DOCUMENT A/CONF.62/L.78

Draft convention on the law of the sea

[Original: English]
[28 August 1981]

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Unless the Commission decides otherwise, the Commission shall function by way of sub-committees composed of seven members, appointed in a balanced manner taking into account the specific elements of each submission by a coastal State. Nationals of the coastal State making the submission who are members of the Commission and any Commission member who has assisted a coastal State by providing scientific and technical advice with respect to the submission shall not be a member of the sub-committee dealing with that submission but has the right to participate as a member in the proceedings of the Commission concerning the said submission. The coastal State which has made a submission to the Commission may send its representatives to participate in the relevant proceedings without the right to vote.

Article 6

1. The sub-committee shall submit its recommendations to the Commission.
2. Approval by the Commission of the recommendations of the sub-committee shall be by a majority of two thirds of Commission members present and voting.
3. The recommendations of the Commission shall be submitted in writing to the coastal State which made the submission and to the Secretary-General of the United Nations.

Article 7

Coastal States shall establish the outer limits of the continental shelf in conformity with the provisions of article 76, paragraph 8, of Part VI of this Convention and in accordance with the appropriate national procedures.

Article 8

In the case of disagreement by the coastal State with the recommendations of the Commission, the coastal State shall, within a reasonable time, make a revised or new submission to the Commission.

Article 9

The actions of the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent 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. The Authority shall encourage the conduct of prospecting in the Area.
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 States referred to in article 153, paragraph 2 (a), of Part XI or this Convention, may apply to the Authority for approval of plans of work covering activities in 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 155, 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 three 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 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 155, paragraph 2 (a), 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. The criteria and procedures for implementation of the sponsorship requirement shall be set forth in the rules, regulations and procedures of the Authority.
3. The sponsoring State or States shall, pursuant to article 159 of Part XI of this Convention, 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 this 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 be part of his application undertaking:
   (a) to accept as enforceable and compliant 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 provided 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 appropriate 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. Undertakings 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 so requests, all information and on fair and reasonable commercial terms and conditions, the technology which he uses in carrying out activities in the Area under the contract and which he is legally entitled to transfer. This shall be done by means of licenses 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 an 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 under the contract 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 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;

(c) to acquire, if and when requested to do so by the Enterprise and whenever it is possible to do so without substantial cost to the contract, a legally binding and enforceable right to transfer to the Enterprise in accordance with subparagraph (a) any technology he uses in carrying out activities in the Area under the contract 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 existence of such a relationship and the degree of control or influence shall be relevant in determining whether all feasible measures have been taken. In cases where the operator exercises effective control over the owner, failure to acquire the legal rights from the owner shall be considered relevant to the applicant's qualifications for any subsequent proposed plan of work;

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

(e) to take the same measures as those prescribed in subparagraphs (a), (b), 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 part of the area proposed by the contractor which has been reserved pursuant to article 8 and provided that activities under the contract sought by the developing state or group of developing states shall 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 arising out of this undertaking shall be resolved by the parties and shall be subject to compulsory dispute settlement in accordance with Part XI of this Convention, and

monetary penalties, suspension, or termination of contract as provided in article 18. Disputes as to whether obligations under the contract are within the range of fair and reasonable commercial terms and conditions may be submitted to either party to binding commercial arbitration in accordance with the United Nations Commission on International Trade Law arbitration rules or other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority. In any case in which the finding is negative, the contractor shall be given 45 days to revise his offer to conform to within that range before the Authority makes any determinations with respect to violation of the contract and the imposition of penalties, as provided in article 18.

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 mining 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 provide the Enterprise on fair and reasonable terms and conditions.

6. In the case of joint ventures with the Enterprise, the 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 10 years after the Enterprise has begun commercial production of minerals from the resources of the Area and may be invoked during that period.

8. For the purposes of this article, "technology" means the specialized equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to operate, maintain, manage and maintain system and the legal right to use these items for that purpose on 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 fulfilled the procedures established for applications in accordance with article 4 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 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 inquiry under investigation have been made, the Authority shall approach 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 41, paragraph 2 (a), of Part XI of this Convention;

(c) the proposed plan of work has been submitted or sponsored by a State Party which already holds

(i) the undertaking required by paragraph 3, like other provisions of this Convention, shall be subject to compulsory dispute settlement in accordance with Part XI of this Convention, and

(ii) the undertaking required by paragraph 3 and the development and exploitation of polyvalent modules in non-reserved sites that, together with other parts of the proposed site, would exceed in size 30 per cent of a circular
area of 400,000 square kilometers surrounding the centre of either part of the area covered by the plan of work; and 

(6) plans of work for the exploration and exploitation of polymetallic nodules on non-renewable sites which aggregate site coverage of 2% of the total ocean area which is not reserved or otherwise withdrawn by the Authority from eligibility for exploitation pursuant to article 152, paragraph 2 (d), of Part XI of this Convention.

4. For the purpose of the standard set forth in paragraph 3 (e), a plan of work proposed by a partnership or consortium shall be counted on a pro rata basis among the sponsoring States Parties interested according to article 4, paragraph 2. The Authority may approve plans of work covered by paragraph 3 (e) if it determines that such approved would not permit a State Party or person sponsored by it to monopolize the conduct of activities in the Area or to prejudice other States Parties from activities in the Area.

5. Notwithstanding the provisions of paragraph 3 (a), after the end of the interim period as defined in article 151 of Part XI of this Convention, the Authority may adopt by means of rules, regulations, and procedures other procedures and criteria consistent with this Convention for deciding whether applicants shall have plans of work approved by the Authority or whether selection among applicants for a proposed area. These procedures and criteria shall ensure approval of plans of work on an equitable and non-discriminatory basis.

Article 7. Selection of applicants for production authorizations

1. Six months after the entry into force of this Convention, and thereafter each four months, the Authority shall take up for consideration applications for production authorization submitted during the immediately preceding period. In the event all such applications can be approved without exceeding the production limitations or contravening the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided in article 151 of Part XI of this Convention, the Authority shall issue the authorizations applied for.

2. Where the selection must be made among applicants for production authorization because of the production limitations 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 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.

3. The Authority shall consider all applications for production authorization received within the preceding period of time referred to in 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;

4. Applicants who are not selected in any period shall have priority in subsequent periods until they receive an authorization.

5. 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 so as to avoid discrimination against any State or system, to participate in activities in the Area, and to prevent monopolization of such activities. The provisions of this subparagraph shall be applied whenever the Authority considers priorities for production authorization.

6. Production authorization with respect to reserved areas shall have priority where fewer reserved sites than non-reserved sites are under exploitation.

7. The Authority shall make its decision 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 co-ordinates dividing the area into two parts of equal area 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 shall relate to mapping, sampling, the density of nodules, and the composition of nodules in them. 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 in association with developing States. This designation may be deferred for a further period of 45 days if the Authority requires 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 each such site in joint ventures with the interested State or entity.

2. The Enterprise may conclude contracts for the execution of such activities in accordance with articles 24, 25, and 26. If the Authority accepts an independent expert to assess whether all data required by this article has been submitted to the Authority, the Enterprise may conclude contracts for the execution of such activities in accordance with articles 24, 25, and 26. If the Authority rejects an independent expert to assess whether all data required by this article has been submitted to the Authority, the Enterprise may conclude contracts for the execution of such activities in accordance with articles 24, 25, and 26.

3. The Authority may prescribe, in the rules, regulations, and procedures of the Authority, other procedures and criteria consistent with this Convention for deciding whether applicants shall have plans of work approved by the Authority or whether selection among applicants for a proposed area. These procedures and criteria shall ensure approval of plans of work on an equitable and non-discriminatory basis.

Article 10. Separate stages of operations

If an operator in accordance with article 2, paragraph 4 (a), 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 area 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 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 effect. The Enterprise shall be entitled to give all necessary rights and facilities to any State or regional entity for joint ventures or production sharing in 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 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 incentives as provided in article 13.

Article 12. Activities conducted by the Enterprise

1. Activities in the Area conducted under article 135, paragraph 2 (a), of Part XI of this Convention through the Enterprise shall be governed by the provisions of Part XI, 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 19. 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 435, paragraph 2 (9), 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 revenue 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 to contractors to undertake joint arrangements with the Enterprise and developing countries or the 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 deep-sea mining effectively at the same time as the entities referred to in article 153, paragraphs 2 (9), of Part XI 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 entities.

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 exceeds the fee levied, 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 authorization, in accordance with article 121 of Part XI 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 commercial production, in conformity with paragraph 3, 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 as 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>Years after commencement of commercial production</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 10</td>
<td>10%</td>
</tr>
<tr>
<td>11 to 20</td>
<td>15%</td>
</tr>
<tr>
<td>21 to 30</td>
<td>20%</td>
</tr>
</tbody>
</table>

(b) The 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 subparagraph (m), shall fall below 15 per cent as a result of the payment of the production charge at 4 per cent, the production charge shall be 2 per cent instead of 4 per cent in that accounting year.

6. (a) 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.

(b) 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.

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

<table>
<thead>
<tr>
<th>Increment of Attribution</th>
<th>First period of commercial production</th>
<th>Second period of commercial production</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 per cent, but less than 10 per cent</td>
<td>35 per cent</td>
<td>40 per cent</td>
</tr>
<tr>
<td>10 per cent</td>
<td>40 per cent</td>
<td>45 per cent</td>
</tr>
<tr>
<td>20 per cent</td>
<td>45 per cent</td>
<td>50 per cent</td>
</tr>
<tr>
<td>30 per cent</td>
<td>50 per cent</td>
<td>55 per cent</td>
</tr>
</tbody>
</table>

(d) The first period of commercial production referred to in subparagraphs (g) and (h), 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.

(e) 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.

(f) 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 (g).

(g) 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.

(h) 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 (o), 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 other as the 25 per cent floor does to the three metal costs.

(i) 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).
In the event that the contractor engages in mining, transportation of modules 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 income deemed to be reasonably attributable to the operation of the contract in accordance with the financial rules, regulations and procedures of the Authority.

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

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 all cases other than that specified in subparagraph (a) (i) in conformity with generally recognized accounting principles, including, inter alia, costs of machinery, equipment, ships, processing plant, construction, buildings, land, roads, production and administrative facilities, research, and development, interest, required licenses, fees, and
to (ii) similar expenditures to those described in (i) above, incurred subsequent to the commencement of commercial production, necessary to carry out the plans of work, except those chargeable to operating costs.

The proceeds from the disposal of capital assets and the market value of those capital assets which are no longer required for operations under the contract and which are not sold shall be declared from the contractor's development costs during the relevant accounting year. Where these deductions exceed the contractor's development costs the excess shall be added to the contractor's gross proceeds.

The contractor's development costs referred to in subparagraphs (b) (i) and (ii) shall be recovered in 10 equal annual installments from the royalty cost of production of the contract area.

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

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 operations under the contract, in conformity with generally recognized accounting principles, including, inter alia, the fixed annual fee or the production charge whichever is greater, expenditures for wages, salaries, employee benefits, materials, services, transportation, processing and marketing costs, interest, utilities, 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.

In the event that the contractor engages in mining, transportation of modules, and production of 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 the financial rules, regulations and procedures of the Authority, including, inter alia, the fixed annual fee or the production charge, whichever is greater, expenditures for wages, salaries, employee benefits, materials, services, transportation, processing and marketing costs, interest, utilities, 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 either in the mining sector or the processing 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.

The term "attributable income" shall mean the whole of the contractor's net proceeds.

The term "contractor's net proceeds" shall be defined as in subparagraph (a) (i).

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

The term "contractor's development costs" shall mean all expenditures incurred prior to the commencement of commercial production as in subparagraph (a) (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.

The term "contractor's operating costs" shall mean the contractor's gross proceeds, and in cases, which are directly related to the mining of the resources of the contract area, in conformity with generally recognized accounting principles.

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.

The costs referred to in subparagraphs (a) (i) and (ii), in respect of interest paid by the contractor shall be added to the interest cost.

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

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 terminals. For purposes, the Authority shall specify, in the financial rules, regulations and procedures, the relevant international terminal market. For the purposes of this paragraph "processed metals" shall mean the metals in the most basic form in which they are customarily traded in international terminal markets.

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

If an international terminal market provides a representative pricing mechanism for processed metals, modules, and semi-processed metals from the modules, the average price for 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 5.

All costs, expenditures, proceeds and revenues and all cost 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, for the purpose of arm's length transactions taking into account other transactions in the market.

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, any arm's length transactions by the Commission on Transnational Corporations created by the Economic and Social Council of the United Nations, 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 contractor of certified independent accountants acceptable to the Authority for the purpose of auditing in compliance with the said rules and regulations.

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 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 freely available and effectively usable on the major foreign exchange markets, or as the contractor's option, in the equivalents of processable metals at market value. The market value shall be determined in accordance with paragraph 5 (b). The freely usable currencies and currencies which are freely available and effectively usable on the major foreign exchange markets shall be defined in the rules, regulations and procedures of the Authority in accordance with prevailing international monetary practice.

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 encourage and 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 138, paragraph 2, of Part XI 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 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 desirous to be proprietors 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 the Authority. The responsibilities set forth in article 168, 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 each person in all activities covered by the contract, in accordance with article 146, 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 6, of Part XI of this Convention.

Article 17. Rules, regulations and procedures

1. The Authority shall adopt and uniformly apply rules, regulations and procedures in accordance with article 160, paragraph 2(f), (l), and article 162, paragraph 20(b) of Part XI of this Convention, for the implementation of its functions as prescribed in Part XI, in the areas referred to in the following matters:

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

(b) operation:

(i) size of area;

(ii) duration of operations;

(iii) performance requirements including assurance pursuant to article 4, paragraph 6 (c);

(iv) categories of resources;

(v) designation 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 144 of Part XI 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 mineral 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 12;

(iv) rules, regulations and procedures to implement decisions of the Council taken in pursuance of articles 154, paragraph 4, and 164, paragraph 260, of Part XI 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 XI of this Convention 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 not 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 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-scale mining facilities and mining 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 ore, the useful life of mining equipment and processing facilities and commercial viability. Exploration 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 extend the terms and conditions of the plan of work at the time it considers renewal in accordance with rules and regulations which it has issued subsequent to entering into the plan of work.

(c) Performance requirements:

The Authority shall require that during the exploitation stage, periodic expenditures be made by the operator which are reasonably
related to the size of the area covered by the plan of work and the expenditures which would be expected of a bona fide operator who intended to bring the area into commercial production within the time-limits established by the Authority. Such required expenditures should 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 exploitation stage is completed and the exploitation stage begins to achieve commercial production. To determine this interval, the Authority should take into consideration that continuation of large-scale mining and processing systems cannot be initiated until after the termination of the exploitation 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 exploitation stage and reasonable allowance should be made for unavoidable delays in the construction schedule. Once commercial production is achieved, the project would result from mining, dredging, and reasonable limits and taking into consideration all relevant factors require the operator to maintain commercial production throughout the period of the plan of work.

(c) Categories of resources:
In determining the category of resources in respect of which a plan of work may be approved, the Authority shall give emphasis to those following characteristics:

(i) resources which require the use of similar mining methods; and
(ii) resources which can be developed simultaneously without undue interference between operators in the same area developing different resources.

Nothing in this subparagraph shall deter the Authority from granting a contract for more than one category of mineral in the same area to the same applicant.

(e) Renunciation of areas:

The operator shall have the right at any time to renounce without penalty the whole or part of his rights in the area covered by a plan of work.

(f) Protection of the marine environment:
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 shipment processes 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 sampling 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 when 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 16. 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 within violations of the fundamental terms of 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 in any case covered under paragraph 1 (b).

3. Except in cases of emergency orders as provided for in article 162, paragraph 2 (a), of Part XI of this Convention, the Authority may not exercise 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 Part XI, section 5.

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 unworkable or make it impracticable or unnecessary 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 2, 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 cases 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 entitled to assume the obligations of the transferor and if the transfer does not confer on the transferee a plan of work, the approval of which would be forbidden by article 6, paragraph 3 (d).

Article 21. Applicable law

The law applicable to the contract shall be the law of Part XI, the rules and regulations of 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 near-shore minerals is an option as long as it does not exceed what is 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 and 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, of Part XI of this Convention, shall lie with the Authority, account being taken of contributory factors by the contractor. Liability in each case shall be for the actual amount of damage.

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 (d), of Part XI of this Convention, as well as transportation, processing and marketing of minerals recovered from the area.

2. In carrying out its purposes and in the performance of its functions, the Enterprise shall act in accordance with the provisions of this Convention, including its Annexes, and the rules, regulations and procedures of the Authority.

3. In developing the resources of the area pursuant to paragraph 1, the Enterprise shall, subject to the provisions of this Convention, operate on sound commercial principles.

Article 2. Relationship to the Authority

1. Pursuant to article 170 of Part XI of this Convention, the Enterprise shall act in accordance with the general policies of the Assembly and the directives of the Council.

2. Subject to paragraph 1, the Enterprise shall enjoy autonomy in the conduct of its operations.

3. Nothing in this Convention 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.