

# **Third United Nations Conference on the Law of the Sea**

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Document:-

**A/CONF.62/L.104 and Add.1**

**Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand, Norway,  
Sweden and Switzerland: amendments**

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## DOCUMENT A/CONF.62/L.104 and Add.1\*

Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand, Norway,  
Sweden and Switzerland: amendments[Original: English]  
[13 April 1982]

Article 150: insert the following new subparagraph before subparagraph (a) and reletter the subparagraphs accordingly:“(a) the development of the resources of the Area;”.

Existing subparagraph (a) should be changed to read:“(b) orderly, safe and rational management of the resources of the Area . . .”.

Article 155, paragraphs 3 and 4 should read as follows:

“3. The Conference shall establish its own rules of procedure. The decision-making procedure applicable at the Conference shall be the same as that applicable at the Third United Nations Conference on the Law of the Sea unless otherwise decided by the Conference. The Conference shall make every effort to reach agreement on any amendments by way of consensus and there should be no voting on such matters until all efforts at consensus have been exhausted.

“4. (a) If, five years after its commencement, the Conference has not reached agreement on the system of exploration and exploitation of the resources of the Area, it may decide during the ensuing twelve months to adopt and submit to the States Parties for ratification or accession such amendments changing or modifying the system as it determines necessary and appropriate taking into account the experience gained as to the effectiveness and the viability of the system as laid down in article 153, paragraph 2.

“(b) The amendments shall enter into force twelve months after the date of deposit of instruments of ratification or accession by two thirds of the States Parties. Exploration and exploitation of the resources of the Area shall thereafter be governed by this Part and the relevant Annexes as amended.

“(c) A State Party which has not ratified or acceded to the amendments shall nevertheless continue to enjoy the rights and perform the obligations of the other provisions of this Convention.”.

Article 158: paragraph 4 should read as follows:

“4. Each organ shall be responsible for exercising the powers and functions which have been conferred upon it. No organ shall take any action that derogates from or impedes the exercise of specific powers and functions conferred upon another organ.”.

Article 160, paragraph 1: at the end of the paragraph add the following:

“Nothing in this paragraph shall derogate from the provisions of article 158, paragraph 4.”.

Article 161, paragraph 1 (a) and (b): reverse the order of subparagraphs 1 (a) and 1 (b) and add the following to the new paragraph 1 (a): “as well as the largest consumer”.

Add the following subparagraph after paragraph 1 (e): “Accordingly, the Council shall consist of nine members from the group of Western European and other States, three members from the group of Eastern European (Socialist) States and twenty-four members from the African, Asian and Latin American groups.”.

For the purpose of this paragraph, the group of Western European and other States shall include, *inter alia*, Japan and the United States of America.

Article 161, paragraph 7 (c): delete the reference to article 162, paragraph 2 (q) and add as paragraph (c) (*bis*) the following:

“(c) (*bis*) Decisions on questions of substance arising under article 162, paragraph 2 (q), shall be taken by a majority of three fourths plus one of the members present and voting, provided that such a majority includes a majority of the members of the Council.”.

## ANNEX III

BASIC CONDITIONS OF PROSPECTING, EXPLORATION  
AND EXPLOITATION

Article 1 should read as follows: “Title to minerals shall pass to the operator upon recovery of the minerals from the Area in accordance with this Convention.”.

Article 3, paragraph 1, should read as follows:

“1. The Enterprise, States Parties, and the other entities referred to in article 153, paragraph 2 (b), of this Convention, may apply to the Authority for approval of plans of work covering activities in the Area. Upon approval of a plan of work, any such entity shall be referred to as an “operator” for the purposes of this Convention.”.

Paragraph 4 (a) and (b) should read as follows:

“4. Every plan of work approved by the Authority shall:

“(a) be in strict conformity with this Convention and the rules, regulations and procedures of the Authority;

“(b) include the following undertakings by the applicant:

“(i) to accept as enforceable and comply with the applicable obligations created by the provisions of Part XI, the rules, regulations and procedures of the Authority and the decisions of the organs of the Authority in force at the time the plan of work is approved, and the terms of his contracts with the Authority;

“(ii) to accept control by the Authority of activities in the Area, as authorized by this Convention;

“(iii) to provide the Authority with a written assurance that his obligations under the contract will be fulfilled in good faith;

“(iv) to comply with the provisions on the transfer of technology set forth in article 5.”.

Subparagraph (b) replaces article 4, paragraph 6. Consequently article 17, paragraph 1 (b) (iii), should be redrafted as follows:

“(iii) performance requirements including undertakings pursuant to article 3, paragraph 4 (b);”.

Article 4, paragraph 1, should read as follows:

“1. Applicants, other than the Enterprise, shall be qualified if they have the nationality or control and sponsorship required by article 153, paragraph 2 (b), of this Convention and if they follow the procedures established by the Authority by means of rules, regulations and procedures and meet the following qualification standards:

“(a) financial and technical capability including the capacity to generate internally or to raise funds necessary to comply with the minimum annual expenditures for exploration established in the rules, regulations and procedures of the Authority;

\*Document A/CONF.62/L.104/Add.1, added Switzerland to the list of sponsors.

“(b) except for the Enterprise and State Party applicants, the provision of a satisfactory financial guarantee to assure performance of the obligations under the proposed plan of work in the amount of 50 per cent of minimum annual expenditures for the first three years of exploration;

“(c) any additional qualifications as may be determined by the Authority in its rules, regulations and procedures.”.

Delete paragraphs 4, 5 and 6.

Add a new article 4 (bis) to read as follows:

“Article 4 (bis)

“Certification of applicants

“1. A State Party or States Parties which sponsor an applicant, or in the case of the Enterprise, the Authority, shall provide the Legal and Technical Commission with a certification that the applicant which it sponsors in accordance with article 153, paragraph 2, is in full compliance with article 4 and the rules, regulations and procedures of the Authority concerning qualification standards for applicants.

“2. A State Party shall not be subject to certification requirements but shall comply with article 4 and the rules, regulations and procedures of the Authority concerning qualification standards for applicants.”.

Article 5, paragraphs 3 and 4, should read as follows:

“3. Every contract for the conduct of activities in the Area entered into by the Authority shall contain the following undertakings by the contractor:

“(a) to co-operate with the Authority in the acquisition by the Enterprise on fair and reasonable commercial terms and conditions of the technology necessary for the carrying out of its activities in the Area;

“(b) to make available to the Enterprise, if and when the Authority shall so request, the technology which he uses in carrying out activities in the Area, which he is legally entitled to transfer and which he has made available or is willing to make available to third parties. This should be done by means of a licence or other appropriate arrangements which the contractor shall negotiate with the Enterprise and shall be on terms and conditions no less favourable than the terms and conditions under which the contractor has made or is willing to make the technology available to third parties;

“(c) to acquire, if and when requested to do so by the Enterprise and whenever it is possible to do so without substantial cost to the contractor, a right to transfer to the Enterprise any other technology than that mentioned in subparagraph (b) which he uses in carrying out activities in the Area;

“(d) to assist, if and when the Authority so requests, the Enterprise in obtaining on the free market efficient and useful technology through purchase, licensing, leasing or other appropriate agreement or arrangement on fair and reasonable commercial terms and conditions;

“(e) to take the same measures as those mentioned in subparagraphs (a) to (d) for the benefit of a developing State or group of developing States which has applied for a contract under article 9, provided that these measures shall be limited to the exploitation of the part of the area proposed by the contractor which has been reserved pursuant to article 8.

“4. Disputes concerning the undertakings required by paragraph 3 between the contractor and the Authority and between States Parties and the Authority shall be subject to compulsory dispute settlement in accordance with Part XI as appropriate. Disputes arising under subparagraph (b) may be submitted by either party to commercial arbitration in accordance with the United Nations Commission on International Trade Law arbitration rules or other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority.”.

Add a new paragraph 5 as follows:

“5. In order to comply with the policy of Part XI, States Parties undertake to ensure that the Enterprise is able to become a viable commercial entity and to engage successfully in the operations referred to in article 170. To this end, States Parties which engage in activities in the Area or sponsor an entity referred to in article 153, paragraph 2 (b), shall take effective measures to ensure that the provisions of paragraph 3 are brought into effect and shall take appropriate measures consistent with national law to prevent persons subject to their jurisdiction from engaging in a concerted refusal to supply technology to the Enterprise on commercial terms and conditions.”.

Delete paragraph 7. Renumber existing paragraph 5 as paragraph 6 and paragraph 6 as paragraph 7.

Article 6, paragraphs 1 and 2, should read as follows:

“1. The Legal and Technical Commission shall take up for consideration and recommendation to the Council, as expeditiously as possible, proposed plans of work in the order in which they are received.

“2. When considering an application for approval of a plan of work with respect to activities in the Area, the Commission shall presume that the requirements of article 4 have been met in the case of applicants which have been certified pursuant to article 4 (bis), unless the Commission decides otherwise by a three-fourths majority of its members. In such a case, or in the absence of any of the undertakings referred to in article 3, the applicant shall be given 45 days to remedy any deficiencies.”.

Paragraph 3 and 3 (a) should read as follows:

“3. The Commission shall recommend for approval the plans of work submitted by the Enterprise, State Party applicants and applicants which have been certified by States Parties pursuant to article 4 (bis) and whose applications have not been rejected pursuant to paragraph 2, unless:

“(a) it determines by a three-fourths majority of its members that the plan of work does not conform to the Convention and the requirements established by the rules, regulations and procedures of the Authority;”.

Reletter subparagraphs (a), (b) and (c) accordingly.

In paragraph 4 references to paragraph 3 (c) should be to paragraph 3 (d).

In paragraph 5, the reference to paragraph 3 (a) should be to paragraph 3 (b).

Article 163, paragraph 11, should, consequently, read as follows:

“Without prejudice to Annex III, article 6, paragraphs 2 and 3 (a), the decision-making...”.

Article 17, paragraph 1 (b): add a new subparagraph XV to read as follows:

“(xv) exploration for an exploitation of resources of the Area other than polymetallic nodules;”.