, as promised, paragraph 2, deleted in my previous compromise formula in document NG1/10, because I got the impression during the last negotiations that the majority of the delegations wanted to see this provision back in the text. In paragraph 3 of the same article I have added the rights of States in relation to the area as one of the principles to be maintained if the system of exploitation is changed by the review conference.

Some delegations suggested adding to article 153 a new provision which would tackle the process of entry into force of the amendments to the future convention on the law of the sea. I think that this kind of provision should be placed in the final clauses and it should not be incorporated into article 153.

Concerning paragraph 6 of this article, I will confine myself to repeating what I said before, when I submitted this draft to you last year, namely, that so far I have not heard of any proposal providing a better and fairer solution than the one I have suggested in this text. In my view the compromise formula I proposed to you not only puts equal pressure on the two parties of the parallel system, that is on "prospective contractors" and the "Enterprise" to reach an agreement on the new system of exploitation, but also constitutes an important element for ensuring the balance between the activities carried out in the reserved and in the non-reserved areas. It is necessary to keep in mind that the plans of work that shall not be affected by the decisions of the Assembly are those that are connected with activities in areas already reserved.

The first amendment you will find in annex II is in its title where I have added the word "prospecting" for obvious reasons. In paragraph 1 on title to minerals, the second sentence has been deleted since I could not see any reason for it to be maintained. I believe that the third sentence in this article is not necessary either since paragraph 7 of annex II is not relevant to the subject dealt with in paragraph 1. I have therefore decided to delete it.

In paragraph 2 on prospecting, I have deleted the reference to the undertaking by the prospector to transfer data to the Authority at this stage. I found the reasons given by some delegations for the deletion to be well founded. Anyway, the transfer of prospecting data to the Authority is a matter which I have dealt with in paragraph 5 *ter a* relating to reservation of sites. As you may notice, I have replaced in subparagraph *a*, ii the word "designated" with the word "nominated". The intention is to give the prospector flexibility to reject an individual in a particular case, and suggest that the Authority substitute another candidate for the one rejected. This is only fair to the prospector who may wish to reject a particular individual even for reasons not directly connected with prospecting activities. The addition in paragraph 2 *b* of a new sentence referring to the recovery of a reasonable amount of resources from the area for sampling purposes does not require any explanation and I do not think that it should cause any problem.

Paragraph 3 *b* on the question of contracts for specific stages of operations, gave rise, as you may remember, to a long and complicated discussion. I thought that the best way to deal with the problem was to include this idea in subparagraph *c*, iii where, as you can see, I have incorporated the idea of receiving applications for specific stages of operations while establishing at the same time that in these cases the contract shall confer exclusive rights only with respect to such stage or stages. The new subparagraph *d* is only a development of the idea contained in article 151, paragraph 3. In this new provision I have tried to clarify the relationship between the concept of a plan of work and that of a contract, that seems to have caused some confusion. Perhaps the group will wish to give more thought to this question.

Paragraph 4 on qualifications of applicants contains the ideas of paragraph 4 of the informal composite negotiating text but presents them in a more logical sequence. I thought that the provisions on the undertaking of the applicant with respect to the transfer of technology deserved a separate provision, and this is why the set of rules dealing with the duties of the applicant in this field appears now under a special heading in paragraph 4 *bis*. As you know these rules have been one of the most controversial subjects that this negotiating group has had to face. During the latest stages of our negotiations on this point the main concern of most of the delegations related to the scope of the obligations of the applicant with respect to the technology to be transferred. This problem was linked not only with the alleged necessity of defining the technology to be transferred but also with the definition of the expression "activities in the area" contained in article 133, paragraph *a*. The majority of the delegations expressed their wish not to change that definition but rather to make more precise the undertakings of the applicant in paragraph 4 *bis*. The problem of whether the technology for processing minerals is covered by the undertakings set forth in paragraph 4 *bis* was extensively discussed and gave rise to apparently irreconcilable positions. In view of these difficulties I have introduced in paragraph 4 *bis a*, ii some changes that I hope will meet the expectations of some delegations without giving cause for fears in others. As you may see, I refer here to technology "which is not available on the open market". On the other hand, I have clarified that the Authority will have the right to request and obtain the technology "to the same extent as made available to the operator".

In paragraph 4 *bis b* I have established that the procedures of commercial arbitration, should negotiations for transfer of technology not conclude in an agreement, will be in accordance with the arbitration rules of the United Nations Commission on International Trade Law. During the discussions, some delegations were opposed to the idea of commercial arbitration. In my opinion, however, since the arbitration will be in respect to whether or not the terms are "fair and reasonable", I think that this is a subject which will be best settled by an expert body familiar with it rather than by a legal body whose members may not be conversant with the subject. Moreover, such a procedure is the best suited to achieve expeditious settlement of a dispute. In this provision, I decided to delete the last two words of the last underlined sentence. The sentence will then finish with the following expression: "the tribunal shall make an award". Consequently in the following sentence, the word "decision" has to be replaced by the word "award". This makes clear that the penalty for the refusal to transfer technology is not restricted to monetary damages. In any case it is not for an arbitrary tribunal to make a final decision about suspension or termination of a contract which can only be done by the appropriate body within the dispute settlement mechanism.

In paragraph 5 *c*, iv referring to the anti-monopoly clause, I have made an addition, in order to clarify the meaning of this provision, particularly the meaning of the first part of this subparagraph.

In paragraph 5 *bis b*, ii I decided to delete the second part which referred to a kind of bidding to obtain a contract and which was opposed by many delegations. For the same reasons I have decided to delete the words "or greater" in the same provision. I also deleted the first words of subparagraph *c* in the same paragraph, thus placing the criteria contained in it on an equal footing with the criteria contained in the previous subparagraph.

I should like to explain briefly the reasons why I introduced in this paragraph the new subparagraph *d*, whereby the Authority will give priority to the exploitation of the reserved sites when, due to the production limitation or due to the obligations of the Authority under a commodity agreement, it is necessary to disallow some of the applications. I should like to point out that this priority is not an automatic one in all cases; and it is intended to give the Authority flexibility in assuring that the reserved sites are also brought into operation. To some extent this provision is intended to meet fears that there will be an undue imbalance in the exploitation of the reserved areas and the non-reserved areas during the interim period. The Authority itself must take a decision in each particular case when this provision is put into operation. It should be noted that in the cases in which priority is to be given to the exploitation of the reserved areas, activities may be carried out either through the Enterprise or through joint ventures with States or with private entities.

No substantive changes were introduced in paragraph 5 *ter* on the reservation of sites. The changes there responded to the need for clarification.

Paragraph 5 *quater* and *quinquies* and paragraph 6 *a* contain provisions taken from the informal composite negotiating text without change. You may find the respective references in the footnotes. Paragraph 6 *b* is a new provision which would require evidence of the financial and technological capability of the Enterprise when

presenting any plan of work. I think that this is a reasonable requirement and I hope it will be acceptable to this group.

As you can see, paragraph 8 of the negotiating text has been restructured. Moreover, I have reformulated the duty of the Authority not to disclose data deemed to be proprietary in such a way as to cover data transferred to the Authority whether by prospectors, applicants or contractors.

Paragraph 11 represents a set of provisions that have been more or less agreed to. However, during the debate several drafting amendments were suggested in order to clarify some not very explicit or perhaps too general terms. The changes introduced into subparagraphs ii and iii of paragraph 11 *a*, 2 reflect these suggestions; the word "guarantees" is replaced by the reference to paragraph 4 *d*, iii which contains the definition of assurances to be given by an applicant. I decided to omit the provision on passing of title (subparagraph ix) because the title is going to be related to minerals and not to the resources.

In order to cover both cases of the Enterprise's operations and operations of the contractor, I decided to replace in several subparagraphs of paragraph 11 the term "Contractor" by "Operator" and "contract" by "plan of work". It is possible that after a new and careful reading of the text, similar amendments will have to be introduced in other provisions where the words "Contractor" and "contract" are used.

In paragraph 12 I introduced the idea of a warning being given by the Authority before more radical measures might be taken with respect to the contractor when he has violated the terms of the contract, part XI of the convention or the rules and regulations. I decided to simplify the definition of violations referred to in paragraph 12, subparagraph *a*, i because the piling up of several metaphorical descriptions could give rise to very wide interpretations of those terms in the future.

In paragraph 15 I included the rules of international law not incompatible with the present convention as the law applicable to the contract. It is a final decision rendered by a competent international tribunal, and not the rights and obligations of the Authority or the contractor, or decisions of a domestic tribunal about such rights and obligations which must be valid and enforceable in the territory of each State party. Similarly, I amended the second sentence of this paragraph to give it the clear meaning which in the view of many delegations was lacking in the informal composite negotiating text.

Lastly, the amendments in paragraph 16 on the question of liability are self-explanatory, and in my view improve the text.

Document NG1/16/Rev.1 represents what I consider to be the closest formula so far to a fair compromise. Of course I do not rule out the possibility and even the convenience of introducing certain secondary changes in this text, but I believe that any drastic changes may put this compromise in jeopardy, unless there is a general agreement within the Conference to introduce them. After all, this represents the results of years of hard work during which you, the delegates who have participated in the negotiations of negotiating group 1, have given proof of limitless patience, understanding and goodwill.

If any substantive amendments are to be made in order to improve the text, it is my view that the best course of action would be to submit them to this negotiating group before the text is referred to the working group of 21 on First Committee Matters.

ANNEX III

Revised suggested compromise formula by the Chairman of negotiating group 1*†

Article 140. Benefit of mankind

1. Activities in the Area shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of the developing countries *and peoples who have not attained full independence or other self-governing status* as specifically provided for in this part of the present Convention.

2. . . . *The Authority shall provide for the equitable sharing of benefits derived from the Area through any appropriate mechanism in accordance with* article 158, paragraph 2, xii.

Article 143. Marine scientific research

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

New paragraph 2

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

3. States Parties ———— **may carry out marine scientific research in the Area. States Parties shall** promote international co-operation in marine scientific research in the Area———— by:

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

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

(i) Strengthening their research capabilities;

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

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

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

Article 144. Transfer of technology

New paragraph 1 (former article 151 paragraph 8)

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

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

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

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

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

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

Article 150. Policies relating to activities in the Area

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

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

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

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

*Documents NG1/16/Rev.1 and Rev.1/Corr.1, dated 24 and 26 April 1979 respectively.

†Italics denote changes from the informal composite negotiating text, and bold type changes from previous NG1 documents. Dots indicate deletions from the informal composite negotiating text, and dashes deletions from previous NG1 documents.

(d) Increasing availability of the minerals **produced from the resources of the Area as needed, in conjunction with minerals produced from other sources, to ensure supplies to consumers of such minerals;**

(e) *Just and stable prices remunerative to producers and fair to consumers* for **minerals produced both from the resources of the Area and from other sources**, and promoting equilibrium between supply and demand;

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

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

Article 150 bis. Production policies

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

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

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

(a) *The interim period shall begin five years prior to 1 January of the year in which the earliest commercial production is planned to commence under an approved plan of work. In the event that the earliest commercial production is delayed beyond the year originally planned, the beginning of the interim period and the production ceiling originally calculated shall be adjusted accordingly. The interim period shall last 25 years or until the day when such new arrangements or agreements as are referred to in paragraph 1 above enter into force, whichever is earlier. The Authority shall resume the power to limit the production of minerals from nodules as provided in this article for the remainder of the 25-year period if the said arrangements or agreements should lapse or become ineffective for any reason whatsoever.*

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

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

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

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

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

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

Article 150 ter. Exercise of power by the Authority

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

2. **Nevertheless,** special consideration for developing countries, including particular consideration for the land-locked and geographically disadvantaged among them, specifically provided for in this part of the present Convention, shall ———— **be permitted.**

3. ————.

Article 151. *System of exploration and exploitation*

1. Activities in the Area shall be *organized,* carried out *and controlled* by the Authority on behalf of mankind as a whole in accordance with the provisions of this article as well as other relevant provisions of this Part of the present Convention and its annexes, and the rules, regulations and procedures of the Authority ————.

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

(i) By the Enterprise; and

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

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

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

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

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

Article 153. *The Review Conference*

1. Twenty years from *the approval of the first contract or plan of work under the present Convention* the Assembly shall convene a

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

2. (Re-inserted)

In particular, the Conference shall consider whether, during the 20-year period, *reserved areas have been exploited in an effective and balanced way in comparison with non-reserved areas*.

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

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

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

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

ANNEX II

Basic conditions of **prospecting**, exploration and exploitation

Title to minerals . . .

1. Title to the minerals shall . . . be passed ———— upon recovery of the minerals pursuant to a contract of exploration and exploitation. ————

Prospecting

2. (a) (i) The Authority shall encourage the conduct of prospecting in the Area.

(ii) 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 training of personnel **nominated** by the Authority and accepts verification **by the Authority of compliance** ————. The proposed prospector shall, together with the undertaking, notify the Authority of the broad area or areas in which prospecting is to take place.

(iii) Prospecting may be carried out by more than one prospector in the same area or areas simultaneously.

(iv) 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 . . . . **A prospector shall however, be entitled to recover a reasonable amount of resources of the Area to be used for sampling.**

———— Exploration and exploitation

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

(b) ————

(c) Every **plan of work approved** by the Authority shall:

(i) Be in strict conformity with the present Convention and the rules and regulations of the Authority.

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

(iii) Confer *on the* **operator** exclusive rights *for the exploration and exploitation of the resources* in the ———— area **covered by the plan of work** in accordance with the rules and regulations of the Authority. **If the applicant presents a plan of work for one of the two stages only, the contract may confer exclusive rights with respect to** such stage.

(New) **(d) Except for plans of work proposed by the Enterprise, each plan of work shall take the form of a contract to be signed by the Authority and the operator or operators upon approval of the plan of work by the Authority.**

Qualifications of applicants

4. (a) **Applicants, other than the Enterprise, shall be qualified if they have the nationality or control and sponsorship required by article 151, paragraph 2, ii, and if they follow the procedures and meet the standards established by the Authority by means of rules, regulations, and procedures.**

(b) **Except as provided in subparagraph d below, the qualification standards prescribed by the Authority shall relate to** the financial and technical capabilities of the applicant and his performance under previous contracts with the Authority.

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

(d) **The qualification standards shall require that every applicant,** without exception, shall **as part of his application** undertake:

(i)[17] *To accept as enforceable and comply with* the **applicable** obligations created by the provisions of Part XI of the present Convention, rules and regulations adopted by the Authority, decisions of the organs of the Authority, and terms of his contracts **with the Authority;**

(ii)[18] To accept control by the Authority **of activities in the Area, as authorized by the present Convention.**

(iii)[19] To provide the Authority with **written** assurances that its obligations covered by the contract entered into by it will be fulfilled in good faith.

(iv) To comply with the provisions on the transfer of technology set forth in paragraph 4 *bis*.

Transfer of technology

4 (bis) (a)[20] *In respect of transfer of technology, every applicant, other than the Enterprise, shall:*

(New)

(i) Make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the Area, as well as other relevant information about the characteristics of such technology, **and information as to where such technology is available on the open market.** That description shall be submitted with the application and thereafter whenever a substantial technological change or innovation is introduced.

[17] Formerly paragraph 4 *c*, i of document NG1/13 and Corr.1.
[18] Formerly paragraph 4 *c*, iii of document NG1/13 and Corr.1.
[19] Formerly paragraph 4 *c*, iv of document NG1/13 and Corr.1.
[20] Formerly paragraph 4 *c*, ii to ii *quinquies* of document NG1/13 and Corr.1, with amendments.

(New)

(ii) Undertake to use, in carrying out activities in the Area, technology other than that covered by subparagraph iii **and which is not generally available on the open market** 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 **to the same extent as made available to the operator,** that technology under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions. **Should an owner of technology refuse to honour his assurance when requested by the Enterprise, subsequent assurances by him shall not be accepted; and if the owner who refuses to honour his assurance has a corporate or family relationship with the applicant, this refusal shall be considered relevant to the applicant's qualifications for any subsequent proposed plan of work.**

(iii) 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.* **This commitment may be invoked only if the Enterprise finds that it is unable to obtain the same or equally efficient and useful technology on the open market and on fair and reasonable terms and conditions.**

(New)

(iv) 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, of the technology covered by subparagraph ii.

(New)

(v) Undertake the same obligations as those prescribed in *subparagraphs ii, iii and iv* for the benefit of a developing country or a group of developing countries which has applied for a contract under paragraph 5 ter 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 **third** country or the nationals of a **third** country.

(b)[21] *If upon request in accordance with this paragraph the pertinent negotiations* **fail** *within a reasonable time* **to reach agreement on the terms and conditions of transfer to the Enterprise,** *either party may refer any matter arising in the negotiations to conciliation in accordance with annex IV of the present 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* **to reach agreement on the terms and conditions of transfer either the Enterprise, acting on behalf of the Authority, or the Contractor** *may thereafter refer to binding commercial arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law* **(or other arbitration rules if and when prescribed in the rules, regulations and procedures of the Authority),** *within 90 days* **the question whether the offers made are within the range of fair and reasonable commercial terms and conditions.** *In cases where* **the arbitral tribunal determines that the Contractor's offer is not within that range** *and the* **Contractor** *fails to revise its offer within a further period of 90 days to bring it within that range, the tribunal shall make an award. Where the dispute in the pertinent negotiations refers to matters other than the terms and conditions of transfer and the parties fail to reach agreement in negotiations subsequent to the recommendations of the Conciliation Commission, either party may, within 60 days, refer the matter to the* **appropriate disputes settlement mechanism established in the present Convention for its award.** In the event that the Contractor does not accept, or fails to implement the arbitral **award, or the decision of the appropriate tribunal,** the Contractor shall be liable *to penalties* in accordance with the provisions of paragraph 12 of this annex.

(c) **In the event that the Enterprise is unable to obtain appropriate technology on fair and reasonable commercial terms and conditions to commence in a timely manner the processing of the minerals it recovers from the Area, the States Parties which are engaged in activities in the Area or whose nationals are engaged in activities in the Area, and other States Parties having access to such technology shall consult together and shall take effective measures to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions.**

(d) **In the case of joint ventures with the Enterprise technology transfer will be in accordance with the terms of the joint venture agreement.**

(New) (e) For the purposes of this paragraph, "technology" means the equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance necessary to assemble, maintain and operate a system for the exploration for and exploitation of the resources of the Area and the non-exclusive legal right to use these items for that purpose.

Approval of plans of work
submitted by applicants

5. (a)[22] . . . *Six months* after the entry into force of . . . the present Convention, and thereafter each fourth month . . . the Authority shall take up for consideration *proposed plans of work.*

(b)[23] 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 above 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.

(New) (c) All plans of work proposed by qualified applicants shall be dealt with in the order in which they were received, and the Authority shall conduct, as expeditiously as possible, an . . . inquiry in connexion with operational requirements, financial contribution, and transfer of technology as provided in the relevant provisions of the present Convention and this annex. As soon as the issues under investigation have been settled, the Authority shall approve such plans of work, provided that they conform to the uniform and non-discriminatory requirements established by the rules, regulations and procedures of the Authority, unless:

(i) Part or all of the proposed area is included in a previously approved plan of work or a previously submitted proposed plan of work which has not yet been finally acted on by the Authority; or

(ii) Part or all of the proposed area is disapproved by the Authority pursuant to article 163, paragraph 2, xii; or

(iii) Selection among applications received during that period of time is necessary because approval of all plans of work proposed during that period would be contrary to the production limitation set forth in article 150 bis, paragraph 2, or to the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided for in article 150 bis, paragraph 1; or

(iv) The proposed plan of work has been submitted or sponsored by a State Party which has already had approved:

—three plans of work for exploration and exploitation of sites not reserved pursuant to paragraph 5 ter below within a circular area of 400,000 square kilometers **which is centered upon a point selected by the applicant within the requested additional site,**

—plans of work for exploration and exploitation of sites not reserved pursuant to paragraph 5 ter below, which in aggre-

[21] Formerly paragraph 5 *j,* iv of document NG1/13 and Corr.1, with amendments.

[22] Formerly paragraph 5 *a* of document NG1/13 and Corr.1, with amendments.

[23] Formerly paragraph 5 *b* of document NG1/13 and Corr.1.

gate size constitute 3 per cent of the total sea-bed Area which is not reserved pursuant to that paragraph or otherwise withdrawn by the Authority from eligibility for exploitation pursuant to article 163, paragraph 2, xii.

(New) (d) For the purpose of the standard set forth in subparagraph c, iv, a plan of work proposed by a consortium shall be counted on a pro rata basis among the States Parties whose nationals compose the consortium. The Authority may approve plans of work covered by subparagraph c, iv above if it determines that such approval would not permit a State Party or persons sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the Area.

Selection of applicants

(New) 5 bis. (a) Where the selection must be made among applicants because of the production limitation set forth in article 150 bis, paragraph 2, or because of the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided for in article 150 bis, paragraph 1, the Authority shall make the selection on the basis of objective and non-discriminatory standards set forth in rules and regulations drawn up in accordance with this paragraph.

(b) The Authority shall consider all qualified applications received within the preceding period of time, as prescribed in the rules, regulations, and procedures, and shall give priority to those which:

(i) Give better assurance of performance, taking into account the financial and technical qualifications of the proposed operator and performance, if any, under previously approved plans of work; or

(ii) Provide earlier ———— prospective financial benefits to the Authority, taking into account when production is scheduled to begin. . . .

(c) . . . Selection shall be made **taking into account** the need to provide for all States Parties, irrespective of their social and economic systems or geographical locations, opportunities to participate in activities in the Area, the need to prevent monopolization of such activities, and the need to exploit reserved sites, and on the basis of a determination of equitable merit, taking into account the resources and effort already invested by prospective operators in prospecting and in exploration, if any.

(New) (d) When, due to the same reasons set forth in subparagraph a, the selection must be made among the Enterprise and applicants for contracts, the Authority shall have priority to exploit the area reserved to it under paragraph 5 ter below within the production policies of article 150 bis, either solely through the Enterprise or through joint ventures with States or with private entities sponsored by the States.

(e) The Authority shall make its decisions pursuant to this paragraph as promptly as possible after the close of each period.

Reservation of sites

5 ter. (a)[24] **Each application, other than those proposed by the Enterprise or by any others for reserved sites, shall cover a total area which need not be a single continuous area but shall be sufficiently large,** and of sufficient value to allow *two mining operations*. The proposed operator shall indicate the co-ordinates dividing the area into two parts of equal estimated commercial value. *Within 45 days of receiving the . . . data* **necessary to make the assessment of the value of the sites from the applicant** the Authority shall designate *the part* which is to be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing countries. *The area designated shall become a reserved area as soon as the plan of work for the non-reserved area is approved and the contract is signed.*

(b)[25] The Enterprise shall be given an opportunity to decide whether it wishes itself to conduct activities in *each area reserved pursuant to this paragraph.* ————

(c)[26] In conducting activities in the areas reserved pursuant to this paragraph, the Enterprise may enter into joint arrangements with *any* entity *qualified to conduct activities in the Area*. In such joint arrangements appropriate provision shall be made for participation by developing countries, the nature and extent of such participation to be *approved* by the Authority.

(d)[27] Nothing in this paragraph shall be interpreted as preventing the Enterprise from carrying out activities in accordance with this annex in any part of the Area not **included in a previously approved plan of work or a previously submitted plan of work which has not yet been finally acted on by the Authority.**

Separate stages of operations

5 quater.[28] **If an operator** in accordance with paragraph 3 c, iii above has **an approved plan of work for exploration only,** he shall have a preference and a priority among applicants for a **plan of work for exploitation** with regard to the same areas and resources; provided, however, that where the **operator's** performance has not been satisfactory such preference or priority may be withdrawn.

Joint arrangements

5 quinquies. (a)[29] 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 or exploitation of the resources of the Area.

(b)[30] Contractors entering into such joint arrangements with the Enterprise . . . may receive financial incentives as provided for in the financial arrangements established in paragraph 7 below.

Activities conducted by the Enterprise

6. (a)[31] Activities in the Area conducted under article 151, paragraph 2, i through the Enterprise shall be governed by the provisions of Part XI of the present Convention, **the rules, regulations and procedures of the Authority** and its relevant decisions ————.

(New) (b) Any plan of work proposed by the Enterprise shall be accompanied by evidence supporting its financial and technological capability.

Financial terms of contracts

7. . . .

Transfer of data

8. (*a*) The **operator** shall transfer in accordance with the rules and regulations and the terms and conditions of the **plan of work** 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 area **covered by the plan of work.**

(*b*) Transferred data in respect of the ———— area **covered by the plan of work,** deemed to be proprietary ———— may only be used for the purposes set forth above in this paragraph. 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.

(*c*) **Data transferred to the Authority by prospectors, applicants for contracts for exploration and exploitation, and Contractors, deemed to be proprietary, shall not be disclosed by the Authority. The responsibilities set forth in article 167, paragraph 2 are equally applicable to the staff of the Enterprise.**

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 article 144, paragraph b.*

[24] Formerly paragraph 5 *j*, i of document NG1/13 and Corr.1, with amendments.
[25] Formerly paragraph 5 *j*, ii of document NG1/13 and Corr.1, with amendments.
[26] Formerly paragraph 5 *j*, iii of document NG1/13 and Corr.1, with amendments.
[27] Formerly paragraph 5 *j*, v of document NG1/13 and Corr.1.
[28] Formerly paragraph 5 *h*, of document NG1/13 and Corr.1.
[29] Formerly paragraph 5 *i*, of document NG1/13 and Corr.1.
[30] Formerly paragraph 5 *k*, of document NG1/13 and Corr.1, with amendments.
[31] Formerly annex II, paragraph 6 of the informal composite negotiating text.

Exclusive right to explore and exploit

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

Rules, regulations and procedures

11. (a) The Authority shall adopt and uniformly apply rules, regulations and procedures for the implementation of *its functions as prescribed in* Part XI of the present Convention, . . . on the following matters:

(1) Administrative procedures relating to prospecting, exploration and exploitation in the Area.

(2) Operations:

(i) Size of area;

(ii) Duration of *operations*;

(iii) Performance requirements **including assurances pursuant to paragraph 4 d, iii**;

(iv) Categories of minerals;

(v) Renunciation of areas;

(vi) Progress reports;

(vii) Submission of data;

(viii) Inspection and supervision of operations;

(ix) . . .

(x) Prevention of interference with other *activities in* the marine environment;

(xi) Transfer of rights by a Contractor;

(xii) Procedures for transfer of technology to developing countries *in accordance with article 144* and for their direct participation;

(xiii) Mining standards and practices including those relating to operational safety, conservation of the resources and the protection of the marine environment;

(xiv) . . .

(xv) Definition of commercial production;

(xvi) **Qualification standards for applicants.**

(3) Financial matters:

(i) Establishment of uniform and non-discretionary costing and accounting rules, *as well as the method of selection of auditors*;

(ii) Apportionment of proceeds of operations;

(iii) The incentives referred to in paragraph 7 above.

(4) Rules, regulations and procedures to implement decisions of the Council taken in pursuance of articles 150 *bis* and 162, *paragraph 7*.

(b) Regulations on the following items shall fully reflect the objective criteria set out below:

(1) Size of area:

The Authority shall determine the appropriate size of areas for exploration which may be up to twice as large as those for exploitation in order to permit intensive exploration operations. Areas for exploitation shall be calculated to satisfy *the requirements of paragraph 5 tertius on reservation of sites as well as* stated production requirements over the term of the contract taking into account the state of the art of technology then available for ocean mining and the relevant physical characteristics of the area. Areas shall neither be smaller or larger than are necessary to satisfy this objective. . . .

(2) Duration of *operations*:

(i) Prospecting shall be without time-limit;

(ii) Exploration should be of sufficient duration as to permit a thorough survey of the specific area, the design and construction of mining equipment for the area, the design and construction of small and medium-size processing plants for the purpose of testing mining and processing systems;

(iii) The duration of exploitation should be related to the economic life of the mining project, taking into consideration such factors as the depletion of the ore, the useful life of mining equipment and processing facilities and commercial viability. Exploitation should be of sufficient duration as to permit commercial extraction of minerals of the area and should include a reasonable time period for construction of commercial scale mining and processing systems, during which period commercial production should not be required. The total duration of exploitation, however, should also be short enough to give the Authority an opportunity to amend the terms and conditions *of the plan of work* at the time it considers renewal in accordance with rules and regulations which it has issued subsequent to entering into the *plan of work*.

(3) Performance requirements:

The Authority shall require that during the exploration stage, periodic expenditures be made by the *operator* which are reasonably related to the size of the *area covered by the plan of work* and the expenditures which would be expected of a bona fide *operator* who intended to bring the area into commercial production within the time-limits established by the Authority. Such required expenditures should not be established at a level which would discourage prospective operators with less costly technology than is prevalently in use. The Authority shall establish a maximum time interval after the exploration stage is completed and the exploitation stage begins to achieve commercial production. To determine this interval, the Authority should take into consideration that construction of large-scale mining and processing systems cannot be initiated until after the termination of the exploration stage and the commencement of the exploitation stage. Accordingly, the interval to bring an area into commercial production should take into account the time necessary for this construction after the completion of the exploration stage and reasonable allowance should be made for unavoidable delays in the construction schedule.

Once commercial production is achieved in the exploitation stage, the Authority shall within reasonable limits and taking into consideration all relevant factors require the *operator* to maintain commercial production throughout the period of the *plan of work*.

(4) Categories of minerals:

In determining the category of mineral in respect of which a *plan of work* may be approved the Authority shall give emphasis inter alia to the following characteristics:

(i) Resources which require the use of similar mining methods; and

(ii) Resources which can be developed simultaneously without undue interference between *operators* in the same area developing different resources.

Nothing in this paragraph shall deter the Authority from granting a contract for more than one category of mineral in the same . . . area to the same applicant.

(5) Renunciation of areas:

The *operator* shall have the right at any time to renounce without penalty the whole or part of his rights in the *area covered by a plan of work*.

(6) Protection of the marine environment:

Rules and regulations shall be drawn up in order to secure effective protection of the marine environment from harmful effects directly resulting from activities in the Area or from shipboard processing immediately above a minesite of minerals derived from the minesite, taking into account the extent to which such harmful effects may directly result from drilling, dredging, coring and excavation as well as disposal, dumping and discharge into the marine environment of sediment, wastes or other effluents.

(7) Commercial production:

Commercial production shall be deemed to have begun if an operator engages in activity of sustained large-scale recovery operations which yield a sufficient quantity of materials as to indicate clearly that the principal purpose is large-scale production rather than production intended for information gathering, analysis or equipment or plant-testing.

Penalties

12. (a) A Contractor's rights under the contract concerned may be suspended or terminated only in the following cases:

(i) If, *in spite of warnings by the Authority*, the contractor has conducted his activities in such a way as to result in . . . serious, persistent and wilful violations of the fundamental terms

of the contract, Part XI of the present Convention and the rules and regulations **of the Authority** . . . ; or

(ii) If a Contractor has failed to comply with a final binding decision of the dispute settlement body applicable to him.

(b) The Authority may impose upon the Contractor monetary penalties proportionate to the seriousness of the violation . . . in any case of violation of terms of contract not covered under subparagraph a above.

(c) Except in cases of emergency orders as provided for in article 163, paragraph 2, xi, the Authority may not execute a decision involving monetary penalties, suspension or termination until the Contractor has been accorded a reasonable opportunity to exhaust his judicial remedies *available to him pursuant to Part XI, section 6, of the present Convention*.

Revision of contract

13. (a) When circumstances have arisen, or are likely to arise, which, in the opinion of either party, would render the contract inequitable or make it impracticable or impossible to achieve the objectives set out in the contract or in Part XI of the present Convention, the parties shall enter into negotiations to adjust it to new circumstances . . . .

(b) Any contract entered into in accordance with article 151, paragraph 3, may be revised only *with the consent of* the parties . . . .

Transfer of rights *and obligations*

14. The rights and obligations arising out of a contract shall be transferred only with the consent of the Authority, and in accordance with the rules and regulations adopted by it. The Authority shall not *unreasonably* withhold consent to the transfer if the proposed transferee is in all respects a qualified applicant, and assumes all of the obligations of the transferor.

Applicable law

15. (*a*) The law applicable to the contract shall be the provisions of Part XI of the present Convention, the rules and regulations of the Authority, . . . the terms and conditions of the contract, *and other rules of international law not incompatible with the present Convention. Any final decision rendered by a court or tribunal having jurisdiction* **by virtue of** *the present convention relating to* the rights and obligations of the Authority and of the Contractor shall be valid and enforceable in the territory of each State Party.

(*b*) No State Party may impose conditions on a Contractor that are inconsistent with Part XI of the present Convention. However, the application by a State Party of environmental *or other* regulations to sea-bed miners it sponsors or to ships flying its flag, more stringent than those imposed by the Authority pursuant to paragraph 11 b, 6 of this annex, shall not be deemed inconsistent with Part XI of the present Convention.

Liability

16. Any responsibility or liability for wrongful damage arising out of the conduct of operations by the Contractor shall lie with the Contractor, *account being taken of contributory factors by the Authority*. . . . Similarly, any responsibility or liability for wrongful damage arising out of the exercise of the powers and functions of the Authority shall lie with the Authority *account being taken of contributory factors by the Contractor*. Liability in every case shall be for the actual amount of damages.

DOCUMENT A/CONF.62/L.36

Report of the Chairman of the First Committee

[Original: English]
[26 April 1979]

In accordance with the recommendations included in a report of the General Committee contained in document A/CONF.62/69,[32] adopted by the Conference at its 108th plenary meeting on 15 September 1978, the three negotiating groups dealing with matters before the First Committee (negotiating groups 1, 2 and 3) resumed their work at the very outset of the eighth session. They concluded their work at the end of the third week as recommended.

The results of the negotiations up to that point are contained in documents NG1/16/Rev.1 (A/CONF.62/L.35, annex III), NG1/17 (*ibid.*, annex II), NG2/4 (A/CONF.62/C.1/L.22, annex I), NG2/5,[33] NG2/12 and NG3/6.

In the light of the issue raised in the plenary Conference, I, in consultation with the President, established a group of legal experts to examine legal questions insofar as they related to part XI of the informal composite negotiating text.[34] The result of negotiations in that Group is contained in document GLE/2.

The First Committee held its only meeting, the 45th, on 25 April and it was formal. Our task was pursued in informal fora, created to encourage serious negotiations on the complex issues outstanding in the mandate of the First Committee. Reports were made yesterday to the Committee by all who bear the responsibilities for these subsidiary bodies, notably the Chairmen of the negotiating groups and of the group of legal experts, in order to record those endeavours formally. I also personally gave an account of the activities in the working group of 21 in order to bring them up to date.

As all of these reports were made in formal session, I shall refrain from embarking on a narrative concerning the Committee's programme of work.

A significant development in our labours was the establishment of the working group of 21—an idea launched by the developing countries who might ordinarily be expected to oppose that approach, given the great diversity of culture, of legal, political and economic systems, of religions and of levels of economic development. For the first time, it was possible to have a limited number of speakers, all accredited representatives of definite interests. The system of appointing alternates allowed changes in representation at the front bench, as it were, and thus selections were made for those most interested in an issue to participate directly.

This, clearly, was an advance in the right direction and away from the unruly system of so-called open-ended meetings. Sub-committees and negotiating groups of the whole (or limited but open-ended) did serve their purpose in providing opportunity for informal exchange of views, without the debauchery of publicity and records. Yet, they had only limited success owing to the tendency to address a large audience and attract a long list of speakers.

The working group of 21 addressed specific subjects and encouraged direct exchange between the opposing sides. It is my view that given a definite agenda early and time to prepare for each subject, the establishment of this group may well prove to be an announcement of the much awaited final stage of our endeavours.

The group of legal experts was another new forum for discussions. The presence of the word "legal" helped eliminate large numbers of participants, who do not have the fortune

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

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

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