United Nations

Third Conference
On the Law of the Sea

Ninth session
New York, 3 March to 4 April 1980

Informal composite negotiating text/Revision 2

Contents

Explanatory memorandum by the President of the Conference

Preamble

PART I. USE OF TERMS

Article 1. Use of terms

PART II. TERRITORIAL SEA AND CONTIGUOUS ZONE

SECTION 1. GENERAL

Article 2. Jurisdictional status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil

SECTION 2. LIMITS OF THE TERRITORIAL SEA

Article 3. Breadth of the territorial sea
Article 4. Outer limit of the territorial sea
Article 5. Normal baseline
Article 6. Reefs
Article 7. Straight baselines
Article 8. Internal waters
Article 9. Mouths of rivers
Article 10. Bays
Article 11. Forts
Article 2

The actions of the Commission shall not prejudice matters relating to
delimitation of boundaries between States with adjacent or opposite coasts.

ANNEX III

Basic conditions of prospecting, exploration and exploitation

Article 1

Title to minerals

Title to minerals shall pass upon recovery in accordance with this 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
this Convention and the relevant rules and regulations of the Authority concerning
protection of the marine environment, co-operation in training programmes according
to articles 143 and 144 of Part XI of this Convention and accepts verification by
the Authority of compliance. The proposed prospector shall, together with the
undertaking, notify the Authority of the broad 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.

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 153, paragraph 2 (a), of Part XI of this Convention, may apply to the
Authority for approval of plans of work covering activities 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 9.

3. Exploration and exploitation shall be carried out only in areas
specified in plans of work referred to in article 153, paragraph 3, of Part XI of
this Convention and approved by the Authority in accordance with the provisions of this annex and the relevant rules, regulations and procedures of the Authority.

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

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

(b) Ensure control by the Authority of activities in the Area in accordance with article 133, paragraph 4, of Part XI of this Convention;

(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.

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 6
Qualifications of applicants

1. Applicants, other than the Enterprise, shall be qualified if they have the nationality or control and sponsorship required by article 133, paragraph 2 (b), of Part XI of this Convention and if they follow the procedures and meet the qualification 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 so sponsored shall carry out activities in the Area in conformity with its obligations under the 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 adopted laws and regulations and taken administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction.

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.

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

6. The qualification standards shall require that every 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 authorized by this 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.

Article 5

Transfer of Technology

1. When submitting a proposed plan of work, every applicant shall make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the Area, as well as other relevant non-proprietary information about the characteristics of such technology, and information as to where such technology is available.

2. Every operator under an approved plan of work shall inform the Authority of revisions in the description and information required by paragraph 1 whenever a substantial technological change or innovation is introduced.

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

(a) To make available to the Enterprise, if and when the Authority shall so request and on fair and reasonable commercial terms and conditions, the technology which is to be used by him in carrying out activities in the Area and which he is legally entitled to transfer. This shall be done by means of licence or other appropriate arrangements which the operator shall negotiate with the Enterprise and which shall be set forth in a special agreement supplementary to the contract. This commitment may be invoked only if the Enterprise finds that it is unable to obtain the same or equally efficient and useful technology on the open market and on fair and reasonable commercial terms and conditions;

(b) To obtain a written assurance from the owner of any technology not covered under subparagraph (a) that the operator uses in carrying out activities in the Area and which is not generally available on the open market that the owner will, if and when the Authority so requests, make available to the Enterprise to the same extent as made available to the operator, that technology under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions. If such assurance is not obtained, the technology in question shall not be used by the operator in carrying out activities in the Area. This assurance shall be made legally binding and enforceable whenever it is possible to do so without additional cost to the contractor; /

7/ The question re-introducing sanctions referred to in paragraph 19, page 5, of the report on the system of exploration and exploitation should be further considered.
(c) To take all feasible measures, if and when requested to do so by the Enterprise, to acquire the legal right to transfer to the Enterprise in accordance with subparagraph (a) any technology he uses in carrying out activities in the Area which he is not legally entitled to transfer and which is not generally available on the open market. In cases where there is a substantial corporate relationship between the operator and the owner of the technology, the closeness of the determination whether all feasible measures have been taken. In cases where the legal rights from the owner shall be considered relevant to the applicant's qualifications for any subsequent proposed plan of work; I

(d) To facilitate the acquisition by the Enterprise under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions any technology covered by subparagraph (b) should the Enterprise decide to negotiate directly with the owner of the technology and request such facilitation;

(c) and (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 reserved part of the Area proposed by the applicant and provided that activities under the contract sought by the developing State or group of developing States would not involve transfer of technology to a third State or the nationals of a third State. Obligations under this provision shall only apply with respect to any given contractor where technology has not been requested or transferred by him to the Enterprise.

4. Disputes concerning the undertakings required by paragraph 3, like other provisions of the contracts, shall be subject to compulsory dispute settlement in accordance with Part XI, and monetary penalties, suspension, or termination of the range of fair and reasonable commercial terms and conditions may be submitted by either party to binding commercial arbitration in accordance with the UNCITRAL Arbitration Rules or other arbitration rules if and when prescribed in the rules, regulations and procedures of the authority.

5. In the event that the Enterprise is unable to obtain appropriate technology on fair and reasonable commercial terms and conditions to commence in a timely manner the recovery and processing of minerals from the Area, either the Council or the Assembly may convene a group of States Parties composed of those which are engaged in activities in the Area, those which have sponsored entities which are engaged in activities in the Area and other States Parties having access to such technology. This group shall consult together and shall take effective measures to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions. Each such State Party shall take all feasible measures to this end within its own legal system.

6. In the case of joint ventures with the Enterprise, technology transfer will be in accordance with the terms of the joint venture agreement.

7. The undertakings required by paragraph 3 shall be included in each contract for the conduct of activities in the Area until the Enterprise has begun commercial production of minerals from the resources of the Area, and these undertakings may be invoked until 10 years after the Enterprise has begun such commercial production.
8. For the purposes of this article, "technology" means the specialised equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to assemble, maintain and operate a viable system and the legal right to use these items for that purpose on a non-exclusive basis.

Article 6

Approval of plans of work submitted by applicants

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

2. When considering an application for a contract with respect to activities in the Area, the Authority shall first ascertain whether:

   (a) the applicant has complied with the procedures established for applications in accordance with article 4 and had 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 30 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 expeditiously as possible, an inquiry into their compliance with the terms of this 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 non-discriminatory 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; or

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

   (c) The production limitation set forth in article 151, paragraph 2, of this Convention or 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 3, of Part XI of this Convention prevents the approval of any applications or requires a selection among applications received during the period of time specified above; or

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

      (i) Plans of work for exploration and exploitation of polymetallic nodules in non-reserved sites that, together with either part of the proposed site, would exceed in size 30 per cent of a circular area of 400,000 square kilometres surrounding the centre or either part of the area covered by...
the proposed plan of work,

(ii) plans of work for the exploration and exploitation of polymetallic nodules in non-reserved sites which in aggregate size constitute 2 per cent of the total sea-bed area which is not reserved or otherwise withdrawn by the Authority from eligibility for exploitation pursuant to article 152, paragraph 2 (w) of Part XI of this Convention.

4. For the purpose of the standard set forth in paragraph 3 (d), a plan of work proposed by a partnership or consortium shall be counted on a pro rata basis among the sponsoring States Parties involved according to article 4, paragraph 2. 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 preclude other States Parties from activities in the Area.

Article 7

Selection of applicants

1. Where the selection must be made among applicants because of the production limitation set forth in article 151, paragraph 2, of Part XI of this Convention, or because of 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, of Part XI of this Convention, the Authority shall make the selection on the basis of objective and non-discriminatory standards set forth in rules and regulations drawn up in accordance with this article.

2. The Authority shall consider all qualified applications received within the preceding period of time referred to in article 6, paragraph 1, and shall give priority to those which:

(a) give better assurance of performance, taking into account the financial and technical qualifications of the proposed operator and performance, if any, under previously approved plans of work;

(b) provide earlier prospective financial benefits to the Authority, taking into account when production is scheduled to begin;

(c) have already invested most resources and effort in prospecting or exploration.

3. Applicants who are not selected in any period shall have priority in subsequent periods until they receive a contract.

4. Selection shall be made taking into account the need to enhance opportunities for all States Parties, irrespective of their social and economic systems or geographical locations, to participate in activities in the Area and to prevent monopolization of such activities.

5. The Authority shall have priority to exploit the reserved areas either solely through the Enterprise or through joint ventures with States Parties or with private entities sponsored by them whenever fewer reserved sites than non-reserved sites are under exploitation.

6. The Authority shall make its decisions pursuant to this article as promptly as possible after the close of each period.
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 continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations. The applicant shall indicate the coordinates dividing the area into two parts of equal estimated commercial value and submit all the data obtained by him with respect to both parts of the area. Without prejudice to the powers of the Authority pursuant to article 17 the data to be submitted concerning polymetallic nodules will relate to mapping, sampling, the density of nodules, and the composition of metals in them. Within forty-five 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 in association with developing States. This designation may be deferred for a further period of forty-five 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 9

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 entity.

2. The Enterprise may conclude contracts for the execution of part of its activities in accordance with article 12 of annex IV. 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 153, paragraph 2 (b), of Part XI of this Convention. When considering such joint ventures, the Enterprise shall offer to States Parties which are developing States 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 and conditions with respect to such contracts and joint ventures.

4. Any State Party which is a developing State or any natural or juridical person sponsored by it and effectively controlled by it or by other developing State which is a qualified applicant, or any group of the foregoing, may notify the Authority that it wishes to submit a plan of work pursuant to article 6 with respect to a reserved site. The plan of work shall be considered if the Enterprise decides, pursuant to paragraph 1, that it does not intend to carry out activities in that site.
Article 10

Separate stages of operations

If an operator in accordance with article 3, paragraph 4 (c), has an approved plan of work for exploration only, he shall have a preference and a priority among applicants for a plan of work for exploitation with regard to the same areas and resources; provided, however, that where the operator’s performance has not been satisfactory such preference or priority may be withdrawn.

Article 11

Joint arrangements

1. Contracts may provide for joint arrangements, when the parties so agree, between the contractor and the Authority through the Enterprise, in the form of joint ventures or production sharing, as well as any other form of joint arrangement which shall have the same protection against termination, suspension or revision as contracts with the Authority.

2. Contractors entering into such joint arrangements with the Enterprise may receive financial incentives as provided for in the financial arrangements established in article 13.

3. Joint venture partners of the Enterprise shall be liable for the payments required by article 13 to the extent of their joint venture share, subject to financial incentive as provided in article 13.

Article 12

Activities conducted by the Enterprise

1. Activities in the Area conducted under article 133, paragraph 2 (a), of Part XII of this Convention through the Enterprise shall be governed by the provisions of Part XII, and the relevant annexes, the rules, regulations and procedures of the Authority and its relevant decisions.

2. Any plan of work proposed by the Enterprise shall be accompanied by evidence supporting its financial and technological capability.

Article 13

Financial terms of contracts

1. In adopting rules, regulations and procedures concerning the financial terms of a contract between the Authority and the entities referred to in article 153, paragraph 2 (b), of part XI of this Convention in accordance with the provisions of part XI, 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 Areas;
(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 thereto, and to train the personnel of the Authority and of developing States;

(e) To enable the Enterprise to engage in non-bed mining effectively at the same time as the entities referred to in article 153, paragraph 2 (b), of Part XII of this Convention; and

(f) To ensure that the financial incentives provided to contractors under paragraph 14, or under the terms of contracts reviewed in accordance with article 19, or under the provisions of article 11 with respect to joint ventures, shall not result in subsidizing contractors with a view to placing them at an artificially 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. If the approved commencement of commercial production is postponed because of a delay in the allocation of the production quota, in accordance with article 151 of Part XII of this Convention, the annual fixed fee shall be waived for the period of postponement. 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 year from the date of commencement of the commercial production, in conformity with paragraph 5, a contractor shall choose to make his financial contribution to the Authority either by:

(a) Paying a production charge only; or

(b) Paying a combination of a production charge and a share of net proceeds.

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 in accordance with the following schedule:

   (i) Years 1-10 of commercial production 5 per cent

   (ii) Years 11 to the end of commercial production 12 per cent

(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 paragraphs 7 and 8.

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, such 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:

(i) First period of commercial production 2 per cent

(ii) Second period of commercial production 4 per cent

If, in the second period of commercial production, as defined in subparagraph (a), the return on investment in any accounting year, as defined in subparagraph (a), shall fall below 15 per cent as a result of the payment of the production charge at 2 per cent, the production charge shall be 2 per cent instead of 4 per cent in that accounting year.

(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 paragraphs 7 and 8.

(a) (i) The Authority's share of net proceeds shall be taken out of that portion of the contractor's net proceeds which is attributable to the mining of the resources of the contract area, referred to hereinafter as attributable net proceeds:

(ii) The Authority's share of attributable net proceeds shall be determined in accordance with the following incremental schedule:

<table>
<thead>
<tr>
<th>Return on Investment</th>
<th>First period of commercial production</th>
<th>Second period of commercial production</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greater than 0 per cent, but less than 10 per cent</td>
<td>35 per cent</td>
<td>40 per cent</td>
</tr>
<tr>
<td>Equal to or greater than 10 per cent, but less than 20 per cent</td>
<td>42.5 per cent</td>
<td>50 per cent</td>
</tr>
<tr>
<td>Equal to or greater than 20 per cent</td>
<td>50 per cent</td>
<td>70 per cent</td>
</tr>
</tbody>
</table>

(a) The first period of commercial production referred to in subparagraphs (a) and (a), shall commence in the first accounting year of commercial production, and terminate in the accounting year in which the contractor's development costs with interest on the unrecovered portion thereof are fully recovered by his cash surplus, as set out below:

In the first accounting year during which development costs are incurred, unrecovered development costs shall equal the development costs less cash surplus in that year. In each subsequent accounting year, unrecovered development costs shall equal the unrecovered development costs of the preceding accounting year, plus interest thereon at the rate of 10 per cent per annum, plus development costs incurred in the current accounting year and less contractor's cash surplus in the current accounting year. The accounting year in which unrecovered development costs become zero for the first time, shall be the accounting year in which the
contractor's development costs with interest on the unrecovered portion thereof are fully recovered by his cash surplus;

The contractor's cash surplus in any accounting year shall be his gross proceeds less his operating costs and less his payments to the Authority under subparagraph (c);

The second period of commercial production shall commence in the accounting year following the termination of the first period of commercial production and shall continue until the end of the contract.

(e) The term "attributable net proceeds" shall mean the product of the contractor's net proceeds and the ratio of the development costs in the mining sector to the contractor's development costs. In the event that the contractor engages in mining, transportation of nodules and production primarily of three processed metals, namely, cobalt, copper and nickel, the amount of attributable net proceeds shall not be less than 25 per cent of the contractor's net proceeds. Subject to subparagraph (a), in all other cases, including those where the contractor engages in mining, transportation of nodules, and production primarily of four processed metals namely, cobalt, copper, manganese and nickel, the Authority may, by regulations, prescribe appropriate floors which shall bear the same relationship to each case as the 25 per cent floor does to the three metal case.

(f) The term "contractor's net proceeds" shall mean the contractor's gross proceeds less his operating costs and less the recovery of his development costs as set out in subparagraph (j).

(g) (i) In the event that the contractor engages in mining, transportation of nodules and production of processed metals, the term "contractor's gross proceeds" shall mean the gross revenues from the sale of the processed metals, and any other monies deemed to be reasonably attributable to the operation of the contract in accordance with the financial rules, regulations and procedures of the Authority.

(ii) In all cases other than those specified in subparagraphs (g) (i) and (a) (iii) the term "contractor's gross proceeds" shall mean the gross revenues from the sale of the semi-processed metals from the nodules extracted from the contract area, and any other monies deemed reasonably attributable to the operation of the contract in accordance with the financial rules, regulations and procedures of the Authority.

(h) The term "contractor's development costs" shall mean:

(i) All expenditures incurred prior to the commencement of commercial production which are directly related to the development of the productive capacity of the contract area and the activities related thereto for operations under the contract, in conformity with generally recognized accounting principles, including inter alia, costs of machinery, equipment, ships, construction, buildings, land, roads, prospecting and exploration of the contract area, research and development, interest, required leases, licences, fees; and

(ii) Similar expenditures to those described in subparagraph (i) above, incurred subsequent to the commencement of commercial production, necessary to carry out the plan of work, except those chargeable to operating costs.
(i) The proceeds from the disposal of capital assets and the market value of
these capital assets which are no longer required for operations under the contract
which are not sold shall be deducted from the contractor's development costs
during the relevant accounting year. When these deductions exceed the contractor's
development costs the excess shall be added to the contractor's gross proceeds.

(ii) The contractor's development costs referred to in subparagraphs (h) (i)
and (n) (iv) shall be recovered in 10 equal annual instalments from the date of
commencement of commercial production. The contractor's development costs
incurred subsequent to the commencement of commercial production, referred to in
subparagraphs (h) (ii) and (n) (iv) shall be recovered in 10 or fewer equal annual
instalments so as to ensure their complete recovery by the end of the contract.

(k) The term "contractor's operating costs" shall mean all expenditures
incurred after the commencement of commercial production in the operation of
the productive capacity of the contract area and the activities related thereto, for
principles, including, but not limited to, the fixed annual fee or the production charge,
whichever is greater, expenditures for wages, salaries, employee benefits, utilities
materials, services, transportation, processing and marketing costs, interest,
interest, preservation of the marine environment, overhead and administrative costs
specifically related to the operation of the contract, and any net operating losses
carried forward or backward as specified below. Net operating losses may be carried
forward for two consecutive years except in the last two years of the contract
when they may be carried backward to the two preceding years.

(l) In the event that the contractor engages in mining, transportation of
modules, and production of processed and semi-processed metals, the term
"development costs of the mining sector" shall mean the portion of the contractor's
development costs which is directly related to the mining of the resources of the
contract area, in conformity with generally recognized accounting principles, and
including, but not limited to, the fixed annual fee, annual fixed fee, and, where applicable, costs of
prospecting and exploration of the contract area, and a portion of research and
development costs.

(m) The term "return on investment" in any accounting year, shall mean the
ratio of attributable net proceeds in that year to the development costs of the
mining sector. The Development costs of the mining sector for the purpose of this
subparagraph shall include expenditures on new or replacement equipment in the
mining sector less the original cost of the equipment replaced.

(n) In the event that the contractor engages in mining only:

(i) The term "attributable net proceeds" shall mean the whole of the
contractor's net proceeds;

(ii) The term "contractor's net proceeds" shall be as defined in
subparagraph (f) above;

(iii) The term "contractor's gross proceeds" shall mean the gross revenues
from the sale of the modules, and any other monies deemed to be
reasonably attributable to the operation of the contract in accordance
with the financial rules, regulations and procedures of the Authority;

(iv) The term "contractor's development costs" shall mean all expenditures
incurred prior to the commencement of commercial production as in
subparagraph (h) (i), and all expenditures incurred subsequent to the
commencement of commercial production, as in subparagraph (a) (ii),
which are directly related to the mining of the resources of the
contract area, in conformity with generally recognized accounting
principles;

(v) The term "contractor's operating costs" shall mean the contractor's
operating costs as in subparagraph (k), which are directly related to
the mining of the resources of the contract area in conformity with
generally recognized accounting principles;

(vi) The term "return on investment in any accounting year" shall mean the
ratio of the contractor's net proceeds in that year to the contractor's
development costs. Contractor's development costs for the purpose of
this subparagraph shall include expenditures on new or replacement
equipment less the original cost of the equipment replaced.

(c) The costs referred to in subparagraphs (b), (k), (l) and (a) above, in
respect of interest paid by the contractor may only be allowed if, in all the
circumstances, the Authority approves, pursuant to article 4, paragraph 1, the
debt-equity ratio and the rates of interest as reasonable, having regard to
existing commercial practice.

(p) The costs referred to in this paragraph shall not be interpreted as
including payments of corporate income taxes or similar charges levied by States
in respect of the operations of the contractor.

7. (a) The term "processed metals", referred to in paragraphs 5 and 6,
shall mean the metals in the most basic form in which they are customarily
traded on international terminal markets. For this purpose, the Authority shall
specify, in the financial rules, regulations and procedures, the relevant
international terminal market. For the metals which are not traded on such
markets, the term "processed metals" shall mean the metals in the most basic form
in which they are customarily traded in representative arm's length transactions;

(b) In the event that the Authority cannot otherwise determine the quantity
of the processed metals produced from the nodules extracted from the contract area
referred to in subparagraphs 5 (b) and 6 (b), the quantity shall be
determined on the basis of the metal content of the nodules extracted from the
contract area, processing recovery efficiency and other relevant factors in
accordance with the rules, regulations and procedures of the Authority, and in
conformity with generally recognized accounting principles.

8. If an international terminal market provides a representative pricing
mechanism for processed metals, nodules and semi-processed metals from the
nodules, the average price on such a market shall be used. In all other cases,
the Authority shall, after consulting the contractor, determine a fair price for
the said products in accordance with paragraph 9.

9. (a) All costs, expenditures, proceeds and revenues and all
determinations of price and value referred to in this article shall be the result
of free market or arm's length transactions. In the absence thereof, they shall
be determined by the Authority, after consulting the contractor, as though they
were the result of free market or arm's length transactions taking into account
relevant transactions in other markets.

(b) In order to ensure enforcement of and compliance with the provisions of
this paragraph, the Authority shall be guided by the principles adopted for, and
the interpretation given to, arm's length transactions by the United Nations Group
of ECOSOC on Multinational Enterprises, the Ad Hoc Group of Experts on Tax Treaties, between Developing and Developed Countries and other international organizations, and shall adopt rules and regulations specifying uniform and internationally acceptable accounting rules and procedures, and the means of selection by the Authority for contractor of certified independent accountants acceptable to the Authority for the purpose of auditing in compliance with the said rules and regulations.

10. The contractor shall make available to the accountants, in accordance with the financial rules, regulations and procedures of the Authority, such financial data as are required to determine compliance with this article.

11. All costs, expenditures, proceeds and revenues, and all prices and values referred to in this article, shall be determined in accordance with generally recognized accounting principles and the financial rules, regulations and procedures of the Authority.

12. The payments to the Authority under paragraphs 5 and 6 shall be made in freely usable currencies or currencies which are convertible in the major foreign exchange markets into freely usable currencies, or at the contractor’s option, in the equivalents of processed metals at market value. The market value shall be determined in accordance with paragraph 5 (b). Freely usable currencies shall be defined in accordance with the rules and regulations of the Authority.

13. All financial obligations of the contractor to the Authority, as well as all his fees, costs, expenditures, proceeds and revenues referred to in this article shall be adjusted by expressing them in constant terms relative to a base year.

14. The Authority may, taking into account any recommendations of the Economic Planning Commission and the Legal and Technical Commission, adopt rules and regulations that provide for incentives, on a uniform and non-discriminatory basis, to contractors to further the objectives set out in paragraph 1.

15. In the event of a dispute between the Authority and a contractor over the interpretation or application of the financial terms of a contract, either party may submit the dispute to binding commercial arbitration, unless both parties agree to settle the dispute by other means, in accordance with article 188, paragraph 2, of Part XII of this Convention.

Article 14

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 area covered by the plan of work.

2. Transferred data 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 promulgation of rules and regulations concerning protection of the marine environment and safety other than equipment design data shall not be deemed to be proprietary.

3. Data transferred to the Authority by prospectors, applicants for contracts for exploration and exploitation, and contractors deemed to be
proprietary shall not be disclosed by the Authority to the Enterprise or outside the Authority, but the data on the reserved sites may be disclosed to the Enterprise. 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 163, paragraph 2, of Part XI of this Convention are equally applicable to the staff of the Enterprise.

Article 15

Training programmes

The contractor shall draw up practical programmes for the training of personnel of the Authority and developing States, including the participation of such personnel in all activities covered by the contract, in accordance with article 144, paragraph 2, of Part XI of this Convention.

Article 16

Exclusive right to explore and exploit

The Authority shall, pursuant to Part XI and the rules and regulations prescribed by the Authority, accord the operator the exclusive right to explore and exploit the area covered by the plan of work in respect of a specified category of minerals and shall ensure that no other entity operates in the same area for a different category of minerals in a manner which might interfere with the operations of the operator. The operator shall have security of tenure in accordance with article 153, paragraph 2, of Part XI of this Convention.

Article 17

Rules, regulations and procedures

1. The Authority shall adopt and uniformly apply rules, regulations and procedures for the implementation of its functions as prescribed in Part XI on the following matters:

(a) Administrative procedures relating to prospecting, exploration and exploitation in the Area;

(b) Operations:

(i) Size of area;

(ii) Duration of operations;

(iii) Performance requirements including assurances pursuant to article 4, paragraph 6 (c);

(iv) Categories of resources;

(v) Renunciation of areas;

(vi) Progress reports;

(vii) Submission of data;
(viii) Inspection and supervision of operations;
(ix) Prevention of interference with other activities in the marine environment;
(x) Transfer of rights and obligations by a contractor;
(xi) Procedures for transfer of technology to developing States in accordance with article 14 of Part II of this Convention and for their direct participation;
(xii) Mining standards and practices including those relating to operational safety, conservation of the resources and the protection of the marine environment;
(xiii) Definition of commercial production;
(xiv) Qualification standards for applicants;
(c) Financial matters:
(i) Establishment of uniform and non-discriminatory costing and accounting rules, as well as the method of selection of auditors;
(ii) Apportionment of proceeds of operations;
(iii) The incentives referred to in article 13;
(d) Rules, regulations and procedures to implement decisions of the Council taken in pursuance of articles 151, paragraph 1, and 164, paragraph 2 (d), of Part II of this Convention.

2. Regulations on the following items shall fully reflect the objective criteria set out below:

(a) Size of area:

The Authority shall determine the appropriate size of areas for exploration which may be up to twice as large as those for exploitation in order to permit intensive exploration operations. The size of area shall be calculated to satisfy the requirements of article 8 on reservation of sites as well as stated production requirements consistent with article 151 of Part II in accordance with the terms 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.

(b) Duration of operations:

(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
Rules and regulations shall be drawn up in order to secure effective protection of the marine environment from harmful effects directly resulting from activities in the area or from shipboard processing immediately above a mine site of minerals derived from the mine site, taking into account the extent to which such harmful effects may directly result from drilling, dredging, coring and excavation as well as disposal, dumping and discharge into the marine environment of sediment, wastes or other effluents.

(g) 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 materials 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.

Article 18

Penalties

1. A contractor's rights under the contract concerned may be suspended or terminated only in the following cases:

(a) If, in spite of warnings by the Authority, the contractor has conducted his activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the contract, Part XI and the rules and regulations of the Authority, or

(b) If a contractor has failed to comply with a final binding decision of the dispute settlement body applicable to him.

2. The Authority may impose upon the contractor monetary penalties proportionate to the seriousness of the violation in any case of violation of terms of contract not covered under paragraph 1 (a), or in lieu of suspension or termination or in any case covered under paragraph 1 (a).

3. Except in cases of emergency orders as provided for in article 162, paragraph 2 (v), of Part XI of this Convention, the Authority may not execute a decision involving monetary penalties, suspension or termination until the contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to him pursuant to section 6 of Part XI.

Article 19

Revision of contract

1. When circumstances have arisen, or are likely to arise, which, in the opinion of either party, would render the contract inequitable or make it impracticable or impossible to achieve the objectives set out in the contract or in Part XI, the parties shall enter into negotiations to adjust it to new circumstances.

2. Any contract entered into in accordance with article 153, paragraph 3, of Part XI of this Convention may be revised only with the consent of the parties.
Article 20

Transfer of rights and obligations

The rights and obligations arising out of a contract shall be transferred only with the consent of the Authority, and in accordance with the rules and regulations adopted by it. The Authority shall not unreasonably withhold consent to the transfer if the proposed transferee is in all respects a qualified applicant and assumes all of the obligations of the transferor and if the transfer does not confer to the transferee a plan of work, the approval of which would be forbidden by article 6, paragraph 3 (d).

Article 21

Applicable law

1. The law applicable to the contract shall be the provisions of Part XI, the rules and regulations prescribed by the Authority, the terms and conditions of the contract, and other rules of international law not incompatible with this Convention. Any final decision rendered by a court or tribunal having jurisdiction by virtue of this Convention relating to the rights and obligations of the Authority and of the contractor shall be valid and enforceable in the territory of each State Party.

2. No State Party may impose conditions on a contractor that are inconsistent with Part XI. However, the application by a State Party of environmental or other regulations to sea-bed mining or to ships flying its flag, more stringent than those imposed by the Authority pursuant to article 17, paragraph 2 (f), shall not be deemed inconsistent with Part XI.

Article 22

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 168, 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 IV

Statute of the Enterprise

Article 1

Purpose

1. The Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly, pursuant to article 153, paragraph 2 (a) of Part XI of this Convention, as well as transportation, processing and marketing of minerals recovered from the Area.