

Third United Nations Conference on the Law of the Sea

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

A/CONF.62/WP.8/PartI

Informal single negotiating text, part I

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

and non-living natural resources, for example our fish and, as recent explorations have indicated, oil and other mineral resources.

As participants in the delegation of the Kingdom of the Netherlands, members of the delegation from Surinam took part in the various sessions of the Conference without being able to speak specifically for Surinam, but we followed the progress of work with great interest. We noticed your personal efforts and had high esteem for the effort of the distinguished representatives to bring the Conference to a successful end.

But we are not yet at the end of the sessions. At this stage my delegation is only able to issue this statement as one of so many other documents of the Conference.

Nevertheless, allow me to mention briefly some problems of my own country, especially where the sea is concerned. Up to this month, also due to our "autonomous" political status, balancing between independence (home affairs) and dependency (in foreign affairs), Surinam has no guarantee that the problems just mentioned will be solved before the day of independence at the end of November this year.

Inspired by the efforts made to secure a successful outcome of the Conference and an international agreement acceptable to the overwhelming majority of the nations of the world, we are strengthened and motivated to live and act in accordance with the goals and aims of the Conference, notwithstanding little disputes about the delimitation of our historic territorial rights.

We do hope that the new law of the sea will succeed in establishing a workable and compulsory peaceful settlement

of disputes in *ad hoc* international courts and courts of appeal, in a sense as put forward by the representative of the Kingdom of the Netherlands in the statement read by Mr. Riphagen at the 34th meeting on 9 July 1974.³¹ Then every attempt at provocation in these matters can be handled legally.

I am glad to inform you of the intention of my Government to give priority to a possible agreement with the Republic of France concerning our distinguished neighbours on the Eastern border of Surinam, an agreement that will settle once and for all boundary disputes along the Marowijne river, in its origin and in the continental shelf. If we succeed in this – hopefully at the end of this year – the French Government and its Departement d'Outre Mer (commonly called Guyane Française, better known as Cayenne), together with Surinam, will have achieved a solution to a centuries-old delimitation dispute, a solution, which I do hope will suit all the three parties concerned.

The sea, always in motion, is, of all the things made by the hand or the will of the Creator, the largest, and an everlasting phenomenon on this, our planet. That is also, in the view of my delegation, the reason why this important Conference has embarked upon a new convention on the law of the sea, for the benefit of and equilibrium between all nations, big or small, rich or poor, coastal or landlocked.

May the Conference succeed, so that some of the goals of the United Nations may be realized, for example, the establishment of conditions (where the sea is concerned) under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained and the reaffirmation of faith in the equal rights of nations, large and small.

DOCUMENT A/CONF.62/WP.8

Informal single negotiating text

[Original: English]
[7 May 1975]

Note by the President of the Conference

At its 55th plenary meeting on Friday 18 April 1975 the Conference decided to request the Chairman of its three Main Committees each to prepare a single negotiating text covering the subjects entrusted to his Committee. In his concluding statement, before the Conference made this request, the President stressed that the single text should take account of all the formal and informal discussions held so far, would be informal in character and would not prejudice the position of any delegation nor would it represent any negotiated text or accepted compromise. It should, therefore, be quite clear that the single negotiating text will serve as a procedural device and only provide a basis for negotiation. It must not in any way be regarded as affecting either the status of proposals already made by delegations or the right of delegations to submit amendments or new proposals.

DOCUMENT A/CONF.62/WP.8/PART I (Text presented by the Chairman of the First Committee.)

Part I: Interpretation

Article 1

For the purposes of this Convention

(i) "States Parties" to this Convention means Contracting Parties.

(ii) "Activities in the Area" means all activities of exploration of the Area and of the exploitation of its resources, as well as other associated activities in the Area including scientific research.

(iii) "Resources" means resources *in situ*.

(iv) "Mineral resources" means any of the following categorizations:

- (a) Liquid or gaseous substances such as petroleum, gas, condensate, helium, nitrogen, carbon dioxide, water, steam, hot water, and also sulphur and salts extracted in liquid form in solution;
- (b) Useful minerals occurring on the surface of the sea-bed or at depths of less than three metres beneath the surface and also concretions of phosphorites and other minerals;
- (c) Solid minerals in the ocean floor at depths of more than three metres from the surface;
- (d) Ore-bearing silt and brine.

Part II: Principles

THE AREA AND ITS LIMITS

Article 2

1. This Convention shall apply to the sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction, hereinafter called the "Area".

2. States Parties to this Convention shall notify the International Sea-bed Authority established pursuant to Article 21 (hereinafter called the "Authority"), of the limits referred to in paragraph 1 of this article defined in this Convention and determined by co-ordinates of latitude and longitude and shall indicate the same on appropriate large scale charts officially recognized by that State.

3. The Authority shall register and publish such notification in accordance with rules adopted by it for the purpose.

4. Nothing in this article shall affect the validity of any agreement between States with respect to the establishment of limits between opposite or adjacent States.

COMMON HERITAGE OF MANKIND

Article 3

The Area and its resources are the common heritage of mankind.

NO CLAIM OR EXERCISE OF SOVEREIGNTY OR OTHER RIGHTS

Article 4

1. No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or person, natural or juridical, appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights, nor such appropriation shall be recognized.

2. States or persons, natural or juridical, shall claim, acquire or exercise rights with respect to the minerals in their raw or processed form derived from the Area only in accordance with the provisions of this Convention. Otherwise, no such claim, acquisition or exercise of rights shall be recognized.

GENERAL CONDUCT IN THE AREA AND IN RELATION TO THE AREA

Article 5

States shall act in, and in relation to, the Area in accordance with the provisions of this Convention and the United Nations Charter in the interests of maintaining international peace and security and promoting international co-operation and mutual understanding.

ACTIVITIES IN THE AREA

Article 6

Activities in the Area shall be governed by the provisions of this Convention and shall be subject to regulation and supervision by the Authority as provided herein. No such activities shall be carried out except in accordance with such regulations and the provisions of this Convention.

BENEFIT OF MANKIND AS A WHOLE

Article 7

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.

RESERVATION AND USE OF THE AREA EXCLUSIVELY FOR PEACEFUL PURPOSES

Article 8

1. The Area shall be reserved exclusively for peaceful purposes.

2. The Area shall be open to use exclusively for peaceful purposes by all States Parties, whether coastal or land-locked, without discrimination, in accordance with the provisions of this Convention, and regulations made thereunder.

GENERAL PRINCIPLES REGARDING ACTIVITIES IN THE AREA

Article 9

1. The development and use of the Area shall be undertaken in such a manner as to:

- (a) Foster the healthy development of the world economy and a balanced growth in international trade; and
- (b) Avoid or minimize any adverse effects on the revenues and economies of the developing countries, resulting from a substantial decline in their export earnings from minerals and other raw materials originating in their territory which are also derived from the Area.

2. Activities in the Area shall be carried out in an efficient manner to ensure:

- (a) Orderly and safe development and rational management of the Area and its resources;
- (b) Expanding opportunities in the use thereof;

(c) Conservation and utilization of the resources of the Area for optimum benefit of producers and consumers of raw materials and of products made from them;

(d) Equitable sharing in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal.

SCIENTIFIC RESEARCH

Article 10

1. Scientific research provided for in this Convention shall be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole. The Authority shall be the centre for harmonizing and co-ordinating scientific research.

2. The Authority may itself conduct scientific research and may enter into agreements for that purpose.

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

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

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

- (i) Strengthening their research capabilities;
- (ii) Training their nationals 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 publication of research programmes and dissemination of the results of research through the Authority.

TRANSFER OF TECHNOLOGY

Article 11

1. The Authority and through it States Parties to this Convention shall take necessary measures for promoting the transfer of technology and scientific knowledge relating to activities in the Area so that all States benefit therefrom. In particular, they shall promote:

(a) Programmes for the promotion of transfer of technology to developing countries with regard to activities in the Area, including, *inter alia*, facilitating the access of developing countries to patented and non-patented technology, under just and reasonable conditions;

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

PROTECTION OF THE MARINE ENVIRONMENT

Article 12

With respect to activities in the Area, appropriate measures shall be taken for the adoption and implementa-

tion of international rules, standards and procedures for, *inter alia*:

(a) The prevention of pollution and contamination, and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from the consequences of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities;

(b) The protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.

PROTECTION OF HUMAN LIFE

Article 13

With respect to activities in the Area, the Authority and States shall take appropriate measures for the adoption and implementation of international rules, standards and procedures for the protection of human life to supplement existing international law and any specific treaties which may be applicable.

RIGHTS OF COASTAL STATES

Article 14

1. Activities in the Area, with respect to resources in the Area which lie across limits of national jurisdiction, shall be conducted with due regard to the rights and legitimate interests of any coastal State across whose jurisdiction such resources lie.

Consultations, including a system of prior notification, shall be maintained with the State concerned, with a view to avoiding infringement of such rights and interests.

2. Neither the provisions of this Convention nor any rights granted or exercised pursuant thereto shall affect the rights of coastal States to take such measures in accordance with applicable principles of international law as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastlines or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the Area.

LEGAL STATUS OF THE SUPERJACENT WATERS AND AIR SPACE

Article 15

Neither the provisions of this Convention nor any rights granted or exercised pursuant thereto shall affect the legal status of the waters superjacent to the Area or that of the air space above those waters.

ACCOMMODATION OF ACTIVITIES IN THE AREA AND IN THE MARINE ENVIRONMENT

Article 16

1. Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment.

2. Stationary and mobile installations relating to the conduct of activities in the Area shall be subject to the following conditions:

- (i) Such installations shall be erected, emplaced and removed solely in accordance with the provisions of this Convention and subject to rules and regulations prescribed by the Authority. The erection, emplacement and removal of such installations shall be the subject of timely notification through Notices to Mariners or other generally recognized means of notification;
- (ii) Such installations shall not be located in the Area where they may obstruct passage through sea lanes of vital importance for international shipping or in areas of intense fishing activity;
- (iii) Safety zones shall be established around such installations with appropriate markings to ensure the safety both of the installations themselves and of shipping. The configuration and location of such safety zones shall not be such as to form a belt impeding the lawful access of shipping to particular maritime zones or navigation along international sea lanes;
- (iv) Such installations shall be used exclusively for peaceful purposes;
- (v) Such installations shall not possess the status of islands. They shall have no territorial sea, nor shall their presence affect the determination of territorial or jurisdictional limits of any kind.

3. Other activities in the marine environment shall be conducted with reasonable regard for activities in the Area.

RESPONSIBILITY TO ENSURE COMPLIANCE AND LIABILITY FOR DAMAGE

Article 17

1. Every State shall have the responsibility to ensure that activities in the Area, whether undertaken by governmental agencies, or non-governmental entities or persons under its jurisdiction, or acting on its behalf, shall be carried out in conformity with the provisions of this Convention. The same responsibility applies to international organizations and their members for activities in the Area undertaken by such organizations or on their behalf. Damage caused by such activities shall entail liability on the part of the State or international organization concerned, in respect of activities which it undertakes itself or authorizes.

2. A group of States or a group of international organizations acting together shall be jointly and severally responsible under these articles.

3. Every State shall take appropriate measures to ensure that the responsibility provided for in paragraph 1 of this article shall apply *mutatis mutandis* to international organizations of which it is a member.

PARTICIPATION OF DEVELOPING COUNTRIES, INCLUDING LAND-LOCKED AND OTHER GEO- GRAPHICALLY DISADVANTAGED STATES

Article 18

Participation in the activities in the Area of developing countries, including the land-locked and other geographically disadvantaged States among them, shall be promoted, having due regard to their special needs and interests.

ARCHAEOLOGICAL AND HISTORICAL OBJECTS

Article 19

1. All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of by the Authority for the benefit of the international community as a whole, particular regard being paid to the preferential rights of the State of country of origin, or the State of cultural origin, or the State of historical and archaeological origin.

2. The recovery and disposal of wrecks and their contents more than 50 years old found in the Area shall be subject to regulation by the Authority without prejudice to the rights of the owner thereof.

3. Any dispute with regard to a preferential right under paragraph 1 or a right of ownership under paragraph 2, shall, on the application of either party, be subject to the procedure for settlement of disputes provided for in this Convention.

Part III: The International Sea-bed Authority

ESTABLISHMENT OF THE INTERNATIONAL SEA-BED AUTHORITY

Article 20

1. There is hereby established the International Sea-bed Authority which shall function in accordance with the provisions of this Convention.

2. All States Parties to this Convention are members of the Authority.

3. The seat of the Authority shall be at Jamaica.

4. The Authority may establish such regional centres or offices as it deems necessary for the performance of its functions.

NATURE AND FUNDAMENTAL PRINCIPLES OF THE FUNCTIONING OF THE AUTHORITY

Article 21

1. The Authority is the organization through which States Parties shall administer the Area, manage its resources and control the activities of the area in accordance with the provisions of this Convention.

2. The Authority is based on the principle of the sovereign equality of all of its members.

3. All members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with this Convention.

FUNCTIONS OF THE AUTHORITY

Article 22

1. Activities in the Area shall be conducted directly by the Authority.

2. The Authority may, if it considers it appropriate, and within the limits it may determine, carry out activities in

the Area or any stage thereof through States Parties to this Convention, or State enterprises, or persons natural or juridical which possess the nationality of such States or are effectively controlled by them or their nationals, or any group of the foregoing, by entering into service contracts, or joint ventures or any other such form of association which ensures this direct and effective control at all times over such activities.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this article and in order to promote the earliest possible commencement of activities in the area, the Authority, through the Council, shall:

- (i) Identify as early as practicable after coming into force of this Convention ten economically viable mining sites in the Area for exploration and exploitation of no more than . . . (size, etc.);
- (ii) Enter into joint ventures in respect of these sites with States Parties to this Convention or State-enterprises or persons natural and juridical which possess the nationality of such States or are effectively controlled by them or their nationals or any group of the foregoing. Such joint ventures shall be subject to the conditions of exploration and exploitation established by and under this Convention and shall always ensure the direct and effective control of the Authority at all times.

4. In entering into such joint ventures as provided for in paragraph 3 (ii) of this article, the Authority may decide on the basis of available data to reserve certain portions of the mining sites for its own further exploitation.

Article 23

1. In the exercise of its functions the Authority shall take measures pursuant to this Convention to promote and encourage activities in the Area and to secure the maximum financial and other benefit from them.

2. The Authority shall avoid discrimination in the granting of opportunities for such activities and shall, in the implementation of its powers, ensure that all rights granted pursuant to this Convention are fully safeguarded. Special consideration by the Authority under this Convention for the interests and needs of the developing countries, and particularly the land-locked among them, shall not be deemed to be discrimination.

3. The Authority shall ensure the equitable sharing by States in the benefits derived from activities in the Area, taking into particular consideration the interests and needs of the developing countries whether coastal or land-locked.

ORGANS OF THE AUTHORITY

Article 24

1. There are established as the principal organs of the Authority an Assembly, a Council, a Tribunal, an Enterprise and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with this Convention.

THE ASSEMBLY

Article 25

1. The Assembly shall consist of all the members of the Authority.

2. The Assembly shall meet in regular session every two years and in such special sessions as may be determined by the Assembly, or convened by the Secretary-General at the request of the Council or of a majority of the members of the Authority.

3. Sessions shall take place at the seat of the Authority unless otherwise determined by the Assembly. At such sessions, each member shall have one representative who may be accompanied by alternates and advisers.

4. The Assembly shall elect its President and such other officers as may be required at the beginning of each session. They shall hold office until the new President and other officers are elected at the next following session.

5. Each member of the Assembly shall have one vote.

6. All decisions on questions of substance, and the question whether a question is one of substance or procedure, shall be made by a two-thirds majority of the members present and voting, provided that such majority shall include at least a majority of the members of the Authority. Decisions on other questions shall be made by a majority of the members present and voting.

7. A majority of the members of the Assembly shall constitute a quorum.

8. Upon a written request to the President supported by not less than one-third of the members of the Assembly, a vote on any matter before the Assembly shall be deferred pending reference to the Tribunal for an Advisory Opinion on any legal question connected therewith. Voting on such matter shall be stayed pending delivery of the Tribunal's Advisory Opinion, or for a period of six months from the receipt of the request, whichever is earlier.

POWERS AND FUNCTIONS OF THE ASSEMBLY

Article 26

1. The Assembly shall be the supreme policy-making organ of the Authority. It shall have the power to lay down general guidelines and issue directions of a general character as to the policy to be pursued by the Council or other organs of the Authority on any questions or matters within the scope of this Convention. It may also discuss any questions or any matters within the scope of this Convention and make recommendations thereon.

2. In addition, the powers and functions of the Assembly shall include:

- (i) Election of the members of the Council in accordance with article 27;
- (ii) Appointment, upon the recommendation of the Council, of the members of the Tribunal and of the Governing Board of the Enterprise;
- (iii) Establishment, as appropriate, of such subsidiary organs as may be found necessary for the performance of its functions in accordance with the provisions of this Convention;
- (iv) Assessment of the contributions of Parties to this Convention as necessary for meeting the administrative budget of the Authority;
- (v) Adoption of the financial regulations of the Authority, including rules on borrowing;
- (vi) Approval of the budget of the Authority on its submission by the Council;
- (vii) Adoption of its rules of procedure;

- (viii) Request and consideration of special reports from the Council and from the other organs of the Authority on any matter within the scope of this Convention;
 - (ix) Studies and recommendations for the purpose of promoting international co-operation concerning activities in the Area and encouraging the progressive development of international law relating thereto and its codification;
 - (x) Adoption of criteria, rules, regulations and procedures, for the equitable sharing of benefits derived from the Area and its resources, taking into special account the interests and needs of the developing countries, whether coastal or land-locked;
 - (xi) Consideration of problems arising from States in connexion with activities in the Area, from the land-locked or otherwise geographically disadvantaged location of some of them and recommending basic guidelines for appropriate action.
3. The powers and functions of the Authority not specifically entrusted to other organs of the Authority shall be vested in the Assembly.

THE COUNCIL

Article 27

1. The Council shall consist of 36 members of the Authority elected by the Assembly; 24 to be elected in accordance with the principle of equitable geographical representation and 12 with a view to representation of special interests, taking into account the principle of equitable geographical representation, the election to take place in the following order:

(a) Six members with substantial investment in, or possessing advanced technology which is being used for, the exploration of the Area and the exploitation of its resources, and members which are major importers of landbased minerals which are also produced from the resources of the Area, provided only that at the first election at least one of these six members shall be from the Eastern (Socialist) European region.

(b) Six members from among the developing countries, one being drawn from each of the following categories:

- (i) States which are exporters of landbased minerals which may also be produced from the resources of the Area;
- (ii) States which are importers of the minerals referred to in subparagraph (i);
- (iii) States with large populations;
- (iv) Land-locked States;
- (v) Geographically disadvantaged States;
- (vi) Least developed countries.

(c) Twenty-four members in accordance with the principle of equitable geographical representation. For this purpose, the geographical regions shall be Africa, Asia, Eastern Europe (Socialist), Latin America and "Western Europe and others".

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

3. Members shall be eligible for re-election; but due regard should, as a rule, be paid to the desirability of rotating seats.

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

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

6. Decisions on important questions shall be made by a two-thirds plus one majority of the members present and voting. The decision on an issue as to whether or not a matter is an important question shall be taken by a two-thirds majority. Decisions on other questions shall be decided by a majority of the members present and voting.

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

POWERS AND FUNCTIONS OF THE COUNCIL

Article 28

The Council shall be the executive organ of the Authority. It shall exercise the powers and perform the functions entrusted to it by this Convention. In exercising such powers and performing such functions the Council shall act in a manner consistent with general guidelines and policy directions laid down by the Assembly.

The Council shall:

(i) Supervise and co-ordinate the implementation of the provisions of this convention and, whenever it deems it appropriate, invite the attention of the Assembly to cases of non-compliance;

(ii) Recommend to the Assembly candidates for appointment to the Tribunal and to the Governing Board of the Enterprise;

(iii) Establish, as appropriate and with due regard to economy and efficiency, in addition to the Commissions provided for in article 29, such subsidiary organs as may be found necessary for the performance of its functions in accordance with the provisions of this Convention. In the composition of such subsidiary organs due regard shall be paid not only to the need for members highly qualified and competent in the relevant technical matters which may arise in such organs but also to special interests and the principle of equitable geographical distribution;

(iv) Adopt its rules of procedure;

(v) Enter into agreements with the United Nations or other inter-governmental organizations on behalf of the Authority, subject to approval by the Assembly;

(vi) Transmit annually to the Assembly a schedule for apportionment of benefits derived from activities in the Area on the basis of criteria and rules adopted by the Assembly pursuant to subparagraph 2 (x) of article 26;

(vii) Transmit to the Assembly the reports of the Enterprise;

(viii) Transmit to the Assembly annual reports and such special reports as the Assembly may request;

(ix) Approve and supervise the carrying out of activities in the Area by the Enterprise;

(x) Approve on behalf of the Authority contracts for the conduct of activities in the Area and exercise direct and effective control over the activities in the Area;

(xi) Adopt, upon the recommendation of the Economic Planning Commission, programmes or measures to avoid or minimize adverse effects on the revenues of developing countries derived from the export of minerals and other products originating in their territories which are also derived from the resources of the Area. The Council shall ensure that developing countries importers of minerals or other products derived from the resources of the Area shall be given preferential access or favourable terms to such minerals and products;

(xii) Adopt, on the recommendation of the Technical Commission, rules, regulations and procedures and any amendments thereto concerning:

- (a) Technical, operational and financial matters relating to activities in the Area in accordance with the Basic Conditions annexed to this Convention;
- (b) Protection of human life and health;
- (c) Protection and preservation of the marine environment;
- (d) Discovery, identification, protection, acquisition and disposal of objects of archaeological and historical interest found in the Area;
- (e) Any other matters within the scope of the powers and functions of the Council.

(xiii) Arrange for and review the collection of all payments to be made by or to the Authority in connexion with operations pursuant to this Convention;

(xiv) Make recommendations to the Assembly on the matters specified in subparagraph 2 (ii) of article 26 and article 32, and, as appropriate, on any other matter within the scope of the functions of the Council;

(xv) Make recommendations to States concerning the policies and measures required to give effect to the principles of this Convention;

(xvi) Make recommendations to the Assembly concerning suspension of the privileges and rights of membership for gross and persistent violations of the provisions of this Convention.

ORGANS OF THE COUNCIL

Article 29

1. There are hereby established as organs of the Council an Economic Planning Commission and a Technical Commission, each of which shall be composed of fifteen members appointed by the Council with due regard to not only the need for Members highly qualified and competent in the technical matters which may arise in such organs but also to special interests and the principle of equitable geographical distribution.

2. The Council shall invite States Parties to this Convention to submit nominations for appointment to each commission.

3. Appointment to each commission shall take place not less than sixty days before the end of a calendar year and the members of a commission shall hold office from the commencement of the next calendar year following their appointment until the end of the third calendar year thereafter. The first appointments to a commission, however, shall take place not less than thirty days after the

entry into force of this Convention, and those so appointed shall hold office until the end of the calendar year next following the year of their appointment.

4. In the event of the death, incapacity or resignation of a member of a commission prior to the expiry of his term of office, the Council shall appoint a member from the same area or interest who shall hold office for the remainder of the previous member's term.

5. The Council shall appoint to the commission persons of high moral character who may be relied upon to exercise independent judgement. They shall serve in their individual capacity and shall receive such regular remuneration from the Authority as the Council shall from time to time determine. Members of a commission shall be eligible for re-appointment for one further term of office.

6. Each commission shall appoint its chairman and two vice-chairmen who shall hold office for one year.

7. The Council shall approve, on the recommendation of a commission, such rules and regulations as may be necessary for the efficient conduct of the functions of the commission.

8. Decisions shall be made by a two-thirds majority of members of the commission.

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

THE ECONOMIC PLANNING COMMISSION

Article 30

1. Members of the Economic Planning Commission shall have appropriate qualifications and experience relevant to mining and the management of mineral resource activities, and international trade and finance.

2. The Economic Planning Commission, in consultation with the competent organs of the United Nations and the specialized agencies, shall review the trends of, and factors affecting, supply, demand and prices of raw materials which may be obtained from the Area and, bearing in mind the interests of both consuming and land-based mineral producing countries, and in particular the developing countries among them, make recommendations to the Council on programmes and measures with respect to the implementation of article 22 of this Convention and in particular:

(a) Schedules of the extent of the Area or the volume of its resources which would be made available for exploitation; and

(b) Appropriate programmes or measures, including integrated commodity arrangements and buffer stock arrangements, to avoid or minimize adverse effects on developing countries whose economies substantially depend on the revenues derived from the export of minerals and other raw materials originating in their territories which are also derived from the resources of the Area under exploitation taking into account all sources of these minerals and raw materials.

3. The Commission shall advise the Council in the exercise of the Council's economic planning functions and

make such special studies and reports on these functions as may be required by the Council from time to time.

4. Any State Party to this Convention whose economy substantially depends on the export of minerals and other products originating in its territory which are also derived from minerals under exploitation in the Area may bring to the attention of the Economic Planning Commission a situation which is likely to lead to a substantial decline in its mineral export earnings. The Commission shall forthwith investigate this situation and shall make recommendations, in consultation with parties to this Convention and with the competent inter-governmental organizations, to the Council in accordance with paragraph 2 of this article.

THE TECHNICAL COMMISSION

Article 31

1. Members of the Technical Commission shall have appropriate qualifications and experience in the management of sea-bed resources, ocean and marine engineering and mining and mineral processing technology and practices, operations of related marine installations, equipment and devices, ocean and environmental sciences and maritime safety, accounting and actuarial techniques.

2. The Technical Commission shall:

(i) Formulate and submit to the Council the technical and operational rules, regulations and procedures referred to in subparagraph (xii) of article 28;

(ii) Keep such rules, regulations and procedures under review and recommend to the Council from time to time such amendments thereto as it may deem necessary or desirable;

(iii) Make recommendations to the Council with regard to the carrying out of the Authority's functions with respect to scientific research and transfer of technology;

(iv) Prepare special studies and reports at the request of the Council;

(v) Prepare assessments of the environmental implications of activities in the Area and consider and evaluate these implications before recommending the rules, regulations and procedures referred to in subparagraph (i) above;

(vi) Supervise, on a regular basis, all operations with respect to activities in the Area, where appropriate in consultation and collaboration with any entity carrying out such activities or State or States concerned;

(vii) Notify the Council of any cases of failure to comply with the provisions of the present Convention, the rules, regulations and procedures prescribed thereunder and the terms and conditions of a contract, and make recommendations to the Council with respect to measures to be taken in that regard.

THE TRIBUNAL

Article 32

1. The Tribunal shall have jurisdiction with respect to:

(a) Any dispute relating to the interpretation or application of this Convention; and

(b) Any dispute connected with the subject matter of this Convention and submitted to it pursuant to a contract or arrangement entered into pursuant to this Convention.

2. The Tribunal shall exercise all powers and perform all functions referred to under articles 57, 58, 60, 61, 62 and 63.

3. The Tribunal shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in law of the sea matters and other areas of international law.

4. The Tribunal shall consist of nine judges, five of whom shall constitute a quorum.

5. Members of the Tribunal shall be appointed by the Assembly on the recommendation of the Council from among candidates nominated by States Parties to this Convention. In appointing members of the Tribunal due regard shall be paid to the importance of assuring representation on the Tribunal of the principal legal systems of the world.

6. Members of the Tribunal shall hold office for five years and may be reappointed for one further term, provided that the terms of the four judges elected at the first election shall expire at the end of three years.

7. The members of the Tribunal unless removed in accordance with paragraph 9 shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

8. Upon the occurrence of a vacancy in the Tribunal, the Council shall appoint a successor who shall hold office for the remainder of his predecessor's term, subject to the approval of the Assembly at its next regular session.

9. A member of the Tribunal may be removed from office by the Assembly, on the unanimous recommendation of the other members of the Tribunal and the approval of the Council.

10. The Tribunal shall establish its rules of procedure, elect its President annually, appoint a Registrar and such staff as may be necessary for the efficient discharge of its functions. The salaries and emoluments and terms of service of members of the Tribunal, and of its Registrar and staff, shall be determined by the Council.

Article 33

The Tribunal shall decide all disputes relating to the interpretation and application of this part, the rules, regulations and procedures prescribed thereunder and the terms and conditions of any contracts entered into by the Authority which have been submitted to it, and shall render advisory opinions on the request of any organ of the Authority or as otherwise specifically provided in this part.

Article 34

Nothing in the foregoing articles shall prevent members of the Authority from settling their disputes by any other means prescribed by article 57 of this Convention.

THE ENTERPRISE

Article 35

1. The Enterprise shall be the organ of the Authority which shall, subject to the general policy directions and supervision of the Council, undertake the preparation and execution of activities of the Authority in the Area, pursuant to article 22. In the exercise of its functions, it may enter into appropriate agreements on behalf of the Authority.

2. The Enterprise shall have international legal personality and such legal capacity as may be necessary for the performance of its functions and the fulfilment of its purposes. The Enterprise shall function in accordance with the Statute set forth in annex II to this Convention, and shall in all respects be governed by the provisions of this Convention. Appointment of the members of the Governing Board under subparagraph 2 (ii) of article 26 (ii) of this Convention shall be made on the basis of equal representation of all geographical regions enumerated in subparagraph 1 (c) of article 27 and in accordance with the provisions of the Statute set forth in annex II to this Convention.

3. Members of the Authority are *ipso facto* parties to the Statute of the Enterprise.

4. The Enterprise shall have its principal place of business at the seat of the Authority.

THE SECRETARIAT

Article 36

The Secretariat shall comprise a Secretary-General and such staff as the Authority may require. The Secretary-General shall be appointed by the Assembly upon the recommendation of the Council. He shall be the chief administrative officer of the Authority.

Article 37

The Secretary-General shall act in that capacity in all meetings of the Assembly and of the Council, and of any subsidiary organs established by them, and shall perform such other functions as are entrusted to him by any organ of the Authority. The Secretary-General shall make an annual report to the Assembly on the work of the organization.

Article 38

1. The staff of the Authority shall include such qualified scientific and technical and other personnel as may be required to fulfil the objectives and functions of the Authority. The Authority shall be guided by the principle that its permanent staff shall be kept to a minimum.

2. The paramount consideration in the recruitment and employment of the staff and in the determination of their conditions of service shall be to secure employees of the highest standards of efficiency, competence and integrity. Subject to this consideration, due regard shall be paid to the importance of recruiting staff on as wide a geographical basis as possible.

3. The staff shall be appointed by the Secretary-General. The terms and conditions on which the staff shall be appointed, remunerated and dismissed shall be in accord-

ance with regulations made by the Council, and to general rules approved by the Assembly on the recommendation of the Council.

Article 39

In the performance of their duties, the Secretary-General and the staff shall not seek or receive instructions from any Government or from any other source external to the Authority. They shall refrain from any action which might reflect on their position as international officials of the Authority responsible only to the Authority. They shall have no financial interest whatsoever in any activity relating to exploration and exploitation in the Area. Subject to their responsibilities to the Authority, they shall not disclose any industrial secret or data declared by the Authority to be proprietary or other confidential information coming to their knowledge by reason of their official duties for the Authority. Each Party to this Convention undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 40

1. The Authority shall, as necessary, establish a staff of inspectors. The staff of inspectors shall have the responsibility of examining all activities in the Area to determine whether the provisions of this Convention, the rules, regulations and procedures prescribed thereunder, and the terms and conditions of any contract with the Authority pursuant to this Convention are being complied with.

2. The inspectors shall report any non-compliance to the Secretary-General. The Secretary-General shall immediately notify the Chairmen of the Council and of the Technical Commission.

Article 41

1. The Secretary-General may send inspectors into the territory of a Party to this Convention and into the Area and any installation established therein after consultation with the parties concerned. The inspectors shall have access at all times to all places and data and to any person who deals with any activity in the Area pursuant to this Convention, and to any books of account and records kept with respect to such activity.

2. Inspectors shall, upon request made to the Secretary-General, be accompanied by representatives of any State Party to this Convention and any party involved, provided that the inspectors shall not thereby be delayed or otherwise impeded in the exercise of their functions.

Part IV: Finance

Article 42

The Assembly shall establish the General Fund of the Authority.

All receipts of the Authority arising from activities in the Area, including any excess of revenues of the Enterprise over its expenses and costs in such proportion as the Council shall determine shall be paid into the General Fund.

Article 43

The Council shall submit to the Assembly annual budget estimates for the expenses of the Authority. To facilitate

the work of the Council in this regard, the Secretary-General shall initially prepare the budget estimates. If the Assembly does not approve the estimates, it shall return them, together with its recommendations, to the Council. The Council shall then submit further estimates to the Assembly for its approval.

Article 44

1. Expenses of the Authority comprise:

(a) Administrative expenses, which shall include costs of the staff of the Authority, costs of meetings, and expenditure on account of the functioning of the organs of the Authority;

(b) Expenses not included in the foregoing, incurred by the Authority in carrying out the functions entrusted to it under this Convention; and

(c) The expenditure of the Enterprise, to the extent that it cannot be met out of the Enterprise's own revenues and other receipts.

2. The expenses referred to in paragraph 1 of this article shall be met to an extent to be determined by the Assembly on the recommendation of the Council, out of the General Fund, the balance of such expenses to be met out of contributions by members of the Authority in accordance with a scale of assessment adopted by the Assembly pursuant to the subparagraph 2 (iv) of article 26.

Article 45

1. Any excess of revenues of the Authority over its expenses and costs to an extent determined by the Council, all payments received pursuant to article 42 of this Convention and any voluntary contributions made by States Parties to this Convention shall be credited to a Special Fund.

2. Amounts in the Special Fund shall be apportioned and made available equitably in such manner and in such currencies, and otherwise in accordance with criteria, rules, regulations and procedures adopted by the Assembly pursuant to subparagraph 2 (v) of article 26.

Article 46

Subject to such limitations as may be approved by the Assembly in the financial regulations adopted by it pursuant to subparagraph 2 (v) of article 26, the Council may exercise borrowing powers on behalf of the Authority without, however, imposing on members of the Authority any liability in respect of loans entered into pursuant to this paragraph, and accept voluntary contributions made to the Authority.

Article 47

The records, books and accounts of the Authority, including its annual financial statements, shall be subject to an annual audit by a recognized independent auditor.

STATUS, IMMUNITIES AND PRIVILEGES

Article 48

The Authority shall have full international legal personality, and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purpose.

Article 49

To enable the Authority to fulfil its functions it shall enjoy in the territory of each State Party to this Convention, the immunities and privileges set forth herein except as provided in annex . . . to this Convention with respect to operations of the Enterprise.

Article 50

The Authority, its property and assets, shall enjoy, in the territory of each State Party to this Convention, immunity from legal process, except when the Authority waives its immunity.

Article 51

The property and assets of the Authority, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

Article 52

All property and assets of the Authority shall be free from restrictions, regulations, controls and moratoria of any nature.

Article 53

The President and members of the Assembly, the Chairman and members of the Council, members of any organ of the Assembly, or the Council, and members of the Tribunal, and the Secretary-General and staff of the Authority, shall enjoy in the territory of each member State:

(a) Immunity from legal process with respect to acts performed by them in the exercise of their functions, except when the Authority waives this immunity;

(b) Not being local nationals, the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling facilities as are accorded by States Parties to this Convention to the representatives, officials and employees of comparable rank of other States Parties.

Article 54

The provisions of the preceding article shall apply to persons appearing in proceedings before the Tribunal as parties, agents, counsel, advocates, witnesses or experts; provided, however, that subparagraph (b) thereof shall apply only in connexion with their travel to and from, and their stay at, the place where the proceedings are held.

Article 55

1. The archives of the Authority shall be inviolable, wherever they may be.

2. All proprietary data, industrial secrets or similar information and all personnel records shall not be placed in archives open to public inspection.

3. With regard to its official communications, the Authority shall be accorded by each State Party to this Convention treatment no less favourable than that accorded to other international organizations.

Article 56

1. The Authority, its assets, property and income, and its operations and transactions authorized by this Convention, shall be exempt from all taxation and customs duties. The Authority shall also be exempt from liability for the collection or payment of any taxes or customs duties.

2. Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Authority to the President or members of the Assembly, or in respect of salaries, expense allowances or other emoluments paid by the Authority to the Chairman and members of the Council, members of the Tribunal, members of any organ of the Assembly or of the Council and the Secretary-General and staff of the Authority.

SETTLEMENT OF DISPUTES

Article 57

When a dispute falling within article 32 of this Convention has arisen between States Parties to this Convention, or between such State Party and a national of another State Party, or between nationals of different States Parties, or between a State Party or a national of a State Party and the Authority or the Enterprise, the parties to the dispute shall first seek a solution through consultation, negotiation, conciliation or other such means of their own choice. If the dispute has not been resolved within one month of its commencement, any party to the dispute may institute proceedings before the Tribunal, unless the parties agree to submit the dispute to arbitration pursuant to article 63 of this Convention.

Article 58

1. Any State Party to this Convention which questions the legality of measures taken by the Council, or by any organ of the Council or the Assembly on grounds of a violation of this Convention, lack of jurisdiction, infringement of any fundamental rule of procedure or misuse of power, may bring the matter before the Tribunal.

2. The proceedings provided for in this article shall be instituted within one month of either the date of publication of the decision concerned, of its notification to the complainant, or of the date on which he became aware of it.

3. If the Tribunal considers the complaint well-founded, it shall declare the decision concerned to be void, and shall determine what measures shall be taken to redress any damage caused.

Article 59

1. Judgements and orders of the Tribunal shall be final and binding. They shall be enforceable in the territories of members of the Authority in the same way as judgements or orders of the highest court of that Member State.

2. If a member of the Authority fails to perform its obligations under a judgement rendered by the Tribunal, the other party or parties to the dispute may bring the matter before the Council which shall decide upon measures to be taken to give effect to the judgement.

Article 60

1. At any time after it is seized of the dispute, the Tribunal may, if it considers that the circumstances so

require, order provisional measures for the purpose of preserving the respective rights of the parties, or preventing serious harm to the marine environment.

2. A party to the dispute directly affected by such provisional measures may request their immediate review. The Tribunal shall promptly undertake such review and confirm or suspend its order.

Article 61

1. The Tribunal may seek the opinion of any organ of the Council regarding an issue falling within its competence.

2. The Tribunal shall decide whether proceedings shall be suspended until the opinion sought has been made available.

Article 62

Any organ of the Authority may request the Tribunal to give an advisory opinion on any legal question connected with the subject matter of this Convention.

Article 63

1. If the parties to a dispute so agree, pursuant to article 57, they shall submit the dispute to an arbitration commission. The arbitration commission shall be composed of three members. Each party to the dispute shall appoint one member to the commission, while the third member, who shall be the Chairman, shall be chosen in common agreement between the parties. If the parties fail to agree on the designation of the third member within a period of one month, the third member shall be appointed by the President of the Tribunal. In case any of the parties fail to make an appointment within a period of one month the President of the Tribunal shall fill the remaining vacancy or vacancies.

2. The arbitration commission shall decide on matters placed before it by a simple majority.

3. The arbitration commission constituted pursuant to this article shall have such jurisdiction and shall exercise such powers and functions as the Tribunal constituted pursuant to article 32. The provisions of articles 58-61 shall apply *mutatis mutandis* to the arbitration commission.

Part V: Final Provisions

AMENDMENTS

Article 64

Amendments to this Convention may be proposed by any State Party to this Convention. Certified copies of the text of any amendment proposed shall be prepared by the Secretary-General and communicated by him to all parties, at least ninety days in advance of its consideration by the Assembly.

Article 65

Amendments shall come into force for all States Parties to this Convention when:

(i) Approved by the Assembly by a two-thirds majority of those present and voting after consideration of observations submitted by the Council on proposed amendments; and

(ii) Accepted by two-thirds of all the States Parties in accordance with their respective constitutional processes. Acceptance by a State Party shall be effected by the deposit of an instrument of acceptance with the Secretary-General of the United Nations.

GENERAL REVIEW

Article 66

At the third regular session of the Assembly following the coming into force of this Convention, the question of a general review of the provisions of this Convention shall be placed on the agenda of that session. On approval by a majority of the members present and voting, the review will take place at the following Assembly. Thereafter, proposals on the question of a general review of this Convention may be submitted for decisions by the Assembly under the same procedure.

SUSPENSION OF PRIVILEGES

Article 67

A State Party of the Authority which is in arrears in the payment of its financial contributions to the Authority shall have no vote in the Authority if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two years. The Assembly may permit such a State Party to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.

Article 68

1. A member which has persistently violated the provisions of this Convention or of any agreement or contractual arrangement entered into by it pursuant to this Convention, may be suspended from the exercise of the privileges and the rights of membership by the Assembly acting on a two-thirds majority of the States Parties present and voting upon recommendations by the Council.

2. No action may be taken under this article until the dispute settlement procedures have been exhausted.

SIGNATURE

Article 69

The present Convention shall open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other State invited to participate in the Third United Nations Conference on the Law of the Sea or invited by the Assembly of the Authority to become a party to the Convention, as follows: until 31 December 1976 at the Ministry of Foreign Affairs of the Republic of Venezuela, and subsequently, until 30 June 1977 at United Nations Headquarters, New York.

RATIFICATION

Article 70

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

ACCESSION

Article 71

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 69. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

ENTRY INTO FORCE

Article 72

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the thirty-sixth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

PROVISIONAL APPLICATION

Article 73

1. Pending the definitive entry into force of this Convention in accordance with the provisions of article 72, a State may notify, upon signing this Convention, the Secretary-General of the United Nations that it will apply this Convention provisionally and that it will undertake to seek ratification or accession in accordance with constitutional procedures as rapidly as possible.

2. This Convention shall enter provisionally into force upon the thirty-sixth such notification to the Secretary-General of the United Nations.

3. Upon provisional entry into force of this Convention in accordance with paragraph 2, any State which has notified the Secretary-General of the United Nations of its intention to apply this Convention provisionally in accordance with paragraph 1 shall be regarded as being Party for the purpose of provisional application of this Convention.

4. The provisional application of this Convention with respect to a State shall be terminated if that State notifies the other Parties to provisional application of the withdrawal of its notification under paragraph 1.

5. The provisional application of this Convention in accordance with this article shall be terminated:

(a) Upon the definitive entry into force of this Convention in accordance with article 72;

(b) If, as a result of withdrawal of notification, in accordance with paragraph 4 above, the total number of Contracting Parties becomes less than that provided for in paragraph 2;

(c) At the end of a period of years after the commencement of provisional application.

6. If, at the end of six months after the opening of the Convention for signature, provisional entry into force as provided for in article 73 does not occur, an Interim Commission shall come into existence, as provided for in annex III to this Convention.

DEPOSITARY

Article 74

The Secretary-General of the United Nations shall inform all States belonging to any of the categories mentioned in article 69 of:

(a) Signature of the present Convention and of the deposit of instruments of ratification or accession in accordance with articles 69, 70 and 71 respectively;

(b) Notification of provisional application in accordance with article 73;

(c) The date on which the present Convention will enter into force in accordance with article 72;

(d) The date on which the present Convention will provisionally enter into force in accordance with article 73.

AUTHENTIC TEXTS

Article 75

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE AT CARACAS, this day of one thousand nine hundred and seventy-six.

ANNEX I*

Basic conditions of general survey, exploration and exploitation

PART A

Rights in the Area and its resources

1. The Area and its resources being the common heritage of mankind, all rights in the resources are vested in the Authority on behalf of mankind as a whole. These resources are not subject to alienation.

Rights in minerals

2. Title to the minerals or processed substances derived from the Area shall pass from the Authority only in accordance with the provisions of this Convention, the rules and regulations prescribed by the Authority in accordance with this Convention, and the terms and conditions of the relevant contracts, joint ventures or other form of association entered into by it.

Access to the Area and its resources

3. The Authority shall from time to time determine the part or parts of the Area in which the exploration of the Area and the exploitation of its resources and other associated activities may be conducted. In doing so the Authority shall be guided by the following principles.

(a) The Authority shall encourage the conduct of general survey operations, and to that end shall regularly, after consultation with all States Parties, open for general survey the sea-bed and ocean floor of such oceanic areas as are determined by it to be of interest for this purpose. General survey may be carried out by any entity

which meets the environmental protection regulations of the Authority and enters into a contract with it.

(b) The Authority may, upon the proposal of a State Party to this Convention or on its own initiative, open for evaluation and exploitation the sea-bed and ocean floor of oceanic areas determined by it, on the basis of sufficient supporting data, to be of commercial interest. Such evaluation and exploitation shall be conducted directly by the Authority in accordance with part B and, within the limits it may determine in accordance with sub-paragraph 8 (f), through States Parties to this Convention, or State Enterprises, or persons natural or juridical which possess the nationality of such States, or are effectively controlled by them or their nationals, when sponsored by a State Party, by entering into contracts for associated operations in accordance with paragraphs 5 and 6.

Provided, however, that the Authority may refuse to open any part or parts of the Area pursuant to this paragraph when the available data indicate the risk of irreparable harm to a unique environment or unjustifiable interference with other uses of the Area.

PART B

4. The Enterprise may at any time, in any part or parts of the Area determined by the Authority to be open for activities pursuant to paragraph 3 of these Basic Conditions, carry out directly scientific research or a general survey or exploration of the Area or operations relating to evaluation and exploitation of the resources of the Area, including feasibility studies, construction of facilities, processing, transportation and marketing pursuant to a Plan of Operations approved by the Council, subject to the following conditions:

(a) The Enterprise shall submit to the Council in the form prescribed by it for the purpose such information, including a detailed financial analysis of costs and benefits, as would enable the Council to review the financial and technical aspects of the proposed Plan of Operations, as well as a Work Programme, which shall accommodate the objectives of the Authority as reflected in article 23 above;

(b) If on the basis of such information and after taking into consideration all relevant factors, the Council determines that the proposed Plan of Operations offers optimum benefits to the Authority, the Council shall approve the Plan;

(c) Activities in the Area conducted directly by the Enterprise shall, *mutatis mutandis*, be subject to the relevant Basic Conditions set forth in part C.

(d) To the extent that the Enterprise does not currently possess the personnel, equipment and services for its operations, it may employ them under its direction and management on a non-discriminatory basis if they meet the qualifications set forth in paragraph 5. The terms and conditions of such employment shall be in accordance with the relevant provisions of these Basic Conditions.

(e) Minerals and processed substances produced by the Enterprise shall be marketed in accordance with rules, regulations and procedures adopted by the Council in accordance with the following criteria:

(i) The products of the Enterprise shall be made available to States Parties;

(ii) The Enterprise shall offer its products for sale at not less than international market prices; it may, however, sell its products at lower prices to developing countries, particularly the least developed among them;

(iii) Production and marketing of the resources of the Area by the Enterprise shall be maintained or expanded in accordance with the provisions of article 9 above;

(iv) The Enterprise shall, except as specifically provided in this part, market its products without discrimination.

PART C

Contracts for associated operations

5. On the application of any State Party to this Convention, or State enterprise, or person natural or juridical which possesses the nationality of a State Party or is effectively controlled by it or its

* Two further annexes will be issued in the future, Annex II entitled "Statute of the enterprise" and Annex III, "Statute of the Tribunal".

nationals and is sponsored by a State Party or any group of the foregoing (hereinafter called the “applicant”), the Authority may enter into a contract, joint venture or any other such form of association, for the conduct of scientific research, or for the carrying out of a general survey or exploration of the Area, or of operations relating to evaluation and exploitation of the Area including such stages as feasibility study, construction of facilities, processing, transportation and marketing (hereinafter called the “contract”).

6. Every contract entered into by the Authority pursuant to paragraph 4 shall:

(a) Be in strict conformity with this Convention and the rules and regulations prescribed by the Authority in accordance with the Convention;

(b) Ensure direct and effective fiscal and administrative control by the Authority at all stages of operations through appropriate institutional arrangements entered into pursuant to this part.

Qualification of applicants

7. (a) The Authority shall adopt appropriate administrative procedures and rules and regulations for making an application pursuant to paragraph 5, and the qualifications of any applicant referred to therein. Such qualifications shall include (1) financial standing, (2) technological capability, and (3) past performance and work experience.

(b) States Parties which apply to enter into contracts with the Authority shall be presumed to possess the qualifications specified in subparagraph (a). They shall be deemed to have waived their sovereign immunity with respect to financial and economic obligations covered by such contracts.

(c) Each applicant shall, in addition, submit to the Authority a work programme which shall accommodate the objectives of the Authority as reflected in this part and the rules and regulations adopted thereunder.

(d) Each applicant shall undertake to comply with the provisions of this Convention and the rules and regulations adopted by the Authority, and to accept control by the Authority in accordance therewith.

Selection of applicants

8. (a) Upon receiving an application pursuant to paragraph 5 with respect to activities of evaluation and exploitation, the Authority shall first ascertain whether any competing application has been received for the area applied for. If no such competing application has been received, the Authority shall enter into negotiations with a view to concluding a contract with the applicant in respect of the area applied for, provided that the applicant has completed the procedures and possesses the qualifications prescribed pursuant to paragraph 6 and, after a consideration of all relevant factors is deemed to offer the Authority optimum benefits. The Enterprise may not refuse to enter into a contract if the criteria in subparagraph 9 (d) have been satisfied, and the contract in all other respects is in strict conformity with the provisions of this part and of the rules, regulations and procedures adopted thereunder, subject to the stated resource policy established by the Authority.

(b) Applicants shall be required to comply with requirements of the Authority to achieve the objectives set forth in article 12 above.

(c) If the Authority receives more than one application in respect of substantially the same area and category of minerals, selection from among the applicants shall be made on a competitive basis taking into account the extent to which each applicant satisfies the requirements of paragraph 6. The Authority shall enter into negotiations with a view to concluding a contract with the applicant which, after a consideration of all relevant factors, is deemed to offer the Authority optimum benefits including financial arrangements in accordance with subparagraph 9 (d).

(d) The principles set forth in subparagraphs (a), (b) and (c) shall be applied *mutatis mutandis* in prescribing procedures, rules and regulations for the selection of applicants for contracts with respect to activities other than evaluation and exploitation.

(e) When a contractor that has entered into a contract with the Authority for one or some of the stages of operations referred to in

paragraph 4 has completed performance under it, he shall have priority among applicants for a contract or contracts for one or more further stages of operations with regard to the same area and resources; provided, however, that where the contractor has not carried out his obligations satisfactorily, such priority may be withdrawn.

(f) The total number of contracts for evaluation and exploitation entered into by the Authority with a single State Party or with natural and juridical persons under the sponsorship of a single State Party shall not exceed . . . per cent of the total area open under paragraph 3, and shall be equal for all States Parties.

(g) Within the limits specified in subparagraph (f) the Council may every year determine the number of contracts to be entered into by the Authority with a single State Party or with natural and juridical persons under the sponsorship of a single State Party in order to give effect to the provisions of articles

Rights and obligations under the contract

9. (a) Any State Party, or any State enterprise or person natural or juridical which possesses the nationality of a State Party or is effectively controlled by it or by its nationals, when sponsored by a State Party or any group of the foregoing which enters into a contract for activities relating to evaluation and exploitation with the Authority pursuant to paragraph 5 (hereinafter called the “Contractor”) shall, except as otherwise agreed by the Authority, be required to use its own funds, materials, equipment, skills and know-how as necessary for the conduct of operations covered by the contract, and to post a bond by way of guarantee of satisfactory performance under the contract.

(b) The costs involved in the performance of the contract pursuant to subparagraph (a) shall be recoverable by the respective parties out of the proceeds of operations. The Authority shall in its rules and regulations establish a schedule pursuant to which such costs will be recovered in the manner specified in subparagraph (d) of this paragraph.

(c) The proceeds of operations pursuant to the contract after deduction of costs, which shall be calculated according to accounting principles to be determined by the Authority and the terms of the contract, shall be apportioned between the Authority and the Contractor in the manner specified in the contract in accordance with subparagraph (d) of this paragraph.

(d) [Financial arrangements]

10. The Contractor shall:

(a) Transfer in accordance with the rules and regulations and the terms and conditions of the contract to the Authority, at time intervals determined by the Authority, all data necessary and relevant to the effective implementation of the powers and functions of the organs of the Authority under this Convention in respect of the contract area. The Authority shall not disclose to third parties, without the prior consent of the Contractor, such of the transferred data as are deemed to be proprietary by the Contractor. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment shall not be deemed to be proprietary. Except as otherwise agreed with the Authority the Contractor shall not be obliged to disclose proprietary equipment design data.

(b) Draw up programmes for the training of personnel, and take all such other action as may be necessary to fulfil its obligations pursuant to subparagraph 8 (b).

11. The Authority shall, pursuant to this Convention and the rules and regulations prescribed by the Authority, accord the Contractor the exclusive right to evaluate and/or exploit the contract area in respect of a specified category of minerals and shall ensure that no other entity operates in the same contract area for a different category of minerals in a manner which might interfere with the operations of the Contractor. The Contractor shall have security of tenure. Accordingly, the contract shall not be cancelled, modified, suspended or terminated, nor shall the exercise of any right under it be impaired, except for gross and persistent violations of the provisions of this part and the rules and regulations adopted by the Authority thereunder, and after recourse to procedures provided under this part for the settlement of any dispute that may

have arisen. The Authority shall not, during the continuance of a contract, permit any entity to carry out activities in the same area for the same category of minerals.

Rules, regulations and procedures

12. The Authority shall adopt and uniformly apply rules, regulations and procedures consistent with the purposes and fundamental principles of the functioning of the Authority and with these basic conditions in the following subjects:

- (1) Applications to enter into contracts
- (2) Qualifications of applicants
- (3) Selection of applicants
- (4) Progress report
- (5) Submission of data
- (6) Application fees and bonds to secure satisfactory performance
- (7) Inspection and supervision of operations
- (8) Mining standards and practices, including operational safety
- (9) Prevention of interference by the Contractor with other uses of the sea and of the marine environment
- (10) Apportionment of the proceeds of operations
- (11) Direct participation of personnel of developing countries, particularly the land-locked among them and of other countries lacking or less advanced in ocean mining and mineral processing technology, and the transfer of such technology to such countries
- (12) Passing of title to minerals and processed metals from the Area
- (13) Avoiding or minimizing adverse effects on the revenues of developing countries derived from exports of the minerals and products thereof from the Area
- (14) Transfer of rights by a Contractor
- (15) Activities in reserved areas
- (16) Financial and accounting rules

In respect of rules, regulations and procedures for the following subjects the Authority shall uniformly apply the objective criteria set out below:

- (17) Protection of the marine environment:

The Authority shall take into account in adopting rules and regulations for the protection of the marine environment, the extent to which activities in the Area such as drilling, dredging, coring and excavation as well as disposal, dumping and discharge in the Area of sediment or wastes and other matters will have a harmful effect on the marine environment.

- (18) Size of area:

The Authority shall determine the appropriate size of areas for evaluation which may be up to twice as large as those for exploitation in order to permit intensive continued survey and evaluation operations. Areas for exploitation shall be calculated to satisfy the production requirements agreed between the Authority and the Contractor 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 nor larger than are necessary to satisfy this objective. In cases where the Contractor has obtained a contract for exploitation, the area not covered by such contract shall be relinquished to the Authority.

- (19) Duration of activities:

- (a) General survey shall be without time limit except in the case of violations of the Authority's regulations to protect the environment in which case the Authority may prohibit the violator from conducting general survey operations for a reasonable period of time.
- (b) Evaluation 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.

- (c) 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 body, the useful life of mining equipment and processing facilities, and commercial viability. Exploitation should be of sufficient duration as to permit commercial extraction of the 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 contract at the time it considers renewal in accordance with rules and regulations which it has issued subsequent to entering into the contract.

- (20) Performance requirements:

The Authority shall require that during the evaluation stage, periodic expenditures be made by the Contractor which are reasonably related to the size of the contract area and the expenditures which would be expected of a *bona fide* Contractor who intended to bring the area into full-scale 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 evaluation stage is completed and the exploitation stage begins to achieve full-scale 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 evaluation stage and the commencement of the exploitation stage. Accordingly, the interval to bring an area into full-scale commercial production should take into account the time necessary for this construction after the completion of the evaluation stage and reasonable allowance should be made for unavoidable delays in the construction schedule.

Once full-scale commercial production is achieved in the exploitation stage, the Authority shall within reasonable limits and taking into consideration all relevant factors require the Contractor to maintain a reasonable level of commercial production throughout the period of the contract.

- (21) Categories of minerals:

In determining the category of mineral in respect of which a contract may be entered into, the Authority shall give emphasis *inter alia* to the following characteristics:

- (a) Resources which require the use of similar mining methods; and
- (b) Resources which can be developed simultaneously without undue interference between Contractors 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 contract area to the same applicant.

- (22) Renunciation of areas:

The contractor shall have the right at any time to renounce without penalty the whole or part of his rights in the contract area.

13. The Authority shall have the right to take at any time any measures provided for under this Convention to ensure compliance with its terms, and in 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 any activities in the Area.

Suspension or termination

14. A Contractor's rights in the contract area shall be suspended or terminated only if the Contractor has conducted his activities in such a way as to result in gross and persistent violations of this part and rules and regulations and were not caused by circumstances beyond his control, or if a Contractor has wilfully failed to comply with any decision of the [dispute settlement organ].

Revision of contract

15. [Circumstances under which terms and conditions (e.g. financial conditions) of contracts may be revised—to be drafted.]

Force majeure

16. Non-performance or delay in performance shall be excused if and to the extent that such non-performance or delay is caused by *force majeure*. The party invoking *force majeure* may take appropriate measures including revision, suspension or termination of the contract; provided, however, that in the event of a dispute the parties shall first have recourse to the procedures for the settlement of disputes provided for in this part.

Transfer of rights

17. The right 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 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

18. The law applicable to the contract shall be solely the provisions of this Convention, the rules and regulations prescribed by the Authority, and the terms and conditions of the contract. The rights the obligations of the Authority and of the Contractor shall be valid and enforceable notwithstanding the law of any State, or any political subdivision thereof to the contrary. No contracting State may impose conditions on a Contractor that are inconsistent with the principles of this Convention.

Liability

19. Responsibility or liability for wrongful damage arising out of the conduct of operations by the Contractor or the Authority shall lie with the Contractor or the Authority as the case may be. It shall be a defence in any proceeding against a Contractor that the damage was the result of an act or omission of 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. It shall be a defence in any proceeding against the Authority that the damage was a result of an act or omission of the Contractor. Liability in every case shall be for the actual amount of damage.

Settlement of disputes

20. Any dispute concerning the interpretation or application of this Convention, its rules and regulations or the terms and conditions of a contract and arising between the Authority and a Contracting State or any State enterprise or person natural or juridical which possesses the nationality of a Contracting State or is effectively controlled by it or its nationals, or any group of the foregoing shall on the application of either party be subject to the procedure for settlement of such disputes provided for in this Convention.

Arrangements following provisional entry into force of the Convention

21. In the period immediately following provisional application of this Convention, the Authority shall, with respect to the first [...] such contracts, joint ventures or other such form of association, give priority to those covering integrated stages of operations.

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(Text presented by the Chairman of the Second Committee)

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