"(a) Make recommendations to the Council regarding the direction and supervision of a staff of inspectors who shall inspect activities in the area to determine whether the provisions of this Part of the present Convention, the rules, regulations and procedures prescribed thereunder, and the terms and conditions of any contract with the Authority are being complied with;

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REPORTS OF THE CHAIRMAN AND THE CO-ORDINATORS OF THE WORKING GROUP OF 21

A. Report of Mr. Frank X. Wenga (Kenya) Chairman of Negotiating Group I and Co-ordinator of the Working Group of 21 on the System of Exploration and Exploitation

At the end of the first part of the eighth session I submitted to the First Committee the revised compromise formula on the system of exploration and exploitation which is now reflected in the ICN/V/Rev.1. I said then that such formula was in my opinion the fairest, the most balanced, and most feasible compromise attainable at that stage on the issues of the system of exploration and exploitation.

Now after six additional meetings of the Group of 21 held during the resumed session and after having carried out numerous informal consultations with individual delegations and delegations representing groups of countries, I still think that definitive answers to the questions of who will exploit the area and how the area will be exploited, are to be found not very far from the solutions I put before you in the above-mentioned documents. I am now submitting to you and to the Working Group, some amendments I have introduced.

Indeed, although in the new proposal added and some new provisions, the essential characteristics of the system of exploration and exploitation have been kept unchanged. These amendments and additions refer to very specific points and either improve the draft without altering the substance, or develop some ideas that were summarily mentioned in the text in the ICN/V/Rev.1.

All the provisions amended but one belong to annex II. The exception is article 140 of part XV on the principle of "Benefit of Mankind" into which I decided to insert a reference to the General Assembly resolution 1514 (XV) and other General Assembly resolutions relevant to the question of peoples who have not attained full independence or other self-governing status. This inclusion was proposed by the delegation of Qatar on behalf of the Arab Group towards the end of the first part of this session last April in Geneva. The proposal has been endorsed by the Group of 77. I think that this addition to article 140 reflects the views of the overwhelming majority of the Group of 21. I must add that in the
opinion of some delegates the question of implementation of this provision is a
problematic one and will require careful scrutiny at the next stage of the
negotiations.

Concerning the provisions of annex II, at the beginning of the deliberations
at this resumed session I proposed to this Group, and it was accepted, that we
confine our discussions to the following issues:

1. (a) Training of personnel (art. 2, para. 1 (b))
   (b) Right of the Authority to close a particular sector of the Area
   (art. 2, para. 1 (d))

2. Scope of the undertaking by the applicant concerning transfer of
technology which he is not entitled to transfer and which is not
available on the open market (art. 5, para. 2)

3. Procedure in case of failure of negotiations concerning terms and
conditions of transfer of technology (art. 5, para. 2)

4. Transfer of processing technology (art. 5, para. 3)

5. Anti-monopoly clause (arts. 6 and 7)

6. Priority given to the Enterprise when competing with other applicants for
contracts (art. 7, para. 4)

7. Undertaking by the applicant concerning transfer of data necessary to
assess value of the sites (art. 8)

8. Joint arrangements (art. 10)

9. Applicability of annex II to the activities conducted by the Enterprise
(art. 11)

10. Scope of undertaking by contractor to transfer data to the Authority
(art. 13)

As a result of the discussions and of the informal consultations I carried out, I introduced changes in articles 1, 2, 3, 4, 6, 8, 10 and 13 of annex II.

The new draft of article 1 on "Title to minerals" is a drafting change and
seems to be more general without affecting its substance. It also makes it clear
that title would also pass to the Enterprise as well as to the prospector with
respect to the samples collected, in accordance with the relevant provisions. In
article 2, paragraph 1 (b), I decided to replace the reference of the training of
personnel nominated by the Authority by a reference to articles 143 and 144 which
deals respectively with marine scientific research and transfer of technology. I
think that 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. I do not think it is necessary to
establish separate or new obligations in this provision but to provide for the
co-operation of the prospector in the training programmes so that the personnel of
the Authority and the developing countries will be able to acquire prospecting
skills.
Since the nature of prospecting activities is such that it is unlikely to have such effects as to cause irreparable harm to the marine environment or interfere seriously with other uses of the area, I 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 respect to the operations of exploration and exploitation which are likely to have bigger impact on the environment.

In article 3 I decided to add two new paragraphs, namely paragraphs 1 and 2 in the text that is now before you. These new paragraphs deal with the presentation of plans of work by the Enterprise or other entities. I think that the addition of these provisions was necessary as a general introduction to the other provisions of the same article since they refer to the first steps in a sequence developed in the other paragraphs of article 3 and in the following articles. Paragraph 2 states in a clear and categorical way that the Enterprise may apply for a plan of work in respect to any part of the area, either reserved or non-reserved. In light of this change, paragraph 4 in article 8 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, I added the word "qualification" 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 briefly mentioned in the text without providing any detail. In these two paragraphs general rules are set forth on the question of the definition of national and multinational entities and on responsibility of the sponsors. I hope that these new additions will command general acceptance since they fill a lacuna in the existing text but I am also aware that some delegations have serious reservations about the need to have such provisions at all.

Paragraph 3 of article 6 on the procedures to be followed by the Authority after receiving the proposed plan of work has been amended so as to clarify its meaning. No other changes have been introduced to this article.

In article 8 relating to the reservation of sites, I introduced some amendments in order to ensure that the Authority will 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 submitted all data required.

I thought it was convenient to separate into two different articles the provisions of article 8 in the TCMR/Rev.1. I have grouped in a new article (art. 8 (6bis)) the existing and new provisions dealing with the conditions under which activities in reserved sites will be carried out. In the first and fourth paragraphs of this new article I have tried to clarify the process according to which the Enterprise shall decide whether it will carry out activities in the reserved site and the extent to which developing countries may have access to the reserved sites if the Enterprise decides not to exploit the site itself or in joint ventures with such countries. The new paragraph 2 deals with the conclusion of contracts by the Enterprise for the execution of parts of its activities, as well as the entry into joint ventures with other entities on a voluntary basis.

I acknowledge that matters dealt with by the new paragraphs 2, 3 and 4 are quite complex and in many respects delicate, and consequently further discussions on these matters may be required.
In article 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 1 appears in document WG.21/2. The amendments I 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 I think that during the last two sessions of the Conference we made a tremendous progress in this field, some delegations consider that the present text, in particular article 5 of annex II, does not provide a total 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 I could therefore not conduct any detailed discussions on the issues.

I hope that during the next session of the Conference we will have the opportunity to make a last attempt to find a solution acceptable to all sectors concerned.

With regard to the anti-monopoly clause, the delegation of France submitted to the group a proposal suggesting a new wording for article 6, paragraphs 3 and 4, and article 7, paragraphs 2 and 3. This proposal, as well as an explanatory note, are contained in document WG.21/Informal Paper 3 of 10 August 1974. Since the proposal deals in part with a technical subject which is extremely complex, there was not sufficient time to examine it and discuss it thoroughly. Another opportunity should 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 this resumed session. Because I think that this is a very important problem and also because of the polarization of the positions of the delegations on this issue, I proposed to the group to leave this matter to be treated either in a forum broader than this Group of 21 or in any case at a later stage after other less intractable issues were dealt with.

Concerning the problem of the resource policy the Group of Experts has been meeting almost without interruption under the chairmanship of Ambassador Nandan and for a short time, of Mr. Okoth. I am not in a position to give any concrete report of the outcome but perhaps Ambassador Nandan will be able to give a progress report on the subject.

Before I conclude, let me take this opportunity to express my profound gratitude to the Secretariat under the able guidance of Mr. Felipe Paolillo for the indefatigable assistance they have rendered to me in these efforts.