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/C.1/L.17

Alternative means of financing the Enterprise

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

DOCUMENTS OF THE FIRST COMMITTEE

DOCUMENT A/CONF.62/C.1/L.17*

Alternative means of financing the Enterprise

Preliminary note by the Secretary-General

[*Original: English*]
[*3 September 1976*]

CONTENTS

	Paragraphs
INTRODUCTION	1-4
I. FINANCIAL NEEDS	5-14
A. Administrative costs	5-8
B. Operational costs	9-14
II. SOURCES OF FINANCING THE ENTERPRISE	15-36
A. Financing by the Authority	15-16
B. Voluntary contributions by States parties	17-20
C. The Enterprise as borrower	21-35
D. Other funds	36
III. SOME FACTORS INFLUENCING FINANCING REQUIREMENTS	37-42

Introduction

1. During its 28th meeting, the First Committee requested the Secretary-General to prepare a preliminary note on "alternative means of financing the Enterprise". This study would be based on the provisions of part I of the revised single negotiating text,[54] particularly the relevant section of annex II, in which the Enterprise is described as the organ responsible for activities in the area, carried out directly by the Authority, in relation to the exploration and exploitation of the sea-bed and the ocean floor beyond the limits of national jurisdiction. It was indicated that, in referring to different means of financing, mention would have to be made, as appropriate, of some aspects concerning the acquisition of technology.

2. This preliminary note deals with those resources that were the subject of the report of the Secretary-General on "Economic implications of sea-bed mining in the international area".[55]

3. The review of sources of financing for the Enterprise is presented by reference to four interrelated categories listed in paragraph 6 of annex II of part I of the revised single negotiating text, namely:

"(i) Amounts determined from time to time by the Assembly out of the Special Fund referred to in Article 49.

"(ii) Voluntary contributions made by States Parties to this Convention.

"(iii) Amounts borrowed by the Enterprise, in accordance with subparagraph (*c*) below.

"(iv) Other funds made available to the Enterprise, including charges, to enable it to commence operations as soon as possible for carrying out its functions."

4. The remarks made in this study are obviously of a preliminary character. At the present stage, some basic aspects of the operation of the Enterprise cannot be clearly envisioned. The gaps in available information in relation to possible forms of operation, practical requirements with respect to equipment, operating capacity and managerial skills, will have to be filled in successive stages. It may be noted that, to date, exploitation of sub-marine mineral resources has been limited to continental shelf operations for hydrocarbons and a few other natural resources at relatively shallow depths. Although some experimental activities on the deep sea-bed are reported to have taken place, no activities in the sea-bed similar to those that may be undertaken by the Enterprise have been commenced by either private or governmental organizations. The sources of information are therefore very limited and in some cases speculative in character.

I. Financial needs

A. ADMINISTRATIVE COSTS

5. To establish itself as the operating arm of the Authority, capable of formulating projects for activities in the area and conducting adequately the kind of negotiation entailed in exploration and mining, the Enterprise will have to have basic facilities. It will need a permanent nucleus of the most highly qualified technical staff it can recurit, and it will need to be able to engage specialist consultants. It will have to have in its possession, or at the very least access to, extensive library and laboratory facilities, including geological maps and oceanographic charts. It may be noted that these would also be prerequisites for the adequate functioning of the Authority as a whole.

6. Administrative costs include salaries and general expenses (language services, office accommodation, travel, printing, office supplies, etc.) relating to the central management and administration of the Enterprise. Categories of staff envisaged are those which undertake essential management tasks such as budgeting and financial management, as well as those which, with their expertise in engineering, economics, law, etc., evaluate projects in economic and technical terms, negotiate with private and governmental parties over service contracting, financial arrangements, etc.

7. For the purposes of preliminary estimates of administrative costs, it is assumed that the salary structure would be that of the common system of the United Nations. It must however be borne in mind that the Authority will have to have the means to contract expert assistance of the highest qualifi-

*Incorporating document A/CONF.62/C.1/L.17/Corr.2 of 13 September 1976.

[54] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. V (United Nations publication, Sales No. E.76.V.8), document A/CONF.62/WP.8/Rev.1.

[55] *Ibid.*, vol. IV (United Nations publication, Sales No. E.75.V.10), document A/CONF.62/37.

cations, and in this respect special measures might be required in the early stages. It is also assumed that, at the outset, the Enterprise might have 15 Professional and 10 General Service posts under a director-general. The number of posts will probably increase as the Enterprise broadens its operation, and it might be reasonable to estimate a total of 75 Professional and 50 General Service posts by its third year of operation.

8. Conference costs are also included under the administrative costs. They are based on the assumption that the Governing Board will meet quarterly; salary and travel per diem expenses of conference servicing staff are provided, as well as requirements for processing documentation. One-time costs include relocation expenses of newly recruited staff and expenses for furnishing and equipping office space. The following table shows that the total administrative cost would be in the order of $3 million for the first year (for a staff of 1 Director-General, 15 Professional and 10 General Service) and $6 million for the third year (for a staff of 1 Director-General, 75 Professional and 50 General Service).

TABLE 1. ADMINISTRATIVE COSTS
(Thousands of 1976 US dollars per annum)

	First year	*Third year*
Recurring costs		
Salary + related staff costs	850	3 565
General expenses (rent, travel, office supplies etc.)	200	600
Conference servicing	1 275	1 500
TOTAL	2 325	5 665
One-time costs		
Relocation, furniture and equipment	500	200
TOTAL	2 825	5 865

B. OPERATIONAL COSTS

9. The remarks in paragraph 4 above on the limited extent of the information available are especially applicable to the costs related to the actual operation of projects in the area. The information available to the Secretariat suggests that expenses under this heading might be classified into three categories: exploration, research and development; capital investment; and operating costs.

(a) *Exploration, research and development*

The major elements included under this category are the detailed reconnaissance of favourable areas, the delineation of potential mine sites, the design and testing of recovery and processing systems, and the development of more efficient systems for nodule mining in general.

As regards the detailed reconnaissance of favourable areas and the subsequent delineation of potential mine sites, it is assumed that the objective of individual exploration projects will be to maximize the number of potential mine sites delineated. In so far as there may be economies of scale depending on the size of the area chosen for exploration and the techniques employed, expenditures under this category for a given exploration project will be for more than one mine site. At a later stage, costs may then be allocated to each mine site developed.

(b) *Capital investment*

This item consists of all plant or tangible assets. It includes the cost of the recovery and other systems required for operations at sea, processing plants, office buildings and equipment, and all other facilities required on land. These assets will generally be used over a prolonged span of time but the required cash outlays and therefore the financing have to be available prior to large-scale exploitation.

(c) *Operating costs*

These comprise the cost of labour, materials and supplies, general expenses, transportation of goods, marketing, and other administrative expenses required during the operation of a specific project. It is assumed that they are first incurred when commercial exploitation commences.

10. Actual costs of each of the phases outlined above are not known. Clearly, the best estimates of these costs are available to the companies actively involved in the development of nodule mining technology. These companies, however, regard information on costs as proprietary and, as a result, estimates of these costs in the available literature are those made by interested researchers. The variation in these estimates bears testimony to the fact that knowledge of these data is meagre. For the purposes of this report, the Secretariat availed itself of a recent study which was based on interviews with companies knowledgeable in these matters.[56] Prepared by the Ocean Mining Administration, United States Department of the Interior, it provides the "best estimate" of ocean mining costs. Table 2 includes a summary of these costs which were obtained under the following assumptions:

(*a*) The metallurgical processing facility of the venture has a capacity of 3 million tons per annum;

(*b*) The nodules, when recovered from the mine site, are transported to the processing facility by chartered vessel, and so the costs of transporting and chartering the vessel are included in the estimated operating cost;

(*c*) The costs of exploration, research and development are based on a project which delineates three mine sites for the amounts indicated in the table.

Thus, if the Enterprise were to be structured in the manner envisioned by the companies currently engaged in nodule mining development, table 2 would represent an estimate of the probable costs.

TABLE 2. OCEAN MINING COST ESTIMATES
(Millions of 1975 US dollars)

Item	*Low*	*Medium*	*High*
Exploration and research and development	75	125	150
Capital costs	385	468	550
TOTAL INVESTMENT	460	593	700
Annual operating costs	120	143	165

11. In terms of financing the Enterprise, however, what is more important is knowledge of the necessary cash outlays prior to the realization of revenues. For this purpose, a number of assumptions need to be made as regards the order and duration of the various activities. These are:

(*a*) The first set of activities which would require financing would be exploration and research and development, and their duration would be three years;

(*b*) The second set of activities would be the construction of systems and facilities for use both for operations at sea and

[56]See Rebecca L. Wright, *Ocean Mining, An Economic Evaluation*, United States Government, Department of the Interior, Ocean Mining Administration, May 1976.

operations on land. This would include the nodule recovery system, the metallurgical processing plant and other facilities deemed necessary. The duration of this set of activities is estimated to be four years, following completion of research and development for a specific project;

(*c*) Commercial production, and consequently the annual operating costs, commence during the last year of the capital investment period;

(*d*) The total amount of financing required for each set of activities is met during the relevant period.

12. On the basis of these assumptions and the cost data given above, table 3 is a summary of a possible financing scheme during the initial years of operation. For the sake of simplicity, annual financial requirements for each set of activities are evenly distributed over the duration of the respective set.

TABLE 3. FINANCIAL REQUIREMENTS FOR OCEAN MINING VENTURE OVER INITIAL YEARS OF OPERATION
(Millions of US dollars)

Year	*Low*	*Medium*	*High*
1	25.00	41.75	50.00
2	25.00	41.75	50.00
3	25.00	41.75	50.00
4	96.25	117.00	137.50
5	96.25	117.00	137.50
6	96.25	117.00	137.50
7	216.25	260.00	302.50
8	120.00	143.00	165.00

13. On the basis of these data, prior to the realization of any revenues, the Enterprise would require between $364 million and $563 million. By the seventh year, or the first year during which any revenues are realized, total financial requirements inclusive of operating costs during that year will range from $580 million to $865 million. However, during this year, assuming 100 per cent efficiency in operations, revenues would be approximately $300 million and would average this amount for the life of the mine site. Operating costs would be the only costs incurred after the seventh year.

14. The first year of commercial production, from a project designed to produce 3 million tons per year, could expect to yield close to $300 million in revenue. Thus, against the operating costs or working capital needs of that first year, this revenue might provide $80 million to $130 million, which might be applied to the expenses incurred during the previous six years of development. Each successive year could yield $125 million to $170 million in net revenue. Thus, it might be possible for the pre-production costs of the Enterprise to be recovered after three to six years of commercial production.

II. Sources of financing the Enterprise

A. FINANCING BY THE AUTHORITY

15. Paragraph 6 of annex II of part I of the negotiating text provides that the funds of the Enterprise shall comprise amounts determined from time to time by the Assembly out of the Special Fund referred to in article 49. This Special Fund is constituted by any excess in revenues of the Authority over its expenses and costs, all payments received pursuant to article 46, and any voluntary contributions made by States parties. In this connexion, it must be borne in mind that according to article 49, paragraph 2, in conjunction with article 26, paragraph 2 (*x*), amounts in the Special Fund shall be apportioned and made available equitably to States parties in conformity with criteria, rules, regulations and procedures to be adopted by the Assembly. It is not clear whether the Assembly would have the power to apply assets of the Special Fund towards the financing of the Enterprise, notwithstanding the above-mentioned provisions.

16. Moreover, the Authority will be expected to contribute, to a certain degree, to the financing of the Enterprise out of the General Fund. Indeed, the Authority, in preparing its regular budgetary estimates has to include expenditures or costs relating to the functioning of its organs. Paragraph 1 (*a*) of article 48 has provided for such contributions by the Authority by listing among "Expenses of the Authority", administrative expenses including, *inter alia,* expenditure arising out of the "functioning of the organs of the Authority". This clearly covers administrative expenses of the Enterprise. Paragraph 1 (*b*) of article 48 refers to other expenses to be met out of the General Fund which are not included in subparagraph (*a*) but would be incurred by the Authority in carrying out the functions entrusted to it by the convention. It is not clear to what extent, if any, the operational costs of the Enterprise, which will be much higher than the administrative costs, are covered by this subparagraph.

B. VOLUNTARY CONTRIBUTIONS BY STATES PARTIES

17. Another source of financing of the Enterprise's operations would be from voluntary contributions made by States parties in accordance with paragraph 6 of annex II. Obviously, the availablity of funds through voluntary contributions rests on the decisions freely adopted by the Governments. However, it seems useful to cite various precedents of other international and regional financial institutions which have been financed in whole or in part by voluntary contributions of States.

18. The World Bank, as well as regional development banks such as the Inter-American Development Bank, the Asian Development Bank and the African Development Bank, have all been financed initially with voluntary contributions from Member States. In addition, in the case of those regional banks, non-regional members have contributed funds at later stages of the development of the banks. Contributions in all cases have taken the form of capital subscriptions of which about 10 per cent has been paid-in capital, given directly to the institution to provide an initial cash base available for lending; the remaining 90 per cent is not directly given to the institution nor available for lending, but subject to call only if required to meet the institution's obligations on its own borrowings or on loans guaranteed by it.

19. As a result of the substantial guarantees made available to these institutions, they have been very successful in raising capital in all of the world's financial capital markets. The capital raised has taken the form of direct loans as well as short- and long-term bonds. In addition, commercial banks pension funds, insurance companies, etc. can purchase participation in the direct loans made by these institutions. The Inter-American Development Bank, for example, was established in 1959 with $1 billion in subscribed capital from 20 States. In its first year it made loans of $300 million. Since then it has helped to finance over $33 billion in projects with over $8 billion in loans. Portions of these loans have been made on concessional terms in order to finance projects involving special considerations, such as technical assistance or slow returns. Over $2 billion have been raised in private markets alone, including over $1 billion in Triple A US securities (bonds). The 1975 annual report took note of the Bank's success in light of the pessimism surrounding its inception: "These amounts are far beyond even the most optimistic forecasts which the founders of the institution had in mind."

20. However, it is important to note that all of these finance institutions differ fundamentally from the Enterprise in that the total capital (paid-in plus guaranteed) voluntarily

subscribed by each State has corresponded to voting rights in the management of the institution. Another solution is to be found in the managerial structure of the International Fund for Agricultural Development currently being formed. Set up as a result of the World Food Conference, this Fund has as its objective "to utilize additional resources to be made available on concessional terms for agricultural development in developing Member States". The original membership comprises over 90 States, although membership is open to all States Members of the United Nations. The initial resources of the Fund consist of a wide range of contributions from 47 of these members. All members participate in the management of the Fund, whether they have contributed to it or not.

C. The Enterprise as borrower

21. Although any analogy between the Enterprise and any other entity might be misleading, it could be said that the Enterprise is a kind of association in which the partners are all governments. States will not incur any liability for obligations of the Enterprise (paragraph 4 of annex II). While immunities set forth in the statute (paragraph 9 (*d*)) give the Enterprise a privileged position, this very fact can be a disadvantage when it comes to borrowing because it limits the recourse open to the creditor in case of default. But it should be noted that in this sense the Enterprise is in a position similar to that of governments in respect of international loans. It is true that under paragraph 9 (*k*) of annex II the Enterprise may waive its legal privileges and immunities conferred under the same paragraph, but the practical effect of such waiver will depend on the estimates by potential lenders of the viability of the Enterprise.

22. The Enterprise will, in one sense, be in a position of great commercial strength in that as a branch of the Authority it will have a privileged position with respect to access to the area and its resources (paragraph 8 (*d*) of annex I). On the other hand from the point of view of any lender it is bound to be viewed initially as a high-risk borrower.

23. There is the usual substantial risk attached to any mining enterprise that, however carefully the ore bodies are evaluated, they may turn out to be not as good, or not as large, or not as easy to mine, as was expected. Added to this there is the technical risk element inherent in new technologies for mining the sea-bed, bringing the ore to the surface, and loading it into suitable vessels for transport and, possibly, carrying out some processing of the ore before shipment. Although a few large corporations have already gone a long way in developing the technology, it has still to be tried even on a pre-production scale. Moreover, their successful operations in some areas would not necessarily provide a guarantee of the ability of the Enterprise to overcome technological problems in its own operations.

24. There are again the usual commercial risks attached to any mining operation. The costs of extraction are always liable to exceed the proceeds and this is particularly liable to be the case here in that it may sometimes be very difficult even to estimate the cost of extraction. Obviously, a relevant factor would be the stage at which the Enterprise starts to exploit. If economically viable projects are already being carried out under contracts given by the Authority, the risks involved should be more readily identifiable. There is also the usual risk attached to the long time lag between deciding to invest in a mining operation and the first marketing of the product since, during the interval, the world price for the product may have fluctuated considerably. Account must also be taken in this connexion of provisions of the revised single negotiating text, particularly articles 9, paragraph 4, and 30, paragraph 5, relating to measures to be adopted to prevent adverse economic effects caused by activities in the area. These measures might lead the Enterprise to introduce substantial changes in its plans of operations, which could be very costly and therefore pose additional problems.

25. Another category of risk involves management. Until the Enterprise has established itself as an efficient managerial unit, lenders are bound to regard it as an unknown quantity, especially in view of the fact that it would also be operating in such a difficult field. The technical and managerial risks can be reduced markedly if the Enterprise pursues a consistent policy in developing its organization, its staff and its access to technology.

26. Finally, there are particular risks derived from the innovative character of the Enterprise and its functions. Since the Enterprise will be a unique undertaking in the history of international co-operation, it will tend to be viewed initially with some reservations in the banking community.

27. Although no precise provision appears to this effect in the revised single negotiating text, an important question for the Enterprise to consider in relation to its capacity to finance its projects would be the element of assurance to lenders that losses in one project would not be allowed to affect other projects; by this reasoning resources committed to each project might therefore be treated separately from each other.

28. These various problems have been spelled out in some detail in order to underline the nature of the obstacles which would need to be overcome in arranging the financing of the Enterprise. In effect, at some stages large sums are required to be invested at great risk. In economic practice this only happens if there is also the prospect of commensurate returns—i.e., high interest on loans or high profit on investment. The question therefore arises as to how the Enterprise could substantially reduce the risk to those who lend it money. Usually a lender looks primarily at the probability that the borrower will actually be able to repay and only secondarily at whatever he offers as collateral for the loan. This is because he prefers to be repaid rather than to have to seize the collateral and either sell it or use it himself. Thus, as is so often the case, the quality of management and the availability of technology will probably be as important as the funds themselves. Once the Enterprise has established itself as a successful mining organization, it may have relatively little difficulty in borrowing large sums on the strength of its performance.

29. In the meantime, however, its lenders will for many years, be looking primarily to some form of collateral as the security for their loan. Initially, the Enterprise will have no significant assets to offer as collateral. Subsequently, of course, this may change. It may have considerable stocks of certain minerals. It may have very substantial amounts of equipment of its own which are of great value. It may have ongoing mining operations, the output of which can be committed.

30. Thus, while funds would be readily available to the Enterprise once established as an economically viable entity, at its inception the Enterprise would have no basis upon which to obtain loans. Only if guarantees could be provided for the funds could loans be readily available to the Enterprise upon its creation. This conclusion, then, leads to a discussion of possible guaranteeing organizations.

(a) *The guaranteeing organization*

31. The guaranteeing organization would probably, in practice, have to be a consortium of governments. While it is not inconceivable that a commercial consortium of very large concerns would be prepared to guarantee a loan, its terms would probably be less advantageous than those which could be offered by a consortium of governments, and could pose

difficulties regarding collateral. The guarantee offered by the consortium would cover the scheduled repayment of the loan to the lender and the fixed interest on the loan. The risks covered would also be related to the amount of insurance carried by the Enterprise. Clearly the risks to the lenders would be less to the extent that the Enterprise's installations were fully covered. The guarantees provided by the consortium would probably be conditional on the maintenance in force of specified insurance policies.

(b) *The financing arrangements*

32. With the various categories of risk covered in this way either by insurance or by the guarantee consortium, the way would then be open for the Enterprise to borrow from those with funds available. If the sources were public, that is to say governments or other public institutions, they might lend individually to the Enterprise or they might be formed in consortia after the manner of various aid consortia which have been organized to assist particular countries. The non-public sources, because of the very large sums involved, would almost certainly be consortia, even if the lenders were major banks.

33. Apart from direct financing by a consortium of governments, there is also the possibility of the Enterprise issuing bonds which could in principle be traded and bought by public or private entities. In such a case the guarantee consortium would still be guaranteeing repayment and the interest on the bonds. If the aim of a particular bond issue was to raise a certain target sum, then the Enterprise might have to arrange for the bond issue to be underwritten. This would have to paid for if it were done commercially, though it is conceivable that the underwriting might be done free of charge by the authorities of a group of countries. In practical terms the difference between a loan and a bond issue would usually be that bonds would be due for complete repayment at a particular date or at some time within a specified maturity period. A loan, on the other hand would probably be due for repayment in instalments after an initial grace period. For bond issues it would probably be sensible for the maturity date to be 15 to 20 years or 20 to 25 years. For loans, sensible terms would probably be a grace period of 10 years (and certainly not less than 5) followed by at least another 10 years to repay.

34. A complication which will arise in connexion with financing the Enterprise is the matter of convertibility. If all loans to the Enterprise have to be in fully convertible currency—and by implication be repaid in fully convertible currency—this is liable to limit both its sources of financing and also its potential markets. It should be possible for the Enterprise to borrow non-convertible currencies provided these can be used for purchasing goods and equipment, or for establishing facilities which are fully competitive both in cost and quality. The Enterprise might also wish to enter into financing arrangements where all or part of its payments were in kind, that is to say in the material extracted. This would be, in effect, entering into a long-term contract to market some of the product at agreed prices and apply the proceeds to loan repayment.

35. Clearly, in order to be able to obtain loans, the Enterprise would need to possess the necessary technological capability, in the form both of the technology made available to it and the necessary operational and managerial skills. At present it is not clear whether the technology could be acquired in the market. Development of technology by engaging competent agencies or by the Enterprise itself could also be considered, but such development would require time and substantial resources. Then ways and means would have to be found to translate such technology into operational capacity. Taking into account experience in mining business, any time lag between the acquisition of funds on the one hand, and the requisite technological capability on the other, would correspondingly delay the commencement of commercial production by the Enterprise.

D. OTHER FUNDS

36. Paragraph 6 of annex II refers to "other funds... including charges" as a source of funds for the Enterprise "to enable it to commence operations as soon as possible for carrying out its functions". It is not clear what these charges are and who, the Authority or the Enterprise, is to collect such charges. The revised single negotiating text is silent on these points. Therefore, it is not possible at this stage to assess either the nature or the importance of this source.

III. Some factors influencing financing requirements

37. In dealing with problems of financing the Enterprise's operations, certain factors must be taken into consideration which could have a considerable impact on the need for the Enterprise to resort to some of the sources of funds mentioned above.

38. In the first place, there is the system set forth in paragraph 8 (*d*) of annex I, according to which the Authority will set aside part of the areas already prospected by contractors, for exploitation by the Enterprise or in association with developing countries, or entities sponsored by them and under their effective control. When, in application of this system, the Enterprise envisages the exploration and exploitation of areas designated for it by the Authority, the Enterprise would presumably have access to the data and the results of the previous prospecting carried out by a contractor, thus reducing costs under this item.

39. In the second place, requirements for funds will vary greatly according to the nature of the arrangements through which the Enterprise will have access to the necessary technology.[57] Of course, the Enterprise may enter into any of the various types of contracts normally used for the purpose of transferring resources from one body to another—as, for instance, purchase or lease contracts in the case of capital goods—or contracts in which, over and above the transferring of machinery and equipment, technical assistance is given involving, for example, personnel specialized in assembling equipment and in training the Enterprise's personnel. As regards technical resources, the Enterprise could conclude licensing contracts which would give it temporary use of specific technology against compensation. Managerial technology, on the other hand, could be obtained through management contracts. Paragraph 7 (*d*) of annex II, dealing with the procurement of "goods and services" by the Enterprise in cases where the latter does not possess such goods and services, seems to refer to these kinds of contracts.

40. It must be assumed, however, that initially both management and technology in the field of ocean mining will be scarce and, if available, expensive—for which reason, in these cases, the Enterprise would probably have to have at its disposal large amounts of capital. But nothing in part I or in annexes I and II seems to prevent the Enterprise from entering into more elaborate types of contractual arrangements by which not only technological resources, but also financial means could be made available to it to conduct direct activities in the area. Such arrangements could include kinds of

[57]The word "technology" is used here with the same meaning as used in document A/CONF.62/C.3/L.22 (see *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10)), that is to say, covering at least the following elements: hardware, operating procedures, maintenance procedures, operating and maintenance skills, and management capacities.

List of Documents

contracts similar to those concluded in recent years by some developing countries in their dealings with foreign companies in connexion with the development of natural resources. These contracts may assume a wide variety of forms and are given many different names (service contracts, work contracts, production sharing contracts, participation agreements, joint venture agreements, etc.) but most have one common feature, that the contractor is required to assume all costs of the operation—i.e. to contribute not only the material and technical resources, but also the financial resources. The government, on the other hand, grants the right to exploit resources in conformity with the terms of the contract which normally involve some form of sharing in the benefits.

41. In the case of the Enterprise, the system set forth in paragraph 8 (*d*) of annex I provides it with a stock of potentially worth-while areas, thus enabling it to negotiate arrangements of the kind referred to above. It should be noted that participation by the Enterprise in these kinds of ventures with contractors would appear compatible with the provisions of part I of the negotiating text or with the nature of the activities for which the Enterprise is responsible, provided that the operations preserve their character as "direct" operations conforming to a formal plan of work proposed by the Enterprise and approved by the Council after review by the Technical Commission (article 28, paragraph 2 (ix) and paragraph 7 (*b*) of annex II). It may be noted in this connexion that under any contractual arrangement the Enterprise will continue to hold title to the mining rights and to the minerals extracted.

42. Obviously each different means of obtaining technology (through purchase, licensing, co-operative ventures, etc.) will call for commitments of differing quantities of financial resources by the Enterprise. Initially, it would be advantageous for the Enterprise to have access to existing technology already tested in actual operations by contractors. In this regard, it should be stressed that it cannot be determined at this stage whether the technology would be available and at what price, so that further exploration of possible incentives to make the technology available to the Enterprise might be required.

DOCUMENT A/CONF.62/C.1/L.18

Statement of activities of the First Committee

(Prepared by the Rapporteur of the Committee)

[Original: English]
[16 September 1976]

I. Organization of the work of the Committee[58]

1. During the fifth session of the Conference, held in New York from 2 August to 17 September 1976, the First Committee worked through formal meetings, informal meetings, its workshop and the negotiating group of its workshop.

2. At the outset of the session at the 25th meeting, the Committee was in general agreement that there was a need for procedures to be adopted that were not only conducive to meaningful negotiations but also provided an opportunity for all delegations to particpate fully if they so desired. It was also felt by a large number of delegations that such procedures should allow for the placing on record of the results of negotiations. Following extensive informal consultations on the organization of work, the Committee, at its 26th meeting on 11 August 1976, agreed to the establishment of a workshop and the procedures related thereto.

II. Work of the workshop

3. At the beginning of its 1st meeting on 9 August 1976, the workshop unanimously accepted a proposal conveyed by the Chairman of the Committee that Mr. Jagota (India) and Mr. Sondaal (Netherlands) should work as Co-Chairmen. The workshop held 13 meetings from 9 August to 8 September 1976. The Co-Chairmen prepared four joint weekly reports on the progress of work in the workshop for submission to the Committee (A/CONF.62/C.1/WR.1-4) and a final report (A/CONF.62/C.1/WR.5 and Add.1).

4. The workshop discussed the system of exploitation of the international sea-bed area, particularly article 22 of the revised single negotiating text[59] and the related provisions in annex I on the basic conditions of prospecting, exploration and exploitation with reference to informal workshop papers Nos. 1, 2 and 3, documents referred to in paragraph 11 below and other oral submissions on that subject. The workshop later decided to undertake negotiations on the system of exploitation in a more informal *ad hoc* group open to all delegations but having a central membership of 26 delegations. This negotiating group held 12 meetings, the Co-Chairmen having reported orally to the workshop on the general progress of work in the group.

III. Work of the Committee

5. Comments and observations were made on the four weekly reports of the Co-Chairmen of the workshop and the progress made in the workshop, and these are reflected in the summary records of the 27th and 29th to 32nd meetings.

6. Comments and observations were also made on the final report of the Co-Chairmen of the workshop and these are reflected in the summary record of the 34th meeting.

7. Discussions in the Committee reflected the concern over the lack of concrete results. The slow progress was attributed in part to the difficulty in finding a system of exploitation that would be acceptable to all. Some members were of the view that the differences between the approaches held by the various interest groups were considerably great, whereas other members felt that these differences were not irreconcilable. It was emphasized that a way must be found to overcome the present position. The view was also expressed that the discussions in the Committee were largely at a general level, and that some delegations merely reiterated positions

[58] For the establishment and mandate of the First Committee, see *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. III (United Nations publication, Sales No. E.75.V.5), document A/CONF.62/L.8/Rev.1.

[59] See *Offical Records of the Third United Nations Conference on the Law of the Sea*, vol. V (United Nations publication, Sales No. E.76.V.8), document A/CONF.62/WP.8/Rev.1.