Third Committee, parts XV and XVI and annexes IV to VII to the plenary Conference, operating as a Committee.

Any delegation that wishes to submit formal amendments should endeavour to do so before the suspension of the session.

At this point, the session should be suspended to enable Governments to study the final draft convention and any amendments submitted.

Final stage

During the first 10 calendar days of the resumed session the committees should examine the draft convention. Any amendments not previously submitted would have to be submitted formally on the first day of this period. During that period of 10 calendar days the Chairmen, with the assistance, as appropriate, of the officers of their Committees, would have to pursue their efforts to facilitate the attainment of general agreement, having regard to the progress made on all matters of substance which are closely related to one another.

By the end of this period a decision on all pending amendments will be taken by the Committees.

The subsequent steps which would be taken during the resumed session could be determined by the Conference on the recommendations of the General Committee on the first day of the resumed session, so that the convention can be adopted before the end of the fifth week of the resumed session, having due regard to the rules of procedure and to the Gentlemen’s Agreement appearing as an appendix to the rules of procedure.

DOCUMENT A/CONF.62/L.43

Report of the Chairman of the First Committee on the negotiations in the First Committee

[Original: English]

(29 August 1979)

1. Negotiations on matters falling within the mandate of the First Committee and consequently in part XI of the revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1), were, during this resumed session, continued in the working group of 21 established at Geneva last spring. In that group very intensive negotiations were followed by what the co-ordinators, including myself as Chairman, consider to be productive consultations on some of the critical questions relating to the hard-core issues.

2. I do not wish to duplicate by a further explanatory note the comprehensive report of the First Committee (A/CONF.62/C.1/L.26), which is annexed to this report. The 46th formal meeting of the First Committee was held on 22 August 1979 to consider it and some delegations placed on record their preliminary comments, both on the report and on the contents of the suggestions contained in document WG 232 (see appendix A).

3. I must also report that most delegations refrained from commenting on details because they needed time to study the suggestions. Perhaps more important, most of the delegations considered that it was undesirable to comment prematurely on what clearly represented only some elements of the package that must emanate from the hard-core issues before the First Committee.

4. It would appear, none the less, that it was generally agreed that much valuable work has been done at this resumed session and that consequently the results should be preserved at least for the purpose of providing a satisfactory starting point at the next session of the Conference—which will also be the final phase of our work.

5. All of these are to be found in the summary records of the proceedings before the First Committee.

6. The planning of the final phase, therefore, is the main preoccupation of my comments today. One overriding feature of our negotiations is the truth that a consensus on the outstanding issues before the First Committee must, of imperative necessity, address an important reservoir of mini-packages. The major package itself is not always easy to identify; some delegations often regard it as one of the character with each step made in our negotiations. For convenience, therefore, the major package must be regarded as part XI of the negotiating text as a whole.

7. From the point of view of which I speak are comparatively easier to identify; but even here, there is hardly total agreement among the opposing sides as to their scope and content. The difficulty would appear to lie, in the first instance, in the variety of perspectives entertained by the two major interest groups, notably the developed and the developed countries. A more complex situation is posed by the perspectives of delegations with interests that cut across the traditional dichotomy. Among the developed countries are the major as well as the minor industrialized countries, both with varying degrees of interests.

8. In the world of developing countries, there are those who, as land-based producers or potential producers of the mineral that are the focus of intense debate, that is, the deep sea-bed, must share a community of interests with some developed countries, also producers of the same minerals. Among the industrialized countries, the rate of development in economic and technological terms has been so uneven that our negotiating efforts must address seriously the apprehension of the majority with regard to monopoly threatened by the accelerated technological developments of a significant minority among them. There is also a curious community of interests among a number of countries opposed to discrimination in the award of contracts, even though the immediate motivations may be diverse.

9. The discussion of packages is thus complex and, indeed, delicate, especially because there is a tendency to equate them with the extreme priorities of individual delegations. There is a tendency to talk of “important national interest” in loose terms, without the more desirable approach of attempting to reconcile one’s so-called national interests with the many diverse national interests of others within the international community and this Conference.

10. In the final analysis, I believe that the only packages that must preoccupy us in the search for compromise and consensus over part XI of the negotiating text are:

(a) Those which must reconcile the declared realistic interests of the few industrialized countries on the one hand, and, on the other hand, those of the vast majority of mankind represented by predominately developing countries; and

(b) Those which must reconcile the declared realistic interests of two other opposing categorizations of countries. On the one hand, the family of current producers of the minerals in their national territories we seek to exploit in the area, whose economies depend significantly upon their export to the industrialized countries; on the other hand, the highly industrialized countries whose industrial growths consume these minerals, provide healthy markets for the producer countries and who, with contemplated activities in the area, seek assured access to the new source of these minerals through active participation as producers therein.

11. It can only be hoped that, in this monumental reconcentration effort, all concerned will give due consideration to the needs of the young and fragile international community in which we can only survive together or perish like unthinking mortals, who punch each other senselessly into smelting lava from an erupting mountain.

12. One point that must be noted at this stage is that it is impossible to meet all the individual national interests of
of technology. Article 2 of annex II, dealing with prospecting, is not the right place to set forth the obligations related to training of personnel. What is necessary is to indicate the scope of the obligations of the prospector with respect to training, which is dealt with in articles 143 and 144. It was not necessary to establish a separate or new obligation in this provision: but it would be sufficient to provide for the co-operation of the prospector in the training programmes so that the personnel of the Authority and the developing countries would be able to acquire prospecting skills.

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

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

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

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

In article 6, relating to the reservation of sites, some amendments were introduced in order to ensure that the Authority would obtain all the data necessary to make the right decision on the selection of the reserved site. There is a new sentence, according to which the Authority may request an independent expert to assess whether the applicant has submitted all data required. It has been considered common sense to separate into two different articles the provisions of article 6 in the revised negotiating text. The existing and new provisions dealing with the condition under which activities in reserved sites will be carried out are grouped in a new article (art. 8 bis). Paragraphs 1 and 4 of this new article are to clarify the process according to which the Enterprise shall decide whether it will carry out activities in the reserved site and the extent to which developing countries may have access to the reserved sites if the Enterprise decides not to exploit the sites itself or in joint ventures with such countries. The new paragraph 2 deals with the conclusion of contracts by the Enterprise in respect of certain activities, as well as entries into joint ventures with other entities on a voluntary basis. The matters dealt with in the new paragraphs 2, 3, and 4 are quite complex and in many respects delicate, and consequently further discussion in these matters may be required.

In article 10, the introduction of the words "when the parties so agree" in paragraph 1 has been made in order to stress the voluntary character of joint arrangements between the contractor and the Authority. Paragraph 3 is a new one and establishes the obligation of the partners of the Enterprise in joint ventures in reserved sites to pay the financial contributions required by article 12 to the extent of their share, subject to financial incentives as provided for in article 12.

The new wording of article 13, paragraph 3, appears in document W21/2. The amendments introduced in this provision are meant to make more precise the responsibilities of the Authority and the Enterprise concerning the disclosure of proprietary data.

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

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

With regard to the anti-monopoly clause, the delegations of France submitted to the group a proposal suggesting a now wording for article 6, paragraphs 3 and 4, and article 7, paragraph 2 and 3. This proposal and an explanatory note are contained in document W21/ Informal Paper 3 of 10 August 1979. Since the proposal dealt in part with a technical subject which is extremely complex, there was not sufficient time to examine it and discuss it thoroughly. Another opportunity will be provided to take up this matter in the future.

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

APPENDIX A

Suggestions resulting from consultations held by the Chairman and co-ordinators of the working group of 21*.

A. SYSTEM OF EXPLORATION AND EXPLOITATION

Article 140. Benefits of mankind

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

Annex II

Article 1. Title to minerals

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

Article 2. Prospecting

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

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

(d) (Deleted)

2. Prospecting shall not confer any preferential, proprietary, exclusive or any other rights on the prospector with respect to the

*Document W21/2.
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), may apply to the Authority for approval of plans of work covering exploration and exploitation of resources of the Area.

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

(Formerly para. 1) 3. Exploration and exploitation shall be carried out only in areas specified in plans of work referred to in article 153, paragraph 3, and approved by the Authority in accordance with the provisions of this annex and the relevant rules, regulations and procedures of the Authority.

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

(a) Be in strict conformity with the present Convention and the rules and regulations of the Authority;
(b) Ensure control by the Authority of activities in the Area in accordance with article 153, paragraph 4;
(c) Confer on the operator exclusive rights for the exploration and exploitation of the specified category of resources in the area covered by the plan of work in accordance with the rules and regulations of the Authority. If the applicant presents a plan of work for one of the two stages only, the plan of work may confer exclusive rights with respect to such a stage.

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

Article 4. Qualifications of applicants

1. Applicants, other than the Enterprise, shall be qualified if they have the nationality or control and sponsorship required by article 153, paragraph 2 (A), 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 159, confer on the applicant the responsibility to ensure, within their legal systems, that a contractor or sub-contractor shall carry out the works in the Area in conformity with its obligations under the present Convention and the terms of its contract. A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has exercised legislation and provided for administrative procedures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction.

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

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

(Formerly para. 4) 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, and terms of his contracts with the Authority;
(b) To accept control by the Authority of activities in the Area, as authorized by the present Convention;
(c) To provide the Authority with a written assurance that his obligations under the contract will be fulfilled in good faith;
(d) To comply with the provisions on the transfer of technology set forth in article 5 of the present annex.

Article 5. Approval of plans of work submitted by applicants

1. Six months after the entry into force of the present 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 exploration and exploitation, the Authority shall first scrutinize whether:

(a) The applicant has complied with the procedures established for applications in accordance with article 4 of the present annex and has given the Authority the commitments and assurances required by that article. In cases of non-compliance with these procedures or of absence of any of the commitments and assurances referred to, the applicant shall be given 45 days to remedy such defects;
(b) The applicant possesses the requisite qualifications pursuant to article 4;
(c) All proposed plans of work shall be dealt with in the order in which they are received, and the Authority shall conduct, as necessary and as expeditiously as possible, an inquiry into their compliance with the terms of the present Convention and the rules, regulations, and procedures of the Authority, including the operational requirements, the financial contributions and the undertakings concerning the transfer of technology. As soon as the terms of the inquiry 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;
(b) Part or all of the proposed area is disapproved by the Authority pursuant to article 162, paragraph 2 (w);
(c) Selection among applications received during that period of time is necessary because approval of all plans of work proposed during that period would be contrary to the production limitations set forth in article 151, paragraph 2, or to the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided for in article 151, paragraph 1:
(d) The proposed plan of work has been submitted or sponsored by a State Party which has already approved:

(i) Three plans of work for exploration and exploitation of sites not reserved pursuant to article 8 of the present annex within a circular area of 400,000 square kilometers which is centered upon a point selected by the applicant within the requested additional area;
(ii) Plans of work for exploration and exploitation of sites not reserved pursuant to article 8 which in aggregate size constitute 2% of the total unallocated area which is not reserved pursuant to article 153, paragraph 3 (d) or otherwise withdrawn by the Authority from eligibility for exploitation pursuant to article 163, paragraph 2 (w).

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

Article 2. Reservation of sites

Each application, other than those proposed by the Enterprise or by any other 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 proposed operator shall indicate the coordinates of 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. Within 45 days of receiving such data the Authority shall designate the part which it is to be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing countries. This designation may be deferred for a further period of 45 days if the Authority requests an independent expert to assess whether all data required by this article have been submitted to the Authority. The area designated shall become a reserved area as soon
as the plan of work for the non-reserved area is approved and the contract is signed.

Article 8 bis. 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 or all of its activities in accordance with article 11 of annex II. It may also enter into joint ventures with any willing entities that are eligible to carry out activities in the Area pursuant to article 153, paragraph 2 (b). When considering such joint ventures, the Enterprise shall offer to States Parties which are developing countries and their nationals the opportunity of effective participation.

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

4. Any State Party which is a developing country or any national entity sponsored by it which is a qualified applicant or any group of the foregoing, may notify the Authority that it wishes to apply for a plan of work pursuant to article 11 of the present annex with respect to a reserved site. The plan of work shall be considered if the Enterprise decides, pursuant to paragraph 1 above, that it does not intend to carry out activities in that site.

Article 10. Joint arrangements

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

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

3. Joint venture partners of the Enterprise in the reserved sites shall be liable for the payments required by articles 12 of the present annex to the extent of their joint venture share, subject to financial incentives as provided for in article 12.

Article 13. Transfer of data

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

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

3. Data transferred to the Authority by 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 of the Authority. Such data transferred by such persons to the Enterprise shall not be disclosed by the Enterprise to the Authority or outside of the Authority. The responsibilities set forth in article 168, paragraph 2, are equally applicable to the staff of the Enterprise.

B. FINANCIAL ARRANGEMENTS

1. FINANCIAL TERMS OF CONTRACT

Annex II

Article 12

1. In adopting rules, regulations and procedures concerning the financial terms of a contract between the Authority and the entities referred to in article 153, paragraph 2 (b), in accordance with the provisions of Part XI of the present Convention, the Authority shall be guided by the following objectives:

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

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

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

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

(e) To enable the Enterprise to engage in sea-bed mining effectively at the same time as the entities referred to in article 153, paragraph 2 (b);

(f) To ensure that the financial incentives provided to contractors under paragraph 14 of this article, or under the terms of contracts reviewed in accordance with article 18, or under the provisions of article 19 with respect to joint ventures, shall not result in subsidizing contractors with a view to placing them at an artificial competitive advantage relative to land-based miners.

2. A fee shall be levied for the administrative cost of processing an application for a contract of exploration and exploitation and shall be fixed at an amount of $500,000 per application. If the cost incurred by the Authority in processing an application is less than $500,000, the Authority shall refund the difference to the applicant.

The amount of the fee shall be reviewed from time to time by the Council in order to ensure that it covers the administrative cost of processing such an application.

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

4. Within a month from the date of commencement of the commercial production, the Contractor shall be required to file a report on the steps taken toward the implementation of the production charge or the annual fixed fee, whichever is greater.

5. If, after a period of five years from the date of entry into force of the contract, the Contractor decides not to proceed, the Contractor shall pay to the Authority a sum equal to the present value of the production charge or the annual fixed fee, whichever is greater.

6. The Contractor shall be responsible for the costs of the exploration and exploitation of the Area, including the costs of the operations carried out under the contract.

7. The Contractor shall be responsible for the costs of the exploration and exploitation of the Area, including the costs of the operations carried out under the contract.

Annex III

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), in accordance with the provisions of Part XI of the present Convention, the Authority shall be guided by the following objectives:

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

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

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

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

(e) To enable the Enterprise to engage in sea-bed mining effectively at the same time as the entities referred to in article 153, paragraph 2 (b);

(f) To ensure that the financial incentives provided to contractors under paragraph 14 of this article, or under the terms of contracts reviewed in accordance with article 18, or under the provisions of article 19 with respect to joint ventures, shall not result in subsidizing contractors with a view to placing them at an artificial competitive advantage relative to land-based miners.

2. A fee shall be levied for the administrative cost of processing an application for a contract of exploration and exploitation and shall be fixed at an amount of $500,000 per application. If the cost incurred by the Authority in processing an application is less than $500,000, the Authority shall refund the difference to the applicant.

The amount of the fee shall be reviewed from time to time by the Council in order to ensure that it covers the administrative cost of processing such an application.

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

4. Within a month from the date of commencement of the commercial production, the Contractor shall be required to file a report on the steps taken toward the implementation of the production charge or the annual fixed fee, whichever is greater.

5. If, after a period of five years from the date of entry into force of the contract, the Contractor decides not to proceed, the Contractor shall pay to the Authority a sum equal to the present value of the production charge or the annual fixed fee, whichever is greater.

6. The Contractor shall be responsible for the costs of the exploration and exploitation of the Area, including the costs of the operations carried out under the contract.

7. The Contractor shall be responsible for the costs of the exploration and exploitation of the Area, including the costs of the operations carried out under the contract.

Annex IV

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), in accordance with the provisions of Part XI of the present Convention, the Authority shall be guided by the following objectives:

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

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

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

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

(e) To enable the Enterprise to engage in sea-bed mining effectively at the same time as the entities referred to in article 153, paragraph 2 (b);

(f) To ensure that the financial incentives provided to contractors under paragraph 14 of this article, or under the terms of contracts reviewed in accordance with article 18, or under the provisions of article 19 with respect to joint ventures, shall not result in subsidizing contractors with a view to placing them at an artificial competitive advantage relative to land-based miners.

2. A fee shall be levied for the administrative cost of processing an application for a contract of exploration and exploitation and shall be fixed at an amount of $500,000 per application. If the cost incurred by the Authority in processing an application is less than $500,000, the Authority shall refund the difference to the applicant.

The amount of the fee shall be reviewed from time to time by the Council in order to ensure that it covers the administrative cost of processing such an application.

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

4. Within a month from the date of commencement of the commercial production, the Contractor shall be required to file a report on the steps taken toward the implementation of the production charge or the annual fixed fee, whichever is greater.

5. If, after a period of five years from the date of entry into force of the contract, the Contractor decides not to proceed, the Contractor shall pay to the Authority a sum equal to the present value of the production charge or the annual fixed fee, whichever is greater.

6. The Contractor shall be responsible for the costs of the exploration and exploitation of the Area, including the costs of the operations carried out under the contract.

7. The Contractor shall be responsible for the costs of the exploration and exploitation of the Area, including the costs of the operations carried out under the contract.
Annex II
Article 21. Liability

Any responsibility or liability for wrongful damage arising out of the conduct of operations by the Contractor shall lie with the Contractor, account being taken of contributory factors by the Authority. Similarly, any responsibility or liability for wrongful damage arising out of the exercise of the powers and functions of the Authority, including liability for violations under article 188, paragraph 2, shall lie with the Authority, account being taken of contributory factors by the Contractor. Liability in every case shall be for the actual amount of damages.

Annex V

Article 4. Procedure for nomination and election

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

2. At least three months before the date of the election, the Secretary-General of the United Nations in the case of the first election and the Registrar of the Tribunal in the case of subsequent elections shall address a written invitation to the States Parties to submit their nominations for members of the Tribunal within two months. He shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties before the seventh day of the last month before the date of each election.

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

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

Article 36. Composition of the Chamber

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

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

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

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

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

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

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

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

1. The Sea-Bed Disputes Chamber shall form an ad hoc chamber, composed of three of its members, for dealing with a particular dispute submitted to it in accordance with article 188, paragraph 1(b). The composition of such a chamber shall be determined by the Sea-Bed Disputes Chamber with the approval of the parties.

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

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

APPENDIX B
Report by the Chairman of the group of legal experts on the settlement of disputes relating to Part XI

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

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

At the opening of the first meeting, the Chairman stated that he had, on 25 April 1979, reported to the Chairman of the First Committee on the results of the work of the group, setting out fully the status of the work at the conclusion of the first part of the eighth session at Geneva (A/CONF.62/L.13/1.25 and Add.1). That report identified the outstanding issues which were not discussed at all and those that were discussed, though not fully.

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

1. The manner of selection of members of the Sea-Bed Disputes Chamber of the Law of the Sea Tribunal and the necessary changes to annex V;

2. The suggestion regarding ad hoc chambers of the Sea-Bed Disputes Chamber;

3. Liability of the Authority, in cases of staff members violating their duty not to disclose confidential information, and in other cases;

4. Aspects of contractual disputes for which commercial arbitration would be appropriate.

The Chairman also pointed out the need to consider articles 187, 189, 190 and 191 which the group had formulated at the first part of the session, as incorporated in part XI, section 6, because there could be some matters that needed clarification. However, he suggested that this be taken up later, after the negotiations on the outstanding issues had been subject to the same process of negotiation as those issues in respect of which texts had been included in the revised negotiating text.

This course of procedure was accepted by the Group.

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

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

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