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. The Chairman were expected, in the preparation of this text, to take into account all the formal and informal discussions that had been held. It was understood that the text would be informal in character and would not prejudice the position of any delegation, nor would it represent any negotiated text or accepted compromise. The informal single negotiating text was to serve purely as a procedural device and only provide a basis for negotiation without affecting either the status of proposals already made by delegations or the right of delegations to submit amendments or introduce new proposals.

The informal single negotiating texts which were released before the adjournment of the third session of the Third United Nations Conference on the Law of the Sea as documents A/CONF.62/WP.8/Parts I, II and III have been the subject of informal negotiations both during the intersessional period and during almost the entire fourth session which started on 15 March 1976.

At the 1st meeting of the fourth session the President indicated that the next stage should be the preparation by the Chairman of the three Committees of a revised single negotiating text in respect of each of their Committees and that this revised text would reflect as far as possible the result of the informal negotiations that had taken place.

The revised single negotiating text would represent a further stage in the work of the Conference. The Chairman of the three Committees have accordingly prepared revised single negotiating texts. These texts have been prepared entirely on their own responsibility and will have no other status than that of serving as a basis for continued negotiation without prejudice to the right of any delegation to move any amendments or to introduce any new proposals. The texts must not be regarded as committing any delegation or delegations to any of their provisions. In accordance with the procedure already established, there will be no general discussion of the texts.

A new part IV dealing with the item "Settlement of Disputes" is now being presented on the responsibility of the President following a general debate on the item (A/CONF.62/WP.8/Rev.1). Like the other texts it will only serve as a basis for negotiation and will not affect the right of any delegation to introduce amendments or new proposals.

The President presents these texts to the Conference as a procedural device to carry forward the process of negotiation in the expectation and the hope that the future negotiations will help towards the attainment of general agreement in keeping with the letter and the spirit of the "gentleman's agreement" regarding the conclusion of a treaty or a convention by consensus.


SUSPENSION OF PRIVILEGES

Article 61

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 for it in the proceeding 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 62

1. A State Party which has grossly and persistently violated the provisions of this Part of the Convention or of any agreement or contractual arrangement entered into by it pursuant to this Part of the Convention, may be suspended from the exercise of the privileges and the rights of membership by the Assembly upon recommendation by the Council.

2. No action may be taken under this article until the Tribunal has found that a State Party has grossly and persistently violated the provisions of this Part of the Convention.

PROVISIONAL APPLICATION

Article 63

1. Pending the definitive entry into force of this Convention in accordance with the provisions of Article ..., 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 provision of 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 the 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 ...;

(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 this article does not occur, an Interim Commission shall come into existence, as provided for in Annex ... to this Convention.

ANNEX I

Basic conditions of prospection, exploration, and exploitation

RIGHTS IN THE AREA AND ITS RESOURCES

1. All rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act. These resources are not subject to alienation. The minerals derived from the Area, however, may only be alienated in accordance with this Part of the Convention and the rules and regulations adopted thereunder.

TITLE TO MINERALS AND PROCESSED SUBSTANCES

2. Title to the minerals shall normally be passed upon recovery of the minerals pursuant to a contract of exploration and exploitation. In the case of contracts pursuant to paragraph 5 for stages of operations, title to the minerals or processed substances shall pass in accordance with the contract. This paragraph is without prejudice to the rights of the Authority under paragraph 9 (d).

PROSPECTING

3. (a) The Authority shall encourage the conduct of prospection in the Area. Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking from the prospecting party to conduct the prospection in an environment-friendly manner and to the satisfaction of the Authority. The Authority shall adopt rules and regulations for the conduct of prospection.

(b) Prospecting may be carried out by more than one prospector in the same area or areas simultaneously. The Authority may declare a particular area for prospection either on application by the prospector or at the Authority's discretion.

EXPLORATION AND EXPLOITATION

4. Exploration and exploitation shall only be carried out in areas specified in plans of work referred to in Article 22 and approved by the Authority in accordance with the provisions of this Annex and the relevant regulations and procedures adopted pursuant to paragraph 12.

5. Contracts shall normally cover all stages of operations. If the applicant for a contract applies for a specific stage or stages, the contract may only cover such stage or stages. Nothing in this paragraph shall in any way limit the discretion of the Authority.

6. Every contract entered into by the Authority shall:

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

(b) Be subject to review by the Authority at all stages of operation in accordance with Article 22;

(c) Confer exclusive rights on the Contractor in the contract area in accordance with the rules and regulations of the Authority.

QUALIFICATIONS OF APPLICANTS

7. (a) The Authority shall adopt appropriate administrative procedures and rules and regulations for the qualification of an applicant. Such qualifications shall include financial standing, technical capability and satisfactory performance under any previous contracts with the Authority.

(b) The procedures for assessing the qualifications of States Parties which are applicants shall take into account their character as States.
(c) Every applicant without exception shall:

(i) Undertake to comply with and to accept as enforceable the obligations created by the provisions of this Part of the Convention, the rules and regulations adopted by the Authority, and the decisions of its organs and the terms of contracts, and to accept control by the Authority in accordance therewith;

(ii) Accept control by the Authority in accordance with paragraph 6;

(iii) Provide the Authority with satisfactory assurance that its obligations covered by the contract entered into by it will be fulfilled in good faith.

8. (a) Upon receiving an application with respect to activities of exploration and exploitation, the Authority shall first ascertain whether any competing application has been received for the area and category of minerals applied for. If so, such competing application has been received, the Authority shall enter into negotiations for the purpose of concluding a contract with the applicant in respect of the area applied for, unless the Authority finds that:

(i) The applicant does not possess the requisite qualifications pursuant to paragraph 7;

(ii) The applicant has not complied with the procedures established for applications;

(iii) The applicant does not agree to comply with the financial arrangements set forth in paragraph 9 (a) or the requirements concerning operations in this Annex or the rules and regulations of the Authority;

(iv) The contract would not be in accordance with the resource policy set forth in Article 9 and ..., and the relevant decisions of the Authority in implementation thereof. This paragraph shall not prejudice the provisions of paragraph 11.

(b) If the Authority receives more than one application at the same time in respect of substantially the same area and category of minerals, selection from among the applicants shall be made on a competitive basis. In accordance with subparagraph (a), the Authority shall enter into preliminary negotiations with the applicant in order to select the best qualified among them, and, once the selection is made on the basis of a comparative consideration of their applications and qualifications, the Authority shall enter into negotiations with the selected applicant for the purpose of concluding the corresponding contract.

(c) If the Contractor has entered into a contract with the Authority for separate stages of operations, he shall have a preference and a priority among applicants for a contract for subsequent stages of operations with regard to the same areas and resources; provided, however, that where the Contractor's performance has not been satisfactory such preference or priority may be withdrawn.

9. (a) The Authority on the one hand and 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 or by its nationals, when sponsored by a State Party, or any group of the foregoing (hereinafter referred to as the Contractor), on the other hand, having completed the procedures under paragraph 8 above shall conclude a contract for the conduct of activities in the Area. The Contractor shall use its own funds, materials, equipment, skills and know-how as necessary for the conduct of operations covered by the contract and provide an appropriate guarantee of satisfactory performance under the contract to be determined by the Authority. However, the parties may agree to include provisions governing the respective contributions of the Authority and the Contractor.

(b) The costs directly related to the performance of the contract pursuant to subparagraph (a) shall be recoverable by the Contractor out of the proceeds of operations or by the respective parties in the event the Authority has contributed to the costs of performance. 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 the costs referred to in subparagraph (b) of this paragraph which shall be calculated according to accounting rules and procedures which are in general use, 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. See Special Appendix.)

10. (a) The Contractor shall transfer in accordance with the rules and regulations and the terms and conditions of the contract in the Authority at time intervals determined by the Authority all data which are both necessary and relevant to the effective implementation of the powers and functions of the organs of the Authority in respect of the contract area. Transferred data in respect of the contract area, deemed to be proprietary, shall not be disclosed by the Authority, and may only be used for the purposes set forth above in this subparagraph. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment and safety shall not be deemed to be proprietary. Except as otherwise agreed between the Authority and the Contractor, the Contractor shall not be obliged to disclose proprietary equipment design data.

(b) The Contractor shall draw up practical programmes for the training of personnel of the Authority and developing countries, including the participation of such personnel in all activities covered by the contract.

11. The Authority shall, pursuant to this Part of the Convention and the rules and regulations prescribed by the Authority, accord the Contractor the exclusive right to explore and exploit the contract area with the Authority in respect of a specified category of minerals and shall ensure that no other entity other to carry on activities in the same area for the same category of minerals. *

*Paragraph 11 is without prejudice to any decision on emergency orders regarding suspension of work in order to protect the marine environment.
RULES, REGULATIONS AND PROCEDURES

12. (c) The Authority shall adopt and uniformly apply rules, regulations and procedures for the implementation of this Part of the Convention, including these basic conditions, on the following matters:

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

(2) Operations

(i) Size of area;
(ii) Duration of activities;
(iii) Performance requirements and guarantees;
(iv) Categories of minerals;
(v) Reclamation of areas;
(vi) Progress reports;
(vii) Submission of data;
(viii) Inspection and supervision of operations;
(ix) Possession of title pursuant to paragraph 2;
(x) Prevention of interference with other uses of the sea and of the marine environment;
(xi) Transfer of rights by a Contractor;
(xii) Procedures for transfer of technology to developing countries and for their direct participation;
(xiii) Mining standards and practices including those relating to occupational safety, conservation of the resources and the protection of the marine environment;
(xiv) Continuity of operations in the event of disputes;
(xv) Definition of commercial production.

(3) Financial matters

(i) Establishment of uniform and non-discriminatory costing and accounting rules;
(ii) Ascertainment of proceeds of operations.

(4) Rules, regulations and procedures to implement decisions of the Council taken in pursuance of Articles 9 and 30

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

(i) Size of area

The Authority shall determine the appropriate size of areas for exploitation which may be up to twice as large as those for exploration in order to permit intensive exploration operations. Areas for exploration shall be calculated to satisfy stated production requirements over the term of the contract taking into account the state of the art of technology then available for ocean mining and the relevant physical characteristics of the area. Areas shall neither be smaller 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.

(ii) Duration of activities

(i) Prospecting shall be without time-limit;
(ii) Exploration should be of sufficient duration as to permit a thorough survey of the specific area, the design and construction of mining equipment for the area, the design and construction of small and medium-size processing plants for the purpose of testing mining and processing systems;
(iii) The duration of exploitation should be related to the economic life of the mining project, taking into consideration such factors as the depletion of the ore, the useful life of mining equipment and processing facilities and commercial viability. Exploitation should be of sufficient duration as to permit commercial extraction of minerals of the area and should include a reasonable time period for construction of commercial-scale mining and processing systems, during which period commercial production should not be required. The total duration of exploitation, however, should also be short enough to give the Authority an opportunity to amend the terms and conditions of the contract at the time it considers renewal in accordance with rules and regulations which it has issued subsequent to entering into the contract.

(3) Performance requirements

The Authority shall require that during the exploration 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 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 presently in use. The Authority shall establish a maximum time interval after the exploration stage is completed and the exploitation stage begins to achieve commercial production. To determine this interval, the Authority shall take into consideration that construction of large-scale mining and processing systems cannot be initiated until after the termination of the exploration stage and the commencement of the exploitation stage. Accordingly, the interval to bring an area into commercial production should take into account the time necessary for this construction after the completion of the exploration stage and reasonable allowance should be made for unavoidable delays in the construction schedule.

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

(4) 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:

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

(5) Reclamation of areas

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

(6) Protection of the marine environment

Rules and regulations shall be drawn up in order to secure the effective protection of the marine environment, taking into account the extent to which activities in the area conducted by methods such as drilling, dredging, coring and excavation as well as disposal, dumping and discharge in the area of sediment, wastes or other matters from activities in the area will have a harmful effect on the marine environment.

(7) Commercial production

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

13. The Authority shall have the right to take at any time any measures provided for under this Part of the 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 connection with any activities in the Area.

PENALTIES

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

(i) If the Contractor has conducted his activities in such a way as to result in gross and persistent or serious, persistent and willful violations of the fundamental terms of the contract, this Part of the Convention and rules and regulations, which were not caused by circumstances beyond his control or
of increase in world demand during the 20-year period prior to the entry into force of this Part of the Convention, provided that the computed rate of increase shall be at least 6% per centum. The cumulative growth segment of the world nickel market referred to in Article 9 shall be computed on the basis of the annual rate of increase from a base amount, which shall be the highest annual world demand during the three-year period immediately preceding the year in which the interim period commences.

**ANNEX II**

**Statute of the Enterprise**

**PURPOSE**

1. (a) The Enterprise shall conduct activities of the Authority in the Area, in the performance of its functions in implementation of Article 41.

(b) In the performance of its functions and in carrying out its purposes, the Enterprise shall act in accordance with the provisions of this Part of the Convention, in particular of Article 9 and 22 thereof, and the Annexes thereto.

**RELATIONSHIP TO THE AUTHORITY**

2. (a) The Enterprise shall at all times be subject to the policy directives and control of the Council in accordance with the provisions of Article 41.

(b) Nothing in this Annex shall make the Enterprise liable for the acts or obligations of the Authority, or the Authority liable for the acts or obligations of the Enterprise.

**MEMBERSHIP**

3. (a) The members of the Enterprise shall be the members of the Authority on the date of the entry into force of this Convention.

(b) Any State which subsequently becomes a member of the Authority shall ipso facto become a member of the Enterprise from the date on which it becomes a party to this Convention.

**LIMITATION OF LIABILITY**

4. No member shall be liable, by reason of its membership, for obligations of the Enterprise.

**ORGANIZATION AND MANAGEMENT**

**Structure**

5. (a) The Enterprise shall have a Governing Board, a Director-General and such other officers and staff to perform such duties as the Enterprise may determine.

**Governing Board**

6. (i) The Governing Board shall be responsible for the conduct of the operations of the Enterprise, and for this purpose shall exercise all the powers given to it by this Annex.

(ii) The Governing Board shall have 36 members elected by the Assembly on the same criteria as contained in Article 27 of this Part of the Convention for election of the members of the Council.

(iii) Members of the Board shall be elected every two years, and shall be eligible for re-election.

(iv) Each member of the Board shall have one vote. Except as otherwise expressly provided all matters before the Board shall be decided by a majority of the votes cast.

(v) Each member of the Board shall appoint an alternate from the same Member State with full power to act for him when he is not present. When the members of the Board are present, the alternates may participate in meetings, but shall not vote.

(vi) Members of the Board shall continue in office until their successors are appointed or elected. If the office of a