Suggested compromise formula
(first draft)

ANNEX II

Basic conditions of exploration and exploitation

Title to minerals

Title to the minerals shall be passed to the contractor upon recovery of the minerals pursuant to a contract of exploration and exploitation. In the case of contracts pursuant to subparagraph (b) of paragraph 3 of this annex for stages of operations, title to the minerals and refined minerals shall pass in accordance with the contract. This paragraph is without prejudice to the rights of the Authority under paragraph 7 of this annex.

Prospecting

2. (a) The Authority shall encourage the conduct of prospecting in the Area. Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector shall comply with the present Convention and the relevant rules and regulations of the Authority concerning protection of the marine environment, the transfer of data to the Authority, the training or personal designated by the Authority and accepts verification of compliance by the Authority with all of its rules and regulations in so far as they relate to prospecting. The proposed prospector shall, together with the undertaking, notify the Authority of the broad area or areas in which prospecting is to take place. Prospecting may be carried out by more than one prospector in the same area or areas simultaneously. The Authority may close a particular area for prospecting when the available data indicates the risk of irreparable harm to a unique environment or unjustifiable interference with other uses of the Area.

(b) Prospecting shall not confer any preferential, proprietary, exclusive or any other rights on the prospector with respect to the resources.

Contracts for exploration and exploitation

3. (a) Exploration and exploitation shall be carried out only in areas specified in plans of work referred to in paragraph 3 of article 151 and approved by the Authority in accordance with the provisions of this annex and the relevant rules, regulations and procedures adopted pursuant to paragraph 11 of this annex.

(b) Contracts shall normally cover all stages of operations. If the applicant for a contract applies for a specific stage or stages, the contract may only comprise such stage or stages.
(e) Every contract entered into by the Authority shall:

(ii) Be in strict conformity with the present Convention and the rules and regulations adopted by the Authority;

(iii) Ensure control by the Authority of activities in the area in accordance with paragraph 4 of article 151;

(iv) Confer on the contractor exclusive rights for the exploration and exploitation of the resources in the contract area in accordance with the rules and regulations of the Authority.

Qualifications of applicants for contracts.

4. (a) The Authority shall adopt, in accordance with paragraph 21 of this annex, appropriate administrative procedures and rules and regulations for making an application and for the qualifications of an applicant. Such qualifications shall include financial standing, technological capability and satisfactory performance under any previous contracts with the Authority.

(b) The procedures for assessing the qualifications of States Parties which are applicants shall take into account their character as States;

(c) Every applicant without exception shall:

(i) Undertake to accept and enforceable and to comply with the obligations created by the provisions of Part XI of the present Convention, the rules and regulations adopted by the Authority, and the decisions of its organs and the terms of contracts;

(ii) Make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the non-reserved area, as well as other relevant information about the characteristics of such technology. That description shall be submitted with the application and thereafter whenever a substantial technological change or innovation is introduced;

(iii) Undertake to use, in carrying out activities in the Area, technology other than that covered by (ii ter) only if he has obtained written assurance from the owner of the technology that he will, if and when the Authority so requests, make available to the Enterprise that technology under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions;

(ii ter) (former (ii bis) in the ICM). Undertake to make available to the Enterprise, if he receives the contract 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, upon the conclusion of the contract and if and when the Authority shall so request, by means of licence or other appropriate arrangements which the Contractor shall negotiate with the Enterprise and which shall be set forth in a special agreement supplementary to the contract;

(iv) Undertake to facilitate, upon the conclusion of the contract and if and when the Authority shall so request, the acquisition by the Enterprise under licence or other appropriate arrangements and on fair,
and reasonable commercial terms and conditions, the technology which is to be used by the Contractor and which the Contractor is not legally entitled to transfer.

(iii) Undertake the same obligations as those prescribed in (ii) (a), (ii) (b) and (ii) (c) for the benefit of a developing country or a group of developing countries which has applied for a contract under paragraph 5 (a) (ii), provided that these obligations 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 country or group of developing countries would not involve transfer of technology to a developed country or the nationals of a developed country;

(iii) Accept control by the Authority in accordance with subparagraph (c) (ii) of paragraph 3;

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

Selection of applicants for contracts

5. (a) SIX (six) months after the entry into force of the present Convention, and thereafter each fourth month, the Authority shall review applications received for contracts with respect to activities of exploration and exploitation.

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

(i) the applicant has complied with the procedures established for applications in accordance with paragraph 4 of this annex and has given the Authority the commitments and assurances required by that paragraph.

(ii) the applicant possesses the requisite qualifications pursuant to paragraph 4.

(c) Once it is established that the conditions referred to in subparagraph (b) above are met, the Authority shall determine whether more than one application has been received within the preceding time period as provided in subparagraph (a) above in respect of substantially the same area and category of minerals and whether the granting of a contract would be in conformity with the provisions of subparagraph (g) of paragraph 1 of article 150 and the relevant decisions of the Authority in implementation thereof. If no competing application has been received, and if the granting of a contract would be in conformity with subparagraph (g) of paragraph 1 of article 150, the Authority shall without delay enter into negotiations with the applicant with a view to concluding a contract.

(d) The negotiations referred to in subparagraph (c) above shall, within the framework of the provisions of Part XII of the present Convention and the rules, regulations and procedures of the Authority adopted under subparagraph (xvi) of
paragraph 2 of Article 158 and subparagraph (xiv) of paragraph 2 of Article 160,
deal with:

(i) operational requirements under regulations adopted pursuant to
paragraph 1 of this annex such as duration of activities, size or area,
performance requirements and protection of the marine environment;

(ii) the financial contribution to be made by the applicant under the
financial arrangements established in paragraph 7 of this annex, and
participation in the project by developing countries, on the basis of
the incentives for such participation established in paragraph 7;

(iii) transfer of technology under programmes and measures pursuant to
Article 148, and subparagraph (c) (ii) of paragraph 4 of this annex.

(e) in the course of the negotiations referred to in subparagraph (d) above,
and prior to the conclusion of a contract, the Authority shall ensure that such
contract would be in full conformity with the provisions of Part XI of the present
Convention and the rules, regulations and procedures of the Authority adopted under
subparagraph (xvi) of paragraph 2 of Article 158 and subparagraph (xiv) of
paragraph 2 of Article 158, in particular the provisions, rules, regulations and
procedures on the issues enumerated in subparagraph (d) above, and the provisions
of subparagraph (g) of paragraph 1 of Article 150, and the relevant decisions of
the Authority in implementation thereof.

(f) the negotiations referred to in subparagraph (d) above shall be conducted
as expeditiously as possible. As soon as the issues under negotiation in
accordance with subparagraph (d) above have been settled, the Authority shall
conclude the corresponding contract with the applicant. In cases of refusal of
contract the Authority shall state the reasons for such refusal.

(g) if the Authority receives within the applicable time period as provided
in subparagraph (d) above more than one application in respect of substantially
the same part of the area and category of minerals, or if the applications received
within that time period cannot all be accommodated within the production limits
established in subparagraph (g) of paragraph 1 of Article 150, selection from among
the applicants shall be made on a competitive basis. Taking into consideration the
requirements specified in paragraph (a) above, the Authority shall enter into
negotiations with the applicants in order to make its selection on the basis of a
competitive evaluation of their applications and qualifications. In conducting
such negotiations, the Authority shall take into account the need to provide for
all States Parties, irrespective of their social and economic systems or
geographical locations, opportunities to participate in the development of the
resources in the Area and the need to prevent monopolization of such activities.
In so doing the Authority shall also take into account the need to give
priority to applicants who are ready to enter into such joint arrangements with the
Enterprise as referred to in subparagraphs (i) and (j) (iii) below. Once the
selection is made, the Authority shall enter into negotiations with the selected
applicant or applicants on the terms of a contract in accordance with subparagraphs
(c) and (d) above.

(h) if the Contractor in accordance with subparagraph (b) of paragraph 3 of
this annex has entered into a contract with the Authority for separate stages of
operations, he shall have a preference and a priority among applicants for a
contract for subsequent stages of operations with regard to the same areas and
resources; provided, however, that where the Contractor's performance has not been satisfactory such preference or priority may be withdrawn.

(i) Contracts for the exploration and exploitation of the resources of the Area may provide for joint arrangements between the Contractor and the Authority through the Enterprise in the form of joint ventures, production sharing or service contracts, as well as any other form of joint arrangement for the exploration and exploitation of the resources of the Area.

(ii) The proposed contract area shall be sufficiently large and of sufficient value to allow the Authority to determine that one half of it shall be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing countries. Upon such determination by the Authority the Contractor shall indicate the co-ordinates dividing the area into two halves of equal estimated economic value and the Authority shall designate the half which is to be reserved. The Contractor may, alternatively, submit two non-contiguous areas of equal estimated economic value, of which the Authority shall designate one as the reserved area. The determination by the Authority of one half of the area, or of one of two non-contiguous areas, as the case may be, in accordance with the provisions of this subparagraph, shall be made as soon as the Authority has been able to examine the relevant data as may be necessary to decide that both parts are equal in estimated economic value.

Areas designated by the Authority as reserved areas in accordance with this subparagraph, may be exploited only through the Enterprise or in association with developing countries.

(iii) In conducting activities in areas reserved in accordance with this subparagraph, the Enterprise may enter into joint arrangements of the kind referred to in subparagraph (i) above with other entities referred to in subparagraph (ii) of paragraph 2 of article 15. In such joint arrangements appropriate provision shall be made for participation by developing countries. The nature and extent of such participation shall be approved by the Authority.

(iv) If upon a request in accordance with paragraph 4 (c), the pertinent negotiations are not concluded within a reasonable time, either party may refer any matter arising in the negotiations to conciliation in accordance with annex IV of this Convention. The conciliation commission shall within 60 days make recommendations to the parties which shall form the basis of further negotiations. Should the latter negotiations fail, either party may refer to arbitration within 90 days, the question of the fulfillment of the undertakings made in accordance with Paragraph 4 (c). In the event that the Contractor does not accept; or fails to implement the arbitral decision, the Contractor shall be liable to penalties in accordance with the provisions of paragraph 12 of this annex.

(v) Nothing in this subparagraph shall be interpreted as preventing the Enterprise from carrying out activities in accordance with this Annex in any part of the Area not subject to contract or joint arrangement.
(x) Contractors entering into such joint arrangements with the Enterprise as referred to in subparagraphs (i) and (j) (iii) above may receive financial incentives as provided for in the financial arrangements established in paragraph 7 of this annex.

(1) While the inclusion of a quota or anti-monopoly provision appears to be acceptable in principle, its detailed formulation has yet to be fully negotiated.

Transfer of data

8. The Contractor shall transfer in accordance with the rules and regulations and the terms and conditions of the contract 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 contract area. Transferred data in respect of the contract area, deemed to be proprietary, shall not be disclosed by the Authority, and may only be used for the purposes set forth above in this subparagraph. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment and safety shall not be deemed to be proprietary. Except as otherwise agreed between the Authority and the Contractor, the Contractor shall not be obliged to disclose proprietary equipment design data.

Training programmes

9. The Contractor shall draw up practical programmes for the training of personnel of the Authority and developing countries, including the participation of such personnel in all activities covered by the contract, in accordance with paragraph (5) of article 34.

Exclusive right to explore and exploit in the contract area

10. The Authority shall, pursuant to Part XI of the present Convention and the rules and regulations prescribed by the Authority, accord the Contractor the exclusive right to explore and exploit the contract area with the Authority in respect of a specified category of minerals and shall ensure that no other entity operates in the same contract area for a different category of minerals in a manner which might interfere with the operations of the Contractor.

The Contractor shall have security of tenure in accordance with paragraph 5 of article 151.