At its 55th plenary meeting on Friday 18 April 1975 the Conference decided to request the Chairman of its three Main Committees each to prepare a single negotiating text covering the subjects entrusted to his Committee. In his concluding statement, before the Conference made this request, the President stressed that the single text should take account of all the formal and informal discussions held so far, would be informal in character and would not prejudice the position of any delegation nor would it represent any negotiated text or accepted compromise. It should, therefore, be quite clear that the single negotiating text will serve as a procedural device and only provide a basis for negotiation. It must not in any way be regarded as affecting either the status of proposals already made by delegations or the right of delegations to submit amendments or new proposals.

Part I: Interpretation

Article 1

For the purposes of this Convention

(i) "States Parties" to this Convention means Contracting Parties.

(ii) "Activities in the Area" means all activities of exploration of the Area and of the exploitation of its resources, as well as other associated activities in the Area including scientific research.

(iii) "Resources" means resources in situ.
DEPOSITARY

Article 74

The Secretary-General of the United Nations shall inform all States belonging to any of the categories mentioned in article 69 of:

(a) Signature of the present Convention and of the deposit of instruments of ratification or accession in accordance with articles 69, 70 and 71 respectively;

(b) Notification of provisional application in accordance with article 73;

(c) The date on which the present Convention will enter into force in accordance with article 72;

(d) The date on which the present Convention will provisionally enter into force in accordance with article 73.

AUTHENTIC TEXTS

Article 73

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE AT CARACAS, this ........... day of ........... one thousand nine hundred and seventy-six.

ANNEX I*

Basic conditions of general survey, exploration and exploitation

PART A

Rights in the Area and its resources

1. The Area and its resources being the common heritage of mankind, all rights in the resources are vested in the Authority on behalf of mankind as a whole. These resources are not subject to alienation.

Rights in minerals

2. Title to the minerals or processed substances derived from the Area shall pass from the Authority only in accordance with the provisions of this Convention, the rules and regulations prescribed by the Authority in accordance with this Convention, and the terms and conditions of the relevant contracts, joint ventures or other form of association entered into by it.

Access to the Area and its resources

3. The Authority shall from time to time determine the part of the Area in which the exploration of the Area and the exploitation of its resources and other associated activities may be conducted. In doing so the Authority shall be guided by the following principles.

(a) The Authority shall encourage the conduct of general survey operations, and to that end shall regularly, after consultation with all States Parties, open for general survey the sea-bed and ocean floor of such oceanic areas as are determined by it to be of interest for this purpose. General survey may be carried out by any entity which meets the environmental protection regulations of the Authority and enters into a contract with it.

(b) The Authority may, upon the proposal of a State Party to this Convention or on its own initiative, open for evaluation and exploitation the sea-bed and ocean floor of oceanic areas determined by it, on the basis of sufficient supporting data, to be of commercial interest. Such evaluation and exploitation shall be conducted directly by the Authority in accordance with part B and, within the limits it may determine in accordance with sub-paragraph 8 (f), through States Parties to this Convention, or State Enterprises, or personal natural or juridical which possess the nationality of such States, or are effectively controlled by them or their nationals, when sponsored by a State Party, by entering into contracts for associated operations in accordance with paragraphs 5 and 6.

Provided, however, that the Authority may refuse to open any part or parts of the Area pursuant to this paragraph when the available data indicate the risk of irreparable harm to a unique environment or unjustifiable interference with other uses of the Area.

PART B

4. The Authority may, at any time, in any part or parts of the Area determined by the Authority to be open for activities pursuant to paragraph 3 of these Basic Conditions, carry out directed scientific research or a general survey or exploration of the Area or operations relating to evaluation and exploitation of the resources of the Area, including feasibility studies, constructions of facilities, processing, transportation and marketing pursuant to a Plan of Operations approved by the Council, subject to the following conditions:

(a) The Authority shall submit to the Council in the form prescribed by it for the purpose such information, including a detailed financial analysis of costs and benefits, as would enable the Council to review the financial and technical aspects of the proposed Plan of Operations, as well as a Work Programme, which shall accommodate the objectives of the Authority as reflected in article 22 above;

(b) If on the basis of such information and after taking into consideration all relevant factors, the Council determines that the proposed Plan of Operations offers optimum benefits to the Authority, the Council shall approve the Plan;

(c) Activities in the Area conducted directly by the Authority shall, mutatis mutandis, be subject to the relevant Basic Conditions set forth in part C;

(d) To the extent that the Authority does not currently possess the personnel, equipment and services for its operations, it may employ them under its direction and management on a non-discriminatory basis (if they meet the qualifications set forth in paragraph 5. The terms and conditions of such employment shall be in accordance with the relevant provisions of these Basic Conditions.

(e) Minerals and processed substances produced by the Authority shall be marketed in accordance with rules, regulations and procedures adopted by the Council in accordance with the following criteria:

(i) The products of the Authority shall be made available to States Parties;

(ii) The Authority shall offer its products for sale at not less than international market prices; or may, however, sell its products at lower prices to developing countries, particularly the least developed among them;

(iii) Production and marketing of the resources of the Area by the Authority shall be maintained or expanded in accordance with the provisions of article 9 above;

(iv) The Authority shall, except as specifically provided in this part, market its products without discrimination.

PART C

Contracts for associated operations

5. On the application of any State Party to this Convention, or State enterprise, or person natural or juridical which possess the nationality of a State Party or is effectively controlled by it or its
nations and is sponsored by a State Party or any group of the foregoing characterized by the "company"), the Authority may enter into a contract, joint venture or any other such form of association, for the conduct of scientific research, or for the carrying out of a general survey or exploration of the Area, or of operations relating to evaluation and exploitation of the Area including such stages as feasibility study, construction of facilities, processing, transportation and marketing (hereinafter called the "contract").

6. Every contract entered into by the Authority pursuant to paragraph 4 shall:
   (a) Be in strict conformity with this Convention and the rules and regulations prescribed by the Authority in accordance with the Convention;
   (b) Ensure direct and effective fiscal and administrative control by the Authority at all stages of operations through appropriate institutional arrangements entered into pursuant to this part.

Qualification of applicants

7. (a) The Authority shall adopt appropriate administrative procedures and rules and regulations for making an application pursuant to paragraph 5, and the qualifications of any applicant referred to therein. Such qualifications shall include (1) financial standing, (2) technological capability, and (3) past performance and work experience.

(b) States Parties which apply to enter into contracts with the Authority shall be presumed to possess the qualifications specified in subparagraph (a). They shall be deemed to have waived their sovereign immunity with respect to financial and economic obligations covered by such contracts.

(c) Each applicant shall, in addition, submit to the Authority a work programme which shall accommodate the objectives of the Authority as reflected in this part and the rules and regulations adopted thereunder.

(d) Each applicant shall undertake to comply with the provisions of this Convention and the rules and regulations adopted by the Authority, and to accept control by the Authority in accordance therewith.

Selection of applicants

8. (a) Upon receiving an application pursuant to paragraph 5 with respect to activities of evaluation and exploitation, the Authority shall first ascertain whether any competing application has been received for the area applied for. If no such competing application has been received, the Authority shall enter into negotiations with a view to concluding a contract with the applicant in respect of the area applied for, provided that the applicant has completed the procedures and possesses the qualifications prescribed pursuant to paragraph 6 and, after a consideration of all relevant factors, is deemed to offer the Authority optimum benefits. The Enterprise may not refuse to enter into a contract if the criteria in subparagraph 9 (d) have been satisfied, and the contract in all other respects is in strict conformity with the provisions of this part and of the rules, regulations and procedures adopted thereunder, subject to the stated resource policy established by the Authority.

(b) Applicants shall be required to comply with requirements of the Authority to achieve the objectives set forth in article 12 above.

(c) If the Authority receives more than one application in respect of substantially the same area and category of minerals, selection from among the applicants shall be made on a competitive basis taking into account the extent to which each applicant satisfies the requirements of paragraph 6. The Authority shall enter into negotiations with a view to concluding a contract with the applicant which, after a consideration of all relevant factors, is deemed to offer the Authority optimum benefits including financial arrangements in accordance with subparagraph 9 (d).

(d) The principles set forth in subparagraphs (a), (b) and (c) shall be applied mutatis mutandis in prescribing procedures, rules and regulations for the selection of applicants for contracts with respect to activities other than evaluation and exploitation.

(e) When a contractor that has entered into a contract with the Authority for one or some of the stages of operations referred to in paragraph 4 has completed performance under it, he shall have priority among applicants for a contract or contracts for one or more further stages of operations with regard to the same area and resources provided, however, that where the contractor has not carried out his obligations satisfactorily, such priority may be withdrawn.

(f) The total number of contracts for evaluation and exploitation entered into by the Authority with a single State Party or with natural and juridical persons under the sponsorship of a single State Party shall not exceed ... per cent of the total area open under paragraph 3, and shall be equal for all States Parties.

(g) Within the limits specified in subparagraph (f) the Council may every year determine the number of contracts to be entered into by the Authority with a single State Party or with natural and juridical persons under the sponsorship of a single State Party in order to give effect to the provisions of article 8.

Rights and obligations under the contract

9. (a) Any State Party, or any State enterprise or person natural or juridical which possesses the nationality of a State Party or is effectively controlled by it or by its nationals, when sponsored by a State Party or any group of the foregoing which enters into a contract for activities relating to evaluation and exploitation with the Authority pursuant to paragraph 5 (hereinafter called the "Contractor") shall, except as otherwise agreed by the Authority, be required to use its own funds, materials, equipment, skills and know-how as necessary for the conduct of operations covered by the contract, and to post a bond by way of guarantee of satisfactory performance under the contract.

(b) The costs involved in the performance of the contract pursuant to subparagraph (a) shall be recoverable by the respective parties out of the proceeds of operations. The Authority shall in its rules and regulations establish a schedule pursuant to which such costs shall be recovered in the manner specified in subparagraph (d) of this paragraph.

(c) The proceeds of operations pursuant to the contract after deduction of costs, which shall be calculated according to accounting principles to be determined by the Authority and the terms of the contract, shall be apportioned between the Authority and the Contractor in the manner specified in the contract in accordance with subparagraph (d) of this paragraph.

(d) [Financial arrangements]

10. The Contractor shall:

(a) 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 necessary and relevant to the effective implementation of the powers and functions of the organs of the Authority under this Convention in respect of the contract area. The Authority shall not disclose to third parties, without the prior consent of the Contractor, such of the transferred data as are deemed to be proprietary by the Contractor. Data which are necessary for the protection of rules and regulations concerning protection of the marine environment shall not be deemed to be proprietary. Except as otherwise agreed with the Authority the Contractor shall not be obliged to disclose proprietary equipment design data.

(b) Draw up programmes for the training of personnel, and take all such other action as may be necessary to fulfill its obligations pursuant to subparagraph 8 (b).

11. The Authority shall, pursuant to this Convention and the rules and regulations prescribed by the Authority, accord the Contractor the exclusive right to evaluate and/or exploit the contract area 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. Accordingly, the contract shall not be cancelled, modified, suspended or terminated, nor shall the exercise of any right under it be impaired, except for good and sufficient reasons, in the event of the provisions of this part and the rules and regulations adopted by the Authority thereunder, and after recourse to procedures provided under the past for the settlement of any dispute that may
have arisen. The Authority shall not, during the continuance of a contract, permit any entity to carry out activities in the same area for the same category of minerals.

Rules, regulations and procedures

12. The Authority shall adopt and uniformly apply rules, regulations and procedures consistent with the purposes and fundamental principles of the functioning of the Authority and with these basic conditions in the following subjects:

(a) Applications to enter into contracts
(b) Qualifications of applicants
(c) Selection of applicants
(d) Progress report
(e) Submission of data
(f) Application fees and bonds to secure satisfactory performance
(g) Inspection and supervision of operations
(h) Mining standards and practices, including operational safety
(i) Prevention of interference by the Contractor with other uses of the sea and of the marine environment
(j) Apportionment of the proceeds of operations
(k) Direct participation of personnel of developing countries, particularly the landlocked among them and of other countries lacking or less advanced in ocean mining and mineral processing technology, and the transfer of such technology to such countries
(l) Passing of title to minerals and processed metals from the Area
(m) Avoiding or minimizing adverse effects on the revenues of developing countries derived from exports of the minerals and products thereof from the Area
(n) Transfer of rights by a Contractor
(o) Activities in reserved areas
(p) Financial and accounting rules

In respect of rules, regulations and procedures for the following subjects the Authority shall uniformly apply the objective criteria set out below:

(17) Protection of the marine environment:

The Authority shall take into account in adopting rules and regulations for the protection of the marine environment, the extent to which activities in the Area such as drilling, dredging, coring and excavation, as well as disposal, dumping and discharge in the Area of sediments or waste and other matters will have a harmful effect on the marine environment.

(18) Site of area:

The Authority shall determine the appropriate size of areas for evaluation which may be up to twice as large as those for exploitation in order to permit intensive continued survey and evaluation operations. Areas for exploitation shall be calculated to satisfy the production requirements agreed to between the Authority and the Contractor over the term 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. In cases where the Contractor has obtained a contract for exploitation, the area not covered by such contract shall be relinquished to the Authority.

(19) Duration of activities:

(a) General survey shall be without time limit except in the ease of violations of the Authority’s regulations to protect the environment in which case the Authority may prohibit the violator from conducting general survey operations for a reasonable period of time.

(b) Evaluation should be of sufficient duration as to permit a thorough survey of the specific area, the design and construction of mining equipment for the area, the design and construction of small- and medium-size processing plants for the purpose of testing mining and processing systems.

(c) The duration of exploitation should be related to the economic life of the mining project taking into consideration such factors as the depletion of the orebody, the useful life of mining equipment and processing facilities, and commercial viability. Exploitation should be of sufficient duration as to permit commercial extension of the 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 amend the terms and conditions of the contract at the time it considers renewal in accordance with rules and regulations which it has issued subsequent to entering into the contract.

(20) Performance requirements:

The Authority shall require that during the evaluation stage, periodic expenditures be made by the Contractor which are reasonably related to the size of the contract area and the expenditures which would be expected of a bona fide Contractor who intended to bring the area into full-scale commercial production within the time limits established by the Authority. Such required expenditures should not 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 evaluation stage is completed and the exploitation stage begins to achieve full-scale commercial production. To determine this interval, the Authority should take into consideration that construction of large-scale mining and processing systems cannot be initiated until after the undertaking of the evaluation stage and the commencement of the exploitation stage. Accordingly, the interval to bring an area into full-scale commercial production should take into account the time necessary for this construction after the completion of the evaluation stage and reasonable allowance should be made for unavoidable delays in the construction schedule.

Once full-scale commercial production is achieved in the exploitation stage, the Authority shall within reasonable limits and taking into consideration all relevant factors require the Contractor to maintain a reasonable level of commercial production throughout the period of the contract.

(21) Categories of minerals:

In determining the category of mineral in respect of which a contract may be entered into, the Authority shall give emphasis inter alia to the following characteristics:

(a) Resources which require the use of similar mining methods, and

(b) Resources which can be developed simultaneously without undue interference between Contractors in the same area developing different resources.

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

(22) Reconciliation of areas:

The contractor shall have the right at any time to resource without penalty the whole or part of his rights in the contract area.

13. The Authority shall have the right to take at any time any measures provided for under this Convention to ensure compliance with its terms, and in the performance of the control and regulatory functions assigned to it thereunder or under any contract. The Authority shall have the right to inspect all facilities in the Area used in connection with any activities in the Area.

Suspension or termination

14. A Contractor’s rights in the contract area shall be suspended or terminated only if the Contractor has conducted his activities in such a way as to result in gross and persistent violations of the contract and rules and regulations and were not caused by circumstances beyond his control, or if a Contractor has wilfully failed to comply with any decision of the [dispute settlement organ].
Revision of contract

15. [Circumstances under which terms and conditions (e.g., financial conditions) of contracts may be revised—be drafted.]

Force majeure

16. Non-performance or delay in performance shall be excused if and to the extent that such non-performance or delay is caused by force majeure. The party invoking force majeure may take appropriate measures including revision, suspension or termination of the contract; provided, however, that in the event of a dispute the parties shall first have recourse to the procedures for the settlement of disputes provided for in this part.

Transfer of rights

17. The right and obligations arising out of a contract shall be transferred only with the consent of the Authority, and in accordance with the rules and regulations adopted by it. The Authority shall not withhold consent to the transfer if the proposed transferee is in all respects a qualified applicant, and assumes all of the obligations of the transferee.

Applicable law

18. The law applicable to the contract shall be solely the provisions of this Convention, the rules and regulations prescribed by the Authority and the terms and conditions of the contract. The rights and obligations of the Authority and of the Contractor shall be valid and enforceable notwithstanding the law of any State, or any political subdivision thereof, to the contrary. No contracting State may impose conditions on a Contractor that are inconsistent with the principles of this Convention.

Liability

19. Responsibility or liability for wrongful damage arising out of the conduct of operations by the Contractor or the Authority shall be with the Contractor or the Authority as the case may be. It shall be a defence in any proceeding against a Contractor that the damage was the result of an act or omission of the Authority. Similarly, any responsibility or liability for wrongful damage arising out of the exercise of the powers and functions of the Authority shall lie with the Authority. It shall be a defence in any proceeding against the Authority that the damage was a result of an act or omission of the Contractor. Liability in every case shall be for the actual amount of damage.

Settlement of disputes

20. Any dispute concerning the interpretation or application of this Convention, its rules and regulations or the terms and conditions of a contract and arising between the Authority and a Contracting State or any State enterprise or person natural or juridical which possesses the nationality of a Contracting State or is effectively controlled by it or its nationals, or any group of the foregoing shall be subject to the procedures for settlement of such disputes provided for in this Convention.

Arrangements following provisional entry into force of the Convention

21. In the period immediately following provisional application of this Convention, the Authority shall, with respect to the first [...] such contracts, joint ventures or other such form of association, give priority to those covering integrated stages of operations.

DOCUMENT A/CONF.62/WP.8/PART II
(Text presented by the Chairman of the Second Committee)

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