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Report on negotiations held by the Chairman and co-ordinators of the working group of 21.

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(1 August 1979)

At this resumed session, the working group of 21 continued its work in the form of meetings and consultations. It was chaired over-all by the Chairman of the First Committee, who also co-ordinated the negotiations on the Assembly and the Council. Mr. Njenga co-ordinated the negotiations on the system of exploration and exploitation. Mr. Kock co-ordinated the negotiations on financial arrangements. Mr. Wustenhein acted as co-ordinator but held separate meetings of the group of legal experts, the results of which were reported to the working group of 21. The suggestions resulting from consultations held by the Chairman and the co-ordinators of the working group of 21 are given in document WC21/2 (appendix A). The report of Mr. Wustenhein is incorporated in this report as appendix B.

The working group of 21 considered the hard-core issues in the following order: first, the Assembly and the Council; composition of the Council, decision-making system and interrelationship between the Council and the Assembly; secondly, financial arrangements; and thirdly, the system of exploration and exploitation.

The Assembly and the Council.

The working group of 21 addressed the issues under this heading, bearing in mind the need to assemble a mini-package consisting of the interrelationship of the principal organs of the Authority, mainly regarding the scope of the powers and functions of the Assembly and the Council, and the decision-making system in the Council.

Document WC21/2 contains suggestions which were made during consultations held by the Chairman and co-ordinators following negotiations. Those relating to the Assembly and Council were chosen because it is the impression of the Chairman, in co-ordinating the negotiations, that they had been the basis for intense negotiations. Some of the suggestions were accepted on an ad referendum basis. Others, notably the ideas on the decision-making system, did not enjoy complete consensus, especially as the number of members required for a blocking majority remains unsatisfied and reservations have been expressed by some representatives regarding the list of subject requiring a special voting regime.

The suggestions, all part of a "package", do not assume more than the rate of providing indication as to the trends of negotiations. It is only the reaction of the membership of the First Committees that will dictate the capacity of any ideas to enter into the second revision of the negotiating text.

Interrelationship

The suggestions attempt to resolve the existing issues relating to the concept of the supremacy of the Assembly, which appeared to present difficulty to the industrialized countries. They also seek to clarify the scope of exercise of the powers and functions of each organ.

First, the suggested revision of article 164 states that the Assembly shall be considered the supreme organ of the Authority. The sources of its supremacy lie in its membership consisting of all the members of the Authority, in its accountability for the other principal organs of the Authority, in its "incidental powers" as defined in article 157 and its residual powers as referred to in new paragraph 2 of article 169.

Secondly, the relationship of powers and functions of the principal organs of the Authority is defined in articles 156, 158, paragraph 4, which makes it explicit that each organ, in exercising its powers and functions, shall avoid taking any action which may derogate from or impede the exercise of specific powers and functions conferred upon another organ. Paragraph 2 of article 160 gives the Assembly power to discuss and decide upon any question within the competence of the Authority, and to decide which organ shall deal with any questions not specifically entrusted to a particular organ. The revised paragraph 2 of article 165 gives the Council power to make recommendations to the Assembly concerning policies on any question within the competence of the Authority.

A related issue is that of the interrelationship of the Council and its subsidiary organ, the Legal and Technical Commission. Paragraph 2 (j) of article 162 of the revised negotiating text provides that the Council shall not act expeditiously in its approval of formal, written plans of work following the review of the Commission. It then provides that such plans of work shall be deemed to have been approved unless a decision to disapprove is taken within 60 days upon submission by the Commission. It is this latter provision that has proved to be a highly contested issue, the opponents considering that it erodes the supremacy of the Council over its subsidiary organs.

The suggested article 162, paragraph 2 (j) seeks to accommodate this serious preoccupation. It restricts the operation of such automatic approval system only to a plan of work which is not contested by a competing application. It also provides that a plan may be deemed to have been approved unless a proposal for its approval or disapproval has been voted upon within 60 days.

On an ad referendum basis, it would appear that these suggestions attract consensus.

II. Financial Arrangements

Annex III: Financing the Enterprise

The Chairman of negotiating group 2 began his report by explaining the revisions which he proposed to be annexed, the statute of the Enterprise.

The first revision proposed is to article 3. Mauritis pointed out that there is a need to make a cross-reference between article 3 and article 10 in order to make explicit the fact that article 3 is subject to article 10. The Chairman accepted this point and proposed the addition of the words "subject to article 10, paragraph 3, below." Since
of technology. Article 2 of annex II, dealing with prospecting, is not the right place to set forth the obligations of the prospector with respect to training, which is dealt with in articles 145 and 144. It was necessary to establish a separate new obligation in this provision but it would be sufficient to provide for the co-operation of the prospector in the training programmes so that the personnel of the Authority and the developing countries would acquire prospecting skills.

Since the nature of prospecting activities is such that it is unlikely to have such major effects as to cause irreparable harm to the marine environment or interfere seriously with other uses of the area, the Chairman of negotiating group 1 decided to delete the provision in paragraph 1 (d) of the same article. The protection of the marine environment as well as the accommodation of different activities in the area are matters which have been taken care of in other provisions of the convention dealing particularly with operations of exploration and exploitation which are likely to have a greater impact on the environment.

In article 3, two new paragraphs were added, namely paragraphs 1 and 2. These new paragraphs deal with the presentation of plans of work by the Enterprise or other entities. The addition of these provisions was necessary to a general introduction to the other provisions of the same article since they refer to the first steps in a sequence developed in the other paragraphs of article 3 and in the following articles. Paragraph 2 states clearly and categorically that the Enterprise may apply for a plan of work in respect of any part of the area, either reserved or unreserved. In light of this change, the saving clause in article 8, paragraph 4, of the annex is no longer necessary. The amendment in paragraph 6 (c) of the same article was made to delimit the scope of the exclusive right conferred on the operator.

Also for the sake of clarification, the word "qualification" was added before "standards" in article 4, paragraph 1. The amendment in paragraph 4 of the same article is a consequence of the alteration made in paragraph 1. Paragraphs 2 and 3 are now and deal with the question of sponsorship of applicants by States parties, a question that until now was mentioned briefly in the text without providing any detail. In these two paragraphs general rules are set forth on sponsorship of national and multinational entities and on responsibility of the stakeholders. It is hoped that these new provisions will command general acceptance since they will form a balance in the existing text. However, it should be pointed out that some delegations have serious reservations about the need to have such provisions at all.

Article 5, paragraph 3, on the procedures to be followed by the Authority after receipt of the plan of work, has been amended to clarify its meaning. No other changes have been made to this article.

In article 8, relating to the reservation of sites, some amendments were introduced in order to ensure that the Authority would obtain all the data necessary to make the right decision on the selection of the reserved sites. There is a new sentence, according to which the Authority may request an independent expert to assess whether the applicant submitted all data required. It has been considered convenient to separate into two different articles the provisions of article 8 in the revised negotiating text. The existing and new provisions dealing with the conditions under which activities in reserved sites will be carried out are grouped in a new article (art. 8 bis). Paragraphs 1 and 4 of this new article are to clarify the process according to which the Enterprise shall decide whether it will carry out activities in the reserved site and the extent to which developing countries may have access to the reserved sites if the Enterprise decides not to exploit the site itself or in joint ventures with such countries. The new paragraph 2 deals with the conclusion of contracts by the Enterprise for the execution of parts of its activities, as well as entry into joint ventures with other entities on a voluntary basis. The matters covered in the new paragraphs 2, 3 and 4 are quite complex and in many respects delicate, and consequently further discussions on these matters may be required.

In article 16, the introduction of the words "when the parties so agree" in paragraph 1 has been made in order to stress the voluntary character of joint arrangements between the contractor and the Authority. Paragraph 3 is a new one and establishes the obligation of the parties to the Enterprise in joint ventures in reserved sites to pay the financial contributions required by article 12 to the extent of their share, subject to financial incentives as provided for in article 12.

The new wording of article 15, paragraph 3, appears in document W2G/12. The amendments introduced in this provision are meant to make more precise the responsibilities of the Authority and the Enterprise concerning the disclosure of proprietary data.

Unfortunately, the group could not deal extensively with other important matters still pending, the consideration of which would have required more time and additional negotiations. One of these matters is the problem of transfer of technology. Although during the last two sessions of the Conference tremendous progress was made in this field, the delegations consider that the present text, in particular article 5 of annex I, does not provide a totally satisfactory solution to the problem and that we have to work out such provisions in order to make the undertaking of the contractors more specific and mandatory. However, no one gave any priority to the proposals on these matters and, therefore, detailed discussions on the issues could not be conducted.

It is hoped that the next session of the Conference will provide the opportunity to make a last attempt to find a solution on this matter acceptable to all sectors concerned.

With regard to the anti-monopoly clause, the delegation of France submitted to the group a proposal suggesting a new wording for article 6, paragraphs 3 and 4, and article 7, paragraphs 2 and 3. This proposal and an explanatory note are contained in document W2G/ Informal Paper 3, of 10 August 1979. Since the proposal deals in part with a technical subject which is extremely complex, there was not sufficient time to examine it and discuss it thoroughly. Another opportunity will be provided to take up this matter in the future.

The question of the moratorium in case of failure of the review conference to reach an agreement within five years was not considered by the group during the resumed session. Since this is a very important problem and also because of the polarization of the positions of the delegations on this issue, it was proposed to the group to leave this matter to be treated either in a forum broader than the group of 21 or in any case as a stand-alone issue after other, less intractable issues have been dealt with.

APPENDIX A

Suggestions resulting from consultations held by the Chairman and co-ordinators of the working group of WT

A. SYSTEM OF EXPLORATION AND EXPLOITATION

Article 140. Benefit of mankind

1. Activities in the Area shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of the developing countries and peoples who have not attained full independence or other self-governing status recognized by the United Nations in accordance with General Assembly resolution 1514 (XV) and other relevant General Assembly resolutions as specifically provided for in this Part of the present Convention.

Annex II

Article 1. TITLE TO MINERALS

1. Title to minerals shall pass upon recovery in accordance with the present Convention.

Article 2. Prospecting

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

(b) Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector shall comply with the present Convention and the relevant rules and regulations of the Authority concerning the exploration of the marine environment, co-operation in training programmes according to articles 143 and 144 and accepts verification by the Authority of compliance. The proposed prospector shall, together with the undertaking, notify the Authority of the area or areas in which prospecting is to take place.

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

(d) [Deleted]

2. Prospecting shall not confer any preferential, proprietary, exclusive or any other rights on the prospector with respect to the
resources. A prospector shall, however, be entitled to recover a reasonable amount of resources of the Area to be used for sampling.

Article 3. Exploration and exploitation

1. The Enterprise, States Parties, and the other entities referred to in article 135, paragraph 3 (b), may apply to the Authority for approval of plans of work covering exploration and exploitation of resources of the Area.

2. The Enterprise may apply with respect to any part of the Area, but applications by others with respect to reserved areas are subject to the additional requirements of article 8.

(Formerly para. 1) 3. Exploration and exploitation shall be carried out only in areas specified in plans of work referred to in article 135, paragraph 3, and approved by the Authority in accordance with the provisions of this annex and the relevant rules, regulations and procedures of the Authority.

(Formerly para. 2) 4. Every plan of work approved by the Authority shall:

(a) Be in strict conformity with the present Convention and the rules and regulations thereof;

(b) Ensure control by the Authority of activities in the Area in accordance with article 135, paragraph 4;

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

(Formerly para. 3) 5. Except for plans of work proposed by the Enterprise, each plan of work shall take the form of a contract to be signed by the Authority and the operator or operators upon approval of the plan of work by the Authority.

Article 4. Qualifications of applicants

1. Applicants, other than the Enterprise, shall be qualified if they have the nationality or control and sponsorship required by article 135, paragraph 3 (b), and if they follow the procedures and meet the qualifications and standards established by the Authority by means of rules, regulations and procedures.

2. Sponsorship by the State Party of which the applicant is a national shall be sufficient unless the applicant has more than one nationality, as in the case of a partnership or consortium of entities from several States, in which event all States Parties involved shall sponsor the application, or unless the applicant is effectively controlled by another State Party or its nationals, in which event both States Parties shall sponsor the application.

3. The sponsoring State or States shall, pursuant to article 139, have the responsibility to ensure, within their legal systems, that a contractor sponsored shall carry out activities in the Area in conformity with its obligations under the present Convention and the terms of its contract. A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has enacted legislation and provided for administrative procedures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction.

(Formerly para. 2) 4. Except as provided in paragraph 6, such qualification standards shall relate to the financial and technical capabilities of the applicant and his performance under previous contracts with the Authority.

(Formerly para. 3) 5. The procedures for assessing the qualifications of States Parties which are applicants shall take into account their character as States.

(Formerly para. 6) 6. The qualification standards shall require that each applicant, without exception, shall, as part of his application, undertake:

(a) To accept as enforceable and comply with the applicable obligations created by the provisions of Part XI, rules and regulations of the Authority, decisions of the organs of the Authority, and terms of his contracts with the Authority;

(b) To accept control by the Authority of activities in the Area, as specified by the present Convention;

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

(d) To comply with the provisions on the transfer of technology set forth in article 5 of the present annex.

Article 6. Approval of plans of work submitted by applicants

1. Six months after the entry into force of the present Convention, and thereafter each four months, the Authority shall take up for consideration proposed plans of work.

2. When considering an application for a contract with respect to exploration and exploitation, the Authority shall first ascertain whether

(a) The applicant has complied with the procedures established for applications in accordance with article 4 of the present annex and has given the Authority the commitments and assurances required by that article. In cases of non-compliance with these procedures or of absence of any of the commitments and assurances referred to, the applicant shall be given 45 days to remedy such defects;

(b) The applicant possesses the requisite qualifications pursuant to article 4.

3. All proposed plans of work shall be dealt with in the order in which they were received, and the Authority shall conduct, as necessary and as expeditiously as possible, an inquiry into their compliance with the terms of the present Convention and the rules, regulations and procedures of the Authority, including the operational requirements, the financial contributions and the undertakings concerning the transfer of technology. As soon as the issues under investigation have been settled, the Authority shall approve such plans of work, provided that they conform to the uniform and nondiscriminatory requirements established by the rules, regulations, and procedures of the Authority, unless:

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

(b) Part or all of the proposed area is disapproved by the Authority pursuant to article 162, paragraph 2 (w);

(c) Selection among applications received during that period of time is necessary because approval of all plans of work proposed during that period would be contrary to the production limitation set forth in article 131, paragraph 2, or to the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided for in article 151, paragraph 1;

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

(i) Three plans of work for exploration and exploitation of sites not reserved pursuant to article 8 of the present annex within a circular area of 400,000 square kilometres which is centred upon a point selected by the applicant within the requested additional site;

(ii) Plans of work for exploration and exploitation of sites not reserved pursuant to article 8 which in aggregate sites make up 10 per cent of the total sea-bed Area which is not reserved pursuant to that article or otherwise withdrawn by the Authority from eligibility for exploitation pursuant to article 162, paragraph 3 (w).

4. For the purpose of the standard set forth in paragraph 3 (d) above, a plan of work proposed by a consortium shall be counted on a pro rata basis among the States Parties whose nationals compose the consortium. The Authority may approve plans of work covered by paragraph 3 (d) if it determines that such approval would not permit a State Party or persons sponsored by it to monopolize the conduct of activities in the Area or to prejudice other States Parties from activities in the Area.

Article 8. Reservation of sites

Each application, other than those proposed by the Enterprise or by any others for reserved sites, shall cover a total area, which need not be a single contiguous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations. The proposed operator shall indicate the co-ordinates dividing the area into two parts of equal estimated commercial value and extend all the data obtained by him with respect to both parts of the area. Within 45 days of receiving such data the Authority shall designate the part which is to be reserved solely for the conduct of activities by the Authority through the Enterprise or its association with developing countries. This designation may be deferred for a further period of 45 days if the Authority requests an independent expert to assess whether all data required by this article has been submitted to the Authority. The area designated shall become a reserved area as soon
as the plan of work for the non-reserved area is approved and the contract is signed.

Article 8. Activities in reserved sites

1. The Enterprise shall be given an opportunity to decide whether it intends to carry out activities in each reserved site. This decision may be taken at any time, unless a notification pursuant to paragraph 4 is received by the Authority, in which event the Enterprise shall take its decision within a reasonable time. The Enterprise may decide to exploit such sites in joint ventures with the interested State or States.

2. The Enterprise may conclude contracts for the execution of part of its activities in accordance with article 11 of annex III. It may also enter into joint ventures for the conduct of such activities with any willing entities which are eligible to carry out activities in the Area pursuant to article 135, paragraph 2 (b). When considering such joint ventures, the Enterprise shall offer to States Parties which are developing countries and their nationals the opportunity of effective participation.

3. The Authority may prescribe, in the rules, regulations, and procedures of the Authority, procedural and substantive requirements with respect to such contracts and joint ventures.

4. Any State Party which is a developing country or any national entity sponsored by it which is a qualified applicant or any group of the foregoing, may notify the Authority that it wishes to apply for a plan of work pursuant to article 6 of the present annex with respect to a reserved site. The plan of work shall be considered if the Enterprise decides, pursuant to paragraph 1 above, that it does not intend to carry out activities in that site.

Article 10. Joint arrangements

1. Contracts for the exploration and exploitation of the resources of the Area may provide for joint arrangements, where the parties so agree, between the Contractor and the Authority through the Enterprise, in the form of joint ventures, production-sharing or service contracts, as well as any other form of joint arrangement for the exploration and exploitation of the resources of the Area.

2. Contractors entering into such joint arrangements with the Enterprise may receive financial incentives as provided for in the financial arrangements established in article 12 of the present annex.

3. Any State Party in the reserved site shall be liable for the payments required by article 12 of the present annex to the extent of their joint venture share, subject to financial incentives as provided for in article 12.

Article 13. Transfer of data

1. The operator shall transfer in accordance with the rules and regulations and the terms and conditions of the plan of work to the Authority, at time intervals determined by the Authority, all data which are both necessary and relevant to the effective implementation of the powers and functions of the principal organs of the Authority in respect of the areas covered by the plan of work.

2. Data transferred in respect of the area covered by the plan of work, deemed to be proprietary, may only be used for the purposes set forth in this article. Data which are necessary for the prevention of rules and regulations concerning protection of the marine environment and safety shall not be deemed to be proprietary.

3. Data transferred to the Authority by prospective customers, for contracts for exploration and exploitation, and contractors deemed to be proprietary shall not be disclosed by the Authority to the Enterprise or outside of the Authority. Such data transferred by such persons to the Enterprise shall not be disclosed by the Enterprise to the Authority or outside of the Authority. The responsibilities set forth in article 16, paragraph 2, are equally applicable to the staff of the Enterprise.

B. FINANCIAL ARRANGEMENTS

I. FINANCIAL TERMS OF CONTRACT

Annex II

Article 12

1. In adopting rules, regulations and procedures concerning the financial terms of a contract between the Authority and the Contractor referred to in article 11, paragraph 4, in accordance with the provisions of Part XI of the present Convention, and in negotiating the financial terms of a contract in accordance with the provisions of Part XI and those rules, regulations and procedures, the Authority shall be guided by the following objectives:

(a) To ensure optimum revenues for the Authority from the proceeds of commercial exploitation;

(b) To attract investments and technology to the exploration and exploitation of the Area;

(c) To ensure equality of financial treatment and comparable financial obligations on the part of all States and other entities which obtain contracts;

(d) To provide incentives on a uniform and non-discriminatory basis for contractors to undertake joint arrangements with the Enterprise and developing countries or their nationals, to stimulate the transfer of technology thereof, and to train the personnel of the Authority and of developing countries;

(e) To enable the Enterprise to engage in sea-bed mining effectively at the same time as the entities referred to in article 135, paragraph 2 (b);

(f) To ensure that the financial incentives provided to contractors under paragraph 14 of this article, or under the terms of contracts reviewed in accordance with article 18, or under the provisions of article 16 with respect to joint ventures, shall not result in subsidizing contractors with a view to placing them at an artificial competitive advantage relative to land-based miners.

2. A fee shall be levied for the administrative cost of processing an application for a contract of exploration and exploitation and shall be fixed at an amount of $500,000 per application. If the cost incurred by the Authority in processing an application is less than $500,000, the Authority shall refund the difference to the applicant. The amount of the fee shall be reviewed from time to time by the Council in order to ensure that it covers the administrative cost of processing such an application.

3. A Contractor shall pay an annual fixed fee of $1 million from the date of entry into force of the contract. From the commencement of commercial production, the Contractor shall pay either the production charge or the annual fixed fee, whichever is greater.

4. Within a month from the date of commencement of the commercial production, in conformity with paragraph 3, a Contractor shall choose to make his financial contribution to the Authority by either:

(a) Paying a production charge only, hereinafter referred to as the single system; or

(b) Paying a combination of a production charge and a share of net proceeds, hereinafter referred to as the mixed system.

5. (a) If a Contractor chooses to make his financial contribution to the Authority by paying a production charge only, it shall be fixed at a percentage of the market value of the processed metals produced from the nodules extracted from the contract area and the average price for those metals during the relevant accounting year, as defined in paragraph 7 below.

(b) The said market value shall be the product of the quantity of the processed metals produced from the nodules extracted from the contract area and the average price for those metals during the relevant accounting year.

6. If a Contractor chooses to make his financial contribution to the Authority by paying a combination of a production charge and a share of net proceeds, with payments shall be determined as follows:

(a) The production charge shall be fixed at a percentage of the market value of the processed metals produced from the nodules extracted from the contract area in accordance with the following schedule:

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Years 1-10 of commercial production:</td>
<td>5 per cent</td>
</tr>
<tr>
<td>Years 11-20 of commercial production:</td>
<td>12 per cent</td>
</tr>
</tbody>
</table>

(b) The said market value shall be the product of the quantity of the processed metals produced from the nodules extracted from the contract area and the average price for those metals during the relevant accounting year, as defined in paragraph 7 below.

(c) The production charge shall be $2 per cent instead of 4 per cent in that accounting year.

(d) The said market value shall be the product of the quantity of the processed metals produced from the nodules extracted from the contract area and the average price for those metals during the relevant accounting year, as defined in paragraph 7 below.
Annex II

Article 21. Liability

Any responsibility or liability for wrongful damage arising out of the conduct of operations by the Contractor shall lie with the Contractor, account being taken of contributory factors by the Authority. Similarly, any responsibility or liability for wrongful damage arising out of the exercise of the powers and functions of the Authority, including liability for violations under article 109, paragraph 2, shall lie with the Authority, account being taken of contributory factors by the Contractor. Liability in every case shall be for the actual amount of damages.

Annex V

Article 4. Procedure for nomination and election

1. Each State Party may nominate not more than two persons having the qualifications prescribed in article 2. The members of the Tribunal shall be elected from a list of persons thus nominated.

2. At least three months before the date of the election, the Secretary-General of the United Nations shall convene the first election and the Registrar of the Tribunal shall convene the second election. At the time of the election, and by procedure agreed to by the States Parties in the case of the first election and by procedure agreed to by the States Parties in the case of the second election, the Tribunal shall be held by the President of the Tribunal in a manner to be determined by the States Parties.

3. The first election shall be held within six months of the date of entry into force of the present Convention.

4. Elections of the members of the Tribunal shall be by secret ballot. They shall be held at the second election of the States Parties convened by the Secretary-General of the United Nations in the case of the first election and by procedure agreed to by the States Parties in the case of the second election. At that meeting, for which two thirds of the States Parties present and voting, shall constitute a quorum, the persons elected to the Tribunal shall be those persons who obtain the largest number of votes and a two-thirds majority of votes of the States Parties present and voting, provided that such majority shall include at least a majority of the States Parties.

Article 36. Composition of the Chamber

1. The Sea-Bed Disputes Chamber established in accordance with article 14 shall be composed of 11 members, selected by a majority of the members of the Tribunal from among its members.

2. In the selection of the members of the Chamber, the representation of the principal legal systems of the world and equitable geographical distribution shall be assured. The Assembly of the Authority may adopt recommendations of a general nature relating to such representation and distribution.

3. The members of the Chamber shall be selected every three years and may be selected for a second term.

4. The Chamber shall elect its President from among its members, who shall serve for the period for which the Chamber has been selected.

5. If any proceedings are still pending at the end of any three-year period for which the Chamber has been selected, the Chamber shall elect the persons elected to the Chamber in its original composition.

6. Upon the occurrence of a vacancy in the Chamber, the Tribunal shall select a successor from among its members who shall hold office for the remainder of the term of his predecessor.

7. A quorum of seven members shall be required to constitute the Chamber.

Article 36 bis. Ad hoc chambers of the Sea-Bed Disputes Chamber

1. The Sea-Bed Disputes Chamber shall form an ad hoc chamber, composed of three or the members of the Chamber, for dealing with a particular dispute submitted to it in accordance with article 181, paragraph 14. The composition of such a chamber shall be determined by the President of the Chamber with the approval of the parties.

2. If the parties do not agree on the composition of an ad hoc chamber referred to in paragraph 1, each party to the dispute shall appoint one member, and the remaining member shall be appointed by them in agreement. If they disagree, or if any party fails to make an appointment, the President of the Sea-Bed Disputes Chamber shall promptly make such appointment and shall request the members of the Sea-Bed Disputes Chamber, after consultation with the parties.

3. Members of the ad hoc chamber must not be in the service of, or nationals of, any of the parties to the dispute.

APPENDIX B

Report by the Chairman of the group of legal experts on the settlement of disputes relating to part XI

Though the questions of the settlement of disputes were not discussed in the group of 21, the Chairman of the group of legal experts on the settlement of disputes relating to part XI presented his report to the group of 21, before presenting it in the First Committee.

The group of legal experts held three meetings during the resumed eighth session in New York. After each of the meetings, the Chairman had intensive consultations with interested delegations, on the basis of which he attempted to reach compromise solutions. This process followed the procedure which had been agreed to by the Group.

At the opening of the first meeting, the Chairman stated that he had, on 23 April 1979, reported to the Chairman of the First Committee on the results of the work of the group, setting out fully the status of the work at the conclusion of the first part of the eighth session at Geneva (A/CONF.60/C.1/L.25 and Add.1). That report identified the outstanding issues which were not discussed at all or those that were discussed, though not fully.

The Chairman suggested that the outstanding issues be dealt with in the following sequence:

1. The manner of selection of members of the Sea-Bed Disputes Chamber of the Law of the Sea Tribunal and the necessary changes to Annex V;
2. The suggestion regarding ad hoc chambers of the Sea-Bed Disputes Chamber;
3. Liability of the Authority, in cases of staff members violating their duty not to disclose confidential information, and in other cases;
4. Aspects of contractual disputes for which commercial arbitration would be appropriate.

The Chairman also pointed out the need to consider articles 387, 389, 390 and 391 which the group had formulated at the first part of the session, as incorporated in part X., section 5, because there could be some matters that needed clarification. However, he suggested that this be taken up later, after the negotiations on the outstanding issues had been subject to the same process of negotiation as those issues in respect of which texts had been included in the revised negotiating text.

This course of procedure was accepted by the Group.

I. SELECTION OF MEMBERS OF THE SEA-BED DISPUTES CHAMBER

On the first issue, which was the manner of selection of members of the Chamber, the Chairman stated that, after the original discussion at Geneva, he had the impression that it would be possible to provide that members of the Chamber be selected by the Law of the Sea Tribunal itself. The Tribunal was to be elected by the Conference of States Parties, who would be the same as the members of the Assembly, and that appeared to be no need for a second vote of confidence. Should there be agreement that the Chamber be selected by the Tribunal, consideration could then be given to whether the Assembly should be empowered to make recommendations that the principles of equitable geographical distribution and the representation of the principal legal systems be followed.

A clear desire to compromise was shown. A willingness to accept that the members of the Tribunal itself should select the members of the Chamber was expressed by those who had originally opposed it. Those who opposed the role of the Assembly in that regard, also in a spirit of compromise, agreed that the Assembly could be empowered to make recommendations of a general nature regarding equitable geographical distribution and the representation of the principal legal systems which was to be assured in the Chamber. It was also