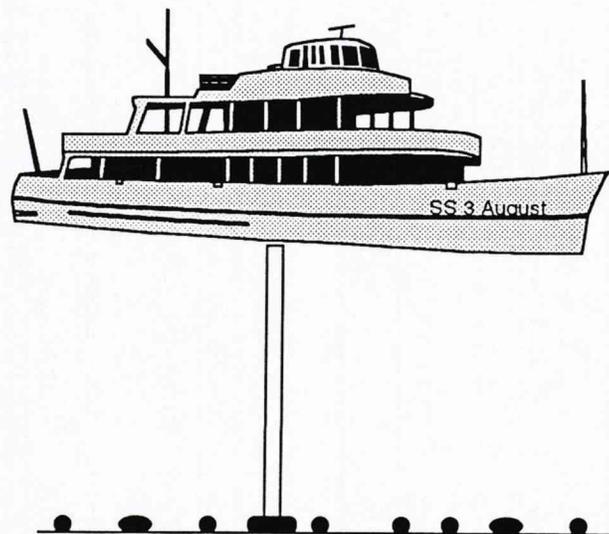


1. "Change voting"
2. "Stem of Resolutions"
3. Function of Enterprise
Change of process address

August 1993

This document has been prepared by representatives of several developed and developing States as a contribution to the process of consultations relating to outstanding issues in Part XI of the 1982 United Nations Convention on the Law of the Sea . The paper does not necessarily reflect the position of any of the delegations involved, but they all consider that it provides a useful basis for negotiations.



August 3, 1993

DRAFT RESOLUTION FOR ADOPTION BY THE GENERAL ASSEMBLY

The United Nations Convention on the Law of the Sea

The General Assembly

Recalling resolution (47/65 of 10 December 1992) on the Law of the Sea,

Recalling that Part XI and related provisions of the 1982 United Nations Convention on the Law of the Sea established a regime for the international seabed area ("the Area") and its resources,

Reaffirming that the Area and its resources are the common heritage of mankind,

Recognizing that political and economic changes, including in particular a growing reliance on market principles, show the need to re-evaluate some aspects of the regime,

Noting the initiative of the Secretary-General to promote dialogue aimed at achieving universal participation in the Convention,

Welcoming the report of the Secretary-General prepared in pursuance of General Assembly resolution (47/65) and, in particular, the agreed conclusions set out in paragraph [.....] of the report,

Taking note of the Provisional Final Report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea,

Considering that the objective of universal participation in the Convention may best be achieved by the adoption of an agreement relating to the implementation of Part XI and related provisions of the Convention and to give effect to the agreed conclusions of the Secretary-General's consultations,

1. *Endorses* the agreed conclusions set out in paragraph [.....] of the report of the Secretary-General;
2. *Adopts* the Agreement relating to the Implementation of Part XI and related provisions of the Convention ("the Agreement"), the text of which is attached to this resolution;
3. *Considers* that future ratifications of or accessions to the Convention should be taken to relate to the Convention together with the Agreement;
4. *Requests* the Secretary-General to transmit the text of the Agreement to the States and the other entities referred to in Article 3 thereof, with a view to facilitating universal participation in the Convention together with the Agreement.

AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE
1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

The States Parties to this Agreement,

Recognizing the significant contribution of the 1982 United Nations Convention on the Law of the Sea ("the Convention") to the maintenance of peace, justice and progress for all peoples of the world;

Having considered the report of the Secretary-General of the United Nations on the conclusions reached in the consultations held from 1990 to (1993) on outstanding issues relating to Part XI and related provisions of the Convention ("Part XI");

Wishing to take account of important political and economic developments affecting the implementation of those provisions, in order to facilitate universal participation in the Convention;

Considering that an Agreement relating to the implementation of the Part XI would best meet that objective;

Have agreed as follows:

Article 1
Implementation of Part XI

The States Parties to the Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea ("the Agreement") undertake to apply and implement Part XI on the basis of the agreed conclusions of the Secretary-General's consultations as set out in Annex I to this Agreement, together with the consequential adjustments and the provisions on the Finance Committee set out in Annex II to this Agreement.

Article 2
Relationship between the Agreement and Part XI

1. The Parties to this Agreement undertake to give effect to the provisions of:
 - (a) this Agreement, including the Annexes which constitute integral parts of the present Agreement; and

- (b) Part XI, subject to the modifications and additions set out in this Agreement.
2. The provisions of Part XI and this Agreement shall be read and interpreted together as one single instrument.
 3. Articles 309 to 319 of the Convention shall apply to this Agreement as they apply to the Convention.
 4. After the adoption of this Agreement, any instrument of ratification of or accession to the Convention shall represent also an accession to this Agreement.

Article 3
Accession

This Agreement shall be open for accession by those States and other entities referred to in Article 305 of the Convention which have ratified or acceded to the Convention or which are simultaneously ratifying or acceding to the Convention and this Agreement. Accession by the entities referred to in Article 305, paragraph 1 (f) shall be in accordance with Annex IX to the Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 4
Simplified Procedure

A State or entity which has deposited before the date of the adoption of this Agreement an instrument of ratification, formal confirmation or accession in respect of the Convention shall be considered to be a party to this Agreement if that state has not notified the Depositary within 12 months of the adoption of this Agreement that it is not having recourse to the simplified procedure set out in this Article. In the event of such a notification being made, accession to this Agreement shall take place in accordance with Article 3.

Article 5
Entry into Force

1. This Agreement shall enter into force on the day of deposit of the [.....] instrument of accession to this Agreement, provided at least [.....] of those instruments have been deposited by States to which subparagraphs 1 (a) (i) or (ii) of Resolution II adopted by the Third United Nations Conference on the Law of the Sea ("Resolution II") applies.

2. For each State acceding to the Agreement after its entry into force, the Agreement shall come into force on the date of deposit by such State of its instrument of accession.

3. States which have recourse to the simplified procedure in Article 4 shall be regarded as having acceded upon expiry of the period of 12 months specified in that Article, or upon entry into force of this Agreement in accordance with paragraph 1, whichever is later.

Article 6
Authentic Texts and Depositary

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the Secretariat of the United Nations.

ANNEX I

AGREED CONCLUSIONS OF THE SECRETARY-GENERAL'S
CONSULTATIONS

A. COSTS TO STATES PARTIES AND INSTITUTIONAL ARRANGEMENTS

1. The Authority is the organization through which States Parties to the Convention shall, in accordance with the regime for the international seabed area ("Area") established in Part XI and as modified by this Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area. The powers and functions of the Authority shall be those expressly conferred upon it by the Convention. The Authority shall have such incidental powers consistent with the Convention, as are implicit in, and necessary for, the exercise of those powers and functions with respect to the activities of the Area.

2. In order to minimize costs to State Parties, all institutions to be established under the Convention shall be cost-effective. Such institutions shall commence their functioning only upon the decision of the Council and the Assembly, in accordance with their respective responsibilities.

3. The establishment and the operation of the various institutions shall be based on an evolutionary approach, taking into account the functional needs of the institutions concerned in order that they may discharge effectively their respective responsibilities at various stages of the development of activities in the Area.

4. The meetings of the various institutions shall be streamlined so as to reduce costs. This will apply to the size, structure and functions of the institutions, including the need to phase in the subsidiary bodies and to the frequency and scheduling of meetings of the various organs and subsidiary bodies. The subsidiary bodies of the Authority shall be phased-in in accordance to their functional needs.

5. The early functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Legal and Technical Commission and the Finance Committee (which shall work in accordance with Part I of Annex II to this Agreement).

6. These early functions shall consist of:

- (a) the processing of applications for approval of a plan of work for exploration in accordance with Part XI and this Agreement;

*Shy back
totally unproductive*

*Can be revised
Productively*

- (b) the monitoring of compliance with the terms of contracts incorporating approved plans of work;
- (c) the implementation of decisions of the Preparatory Commission relating to the registered pioneer investors, including their rights and obligations, in accordance with the provisions of Article 308 (5) of the Convention and Resolution II, paragraph 13;
- (d) the study of the potential impact of minerals production from the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;
- (e) the promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of the activities in the Area;
- (f) the monitoring of the development of marine technology relevant to the activities in the Area;
- (g) the adoption of rules, regulations and procedures necessary for the conduct of activities in the Area as they progress. Notwithstanding the provisions of Annex III, Article 17 (2)(b) and (c) of the Convention, such rules and regulations shall take into account the modifications contained in this Agreement, the changed economic circumstances since the Convention was adopted, the prolonged delay in commercial deep seabed mining and the likely pace of activities in the Area;
- (h) the monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;
- (i) the assessment of available data relating to prospecting and exploration; and
- (j) the elaboration of the regime for exploitation.

7. The application for the approval of a plan of work shall be considered by the Council following the receipt of a recommendation on the application from the Legal and Technical Commission. The processing of an application for the approval of a plan of work shall be in accordance with the provisions of the Convention, including its Annex III, and this Agreement, provided that:

- (a) a plan of work for exploration submitted by a pioneer investor, duly registered as such by the Preparatory Commission in accordance with Resolution II, shall be approved by the Council, notwithstanding the provisions of Part C, paragraphs 10 and 11 of this Annex, and the provisions of Resolution II, paragraph 8, if such plan of work includes in it the terms and conditions set out in the decisions of the Preparatory Commission relating to such pioneer investor. For the purposes of a plan of work submitted by a registered pioneer investor, it shall be sufficient if the plan of work refers to the documents, reports and decisions of the Preparatory Commission, containing the relevant data and information already submitted to the Commission, with additional information regarding the pioneer activities since the date of registration up to the date of submission of the plan of work, together with an indication of plans for future activities, if any. The fees to be paid by a pioneer investor upon the submission of an application for a plan of work, in accordance with the provisions of Resolution II, paragraph 7 (a), and Annex III, Article 13 (2) of the Convention, shall be deferred until the pioneer investor submits a plan of work for exploitation. The period following entry into force of the Convention, within which a registered pioneer investor is required to submit a plan of work pursuant to Resolution II, paragraph 8 (a), shall be extended from six months to twelve months; and
- (b) a plan of work submitted on behalf of a State or entity, or any component of such entity, referred to in Resolution II, subparagraphs 1 (a) (i) and (ii), other than a registered pioneer investor, which had already undertaken substantial activities in the Area prior to entry into force of the Convention and their successors in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work, if the sponsoring state certifies that the applicant has expended an amount equivalent to at least \$US30 million in research and exploration activities and has expended no less than ten (10) per cent of that amount in the location, survey and evaluation of the area referred to in the plan of work. If the plan of work otherwise satisfies the requirements of the Convention and any rules regulations and procedures adopted pursuant thereto, it shall be approved by the Council, notwithstanding the provisions of Section C, paragraphs 10 and 11 hereof.

8. The Authority shall elaborate and adopt, in accordance with Article 162 (2) (o) (ii), rules, regulations and procedures based on the principles contained in Parts B, E, F, G and H of this Annex, as well as any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploration or exploitation, as follows:

- (a) The Council may undertake such elaboration at any time it deems all or any of such rules, regulations or procedures are required for the conduct of activities in the Area, or when it determines that commercial exploitation is imminent, or at the request of a State wishing to sponsor an application for approval of a plan of work for exploitation.
- (b) If a request is made by a sponsoring State, the Council shall complete the adoption of such rules, regulations and procedures within two years of such a request, and they shall apply provisionally pending their approval by the Assembly.
- (c) If the Council has not completed its work within the prescribed time, and an application for the approval of a plan of work is pending, it shall nonetheless consider and provisionally approve such plan of work for exploitation based on the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles contained in this Annex, and the principle of nondiscrimination among contractors.

9. The Authority shall have its own budget. Expenses of the Authority shall be met by its members or through the budget of the United Nations, until such time as the Authority becomes self-financing.

10. The Authority shall have its own secretariat which shall be linked to the United Nations until such time as the Authority can function independently.

11. There shall be a Finance Committee composed of fifteen members which shall be composed and operated in accordance with Part I of Annex II to this Agreement.

12. States and entities that have not ratified or acceded to the Convention, and are referred to in Article 305 of the Convention, shall be eligible to become provisional members of the Authority pending their ratification of, or accession to, the Convention and this Agreement on the following basis:

- (a) Such membership shall take effect upon notification to the depositary of the Convention by a State of its intention to participate as a provisional member of the Authority and shall terminate after two years or upon ratification of, or accession to, the Convention and this Agreement by such a State.
- (b) Provisional members shall be subject to all the rights and obligations of Part XI as modified by this Agreement including the obligation to contribute to the budget of the Authority based on assessed

contributions while they remain provisional members, unless the financing is through the United Nations budget.

13. The draft rules, regulations and procedures and any recommendations relating to the provisions of Part XI, as contained in the draft provisional final reports and recommendations of the Preparatory Commission, shall be revised to reflect the terms of this Agreement.

B. THE ENTERPRISE

1. The Enterprise shall conduct its initial operation through joint ventures. The Council shall decide upon the commencement of the functioning of the Enterprise.

2. The obligations to fund one mine site of the Enterprise as provided for in Annex IV, Article 11 (3) to the Convention, shall not apply and States parties to the Convention shall be under no obligation to finance any of the operations in any mine site of the Enterprise or under its joint venture arrangements.

3. The Secretariat of the Authority shall perform the preparatory functions necessary for the commencement of the functioning of the Enterprise. These shall include the monitoring of developments in the deep seabed mining sector, in particular the prevailing conditions in the world metal market, developments in deep seabed mining technology, and data and information on the environmental impact of activities in the Area.

C. DECISION-MAKING

1. Decision-making in the organs of the Authority, as a general rule, should be by consensus and there should be no voting until all efforts to reach a decision by consensus have been exhausted.

2. The general policies of the Authority shall be established by the Assembly in collaboration with the Council.

3. Decisions of the Assembly on any matter for which the Council also has competence or on any administrative, budgetary or financial matter shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council for further consideration. The Council shall reconsider the matter in the light of the views expressed by the Assembly.

4. Decisions by the Council or the Assembly having financial or budgetary implications shall be based on the recommendations of the Finance Committee.

5. If consensus can not be reached, decisions by voting in the Assembly on all matters of procedure shall be taken by a majority of States present and voting, and decisions on all matters of substance shall be taken by a two-thirds majority of States present and voting, as provided for in Article 159 (8) of the Convention.

6. The provisions of Article 161, paragraph (1) sub-paragraphs (a) to (e) of the Convention shall be modified as set out in paragraph 2 of Part C of Annex II of this Agreement.

7. The major categories of interests identified in Article 161, paragraph (1) (a)-(c) of the Convention, as modified by this Agreement, should be treated as chambers for the purposes of decision-making in the Council. Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the criteria for the membership in the interest groups identified in Article 161, paragraph (1) (a)-(c). If a country fulfils the criteria for membership in more than one interest group, it may only be proposed by one interest group for election to the Council and it shall represent only that interest group in voting in the Council.

8. Each interest group identified in Article 161, paragraph (1) (a)-(c) of the Convention shall be represented in the Council by those members which are nominated by that interest group. Each interest group shall only nominate as many candidates as the number of seats that are required to be filled by that group. When nominating candidates for election, each interest group shall take due account of the desirability of rotation of membership of the Council. Election to fill the seats according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, shall take place after the election for all other categories of seats have been completed.

9. Decisions by voting in the Council on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance, except when the Convention provides for decisions by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to above.

10. The Council may decide to postpone the taking of a decision in order to facilitate further negotiations whenever it appears that all efforts at achieving consensus on a question have not been exhausted.

11. The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. The prescribed period shall normally be 60 days

unless the Council decides to provide for a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its normal rules of procedure on matters of substance.

12. Where a dispute arises relating to the disapproval of a plan of work such dispute shall be submitted to the dispute settlement mechanism contained in the Convention.

13. Decisions by voting in the Legal and Technical Commission shall be by simple majority.

14. Decisions in the Finance Committee on procedural issues shall be by simple majority and on substantive issues by consensus.

D. REVIEW CONFERENCE

In the light of the present Agreement and the changed circumstances in respect of deep seabed mining since the Convention was adopted, and the changes in the approaches to economic issues, the Review Conference, as provided for in Article 155 of the Convention, is no longer considered appropriate. Instead, notwithstanding the provisions of Article 314 (2), the Authority, on the recommendation of the Council, may undertake a review of the matters referred to in Article 155 and adopt any necessary amendments in accordance with the procedure set forth in Article 314 (1) of the Convention. Accordingly, Article 155 of the Convention shall no longer apply.

E. TRANSFER OF TECHNOLOGY

The policy of the Authority on transfer of technology shall be in accordance with the provisions of Article 144 of the Convention and the following principles:

- (a) The Enterprise shall endeavour to obtain the technology required for its operations through its joint venture arrangements.
- (b) The provisions of Article 5 of Annex III of the Convention concerning the undertaking for mandatory transfer of technology to the Enterprise or to a developing State or group of such States, shall not apply. Instead, the Authority may invite all, or any of the contractors and their respective sponsoring State or States, to co-operate with it in the acquisition of technology by the Enterprise or the joint venture, or a developing State or States seeking to acquire such technology, on fair and reasonable commercial terms and conditions, if the technology in

question was not available on the open market. States parties undertake to cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also fully cooperate with the Authority.

- (c) As a general rule States Parties shall endeavour to promote international technical and scientific co-operation either between the parties concerned on activities relating to the seabed area, or by developing training, technical assistance and scientific co-operation programs.

F. PRODUCTION POLICY

1. The production policy of the Authority shall be based on the following principles:
 - (a) The rights and obligations relating to unfair economic practices under the General Agreement on Tariffs and Trade, its relevant codes and successor agreements, shall apply to activities in the Area.
 - (b) In particular, there shall be no subsidisation of activities in the Area except as may be permitted under the agreements referred to in subparagraph (a). Subsidisation for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (a).
 - (c) There shall be no discrimination between minerals derived from the Area and from other sources. There shall be no preferential access to markets for such minerals or for imports of commodities produced from such minerals, in particular:
 - (i) by use of tariff or non-tariff barriers; and
 - (ii) given by States Parties to such minerals or commodities produced by their state enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals;
 - (d) The plan of work approved by the Authority in respect of each mining area shall indicate a production schedule which shall include the estimated amounts of minerals that would be produced per year under that plan of work;

- (e) In the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (a), States Parties which are parties to such agreements shall have recourse to the dispute settlement procedures of such agreements; and
 - (f) In circumstances where a determination is made under the agreements referred to in subparagraph (a) that a State Party has engaged in subsidisation which is prohibited or has resulted in adverse effects to the interests of another State Party and appropriate steps have not been taken by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.
2. The principles contained in paragraph 1 shall not affect rights and obligations under any provision of the agreements referred to in paragraph 1(a), as well as relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.
3. The acceptance, by a contractor, of subsidies other than those which may be permitted under the agreements referred to in paragraph 1(a) shall constitute a violation of the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.
4. Any State Party which has reason to believe that there has been a breach of the requirements of paragraphs 1 or 3 may initiate dispute settlement procedures in conformity with paragraph 1(e) or 1(f).
5. The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this Part. This shall include relevant rules, regulations and procedures governing the approval of plans of work.

G. ECONOMIC ASSISTANCE

The policy of the Authority to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be as follows:

- (a) Developing land-based producer States whose economies have been determined to be seriously affected by production of minerals from the deep seabed should be assisted from the economic assistance fund of the Authority.

- (b) The Authority shall establish an economic assistance fund from that portion of funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority, provided that the amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions, shall be used for the establishment of the economic assistance fund.
- (c) The Authority shall provide assistance from the fund to affected developing land-based producer states, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programs.
- (d) The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer states.

H. FINANCIAL TERMS OF CONTRACT

The following principles shall provide the basis for financial arrangements:

- (a) The system of financial payments to the Authority shall be fair both to the contractor and to the Authority.
- (b) The rates of financial payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage.
- (c) The system of financial payments may be revised periodically in view of changing circumstances, however, they shall be applied in a nondiscriminatory manner and they may apply retroactively to existing contracts only at the election of the contractor. Any subsequent change in the choice of the systems shall, however, be by agreement of the Council.

- (d) While the system should not be complicated and should not impose major administrative costs on the Authority or on a contractor, consideration should be given to the adoption of a royalty or a combination of a royalty and profit sharing system. If alternative systems are decided upon the choice of the system applicable to an individual contract shall be at the election of the contractor. However, any subsequent change of system shall be by agreement of the Council.
- (e) The annual fixed fee payable by a contractor prior to commercial production of minerals from the deep seabed may be adjusted by the Council to take account of the risks involved in establishing a new industry in an uncertain and potentially unstable environment, and the prolonged delay in the commercial production of minerals from the deep seabed. Diligence should be insured by monitoring conformance of contractors with approved plans of work. An application fee shall be applied to all plans of work submitted to the Authority.
- (f) Any disputes concerning the interpretation or application of the rules and regulations based on these principles should be subject to the dispute settlement procedures under the Convention.

ANNEX II

Consequential Adjustments

A. COSTS TO STATES PARTIES AND INSTITUTIONAL PROVISIONS

1. With respect to the early functions of the Authority, Section 4 of Part XI shall be interpreted and applied in accordance with Part A of Annex I to this Agreement.
2. The functions of the Economic Planning Commission provided for in of the Convention shall be performed by the Legal and Technical Commission until such time as the Council decides otherwise.
3. Prior to the elaboration of the rules, regulations and procedures for exploitation, the Assembly and the Council shall only meet as frequently as required for the adequate and timely performance of their functions.
5. The Finance Committee referred to in Part I of this Annex shall meet in conjunction with the Assembly and the Council. The Legal and Technical Commission shall meet as necessary to consider applications for approval of plans of work and perform such other functions as the Council may direct. Otherwise, subsidiary organs shall meet as required by the Council.
6. The Administrative expenses of the Authority shall be financed by assessed contributions in accordance with Article 173. The Authority shall not have the power to borrow funds to finance its administrative budget.
7. The subsidiary bodies of the Authority shall include a Finance Committee as described in Part I of this Annex. Article 162, subparagraph 2 (y) of the Convention shall be inoperative.
8. Applications for the approval of plans of work shall be processed in accordance with the procedures set out in Part D of Annex I to this Agreement, subject to the provisions of paragraph 7 of Part A of that Annex, provided that paragraph 6 (d), Article 4 of Annex III of the Convention shall not apply.
9. Article 10 of Annex III of the Convention is modified by the addition of the following at the end of the last sentence:

"that is, the contractor has failed to comply with the requirements of an approved plan of work despite written warning or warnings from the Authority to the contractor to comply therewith."

B. THE ENTERPRISE

1. Sub-section E of Section 4 of Part XI, Annex IV and other provisions of the Convention relating to the Enterprise shall be modified by Part B of Annex I to this Agreement.
2. The Authority shall draw up the terms of reference of the Enterprise in the light of Annex I to this Agreement. Consideration of such terms of reference shall begin prior to commencement of commercial production, at a time determined by the Council, and may be concluded in the course of the elaboration of the rules, regulations and procedures for exploitation in accordance with paragraph [.....] of Part A of Annex I to this Agreement.
3. Article 153, paragraph 3 of the Convention is modified by the deletion of the first clause of the second sentence and, therefore, obligations applicable to contractors shall be equally applicable to the Enterprise.

C. DECISION-MAKING

1. Sub-section C of Section 4 of Part XI shall be interpreted and applied in accordance with Part C of Annex I to this Agreement.
2. The provisions of Article 161, subparagraphs 1 (a) to (e) of the Convention shall be modified as follows:

"Composition, Procedure and Voting

1. The Council shall be composed of 36 members as follows:
 - (a) four members from among States Parties, each of which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of the total world consumption, or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region and one State from the Group of Western European and Other States having the largest economy in the respective region in terms of gross domestic product;

- (b) four members from States Parties which have made investments in preparation for, and in the conduct of, activities in the Area, either directly or through their nationals;
- (c) four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;
- (d) twenty-four members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided:
 - (i) that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern Europe, Latin America and Western Europe and Others;
 - (ii) that this includes six members from among developing States, including States with large populations, States which are land-locked or geographically disadvantaged, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least-developed States.*

*imbalance
between interest-
group and regional
representation.
They have no
voting votes*

3. Article 161, paragraph 8 (b) and (c) shall be modified as follows:

- (b) Decisions on questions of substance, except decisions governed by paragraph (d), shall be taken by a two-thirds majority of members present and voting provided that such decisions are not opposed by a majority of the members in any one of the categories (a), (b) or (c).

* It should be noted that the Convention provides for five categories of States in the Council. The issue of whether the five categories should be retained for the purpose of chambered voting requires further discussion.

4. The provisions of Article 162, subparagraphs 2 (j) (i) and (ii) of the Convention are replaced by the provisions of paragraph 11 of Part C of Annex I to this Agreement.

D. REVIEW CONFERENCE

1. Article 155 of the Convention shall not apply and amendments relating to Part XI shall be accomplished pursuant to Article 314, 315 and 316 of the Convention and as provided for in Part D of Annex I to this Agreement.

E. TRANSFER OF TECHNOLOGY

The Authority shall base its policy on transfer of technology on Article 144 of the Convention and the principles contained in Part E of Annex I to this Agreement, which shall replace the provisions in Article 5 of Annex III of the Convention.

F. PRODUCTION POLICY

The provisions of Article 162, subparagraph 2 (q) , Article 165, subparagraph 2 (n), Article 151, paragraphs 1 - 7 and paragraph 9 and Article 7 of Annex III of the Convention shall be replaced by the provisions of Part F of Annex I to this Agreement.

G. ECONOMIC ASSISTANCE TO SERIOUSLY AFFECTED LAND-BASED PRODUCER STATES

1. The Authority shall address the system of economic assistance to developing country land-based producers of minerals to be produced from the deep seabed on the basis of the principles contained in Part G of Annex I to this Agreement.

2. Article 151, paragraph 10 of the Convention is modified by the deletion of the phrase "compensation or take other measures" in the first sentence, and corresponding changes are made in Article 160, subparagraph 2 (l), Article 162, subparagraph (2) (n), Article 164, subparagraph 2 (d), Article 171, paragraph (f) and Article 173, subparagraph 2 (c) of the Convention.

H. FINANCIAL TERMS OF CONTRACT

1. Paragraph 2, Article 13 of Annex III of the Convention is modified by including the following after the first sentence:

"In the case of applications for the approval of a plan of work limited to one phase, either the exploration phase or the exploitation phase, the fee for processing such application shall be \$250,000 for each phase."

2. Paragraph 2, Article 13 of Annex III of the Convention, is modified as follows:

"A contractor shall pay an annual fixed fee of \$US1 million from the date of approval of its plan of work for exploration or for exploitation, provided that such fee may be adjusted by the Council from time to time in the light of the circumstances prevailing in the development of deep seabed mining. From the date of commencement of commercial production, the contractor shall pay either the production charge or the annual fixed fee, whichever is greater."

3. The principles contained in Part H of Annex I to this Agreement shall replace the provisions of paragraphs 4 - 10, Article 13 of Annex III of the Convention. The Authority shall establish rules, regulations and procedures on financial terms of contracts on the basis of these principles.

I. THE FINANCE COMMITTEE

1. The Finance Committee shall be composed of 15 members. Until the Authority is self-financing, the Committee shall include the five largest financial contributors.

2. No two members of the Finance Committee shall be nationals of the same State Party.

3. Members of the Finance Committee shall be elected by the Council.

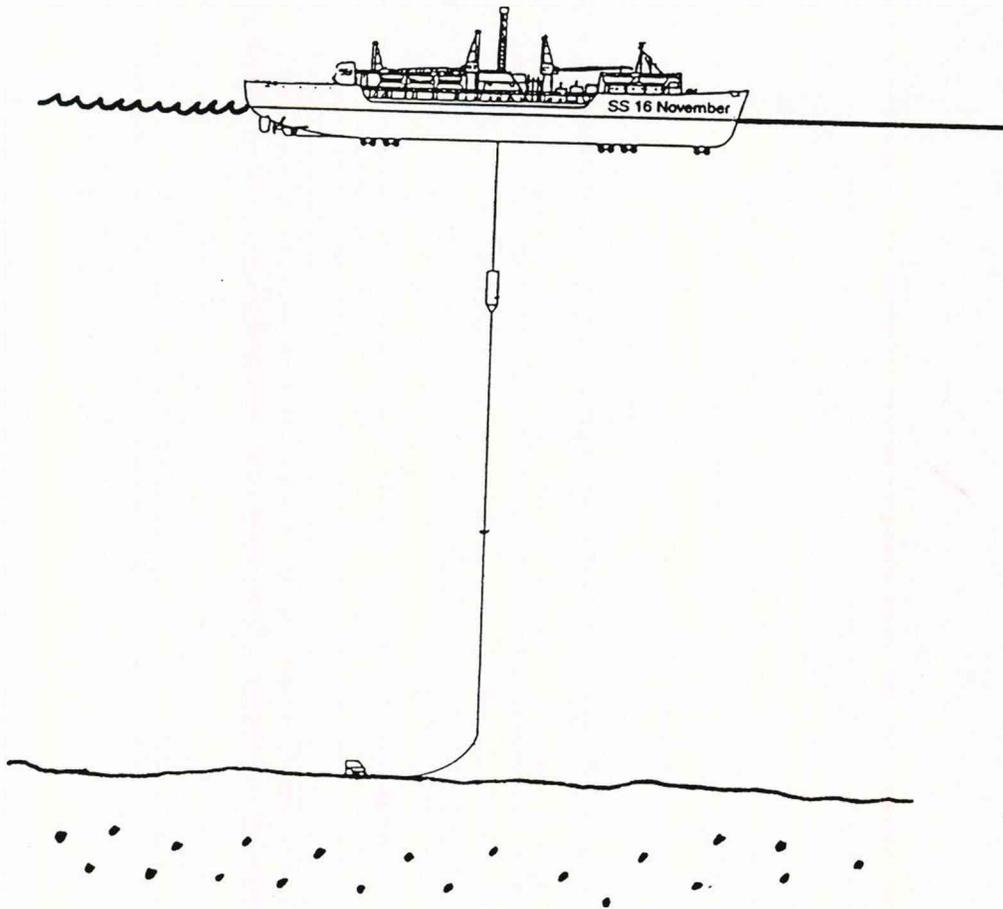
4. The Finance Committee shall consider and approve all recommendations for expenditure before they can be entertained by the Council or the Assembly.

5. Decisions by the Council and the Assembly on the following issues shall be made based on recommendations by the Finance Committee:

- (a) Draft financial rules, regulations and procedures of the various organs of the Authority and the financial management and internal administration of the Authority.
- (b) Assessment of contributions of members to the administrative budget of the Authority in accordance with Article 160, paragraph 2(e) of the Convention.
- (c) All relevant financial matters including for example the proposed annual budget prepared by the Secretary-General, (Article 172), the financial aspects of the implementation of the programs of work of the Secretariat.
- (d) The administrative budget.
- (e) Financial obligations of States parties arising from the operation of Part XI and its related annexes as well as on the administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority.
- (f) Rules, regulations and procedures on the equitable sharing of financial and other economic benefits and the decisions to be made on that basis.

November 1993

The original version of this document was prepared in August 1993 by representatives of several developed and developing States as a contribution to the process of consultations relating to outstanding issues in Part XI of the 1982 United Nations Convention on the Law of the Sea. The document has been revised in the light of discussions during the Secretary-General's informal consultations held in November 1993.



DRAFT RESOLUTION FOR ADOPTION BY THE GENERAL ASSEMBLY

The United Nations Convention on the Law of the Sea

The General Assembly

Recalling resolution (48/.... of ... December 1993) on the Law of the Sea,

Recalling that Part XI and related provisions of the 1982 United Nations Convention on the Law of the Sea (the Convention) established a regime for the international seabed area ("the Area") and its resources,

Reaffirming that the Area and its resources are the common heritage of mankind,

Recognizing that political and economic changes, including in particular a growing reliance on market principles, show the need to re-evaluate some aspects of the regime,

Noting the initiative of the Secretary-General since 1990 to promote dialogue aimed at achieving universal participation in the Convention,

Welcoming the report of the Secretary-General pursuant to General Assembly resolution (48/....) and, in particular, the results of the Secretary-General's informal consultations set out in paragraphs [.....] of the report,

Taking note of the report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea,

Considering that the objective of universal participation in the Convention may best be achieved by the adoption of an agreement relating to the implementation of Part XI and related provisions of the Convention and to give effect to the results of the Secretary-General's informal consultations,

1. *Endorses* the results of the Secretary-General's informal consultations set out in paragraphs [.....] of the report of the Secretary-General;
2. *Adopts* the Agreement relating to the Implementation of Part XI and related provisions of the Convention ("the Agreement"), the text of which is attached to this resolution;
3. *Considers* that future ratifications or formal confirmations of or accessions to the Convention should be taken to relate to the Convention together with the Agreement;
4. *Calls on* States and other entities referred to in Article 3 of the Agreement to act in accordance with the object and purpose of the Agreement pending its entry into force;
5. *Requests* the Secretary-General to transmit certified copies of the Agreement to the States and the other entities referred to in Article 3 thereof, with a view to facilitating universal participation in the Convention together with the Agreement.

**AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE
1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**

The States Parties to this Agreement,

Recognizing the significant contribution of the 1982 United Nations Convention on the Law of the Sea ("the Convention") to the maintenance of peace, justice and progress for all peoples of the world;

Having considered the report of the Secretary-General of the United Nations on the results of the informal consultations held from 1990 to 1994 on outstanding issues relating to Part XI and related provisions of the Convention ("Part XI");

Wishing to take account of important political and economic developments affecting the implementation of those provisions, in order to facilitate universal participation in the Convention;

Considering that an Agreement relating to the implementation of the Part XI would best meet that objective;

Have agreed as follows:

*Article 1
Implementation of Part XI*

1. The States Parties to this Agreement undertake to implement Part XI in accordance with this Agreement.
2. The Annex forms an integral part of this Agreement.

*Article 2
Relationship between this Agreement and Part XI*

1. The provisions of Part XI and this Agreement shall be interpreted and applied together as one single instrument. In the event of any inconsistency, the provisions of this Agreement shall prevail.
2. Articles 309 to 319 of the Convention shall apply to this Agreement as they apply to the Convention.

3. After the adoption of this Agreement, any instrument of ratification or formal confirmation of or accession to the Convention shall represent also an accession to this Agreement.

Article 3
Accession

This Agreement shall be open for accession by those States and other entities referred to in Article 305 of the Convention which have ratified, formally confirmed or acceded to the Convention or which are simultaneously ratifying, formally confirming or acceding to the Convention and this Agreement. Accession by the entities referred to in Article 305, paragraph 1 (f) of the Convention shall be in accordance with Annex IX of the Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 4
Simplified Procedure

A State or entity which has deposited before the date of the adoption of this Agreement an instrument of ratification, formal confirmation or accession in respect of the Convention shall be considered to be a party to this Agreement if that State has not notified the Depositary within [...] months of the adoption of this Agreement that it is not having recourse to the simplified procedure set out in this Article. In the event of such a notification being made, accession to this Agreement shall take place in accordance with Article 3.

Article 5
Entry into Force

1. This Agreement shall enter into force on the day of deposit of the [...] instrument of accession to this Agreement, provided at least [...] of those instruments have been deposited by States to which paragraph 1 (a) (i), (ii) or (iii) of Resolution II of the Third United Nations Conference on the Law of the Sea ("Resolution II") applies.
2. For each State acceding to the Agreement after its entry into force, the Agreement shall come into force on the date of deposit by such State of its instrument of accession.
3. States which have recourse to the simplified procedure in Article 4 shall be regarded as having acceded upon expiry of the period of [...] months specified in that Article, or upon entry into force of this Agreement in accordance with paragraph 1, whichever is later.*

* The issue of simultaneous entry into force of the Convention and this Agreement requires further discussion.

Article 6
States Parties

For the purposes of this Agreement, "States Parties" means States and entities which have consented to be bound by this Agreement and for which it has entered into force.

Article 7
Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement.

Article 8
Authentic Texts and Depositary

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the Secretariat of the United Nations.

ANNEX**SECTION 1. COSTS TO STATES PARTIES AND INSTITUTIONAL ARRANGEMENTS**

1. The Authority is the organization through which States Parties to the Convention shall, in accordance with the regime for the international seabed area ("Area") established in Part XI and this Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area. The powers and functions of the Authority shall be those expressly conferred upon it by the Convention. The Authority shall have such incidental powers consistent with the Convention, as are implicit in, and necessary for, the exercise of those powers and functions with respect to the activities of the Area.
2. In order to minimize costs to State Parties, all organs and subsidiary bodies to be established under the Convention and this Agreement shall be cost-effective. This principle shall also apply to the frequency, length and scheduling of meetings.
3. The setting up and the operation of the various organs and subsidiary bodies shall be based on an evolutionary approach, taking into account the functional needs of the organs and subsidiary bodies concerned in order that they may discharge effectively their respective responsibilities at various stages of the development of activities in the Area.
4. The functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Legal and Technical Commission and the Finance Committee, which shall work in accordance with Section 9 of this Annex. The functions of the Economic Planning Commission shall be performed by the Legal and Technical Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation.
5. The Assembly and the Council, as well as their respective subsidiary bodies, shall meet only as frequently as required for the adequate and timely performance of their functions.
6. Between the entry into force of the Convention and the approval of the first plan of work for exploitation, the Authority shall concentrate on:
 - (a) processing of applications for approval of plans of work for exploration in accordance with Part XI and this Agreement;
 - (b) monitoring of compliance with plans of work for exploration approved in the form of contracts;

- (c) implementation of decisions of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (Preparatory Commission) relating to the registered pioneer investors and their certifying States, including their rights and obligations, in accordance with the provisions of Article 308, paragraph 5 of the Convention and Resolution II, paragraph 13;
 - (d) study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;
 - (e) promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of the activities in the Area;
 - (f) acquisition of scientific knowledge and the monitoring of the development of marine technology relevant to the activities in the Area;
 - (g) adoption of rules, regulations and procedures, including those relating to the protection and preservation of the marine environment, necessary for the conduct of activities in the Area as they progress. Notwithstanding the provisions of Annex III, Article 17 (2)(b) and (c) of the Convention, such rules regulations and procedures shall take into account the terms of this Agreement, the changed economic circumstances since the Convention was adopted, the prolonged delay in commercial deep seabed mining and the likely pace of activities in the Area;
 - (h) monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;
 - (i) assessment of available data relating to prospecting and exploration; and
 - (j) timely elaboration of rules, regulations and procedures for exploitation.
7. (a) The application for the approval of a plan of work for exploration shall be considered by the Council following the receipt of a recommendation on the application from the Legal and Technical Commission. The processing of an

application for the approval of a plan of work for exploration shall be in accordance with the provisions of the Convention, including its Annex III, and this Agreement, provided that:

- (i) a plan of work for exploration submitted on behalf of a State or entity, or any component of such entity, referred to in Resolution II, paragraph 1 (a) (ii) and (iii), other than a registered pioneer investor, which had already undertaken substantial activities in the Area prior to entry into force of the Convention or their successors in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work, if the sponsoring State certifies that the applicant has expended an amount equivalent to at least \$US30 million in research and exploration activities and has expended no less than ten (10) per cent of that amount in the location, survey and evaluation of the area referred to in the plan of work. If the plan of work otherwise satisfies the requirements of the Convention and any rules, regulations and procedures adopted pursuant thereto, it shall be approved by the Council in the form of a contract, notwithstanding the provisions of Section 3, paragraph 10 of this Annex.
- (ii) upon the request of a registered pioneer investor, its plan of work for exploration consisting of documents, reports and other data submitted to the Preparatory Commission before and after registration together with an indication of plans for future activities, if any, shall be approved in the form of a contract by the Council in accordance with Part XI and this Agreement, notwithstanding the provisions of Section 3, paragraph 10 of this Annex. Resolution II, paragraph 8 (c) shall not apply and a request for approval of a plan of work for exploration of a registered pioneer investor may be made by a sponsoring State as a State Party or as a provisional member of the Authority pursuant to paragraph 14. The fee to be paid by a pioneer investor upon application for a plan of work, in accordance with the provisions of Resolution II, paragraph 7 (a), and Annex III, Article 13, paragraph 2 of the Convention, shall be deferred until the pioneer investor submits a plan of work for exploitation, taking into account the \$250,000 fee paid pursuant to Resolution II, paragraph 7 (a), which shall be deemed to be the fee relating to the exploration phase pursuant to Section 8, paragraph 3 of this Annex. The period following entry into force of the Convention within which a registered pioneer investor may request approval of a plan of work pursuant to Resolution II, paragraph 8 (a) shall be extended from six months to twenty four months; and
- (iii) in accordance with the principle of non-discrimination a contract with a State or entity or any component of such entity referred to in (i) above,

shall include arrangements which shall be similar to and no less favourable than those agreed with any State or entity or any component of such entity referred to in (ii) above. In the case of contracts with the States or entities or any components of such entities referred to in (ii) above, the Council shall make such adjustments, as are equitable, to the rights and obligations assumed by them under Resolution II and the decisions of the Preparatory Commission.

- (b) The approval of a plan of work for exploration shall be in accordance with Article 153, paragraph 3 of the Convention.

8. Applications for approval of plans of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities in accordance with the rules, regulations and procedures adopted by the Authority.

9. Applications for the approval of plans of work for exploration other than those referred to in paragraph 7 shall be processed in accordance with the procedures set out in Section 3, paragraph 10 of this Annex.

10. A plan of work for exploration shall be approved for a period of ten years. Upon the expiration of a plan of work for exploration the contractor shall apply for a plan of work for exploitation unless the contractor has received an extension for the plan of work for exploration. Contractors may apply for such extensions for periods of not more than five years each. Such extensions shall be approved if the contractor has made good faith efforts to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or the prevailing economic circumstances have not justified proceeding to the exploitation stage.

11. The reference in the last sentence of Annex III, Article 10 of the Convention to performance which has not been satisfactory shall be interpreted to mean that the contractor has failed to comply with the requirements of an approved plan of work despite written warning or warnings from the Authority to the contractor to comply therewith.

12. The Authority shall elaborate and adopt, in accordance with Article 162, paragraph 2(o)(ii) of the Convention, rules, regulations and procedures based on the principles contained in Sections 2, 5, 6, 7 and 8 of this Annex, as well as any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploration or exploitation, as follows:

- (a) The Council may undertake such elaboration at any time it deems all or any of such rules, regulations or procedures are required for the conduct of activities in the Area, or when it determines that commercial exploitation is imminent, or at the request of a State whose national is in a position to apply for approval of a plan of work for exploitation.

- (b) If a request is made by a State referred to in subparagraph (a) the Council shall, in accordance with Article 162, paragraph 2(o) of the Convention, complete the adoption of such rules, regulations and procedures within two years of such a request.
- (c) If the Council has not completed rules regulations and procedures relating to exploitation within the prescribed time, and an application for the approval of a plan of work for exploitation is pending, it shall nonetheless consider and provisionally approve such plan of work based on the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles contained in this Annex as well as the principle of non-discrimination among contractors.

13. The Authority shall have its own budget. The administrative expenses of the Authority shall be met [by assessed contributions of its members, including its provisional members, in accordance with Article 173 of the Convention and this Agreement] [through the budget of the United Nations] until such time as the Authority becomes self-financing. The Authority shall not exercise the power referred in Article 174, paragraph 1 of the Convention to borrow funds to finance its administrative budget.

14. States and entities referred to in Article 305 of the Convention which have not established their consent to be bound by it shall be eligible to become provisional members of the Authority on the following basis:

- (a) Such membership shall take effect upon notification to the depositary of the Convention by a State or entity of its intention to participate as a provisional member of the Authority and shall terminate two years after the date of entry into force of the Convention or upon ratification or formal confirmation of, or accession to, the Convention and this Agreement by such a State. The Council may, upon request of the State or entity concerned, extend provisional membership by up to two years if the Council is satisfied that the State or entity has been making efforts in good faith to become a party, provided that provisional membership shall not extend beyond four years after the date of entry into force of the Convention.
- (b) Provisional members shall apply the terms of Part XI and this Agreement provisionally and shall have the same rights and obligations as other members, including:
 - (i) the obligation to contribute to the budget of the Authority based on assessed contributions, in accordance with their national laws, regulations and annual budgetary appropriations; and

- (ii) the right to sponsor an application for the approval of a plan of work for exploration. In the case of entities whose components are natural or juridical persons possessing the nationality of more than one State, a plan of work for exploration shall not be approved unless all the States whose natural or juridical persons comprise those entities are provisional members or States Parties.
- (c) Notwithstanding the provisions of paragraph 10, an approved plan of work for exploration which is sponsored by a provisional member in accordance with subparagraph b(ii) shall terminate if such member ceases to be a provisional member and has not become a State Party.
- (d) If the Assembly decides that a provisional member has failed to comply with its obligations in accordance with this paragraph, its provisional membership shall be terminated.

15. The draft rules, regulations and procedures and any recommendations relating to the provisions of Part XI, as contained in the reports and recommendations of the Preparatory Commission, shall be taken into account by the Authority in the adoption of rules, regulations and procedures in accordance with Part XI and this Agreement.

16. The relevant provisions of Part XI, Section 4 shall be interpreted and applied in accordance with this Agreement.

SECTION 2. THE ENTERPRISE

1. The Enterprise shall conduct its initial operation through joint ventures. It shall commence its functioning upon the issuance of a directive by the Council pursuant to Article 170, paragraph 2 of the Convention.
2. The obligations to fund one mine site of the Enterprise as provided for in Annex IV, Article 11, paragraph 3 of the Convention, shall not apply and States parties to the Convention shall be under no obligation to finance any of the operations in any mine site of the Enterprise or under its joint venture arrangements.
3. The Secretariat of the Authority shall perform the preparatory functions necessary for the commencement of the functioning of the Enterprise. These shall include the monitoring of developments in the deep seabed mining sector, in particular the prevailing conditions in the world metal market, developments in deep seabed mining technology, and data and information on the environmental impact of activities in the Area.
4. The obligations applicable to contractors shall apply to the Enterprise. Notwithstanding the provisions of Article 153, paragraph 3 of the Convention, and Annex

III, Article 3, paragraph 5 of the Convention, a plan of work for the Enterprise upon its approval shall be in the form of a contract concluded between the Authority and the Enterprise.

5. A contractor which has contributed a particular area to the Authority as a reserved area shall have priority to enter into a joint venture arrangement with the Enterprise for exploration and exploitation of that area, subject to agreement on the terms and conditions of the joint venture arrangement. If the Enterprise does not commence activities on such a reserved area within ten years of the commencement of its functioning or within ten years of the date on which that area is reserved for the Authority, whichever is the later, the contractor which contributed the area shall be entitled to apply for a plan of work for that area provided it offers to include the Enterprise as a joint venture partner.

6. Article 170, paragraph 4, Annex IV and other provisions of the Convention relating to the Enterprise shall be interpreted and applied in accordance with this Part.

SECTION 3. DECISION - MAKING

1. The general policies of the Authority shall be established by the Assembly in collaboration with the Council.

2. Decision-making in the organs of the Authority, as a general rule, should be by consensus and there should be no voting until all efforts to reach a decision by consensus have been exhausted.

3. If consensus can not be reached, decisions by voting in the Assembly on matters of procedure shall be taken by a majority of States present and voting, and decisions on matters of substance shall be taken by a two-thirds majority of States present and voting, as provided for in Article 159, paragraph 8 of the Convention.

4. Decisions of the Assembly on any matter for which the Council also has competence or on any administrative, budgetary or financial matter shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council for further consideration. The Council shall reconsider the matter in the light of the views expressed by the Assembly.

5. Decisions by the Council or the Assembly having financial or budgetary implications shall be based on the recommendations of the Finance Committee.

6. The major categories of interests identified in paragraph 14 (a) to (c) shall be treated as chambers for the purposes of decision-making in the Council. Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the

criteria for the membership in the interest groups identified in subparagraphs 14 (a) to (d). If a country fulfils the criteria for membership in more than one interest group, it may only be proposed by one interest group for election to the Council and it shall represent only that interest group in voting in the Council.

7. Each interest group identified in paragraph 14 (a) to (d) shall be represented in the Council by those members nominated by that interest group. Each interest group shall only nominate as many candidates as the number of seats that are required to be filled by that group. When the number of potential candidates in each of the categories referred to in paragraph 14 (a) to (e) exceeds the number of seats available in each of those respective categories, as a general rule, the principle of rotation shall apply. States members of each of those categories shall determine how this principle shall apply in those categories. This principle, however, shall not apply to the two States specifically referred to in paragraph 14 (a).

8. Decisions by voting in the Council on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance, except where the Convention provides for decisions by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to above.

9. The Council may decide to postpone the taking of a decision in order to facilitate further negotiation whenever it appears that all efforts at achieving consensus on a question have not been exhausted.

10. (a) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. The prescribed period shall normally be 60 days unless the Council decides to provide for a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its normal rules of procedure on matters of substance.

(b) The provisions of Article 162, paragraph 2 (j) of the Convention shall not apply.

11. Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement mechanism contained in the Convention.

12. Decisions by voting in the Legal and Technical Commission shall be by a majority of members present and voting.
13. Part XI, Section 4, sub-sections B and C shall be interpreted and applied in accordance with this Part.
14. The Council shall consist of 36 members of the Authority elected by the Assembly in the following order:
 - (a) four members from among States Parties, each of which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of the total world consumption, or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and the State, at the time of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this category;
 - (b) four members from among the eight States Parties which have made the largest investments in preparation for, and in the conduct of, activities in the Area, either directly or through their nationals;
 - (c) four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;
 - (d) six members from among developing States, representing special interests. The special interests to be represented shall consist of States with large populations, States which are land-locked or geographically disadvantaged, island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States; and
 - (e) eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern European, Latin America and Western European and Others.

* The issue of whether the system of chambered voting in the Council should extend to the category in sub-paragraph (d) in addition to the categories in sub-paragraphs (a) to (c) requires further discussion.

15. The provisions of Article 161, paragraph 1 of the Convention shall not apply.
- 16 (a) Decisions on questions of substance in the Council, except decisions governed by Article 161, paragraph 8 (d) of the Convention, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority of the members in any one of the categories mentioned in paragraph 14(a), (b) or (c).
- (b) The provisions of Article 161, paragraph 8(b) and (c) of the Convention shall not apply.

SECTION 4. REVIEW CONFERENCE

In the light of the present Agreement and the changed circumstances in respect of deep seabed mining since the Convention was adopted, and the changes in the approaches to economic issues, the provisions relating to the Review Conference in Article 155, paragraphs 1, 3 and 4 of the Convention shall not apply. Notwithstanding the provisions of Article 314, paragraph 2 of the Convention, the Authority may undertake at any time a review of the matters referred to in Article 155, paragraph 1 of the Convention. Amendments relating to Part XI shall be subject to the procedures contained in Articles 314, 315 and 316 of the Convention, provided that:

- (a) the principles, regime and other terms of Article 155, paragraph 2 of the Convention shall be maintained and the rights referred to in paragraph 5 of that Article shall not be affected; and
- (b) amendments shall enter into force on a date determined by the Council by a three-fourths majority of the members present and voting, including a majority of members of each chamber of the Council at that time.

SECTION 5. TRANSFER OF TECHNOLOGY

1. Transfer of technology, for the purposes of Part XI, shall be governed by the provisions of Article 144 of the Convention and the following principles:
 - (a) The Enterprise shall take measures to obtain the technology required for its operations on the open market or through its joint venture arrangements.
 - (b) If the technology in question is not available on the open market, the Authority may invite all or any of the contractors and their respective sponsoring State or

States to cooperate with it in facilitating acquisition of technology by the Enterprise or its joint venture, or a developing State or States seeking to acquire such technology on fair and reasonable commercial terms and conditions, including effective protection of intellectual property rights. States Parties undertake to cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also fully cooperate with the Authority.

- (c) States Parties shall promote international technical and scientific cooperation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific cooperation programmes.
2. The provisions of Annex III, Article 5 of the Convention shall not apply.

SECTION 6. PRODUCTION POLICY

1. The production policy of the Authority shall be based on the following principles:
- (a) The rights and obligations relating to unfair economic practices under the General Agreement on Tariffs and Trade, its relevant codes and successor agreements, shall apply to activities in the Area.
 - (b) In particular, there shall be no subsidisation of activities in the Area except as may be permitted under the agreements referred to in subparagraph (a). Subsidisation for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (a).
 - (c) There shall be no discrimination between minerals derived from the Area and from other sources. There shall be no preferential access to markets for such minerals or for imports of commodities produced from such minerals, in particular:
 - (i) by use of tariff or non-tariff barriers; and
 - (ii) given by States Parties to such minerals or commodities produced by their state enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals;

- (d) The plan of work for exploitation approved by the Authority in respect of each mining area shall indicate an anticipated production schedule which shall include the estimated maximum amounts of minerals that would be produced per year under that plan of work.
 - (e) In the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (a), States Parties which are parties to such agreements shall have recourse to the dispute settlement procedures of such agreements; and
 - (f) In circumstances where a determination is made under the agreements referred to in subparagraph (a) that a State Party has engaged in subsidisation which is prohibited or has resulted in adverse effects to the interests of another State Party and appropriate steps have not been taken by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.
2. The principles contained in paragraph 1 shall not affect rights and obligations under any provision of the agreements referred to in paragraph 1(a), as well as relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.
3. The acceptance, by a contractor, of subsidies other than those which may be permitted under the agreements referred to in paragraph 1(a) shall constitute a violation of the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.
4. Any State Party which has reason to believe that there has been a breach of the requirements of paragraph 1(a) to (d) may initiate dispute settlement procedures in conformity with paragraph 1(e) or (f).
5. The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this Part. This shall include relevant rules, regulations and procedures governing the approval of plans of work.
6. The provisions of Article 162, paragraph 2(q), Article 165, paragraph 2(n), Article 151, paragraphs 1 to 7 and paragraph 9 and Annex III, Article 7 of the Convention shall not apply.

SECTION 7. ECONOMIC ASSISTANCE

1. The policy of the Authority to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the

price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be based on the following principles:

- (a) Developing land-based producer States whose economies have been determined to be seriously affected by production of minerals from the deep seabed shall be assisted from the economic assistance fund of the Authority.
- (b) The Authority shall establish an economic assistance fund from a portion of funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority, provided that the amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions, shall be used for the establishment of the economic assistance fund.
- (c) The Authority shall provide assistance from the fund to affected developing land-based producer states, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes.
- (d) The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer states.

2. Article 151, paragraph 10 of the Convention shall be implemented by means of measures of economic assistance referred to in paragraph 1. Article 160, paragraph 2(l), Article 162, paragraph 2(n), Article 164, paragraph 2(d), Article 171, paragraph (f) and Article 173, paragraph 2(c) of the Convention shall be interpreted accordingly.

SECTION 8. FINANCIAL TERMS OF CONTRACT

1. The following principles shall provide the basis for establishing rules, regulations and procedures for financial terms of contract:

- (a) The system of financial payments to the Authority shall be fair both to the contractor and to the Authority.

- (b) The rates of financial payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage.
 - (c) The system of financial payments may be revised periodically in view of changing circumstances, however, they shall be applied in a non-discriminatory manner and they may apply retroactively to existing contracts only at the election of the contractor. Any subsequent change in the choice of the systems shall, however, be by agreement of the Council.
 - (d) While the system should not be complicated and should not impose major administrative costs on the Authority or on a contractor, consideration should be given to the adoption of a royalty system or a combination of a royalty and profit sharing system. If alternative systems are decided upon the choice of the system applicable to an individual contract shall be at the election of the contractor. However, any subsequent change of system shall be by agreement of the Council.
 - (e) An annual fixed fee shall be payable from the date of commencement of commercial production. However such fee may be credited against other payments due under the system adopted in accordance with subparagraph (d). The amount of such fee shall be established by the Council.
 - (f) Any disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures under the Convention.
2. The provisions of Annex III, Article 13, paragraphs 3 to 10 of the Convention shall not apply.
3. With regard to the implementation of Annex III, Article 13, paragraph 2 of the Convention, the fee for processing applications for the approval of a plan of work limited to one phase, either the exploration phase or the exploitation phase, shall be \$250,000.

SECTION 9. THE FINANCE COMMITTEE

1. There is hereby established a Finance Committee. The Finance Committee shall be composed of 15 members with appropriate qualifications relevant to financial matters. States Parties shall nominate candidates of the highest standards of competence and integrity. In the election of members of the Finance Committee, due account shall be taken of the need for equitable geographical distribution and the representation of special

interests. Until the Authority is self-financing, the membership of the Committee shall include the five largest financial contributors to the administrative budget of the Authority.

2. No two members of the Finance Committee shall be nationals of the same State Party.
3. Members of the Finance Committee shall be elected by the Assembly. Each category referred to in Section 3, paragraph 14(a), (b), (c) and (d) of this Annex shall be represented on the Finance Committee by at least one member. After the Authority becomes self-financing, the election of one member from each category shall be on the basis of nomination by the members of the respective category, without prejudice to the possibility of further members being elected from each such category.
4. Members of the Committee shall hold office for a term of five years. They shall be eligible for re-election for a further term.
5. In the event of death, incapacity or resignation of a member of the Committee prior to the expiration of the term of office, the Assembly shall elect for the remainder of the term a member from the same geographical region or interest group.
6. Members of the Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after the termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Authority.
7. Decisions by the Council and the Assembly on the following issues shall take into account recommendations by the Finance Committee:
 - (a) Draft financial rules, regulations and procedures of the various organs of the Authority and the financial management and internal financial administration of the Authority.
 - (b) Assessment of contributions of members to the administrative budget of the Authority in accordance with Article 160, paragraph 2(e) of the Convention.
 - (c) All relevant financial matters including the proposed annual budget prepared by the Secretary-General (Article 172 of the Convention), the financial aspects of the implementation of the programmes of work of the Secretariat.
 - (d) The administrative budget.
 - (e) Financial obligations of States Parties arising from the operation of Part XI and its related annexes as well as on the administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority.

(f) Rules, regulations and procedures on the equitable sharing of financial and other economic benefits and the decisions to be made on that basis.

8. Recommendations of the Committee shall, where necessary, be accompanied by a summary of the range of opinions in the Committee.

9. Decisions in the Finance Committee on questions of procedure shall be taken by a majority of members present and voting. Decisions on questions of substance shall be taken by consensus.

10. The requirement of Article 162, paragraph 2(y) of the Convention to establish a subsidiary organ to deal with financial matters shall be deemed to have been fulfilled by the establishment of the Finance Committee in accordance with this Section.

UNITED NATIONS



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REFERENCE:

14 December 1993

TO ALL STATES MEMBERS OF AND
OBSERVERS TO THE UNITED NATIONS

In compliance with the decision taken at the last round of informal consultations convened by the Secretary-General on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea, the Secretariat has the honour to send you herewith a Summary Report on the informal consultations held from 8 to 12 November 1993.

The Secretariat has received a revised version of the so-called "Boat Paper" dated November 1993, which is also being circulated to all States Members and Observers of the United Nations.

A French version of the revised version of the "Boat Paper" will follow as soon as it is available.

The next round of these informal consultations will take place from 31 January to 4 February 1994.

14 December 1993

SUMMARY REPORT

on the Secretary-General's informal consultations
on outstanding issues relating to
the deep seabed mining provisions of the
UN Convention on the Law of the Sea

held on 8-12 November 1993

The next round of consultations by the Secretary-General
will take place 31 January-4 February 1994.

The latest round in the series of the Secretary-General's informal consultations on outstanding issues relating to the deep seabed mining provisions of the UN Convention on the Law of the Sea was held from 8 to 12 November 1993. Representatives of 100 States informed the Secretariat of their participation.

The Secretary-General opened this round of consultations with a statement urging participants, in view of the imminence of the entry into force of the Convention, to expend maximum efforts in order to resolve the outstanding issues which continues to hinder universal participation in the Convention.

The delegation of Sierra Leone presented a paper entitled "Agreement on the implementation of Part XI and Annexes III and IV of the United Nations Convention on the Law of the Sea."

Before this latest round of consultations, "the Boat Paper", which had been circulated during the preceding round as an anonymous paper prepared by representatives of several developed and developing States, but not necessarily reflecting the position of any of the delegations involved, had been re-circulated in a consolidated version incorporating three annexes in the original paper into one. The Secretariat also had re-circulated its Information Note dated 4 June 1993.

Intensive face-to-face discussions on outstanding issues relating to the deep seabed mining provisions of the UN Convention on the Law of the Sea, that were initiated during the preceding round of consultations, held from 2 to 6 August 1993, were continued on the basis of these papers.

In the preceding round of consultations, the discussions had covered the following topics: the question of cost-effectiveness as it applies to the institutions; the composition of the organs of the Authority; their decision-making and their functions; and the Enterprise. During the present round of consultations, the discussions in the first stage covered the remaining substantive issues as follows: transfer of technology; the Review Conference; production limitation; compensation fund; financial terms of contracts; and the Finance Committee.

After having completed consideration of these issues, delegations embarked on a renewed consideration of the issue of "Costs to States Parties and institutional arrangements," basing themselves essentially on the consolidated Boat Paper. It was also possible to re-consider the issue of "The Enterprise". Subsequent issues could not be covered due to lack of time.

At the end of this latest round of consultations, the matter of procedural approaches with respect to the use to be made of the results of the consultations was raised and briefly discussed.

During this latest round of consultations, time was also allocated for consultations within the various regional and interest groups as requested by them.

It was decided that another round of consultations will be held from 31 January to 4 February 1994 at Headquarters. Delegations will continue their deliberations on substantive and procedural issues. During the next round, time will again be set aside for regional and interest groups which may wish to meet. The attachment herewith contains a brief summary of the discussions held.

Since the November consultations, an updated version of the consolidated Boat Paper (November 1993) has been prepared by the authors of that paper. This updated version takes into account a number of the views expressed and of the alternative formulations submitted in writing during the present round of consultations. The updated Boat Paper is being circulated together with this summary report which has been prepared by the Secretariat following a decision taken at the last round of consultations.

BRIEF SUMMARY OF THE DISCUSSIONS

A. FIRST PART OF THE NOVEMBER 1993 CONSULTATIONS: COMPLETION OF THE CONSIDERATION OF THE OUTSTANDING SUBSTANTIVE ISSUES, INITIATED DURING THE AUGUST 1993 CONSULTATIONS

(i) TRANSFER OF TECHNOLOGY

1. There seemed to be agreement on the basic matter of the elimination of mandatory transfer of technology to the Enterprise or developing countries.

2. Regarding details, different views were expressed, in particular, on the following: whether mention of article 5 of Annex III of the Convention should be retained or not; what should be stated with regard to transfer of technology to developing countries in the absence of joint ventures.

(ii) REVIEW CONFERENCE

3. Different views were expressed, in particular, on the following: whether the provisions in the Information Note need to be retained; whether provisions in the Information Note could be combined with those in the Boat Paper.

(iii) PRODUCTION LIMITATION/ PRODUCTION POLICY

4. There seemed to be agreement on the general principles with respect to this issue.

5. Regarding details, different views were expressed, in particular, on the following: the sufficiency of the non-subsidization provisions and the clarity of the non-discrimination provision; in subparagraph 1(d) of the Boat Paper, replacing "estimated amount of minerals" by "maximum amount of minerals"; and the need for specifying dispute settlement mechanism for non-GATT members.

(iv) COMPENSATION FUND/ ECONOMIC ASSISTANCE

6. There seemed to be agreement on the general principles with respect to this issue.

7. Regarding details, different views were expressed, in particular, on the following: whether the idea of "compensation" should be included or not; and how the provisions of the Convention mentioning "compensation" would be dealt with.

(v) FINANCIAL TERMS OF CONTRACTS

8. There seemed to be agreement on the general principles with respect to this issue.

9. Regarding details, different views were expressed, in particular, on the following: the annual fixed fee; and the fee for processing applications for the approval of plans of work limited to one phase.

10. Alternative formulations were submitted in writing on the following matters: (a) annual fixed fee; and (b) in paragraph 3 of the Boat Paper, replacing "for exploration or for exploitation" by "for exploitation".

(vi) THE FINANCE COMMITTEE

11. There seemed to be agreement that there should be a Finance Committee.

12. Regarding details, different views were expressed, in particular, on the following: the composition of the members of the Committee, including the reference to the highest contributors; whether other criteria such as, equitable geographical distribution, special interest, should be included; the relationship between the Assembly, the Council and the Finance Committee; and whether provisions should be made in case decisions could not be taken by consensus.

**B. SECOND PART OF THE NOVEMBER 1993 CONSULTATIONS:
RENEWED CONSIDERATION OF OUTSTANDING SUBSTANTIVE ISSUES,
BASED ESSENTIALLY ON THE CONSOLIDATED BOAT PAPER**

(i) GENERAL MATTERS

13. The Boat Paper used words such as "amend", "modify", "replace", etc. in order to indicate where there were changes to be made to the Convention. It was suggested that words such as "supersede", "adapt", "apply", "practically implement" etc. may be more generally acceptable. In any case, there was a general agreement that the use of such words would be harmonized throughout the paper, according to the actual context.

14. Similarly, the Boat Paper enumerated the provisions of the Convention that were to be changed. It was suggested that it might be more appropriate to replace such enumeration by using the term "relevant provisions".

(ii) COSTS TO STATES PARTIES AND INSTITUTIONAL ARRANGEMENTS

15. There seemed to be agreement on the basic principles of cost-effectiveness and evolutionary approach being applied to the institutions.

16. With regard to details, different views were expressed, in particular, on the following: suppression of the Economic Planning Commission (EPC); functions of the Legal and Technical Commission (LTC) being dependent on the Council or the Assembly; how the regime developed for the registered pioneer investors would be integrated into the regime under the Convention; how registered pioneer investors and other applicants would be treated under the Convention; whether the Authority would have the power to borrow funds; the terms and conditions of "provisional membership of the Authority" or "provisional application of the Convention"; and the source of financing of the Authority (assessed contributions of States Parties or United Nations budget).

17. Alternative formulations were submitted in writing on the following matters: (a) approval of a plan of work for exploration of a registered pioneer investor and of other applicants and their treatment; (b) duration for the submission of an approved plan of work for exploration and extension of the period; (c) conditions for provisional membership of the Authority; (d) duration of the period of provisional membership and its extension; and (e) applications for approval of plans of work to be accompanied by environmental impact assessment.

(iii) THE ENTERPRISE

18. There seemed to be agreement on two basic matters: (a) the Enterprise shall commence its operations with joint ventures; and (b) the provisions of the Convention regarding the financing of one mine site of the Enterprise shall not apply.

19. Regarding details, different views were expressed, in particular, on the following: the Council deciding the date of the commencement of the operations of the Enterprise; the early functions of the Enterprise; and the Authority drawing up the terms of reference of the Enterprise, and the Council determining the time when consideration of such terms of reference would begin.

20. An alternative formulation was submitted in writing dealing with the arrangement between the Enterprise and a contractor which has contributed a particular area to the Authority as a reserved area.

(iv) DECISION-MAKING

[In the present round of consultations, owing to lack of time this issue was not reconsidered.]

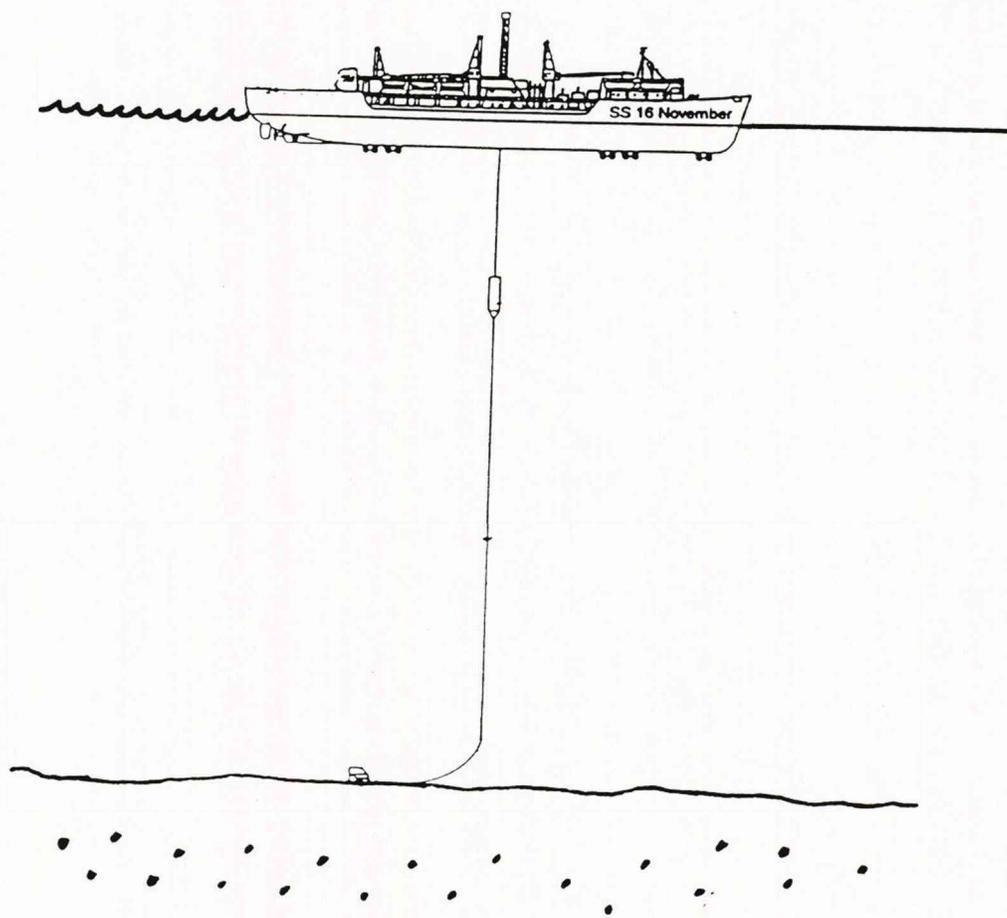
C. THIRD PART OF THE NOVEMBER 1993 CONSULTATIONS: CONSIDERATION OF PROCEDURAL ISSUES:

21. Questions were raised with respect to the procedure to be followed for the adoption of the results of the consultations. Doubts were expressed as to the possibility of completing the procedure of making the results of the consultations operative before the entry into force of the Convention. In this respect one view preferred an interpretative agreement, while the other referred specifically to the use of the amendment procedure contained in article 314 of the Convention.

22. It was, however, pointed out by some other delegations that amendments concerning activities in the Area adopted in accordance with the amendment procedure of the Convention would enter into force only after the expiration of at least one year, and in any event it was essential that the industrialized States participate in the process of adoption of any such agreement, and also participate in the setting up of the Authority from the beginning.

November 1993

The original version of this document was prepared in August 1993 by representatives of several developed and developing States as a contribution to the process of consultations relating to outstanding issues in Part XI of the 1982 United Nations Convention on the Law of the Sea. The document has been revised in the light of discussions during the Secretary-General's informal consultations held in November 1993.



DRAFT RESOLUTION FOR ADOPTION BY THE GENERAL ASSEMBLY

The United Nations Convention on the Law of the Sea

The General Assembly

Recalling resolution (48/.... of ... December 1993) on the Law of the Sea,

Recalling that Part XI and related provisions of the 1982 United Nations Convention on the Law of the Sea (the Convention) established a regime for the international seabed area ("the Area") and its resources,

Reaffirming that the Area and its resources are the common heritage of mankind,

Recognizing that political and economic changes, including in particular a growing reliance on market principles, show the need to re-evaluate some aspects of the regime,

Noting the initiative of the Secretary-General since 1990 to promote dialogue aimed at achieving universal participation in the Convention,

Welcoming the report of the Secretary-General pursuant to General Assembly resolution (48/....) and, in particular, the results of the Secretary-General's informal consultations set out in paragraphs [.....] of the report,

Taking note of the report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea,

Considering that the objective of universal participation in the Convention may best be achieved by the adoption of an agreement relating to the implementation of Part XI and related provisions of the Convention and to give effect to the results of the Secretary-General's informal consultations,

1. *Endorses* the results of the Secretary-General's informal consultations set out in paragraphs [.....] of the report of the Secretary-General;
2. *Adopts* the Agreement relating to the Implementation of Part XI and related provisions of the Convention ("the Agreement"), the text of which is attached to this resolution;
3. *Considers* that future ratifications or formal confirmations of or accessions to the Convention should be taken to relate to the Convention together with the Agreement;
4. *Calls on States* and other entities referred to in Article 3 of the Agreement to act in accordance with the object and purpose of the Agreement pending its entry into force;
5. *Requests* the Secretary-General to transmit certified copies of the Agreement to the States and the other entities referred to in Article 3 thereof, with a view to facilitating universal participation in the Convention together with the Agreement.

**AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE
1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**

The States Parties to this Agreement,

Recognizing the significant contribution of the 1982 United Nations Convention on the Law of the Sea ("the Convention") to the maintenance of peace, justice and progress for all peoples of the world;

Having considered the report of the Secretary-General of the United Nations on the results of the informal consultations held from 1990 to 1994 on outstanding issues relating to Part XI and related provisions of the Convention ("Part XI");

Wishing to take account of important political and economic developments affecting the implementation of those provisions, in order to facilitate universal participation in the Convention;

Considering that an Agreement relating to the implementation of the Part XI would best meet that objective;

Have agreed as follows:

*Article 1
Implementation of Part XI*

1. The States Parties to this Agreement undertake to implement Part XI in accordance with this Agreement.
2. The Annex forms an integral part of this Agreement.

*Article 2
Relationship between this Agreement and Part XI*

1. The provisions of Part XI and this Agreement shall be interpreted and applied together as one single instrument. In the event of any inconsistency, the provisions of this Agreement shall prevail.
2. Articles 309 to 319 of the Convention shall apply to this Agreement as they apply to the Convention.

3. After the adoption of this Agreement, any instrument of ratification or formal confirmation of or accession to the Convention shall represent also an accession to this Agreement.

Article 3
Accession

This Agreement shall be open for accession by those States and other entities referred to in Article 305 of the Convention which have ratified, formally confirmed or acceded to the Convention or which are simultaneously ratifying, formally confirming or acceding to the Convention and this Agreement. Accession by the entities referred to in Article 305, paragraph 1 (f) of the Convention shall be in accordance with Annex IX of the Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 4
Simplified Procedure

A State or entity which has deposited before the date of the adoption of this Agreement an instrument of ratification, formal confirmation or accession in respect of the Convention shall be considered to be a party to this Agreement if that State has not notified the Depositary within [...] months of the adoption of this Agreement that it is not having recourse to the simplified procedure set out in this Article. In the event of such a notification being made, accession to this Agreement shall take place in accordance with Article 3.

Article 5
Entry into Force

1. This Agreement shall enter into force on the day of deposit of the [...] instrument of accession to this Agreement, provided at least [...] of those instruments have been deposited by States to which paragraph 1 (a) (i), (ii) or (iii) of Resolution II of the Third United Nations Conference on the Law of the Sea ("Resolution II") applies.
2. For each State acceding to the Agreement after its entry into force, the Agreement shall come into force on the date of deposit by such State of its instrument of accession.
3. States which have recourse to the simplified procedure in Article 4 shall be regarded as having acceded upon expiry of the period of [...] months specified in that Article, or upon entry into force of this Agreement in accordance with paragraph 1, whichever is later.*

* The issue of simultaneous entry into force of the Convention and this Agreement requires further discussion.

Article 6
States Parties

For the purposes of this Agreement, "States Parties" means States and entities which have consented to be bound by this Agreement and for which it has entered into force.

Article 7
Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement.

Article 8
Authentic Texts and Depositary

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the Secretariat of the United Nations.

ANNEX**SECTION 1. COSTS TO STATES PARTIES AND INSTITUTIONAL ARRANGEMENTS**

1. The Authority is the organization through which States Parties to the Convention shall, in accordance with the regime for the international seabed area ("Area") established in Part XI and this Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area. The powers and functions of the Authority shall be those expressly conferred upon it by the Convention. The Authority shall have such incidental powers consistent with the Convention, as are implicit in, and necessary for, the exercise of those powers and functions with respect to the activities of the Area.
2. In order to minimize costs to State Parties, all organs and subsidiary bodies to be established under the Convention and this Agreement shall be cost-effective. This principle shall also apply to the frequency, length and scheduling of meetings.
3. The setting up and the operation of the various organs and subsidiary bodies shall be based on an evolutionary approach, taking into account the functional needs of the organs and subsidiary bodies concerned in order that they may discharge effectively their respective responsibilities at various stages of the development of activities in the Area.
4. The functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Legal and Technical Commission and the Finance Committee, which shall work in accordance with Section 9 of this Annex. The functions of the Economic Planning Commission shall be performed by the Legal and Technical Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation.
5. The Assembly and the Council, as well as their respective subsidiary bodies, shall meet only as frequently as required for the adequate and timely performance of their functions.
6. Between the entry into force of the Convention and the approval of the first plan of work for exploitation, the Authority shall concentrate on:
 - (a) processing of applications for approval of plans of work for exploration in accordance with Part XI and this Agreement;
 - (b) monitoring of compliance with plans of work for exploration approved in the form of contracts;

- (c) implementation of decisions of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (Preparatory Commission) relating to the registered pioneer investors and their certifying States, including their rights and obligations, in accordance with the provisions of Article 308, paragraph 5 of the Convention and Resolution II, paragraph 13;
 - (d) study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;
 - (e) promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of the activities in the Area;
 - (f) acquisition of scientific knowledge and the monitoring of the development of marine technology relevant to the activities in the Area;
 - (g) adoption of rules, regulations and procedures, including those relating to the protection and preservation of the marine environment, necessary for the conduct of activities in the Area as they progress. Notwithstanding the provisions of Annex III, Article 17 (2)(b) and (c) of the Convention, such rules regulations and procedures shall take into account the terms of this Agreement, the changed economic circumstances since the Convention was adopted, the prolonged delay in commercial deep seabed mining and the likely pace of activities in the Area;
 - (h) monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;
 - (i) assessment of available data relating to prospecting and exploration; and
 - (j) timely elaboration of rules, regulations and procedures for exploitation.
7. (a) The application for the approval of a plan of work for exploration shall be considered by the Council following the receipt of a recommendation on the application from the Legal and Technical Commission. The processing of an

application for the approval of a plan of work for exploration shall be in accordance with the provisions of the Convention, including its Annex III, and this Agreement, provided that:

- (i) a plan of work for exploration submitted on behalf of a State or entity, or any component of such entity, referred to in Resolution II, paragraph 1 (a) (ii) and (iii), other than a registered pioneer investor, which had already undertaken substantial activities in the Area prior to entry into force of the Convention or their successors in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work, if the sponsoring State certifies that the applicant has expended an amount equivalent to at least \$US30 million in research and exploration activities and has expended no less than ten (10) per cent of that amount in the location, survey and evaluation of the area referred to in the plan of work. If the plan of work otherwise satisfies the requirements of the Convention and any rules, regulations and procedures adopted pursuant thereto, it shall be approved by the Council in the form of a contract, notwithstanding the provisions of Section 3, paragraph 10 of this Annex.
- (ii) upon the request of a registered pioneer investor, its plan of work for exploration consisting of documents, reports and other data submitted to the Preparatory Commission before and after registration together with an indication of plans for future activities, if any, shall be approved in the form of a contract by the Council in accordance with Part XI and this Agreement, notwithstanding the provisions of Section 3, paragraph 10 of this Annex. Resolution II, paragraph 8 (c) shall not apply and a request for approval of a plan of work for exploration of a registered pioneer investor may be made by a sponsoring State as a State Party or as a provisional member of the Authority pursuant to paragraph 14. The fee to be paid by a pioneer investor upon application for a plan of work, in accordance with the provisions of Resolution II, paragraph 7 (a), and Annex III, Article 13, paragraph 2 of the Convention, shall be deferred until the pioneer investor submits a plan of work for exploitation, taking into account the \$250,000 fee paid pursuant to Resolution II, paragraph 7 (a), which shall be deemed to be the fee relating to the exploration phase pursuant to Section 8, paragraph 3 of this Annex. The period following entry into force of the Convention within which a registered pioneer investor may request approval of a plan of work pursuant to Resolution II, paragraph 8 (a) shall be extended from six months to twenty four months; and
- (iii) in accordance with the principle of non-discrimination a contract with a State or entity or any component of such entity referred to in (i) above,

shall include arrangements which shall be similar to and no less favourable than those agreed with any State or entity or any component of such entity referred to in (ii) above. In the case of contracts with the States or entities or any components of such entities referred to in (ii) above, the Council shall make such adjustments, as are equitable, to the rights and obligations assumed by them under Resolution II and the decisions of the Preparatory Commission.

- (b) The approval of a plan of work for exploration shall be in accordance with Article 153, paragraph 3 of the Convention.

8. Applications for approval of plans of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities in accordance with the rules, regulations and procedures adopted by the Authority.

9. Applications for the approval of plans of work for exploration other than those referred to in paragraph 7 shall be processed in accordance with the procedures set out in Section 3, paragraph 10 of this Annex.

10. A plan of work for exploration shall be approved for a period of ten years. Upon the expiration of a plan of work for exploration the contractor shall apply for a plan of work for exploitation unless the contractor has received an extension for the plan of work for exploration. Contractors may apply for such extensions for periods of not more than five years each. Such extensions shall be approved if the contractor has made good faith efforts to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or the prevailing economic circumstances have not justified proceeding to the exploitation stage.

11. The reference in the last sentence of Annex III, Article 10 of the Convention to performance which has not been satisfactory shall be interpreted to mean that the contractor has failed to comply with the requirements of an approved plan of work despite written warning or warnings from the Authority to the contractor to comply therewith.

12. The Authority shall elaborate and adopt, in accordance with Article 162, paragraph 2(o)(ii) of the Convention, rules, regulations and procedures based on the principles contained in Sections 2, 5, 6, 7 and 8 of this Annex, as well as any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploration or exploitation, as follows:

- (a) The Council may undertake such elaboration at any time it deems all or any of such rules, regulations or procedures are required for the conduct of activities in the Area, or when it determines that commercial exploitation is imminent, or at the request of a State whose national is in a position to apply for approval of a plan of work for exploitation.

- (b) If a request is made by a State referred to in subparagraph (a) the Council shall, in accordance with Article 162, paragraph 2(o) of the Convention, complete the adoption of such rules, regulations and procedures within two years of such a request.
- (c) If the Council has not completed rules regulations and procedures relating to exploitation within the prescribed time, and an application for the approval of a plan of work for exploitation is pending, it shall nonetheless consider and provisionally approve such plan of work based on the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles contained in this Annex as well as the principle of non-discrimination among contractors.

13. The Authority shall have its own budget. The administrative expenses of the Authority shall be met [by assessed contributions of its members, including its provisional members, in accordance with Article 173 of the Convention and this Agreement] [through the budget of the United Nations] until such time as the Authority becomes self-financing. The Authority shall not exercise the power referred in Article 174, paragraph 1 of the Convention to borrow funds to finance its administrative budget.

14. States and entities referred to in Article 305 of the Convention which have not established their consent to be bound by it shall be eligible to become provisional members of the Authority on the following basis:

- (a) Such membership shall take effect upon notification to the depositary of the Convention by a State or entity of its intention to participate as a provisional member of the Authority and shall terminate two years after the date of entry into force of the Convention or upon ratification or formal confirmation of, or accession to, the Convention and this Agreement by such a State. The Council may, upon request of the State or entity concerned, extend provisional membership by up to two years if the Council is satisfied that the State or entity has been making efforts in good faith to become a party, provided that provisional membership shall not extend beyond four years after the date of entry into force of the Convention.
- (b) Provisional members shall apply the terms of Part XI and this Agreement provisionally and shall have the same rights and obligations as other members, including:
 - (i) the obligation to contribute to the budget of the Authority based on assessed contributions, in accordance with their national laws, regulations and annual budgetary appropriations; and

- (ii) the right to sponsor an application for the approval of a plan of work for exploration. In the case of entities whose components are natural or juridical persons possessing the nationality of more than one State, a plan of work for exploration shall not be approved unless all the States whose natural or juridical persons comprise those entities are provisional members or States Parties.
- (c) Notwithstanding the provisions of paragraph 10, an approved plan of work for exploration which is sponsored by a provisional member in accordance with subparagraph b(ii) shall terminate if such member ceases to be a provisional member and has not become a State Party.
- (d) If the Assembly decides that a provisional member has failed to comply with its obligations in accordance with this paragraph, its provisional membership shall be terminated.

15. The draft rules, regulations and procedures and any recommendations relating to the provisions of Part XI, as contained in the reports and recommendations of the Preparatory Commission, shall be taken into account by the Authority in the adoption of rules, regulations and procedures in accordance with Part XI and this Agreement.

16. The relevant provisions of Part XI, Section 4 shall be interpreted and applied in accordance with this Agreement.

SECTION 2. THE ENTERPRISE

1. The Enterprise shall conduct its initial operation through joint ventures. It shall commence its functioning upon the issuance of a directive by the Council pursuant to Article 170, paragraph 2 of the Convention.
2. The obligations to fund one mine site of the Enterprise as provided for in Annex IV, Article 11, paragraph 3 of the Convention, shall not apply and States parties to the Convention shall be under no obligation to finance any of the operations in any mine site of the Enterprise or under its joint venture arrangements.
3. The Secretariat of the Authority shall perform the preparatory functions necessary for the commencement of the functioning of the Enterprise. These shall include the monitoring of developments in the deep seabed mining sector, in particular the prevailing conditions in the world metal market, developments in deep seabed mining technology, and data and information on the environmental impact of activities in the Area.
4. The obligations applicable to contractors shall apply to the Enterprise. Notwithstanding the provisions of Article 153, paragraph 3 of the Convention, and Annex

III, Article 3, paragraph 5 of the Convention, a plan of work for the Enterprise upon its approval shall be in the form of a contract concluded between the Authority and the Enterprise.

5. A contractor which has contributed a particular area to the Authority as a reserved area shall have priority to enter into a joint venture arrangement with the Enterprise for exploration and exploitation of that area, subject to agreement on the terms and conditions of the joint venture arrangement. If the Enterprise does not commence activities on such a reserved area within ten years of the commencement of its functioning or within ten years of the date on which that area is reserved for the Authority, whichever is the later, the contractor which contributed the area shall be entitled to apply for a plan of work for that area provided it offers to include the Enterprise as a joint venture partner.

6. Article 170, paragraph 4, Annex IV and other provisions of the Convention relating to the Enterprise shall be interpreted and applied in accordance with this Part.

SECTION 3. DECISION - MAKING

1. The general policies of the Authority shall be established by the Assembly in collaboration with the Council.

2. Decision-making in the organs of the Authority, as a general rule, should be by consensus and there should be no voting until all efforts to reach a decision by consensus have been exhausted.

3. If consensus can not be reached, decisions by voting in the Assembly on matters of procedure shall be taken by a majority of States present and voting, and decisions on matters of substance shall be taken by a two-thirds majority of States present and voting, as provided for in Article 159, paragraph 8 of the Convention.

4. Decisions of the Assembly on any matter for which the Council also has competence or on any administrative, budgetary or financial matter shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council for further consideration. The Council shall reconsider the matter in the light of the views expressed by the Assembly.

5. Decisions by the Council or the Assembly having financial or budgetary implications shall be based on the recommendations of the Finance Committee.

6. The major categories of interests identified in paragraph 14 (a) to (c) shall be treated as chambers for the purposes of decision-making in the Council. Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the

criteria for the membership in the interest groups identified in subparagraphs 14 (a) to (d). If a country fulfils the criteria for membership in more than one interest group, it may only be proposed by one interest group for election to the Council and it shall represent only that interest group in voting in the Council.

7. Each interest group identified in paragraph 14 (a) to (d) shall be represented in the Council by those members nominated by that interest group. Each interest group shall only nominate as many candidates as the number of seats that are required to be filled by that group. When the number of potential candidates in each of the categories referred to in paragraph 14 (a) to (e) exceeds the number of seats available in each of those respective categories, as a general rule, the principle of rotation shall apply. States members of each of those categories shall determine how this principle shall apply in those categories. This principle, however, shall not apply to the two States specifically referred to in paragraph 14 (a).
8. Decisions by voting in the Council on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance, except where the Convention provides for decisions by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to above.
9. The Council may decide to postpone the taking of a decision in order to facilitate further negotiation whenever it appears that all efforts at achieving consensus on a question have not been exhausted.
10. (a) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. The prescribed period shall normally be 60 days unless the Council decides to provide for a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its normal rules of procedure on matters of substance.
- (b) The provisions of Article 162, paragraph 2 (j) of the Convention shall not apply.
11. Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement mechanism contained in the Convention.

12. Decisions by voting in the Legal and Technical Commission shall be by a majority of members present and voting.

13. Part XI, Section 4, sub-sections B and C shall be interpreted and applied in accordance with this Part.

14. The Council shall consist of 36 members of the Authority elected by the Assembly in the following order:*

- (a) four members from among States Parties, each of which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of the total world consumption, or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and the State, at the time of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this category;
- (b) four members from among the eight States Parties which have made the largest investments in preparation for, and in the conduct of, activities in the Area, either directly or through their nationals;
- (c) four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;
- (d) six members from among developing States, representing special interests. The special interests to be represented shall consist of States with large populations, States which are land-locked or geographically disadvantaged, island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States; and
- (e) eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern European, Latin America and Western European and Others.

* The issue of whether the system of chambered voting in the Council should extend to the category in sub-paragraph (d) in addition to the categories in sub-paragraphs (a) to (c) requires further discussion.

15. The provisions of Article 161, paragraph 1 of the Convention shall not apply.
- 16 (a) Decisions on questions of substance in the Council, except decisions governed by Article 161, paragraph 8 (d) of the Convention, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority of the members in any one of the categories mentioned in paragraph 14(a), (b) or (c).
- (b) The provisions of Article 161, paragraph 8(b) and (c) of the Convention shall not apply.

SECTION 4. REVIEW CONFERENCE

In the light of the present Agreement and the changed circumstances in respect of deep seabed mining since the Convention was adopted, and the changes in the approaches to economic issues, the provisions relating to the Review Conference in Article 155, paragraphs 1, 3 and 4 of the Convention shall not apply. Notwithstanding the provisions of Article 314, paragraph 2 of the Convention, the Authority may undertake at any time a review of the matters referred to in Article 155, paragraph 1 of the Convention. Amendments relating to Part XI shall be subject to the procedures contained in Articles 314, 315 and 316 of the Convention, provided that:

- (a) the principles, regime and other terms of Article 155, paragraph 2 of the Convention shall be maintained and the rights referred to in paragraph 5 of that Article shall not be affected; and
- (b) amendments shall enter into force on a date determined by the Council by a three-fourths majority of the members present and voting, including a majority of members of each chamber of the Council at that time.

SECTION 5. TRANSFER OF TECHNOLOGY

1. Transfer of technology, for the purposes of Part XI, shall be governed by the provisions of Article 144 of the Convention and the following principles:

- (a) The Enterprise shall take measures to obtain the technology required for its operations on the open market or through its joint venture arrangements.
- (b) If the technology in question is not available on the open market, the Authority may invite all or any of the contractors and their respective sponsoring State or

States to cooperate with it in facilitating acquisition of technology by the Enterprise or its joint venture, or a developing State or States seeking to acquire such technology on fair and reasonable commercial terms and conditions, including effective protection of intellectual property rights. States Parties undertake to cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also fully cooperate with the Authority.

- (c) States Parties shall promote international technical and scientific cooperation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific cooperation programmes.
2. The provisions of Annex III, Article 5 of the Convention shall not apply.

SECTION 6. PRODUCTION POLICY

1. The production policy of the Authority shall be based on the following principles:
- (a) The rights and obligations relating to unfair economic practices under the General Agreement on Tariffs and Trade, its relevant codes and successor agreements, shall apply to activities in the Area.
 - (b) In particular, there shall be no subsidisation of activities in the Area except as may be permitted under the agreements referred to in subparagraph (a). Subsidisation for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (a).
 - (c) There shall be no discrimination between minerals derived from the Area and from other sources. There shall be no preferential access to markets for such minerals or for imports of commodities produced from such minerals, in particular:
 - (i) by use of tariff or non-tariff barriers; and
 - (ii) given by States Parties to such minerals or commodities produced by their state enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals;

- (d) The plan of work for exploitation approved by the Authority in respect of each mining area shall indicate an anticipated production schedule which shall include the estimated maximum amounts of minerals that would be produced per year under that plan of work.
 - (e) In the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (a), States Parties which are parties to such agreements shall have recourse to the dispute settlement procedures of such agreements; and
 - (f) In circumstances where a determination is made under the agreements referred to in subparagraph (a) that a State Party has engaged in subsidisation which is prohibited or has resulted in adverse effects to the interests of another State Party and appropriate steps have not been taken by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.
2. The principles contained in paragraph 1 shall not affect rights and obligations under any provision of the agreements referred to in paragraph 1(a), as well as relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.
3. The acceptance, by a contractor, of subsidies other than those which may be permitted under the agreements referred to in paragraph 1(a) shall constitute a violation of the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.
4. Any State Party which has reason to believe that there has been a breach of the requirements of paragraph 1(a) to (d) may initiate dispute settlement procedures in conformity with paragraph 1(e) or (f).
5. The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this Part. This shall include relevant rules, regulations and procedures governing the approval of plans of work.
6. The provisions of Article 162, paragraph 2(q), Article 165, paragraph 2(n), Article 151, paragraphs 1 to 7 and paragraph 9 and Annex III, Article 7 of the Convention shall not apply.

SECTION 7. ECONOMIC ASSISTANCE

1. The policy of the Authority to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the

price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be based on the following principles:

- (a) Developing land-based producer States whose economies have been determined to be seriously affected by production of minerals from the deep seabed shall be assisted from the economic assistance fund of the Authority.
- (b) The Authority shall establish an economic assistance fund from a portion of funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority, provided that the amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions, shall be used for the establishment of the economic assistance fund.
- (c) The Authority shall provide assistance from the fund to affected developing land-based producer states, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes.
- (d) The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer states.

2. Article 151, paragraph 10 of the Convention shall be implemented by means of measures of economic assistance referred to in paragraph 1. Article 160, paragraph 2(l), Article 162, paragraph 2(n), Article 164, paragraph 2(d), Article 171, paragraph (f) and Article 173, paragraph 2(c) of the Convention shall be interpreted accordingly.

SECTION 8. FINANCIAL TERMS OF CONTRACT

1. The following principles shall provide the basis for establishing rules, regulations and procedures for financial terms of contract:

- (a) The system of financial payments to the Authority shall be fair both to the contractor and to the Authority.

- (b) The rates of financial payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage.
 - (c) The system of financial payments may be revised periodically in view of changing circumstances, however, they shall be applied in a non-discriminatory manner and they may apply retroactively to existing contracts only at the election of the contractor. Any subsequent change in the choice of the systems shall, however, be by agreement of the Council.
 - (d) While the system should not be complicated and should not impose major administrative costs on the Authority or on a contractor, consideration should be given to the adoption of a royalty system or a combination of a royalty and profit sharing system. If alternative systems are decided upon the choice of the system applicable to an individual contract shall be at the election of the contractor. However, any subsequent change of system shall be by agreement of the Council.
 - (e) An annual fixed fee shall be payable from the date of commencement of commercial production. However such fee may be credited against other payments due under the system adopted in accordance with subparagraph (d). The amount of such fee shall be established by the Council.
 - (f) Any disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures under the Convention.
2. The provisions of Annex III, Article 13, paragraphs 3 to 10 of the Convention shall not apply.
3. With regard to the implementation of Annex III, Article 13, paragraph 2 of the Convention, the fee for processing applications for the approval of a plan of work limited to one phase, either the exploration phase or the exploitation phase, shall be \$250,000.

SECTION 9. THE FINANCE COMMITTEE

1. There is hereby established a Finance Committee. The Finance Committee shall be composed of 15 members with appropriate qualifications relevant to financial matters. States Parties shall nominate candidates of the highest standards of competence and integrity. In the election of members of the Finance Committee, due account shall be taken of the need for equitable geographical distribution and the representation of special

interests. Until the Authority is self-financing, the membership of the Committee shall include the five largest financial contributors to the administrative budget of the Authority.

2. No two members of the Finance Committee shall be nationals of the same State Party.
3. Members of the Finance Committee shall be elected by the Assembly. Each category referred to in Section 3, paragraph 14(a), (b), (c) and (d) of this Annex shall be represented on the Finance Committee by at least one member. After the Authority becomes self-financing, the election of one member from each category shall be on the basis of nomination by the members of the respective category, without prejudice to the possibility of further members being elected from each such category.
4. Members of the Committee shall hold office for a term of five years. They shall be eligible for re-election for a further term.
5. In the event of death, incapacity or resignation of a member of the Committee prior to the expiration of the term of office, the Assembly shall elect for the remainder of the term a member from the same geographical region or interest group.
6. Members of the Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after the termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Authority.
7. Decisions by the Council and the Assembly on the following issues shall take into account recommendations by the Finance Committee:
 - (a) Draft financial rules, regulations and procedures of the various organs of the Authority and the financial management and internal financial administration of the Authority.
 - (b) Assessment of contributions of members to the administrative budget of the Authority in accordance with Article 160, paragraph 2(e) of the Convention.
 - (c) All relevant financial matters including the proposed annual budget prepared by the Secretary-General (Article 172 of the Convention), the financial aspects of the implementation of the programmes of work of the Secretariat.
 - (d) The administrative budget.
 - (e) Financial obligations of States Parties arising from the operation of Part XI and its related annexes as well as on the administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority.

- (f) Rules, regulations and procedures on the equitable sharing of financial and other economic benefits and the decisions to be made on that basis.
8. Recommendations of the Committee shall, where necessary, be accompanied by a summary of the range of opinions in the Committee.
 9. Decisions in the Finance Committee on questions of procedure shall be taken by a majority of members present and voting. Decisions on questions of substance shall be taken by consensus.
 10. The requirement of Article 162, paragraph 2(y) of the Convention to establish a subsidiary organ to deal with financial matters shall be deemed to have been fulfilled by the establishment of the Finance Committee in accordance with this Section.

Annex 3/1

14 FEBRUARY 1994

DRAFT RESOLUTION

AND

DRAFT AGREEMENT RELATING
TO THE IMPLEMENTATION OF PART XI
OF THE 1982 UNITED NATIONS
CONVENTION ON THE
LAW OF THE SEA

14 February 1994

DRAFT RESOLUTION FOR ADOPTION BY THE GENERAL ASSEMBLY

The United Nations Convention on the Law of the Sea

The General Assembly

Recalling resolution 48/28 of 9 December 1993 on the Law of the Sea,

Recalling that Part XI and related provisions of the 1982 United Nations Convention on the Law of the Sea (the Convention) established a regime for the international seabed area ("the Area") and its resources,

Reaffirming that the Area and its resources are the common heritage of mankind,

Recognizing that political and economic changes, including in particular a growing reliance on market principles, show the need to re-evaluate some aspects of the regime,

Noting the initiative of the Secretary-General since 1990 to promote dialogue aimed at achieving universal participation in the Convention,

Welcoming the report of the Secretary-General on the results of the Secretary-General's informal consultations^{*},

Taking note of the report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea,

Considering that the objective of universal participation in the Convention may best be achieved by the adoption of an agreement relating to the implementation of Part XI and related provisions of the Convention (Part XI) and to give effect to the results of the Secretary-General's informal consultations,

* Document [...]

1. *Endorses* the results of the Secretary-General's informal consultations contained in the report of the Secretary-General*;
2. *Reaffirms* the unified character of the Convention;
3. *Adopts* the Agreement relating to the Implementation of Part XI and related provisions of the Convention ("the Agreement"), the text of which is appended to this resolution;
4. *Confirms* that the Agreement shall be interpreted and applied together with Part XI as one single instrument;
5. *Considers* that future ratifications or formal confirmations of or accessions to the Convention shall represent also consent to be bound by the Agreement and that no State or entity may establish its consent to be bound by the Agreement without establishing its consent to be bound by the Convention;
6. *Calls on* States which consent to the adoption of the Agreement to refrain from any act which would defeat its object and purpose pending entry into force;
7. *Recognises* the need to provide for provisional application of the Agreement from the date of entry into force of the Convention on 16 November 1994;
8. *Requests* the Secretary-General to transmit immediately certified copies of the Agreement to the States and entities referred to in its Article 3, with a view to facilitating universal participation in the Convention and the Agreement, and to draw attention to Articles 4 and 5 of the Agreement;
9. *Requests* the Secretary-General to open the Agreement for signature in accordance with its Article 3 immediately after its adoption;
10. *Urges* all States and entities referred to in Article 3 of the Agreement to sign it before 16 November 1994.

AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE
1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

The States Parties to this Agreement,

Recognising the significant contribution of the 1982 United Nations Convention on the Law of the Sea ("the Convention") to the maintenance of peace, justice and progress for all peoples of the world;

Having considered the report of the Secretary-General of the United Nations on the results of the informal consultations held from 1990 to 1994 on outstanding issues relating to Part XI and related provisions of the Convention ("Part XI");

Wishing to take account of important political and economic developments affecting the implementation of those provisions, in order to facilitate universal participation in the Convention;

Considering that an Agreement relating to the implementation of Part XI would best meet that objective;

Have agreed as follows:

Article 1

Implementation of Part XI

1. The States Parties to this Agreement undertake to implement Part XI in accordance with this Agreement.
2. The Annex forms an integral part of this Agreement.

Article 2

Relationship between this Agreement, Part XI and the Convention

1. The provisions of Part XI and this Agreement shall be interpreted and applied together as one single instrument. In the event of any inconsistency, the provisions of this Agreement shall prevail.

2. Articles 309 to 319 of the Convention shall apply to this Agreement as they apply to the Convention.

Article 3
Signature

This Agreement shall be open for signature at United Nations Headquarters by the States and entities referred to in Article 305 of the Convention for 12 months from the date of its adoption.

Article 4
Consent to be bound

1. After the adoption of this Agreement, any instrument of ratification or formal confirmation of or accession to the Convention shall represent also consent to be bound by this Agreement.

2. No State or entity may establish its consent to be bound by this Agreement without establishing its consent to be bound by the Convention.

3. A State or entity referred to in Article 3 may establish its consent to be bound by this Agreement by:

- (a) signature with immediate effect;
- (b) signature subject to ratification or formal confirmation, followed by ratification or formal confirmation;
- (c) signature subject to the procedure set out in Article 5; or
- (d) accession.

4. Formal confirmation by the entities referred to in Article 305, paragraph 1(f) of the Convention shall be in accordance with Annex IX of the Convention.

5. Instruments of ratification, formal confirmation or accession shall be deposited with the Secretary-General of the United Nations.

Article 5
Simplified procedure

A State or entity which has deposited before the date of the adoption of this Agreement an instrument of ratification, formal confirmation or accession in respect of the Convention and which has signed this Agreement shall be considered to have established its consent to be bound by this Agreement unless that State or entity has notified the Depositary within 12 months of the date of adoption of this Agreement that it is not availing itself of the simplified procedure set out in this Article. In the event of such notification being made, consent to be bound by this Agreement shall be established in accordance with Article 4, paragraph 1 (b).

Article 6
Entry into force

1. This Agreement shall enter into force 30 days after the date when 40 States have established their consent to be bound in accordance with Articles 4 and 5, provided this includes at least five States to which paragraph 1 (a) (i), (ii) or (iii) of Resolution II applies, of which a minimum of 4 must be developed States.
2. For each State or entity establishing its consent to be bound by this Agreement after its entry into force, this Agreement shall enter into force on the thirtieth day following the date of establishment of its consent to be bound.

Article 7
Provisional application

If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally from that date until its entry into force by all States which have consented to its adoption, and by States and entities which have expressed their consent to such application by notifying the Depositary in writing. Provisional application shall terminate on 16 November 1998 if at that time fewer than the five States referred to in Article 6, paragraph 1 have established their consent to be bound by this Agreement. During the period of provisional application, States and entities shall apply this Agreement in accordance with their national laws and regulations.

7

Article 8
States Parties

For the purposes of this Agreement, "States Parties" means States and entities which have consented to be bound by this Agreement and for which it has entered into force.

Article 9
Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement.

Article 10
Authentic texts

The original of this Agreement, 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.

ANNEX

SECTION 1. COSTS TO STATES PARTIES AND INSTITUTIONAL ARRANGEMENTS

1. The Authority is the organisation through which States Parties to the Convention shall, in accordance with the regime for the international seabed area ("Area") established in Part XI and this Agreement, organise and control activities in the Area, particularly with a view to administering the resources of the Area. The powers and functions of the Authority shall be those expressly conferred upon it by the Convention. The Authority shall have such incidental powers consistent with the Convention as are implicit in, and necessary for, the exercise of those powers and functions with respect to activities in the Area.
2. In order to minimise costs to State Parties, all organs and subsidiary bodies to be established under the Convention and this Agreement shall be cost-effective. This principle shall also apply to the frequency, length and scheduling of meetings.
3. The setting up and the functioning of the various organs and subsidiary bodies shall be based on an evolutionary approach, taking into account the functional needs of the organs and subsidiary bodies concerned in order that they may discharge effectively their respective responsibilities at various stages of the development of activities in the Area.
4. The early functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Legal and Technical Commission and the Finance Committee. The functions of the Economic Planning Commission shall be performed by the Legal and Technical Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation.
5. Between the entry into force of the Convention and the approval of the first plan of work for exploitation, the Authority shall concentrate on:
 - (a) processing of applications for approval of plans of work for exploration in accordance with Part XI and this Agreement;
 - (b) implementation of decisions of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (Preparatory Commission) relating to the registered pioneer investors and their certifying States, including their rights and obligations, in accordance with the provisions of Article 308, paragraph 5 of the Convention and Resolution II, paragraph 13;

- (c) monitoring of compliance with plans of work for exploration approved in the form of contracts;
 - (d) monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;
 - (e) study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected, with a view to minimising their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;
 - (f) promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of activities in the Area;
 - (g) acquisition of scientific knowledge and monitoring of the development of marine technology relevant to activities in the Area, in particular technology relating to protection and preservation of the marine environment;
 - (h) adoption of rules, regulations and procedures, including those relating to the protection and preservation of the marine environment, necessary for the conduct of activities in the Area as they progress. Notwithstanding the provisions of Annex III, Article 17 (2)(b) and (c) of the Convention, such rules, regulations and procedures shall take into account the terms of this Agreement, the prolonged delay in commercial deep seabed mining and the likely pace of activities in the Area;
 - (i) assessment of available data relating to prospecting and exploration; and
 - (j) timely elaboration of rules, regulations and procedures for exploitation, including those relevant to the protection and preservation of the marine environment.
6. (a) The application for the approval of a plan of work for exploration shall be considered by the Council following the receipt of a recommendation on the application from the Legal and Technical Commission. The processing of an application for the approval of a plan of work for exploration shall be in accordance with the provisions of the Convention, including its Annex III, and this Agreement, provided that:
- (i) a plan of work for exploration submitted on behalf of a State or entity, or any component of such entity, referred to in Resolution II, paragraph 1 (a) (ii) and (iii), other than a registered pioneer investor, which had already

undertaken substantial activities in the Area prior to entry into force of the Convention, or their successors in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work, if the sponsoring State certifies that the applicant has expended an amount equivalent to at least US\$30 million in research and exploration activities and has expended no less than ten per cent of that amount in the location, survey and evaluation of the area referred to in the plan of work. If the plan of work otherwise satisfies the requirements of the Convention and any rules, regulations and procedures adopted pursuant thereto, it shall be approved by the Council in the form of a contract. The provisions of Section 3, paragraph 11 of this Annex shall be applied accordingly.

- (ii) Notwithstanding the provisions of Resolution II, paragraph 8(a), a registered pioneer investor may request approval of a plan of work for exploration within 24 months of entry into force of the Convention. Such a plan of work for exploration consisting of documents, reports and other data submitted to the Preparatory Commission before and after registration together with an indication of plans for future activities, if any, and accompanied by a certificate of compliance issued by the Preparatory Commission in accordance with Resolution II, paragraph 11 (a), shall be approved in the form of a contract by the Council in accordance with Part XI and this Agreement. The data and information submitted to the Preparatory Commission by such pioneer investor which were examined and evaluated by the group of experts established by the Preparatory Commission and which formed the basis for registration as a pioneer investor and for other subsequent decisions of the Preparatory Commission in relation to such pioneer investor, shall not be re-examined or re-evaluated by the Legal and Technical Commission or the Council. Resolution II, paragraph 8 (c) shall not apply. The fee to be paid by a pioneer investor upon application for a plan of work, in accordance with the provisions of Resolution II, paragraph 7 (a), and Annex III, Article 13, paragraph 2 of the Convention, shall be deferred until the pioneer investor submits a plan of work for exploitation. The US\$250,000 fee paid pursuant to Resolution II, paragraph 7 (a) shall be deemed to be the fee relating to the exploration phase pursuant to Section 8, paragraph 3 of this Annex. Section 3, paragraph 11 of this Annex shall be applied accordingly; and
- (iii) in accordance with the principle of non-discrimination a contract with a State or entity or any component of such entity referred to in (i) above, shall include arrangements which shall be similar to and no less favourable than those agreed with any State or entity or any component of such entity referred to in (ii) above, recognising the balance that exists between the rights and obligations assumed by them and the interest of the Authority. If any of those States, entities or any components of such entities referred to

in (i) above are granted more favourable arrangements, the Council shall make similar and no less favourable arrangements with regard to the rights and obligations assumed by the States, entities or any components of such entities referred to in (ii) above, provided that such arrangements are equitable having regard to the benefits granted to the latter, the corresponding obligations assumed by them and the interest of the Authority.

- (iv) A State sponsoring an application for a plan of work pursuant to the provisions of paragraphs (i) or (ii) above may be a State applying this Agreement provisionally in accordance with Article 7, a State Party or a provisional member of the Authority in accordance with paragraph 11.
- (b) The approval of a plan of work for exploration shall be in accordance with Article 153, paragraph 3 of the Convention.

7. Applications for approval of plans of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities in accordance with the rules, regulations and procedures adopted by the Authority.

8. Applications for the approval of plans of work for exploration, subject to the provisions of paragraph 6 (a) (i) and (ii), shall be processed in accordance with the procedures set out in Section 3, paragraph 11 of this Annex.

9. A plan of work for exploration shall be approved for a period of ten years. Upon the expiration of a plan of work for exploration, the contractor shall apply for a plan of work for exploitation unless the contractor has already done so or has obtained an extension for the plan of work for exploration. Contractors may apply for such extensions for periods of not more than five years each. Such extensions shall be approved if the contractor has made good faith efforts to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or the prevailing economic circumstances have not justified proceeding to the exploitation stage.

10. Notwithstanding the provisions of paragraph 9, an approved plan of work for exploration which is sponsored by a State provisionally applying this Agreement shall terminate if such a State ceases to apply this Agreement provisionally and has not become a provisional member in accordance with paragraph 11 or has not become a State Party.

11. Upon entry into force of this Agreement States and entities referred to in Article 3 of this Agreement which have not established their consent to be bound by it may become provisional members of the Authority pending the establishment of such consent as follows:

- (a) If this Agreement enters into force before 16 November 1996, such States and entities shall be entitled to become provisional Members of the Authority pending the establishment of their consent to be bound by the Agreement upon notification to the depositary of the Agreement by such a State or entity of its intention to participate as a provisional Member of the Authority. The provisional membership shall terminate on 16 November 1996 or upon earlier ratification or formal confirmation of, or accession to, the Convention and this Agreement by the provisional Member. The Council may, upon the request of the State or entity concerned extend provisional membership for a further period or periods not exceeding a total of two years provided that the Council is satisfied that the State or entity concerned has been making efforts in good faith to become a party to the Agreement and the Convention.
- (b) If this Agreement enters into force after 15 November 1996, such States and entities which have not established their consent to be bound by the Agreement may request the Council to be granted provisional membership in the Authority for a period or periods not extending beyond 16 November 1998. The Council shall grant provisional membership if it is satisfied that the State or entity has been making efforts in good faith to become a party to the Agreement and the Convention.
- (c) Provisional members shall apply the terms of Part XI and this Agreement provisionally in conformity with their national laws, regulations and annual budgetary appropriations and shall have the same rights and obligations as other members, including:
- (i) the obligation to contribute to the budget of the Authority based on assessed contributions; and
 - (ii) the right to sponsor an application for the approval of a plan of work for exploration. In the case of entities whose components are natural or juridical persons possessing the nationality of more than one State, a plan of work for exploration shall not be approved unless all the States whose natural or juridical persons comprise those entities are provisional members or States Parties.
- (d) Notwithstanding the provisions of paragraph 9, an approved plan of work for exploration which is sponsored by a provisional member in accordance with subparagraph c(ii) shall terminate if such member ceases to be a provisional member and has not become a State Party.
- (e) If the Assembly decides that a provisional member has failed to make its assessed contributions or otherwise failed to comply with its obligations in accordance with this paragraph, its provisional membership shall be terminated.

12. The reference in the last sentence of Annex III, Article 10 of the Convention to performance which has not been satisfactory shall be interpreted to mean that the contractor has failed to comply with the requirements of an approved plan of work despite written warning or warnings from the Authority to the contractor to comply therewith.

13. The Authority shall have its own budget. Until the end of the year following the year during which this Agreement enters into force the administrative expenses of the Authority shall be met through the budget of the United Nations. Thereafter the administrative expenses of the Authority shall be met by assessed contributions of its members, including any provisional members, in accordance with Article 173 of the Convention and this Agreement until such time as the Authority becomes self-financing. The Authority shall not exercise the power referred to in Article 174, paragraph 1 of the Convention to borrow funds to finance its administrative budget.

13. The Authority shall elaborate and adopt, in accordance with Article 162, paragraph 2(o)(ii) of the Convention, rules, regulations and procedures based on the principles contained in Sections 2, 5, 6, 7 and 8 of this Annex, as well as any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploration or exploitation, as follows:

- (a) The Council may undertake such elaboration at any time it deems all or any of such rules, regulations or procedures are required for the conduct of activities in the Area, or when it determines that commercial exploitation is imminent, or at the request of a State whose national is in a position to apply for approval of a plan of work for exploitation.
- (b) If a request is made by a State referred to in subparagraph (a) the Council shall, in accordance with Article 162, paragraph 2(o) of the Convention, complete the adoption of such rules, regulations and procedures within two years of such a request.
- (c) If the Council has not completed rules regulations and procedures relating to exploitation within the prescribed time, and an application for the approval of a plan of work for exploitation is pending, it shall nonetheless consider and provisionally approve such plan of work based on the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles contained in this Annex as well as the principle of non-discrimination among contractors.

15. The draft rules, regulations and procedures and any recommendations relating to the provisions of Part XI, as contained in the reports and recommendations of the Preparatory Commission, shall be taken into account by the Authority in the adoption of rules, regulations and procedures in accordance with Part XI and this Agreement.

16. The relevant provisions of Part XI, Section 4 shall be interpreted and applied in accordance with this Agreement.

SECTION 2. THE ENTERPRISE

1. The Secretariat of the Authority shall perform the functions of the Enterprise until it begins to operate independently of the Secretariat. To this end the Secretary-General shall appoint a Coordinator to oversee the performance of these functions by the staff of the Secretariat.

These functions shall be:

- (a) monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;
- (b) assessment of results of the conduct of marine scientific research with respect to activities in the Area, with particular emphasis on research related to the environmental impact of the activities in the Area;
- (c) assessment of available data relating to prospecting and exploration including the criteria for such activities;
- (d) assessment of technological developments relevant to the activities in the Area, in particular technology relating to the protection of the marine environment;
- (e) evaluation of information and data relating to areas reserved for the Authority.
- (f) assessment of approaches to joint-venture operations;
- (g) collection of information on the availability of trained man-power;
- (h) study of managerial policy options for the administration of the Enterprise at varying stages of its operations

2. The Enterprise shall conduct its initial deep seabed mining operation through joint ventures. It shall commence operating independently of the Secretariat of the Authority upon the issuance of a directive by the Council pursuant to Article 170, paragraph 2 of the Convention.

3. The obligations to fund one mine site of the Enterprise as provided for in Annex IV, Article 11, paragraph 3 of the Convention, shall not apply and States parties to the

Convention shall be under no obligation to finance any of the operations in any mine site of the Enterprise or under its joint venture arrangements.

4. The obligations applicable to contractors shall apply to the Enterprise. Notwithstanding the provisions of Article 153, paragraph 3 of the Convention, and Annex III, Article 3, paragraph 5 of the Convention, a plan of work for the Enterprise upon its approval shall be in the form of a contract concluded between the Authority and the Enterprise.

5. A contractor which has contributed a particular area to the Authority as a reserved area shall have priority to enter into a joint venture arrangement with the Enterprise for exploration and exploitation of that area, subject to agreement on the terms and conditions of the joint venture arrangement. If the Enterprise does not submit an application for a plan of work for activities in respect of such a reserved area within ten years of the commencement of its functions independent of the Secretariat of the Authority or within ten years of the date on which that area is reserved for the Authority, whichever is the later, the contractor which contributed the area shall be entitled to apply for a plan of work for that area provided it offers to include the Enterprise as a joint venture partner.

6. Article 170, paragraph 4, Annex IV and other provisions of the Convention relating to the Enterprise shall be interpreted and applied in accordance with this Section.

SECTION 3. DECISION - MAKING

1. The general policies of the Authority shall be established by the Assembly in collaboration with the Council.
2. As a general rule decision-making in the organs of the Authority should be by consensus.
3. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Assembly on matters of procedure shall be taken by a majority of States present and voting, and decisions on matters of substance shall be taken by a two-thirds majority of States present and voting, as provided for in Article 159, paragraph 8 of the Convention.
4. If all efforts to reach a decision by consensus have been exhausted, decisions of the Assembly on any matter for which the Council also has competence or on any administrative, budgetary or financial matter shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council for further consideration. The Council shall reconsider the matter in the light of the views expressed by the Assembly.
5. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Council on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance, except where the Convention provides for decisions by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to below. In taking decisions the Council shall seek to promote the interests of all the members of the Authority.
6. The Council may defer the taking of a decision in order to facilitate further negotiation whenever it appears that all efforts at achieving consensus on a question have not been exhausted.
7. Decisions by the Assembly or the Council having financial or budgetary implications shall be based on the recommendations of the Finance Committee.
8. The provisions of Article 161, paragraph 8 (b) and (c) of the Convention shall not apply.
9. The major categories of interests identified in paragraph 15 (a) to (c)* shall be treated as chambers for the purposes of decision-making in the Council. Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the

* There is a substantial view that the system of chambered voting should extend to the category in sub-paragraph (d). This issue requires further discussion.

criteria for the membership in the interest groups identified in paragraph 15 (a) to (d). If a country fulfils the criteria for membership in more than one interest group, it may only be proposed by one interest group for election to the Council and it shall represent only that interest group in voting in the Council.

10. Each interest group identified in paragraph 15 (a) to (d) shall be represented in the Council by those members nominated by that interest group. Each interest group shall only nominate as many candidates as the number of seats that are required to be filled by that group. When the number of potential candidates in each of the categories referred to in paragraph 15 (a) to (e) exceeds the number of seats available in each of those respective categories, as a general rule, the principle of rotation shall apply. States members of each of those categories shall determine how this principle shall apply in those categories. This principle, however, shall not apply to the two States specifically referred to in paragraph 15 (a).

11. (a) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. The prescribed period shall normally be 60 days unless the Council decides to provide for a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its normal rules of procedure on matters of substance.

(b) The provisions of Article 162, paragraph 2 (j) of the Convention shall not apply.

12. Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement mechanism contained in the Convention.

13. Decisions by voting in the Legal and Technical Commission shall be by a majority of members present and voting.

14. Part XI, Section 4, sub-sections B and C shall be interpreted and applied in accordance with this Section.

15. The Council shall consist of 36 members of the Authority elected by the Assembly in the following order:

(a) four members from among States Parties, each of which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of the total world consumption, or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from

the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this category;

- (b) four members from among the eight States Parties which have made the largest investments in preparation for, and in the conduct of, activities in the Area, either directly or through their nationals;
 - (c) four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;
 - (d) six members from among developing States, representing special interests. The special interests to be represented shall consist of States with large populations, States which are land-locked or geographically disadvantaged, island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States; and
 - (e) eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern European, Latin America and the Caribbean and Western European and Others.
15. The provisions of Article 161, paragraph 1 of the Convention shall not apply.

SECTION 4. REVIEW CONFERENCE

The provisions relating to the Review Conference in Article 155, paragraphs 1, 3 and 4 of the Convention shall not apply. Notwithstanding the provisions of Article 314, paragraph 2 of the Convention, the Authority, on the recommendation of the Council, may undertake at any time a review of the matters referred to in Article 155, paragraph 1 of the Convention. Amendments relating to Part XI shall be subject to the procedures contained in Articles 314, 315 and 316 of the Convention, provided that:

- (a) the principles, regime and other terms of Article 155, paragraph 2 of the Convention shall be maintained and the rights referred to in paragraph 5 of that Article shall not be affected; and
- (b) amendments shall enter into force on a date determined by the Council by a three-fourths majority of the members present and voting, including a majority of members of each chamber of the Council at that time.*

SECTION 5. TRANSFER OF TECHNOLOGY

1. In addition to the provisions of Article 144 of the Convention, transfer of technology for the purposes of Part XI shall be governed by the following principles:

- (a) The Enterprise shall take measures to obtain the technology required for its operations on the open market or through its joint venture arrangements.
- (b) If the technology in question is not available on the open market, the Authority may invite all or any of the contractors and their respective sponsoring State or States to cooperate with it in facilitating acquisition of technology by the Enterprise or its joint venture, or a developing State or States seeking to acquire such technology on fair and reasonable commercial terms and conditions, including effective protection of intellectual property rights. States Parties undertake to cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also fully cooperate with the Authority.
- (c) As a general rule, States Parties shall promote international technical and scientific cooperation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific cooperation programmes.

2. The provisions of Annex III, Article 5 of the Convention shall not apply.

* It is considered that subparagraph (b) is now unnecessary and should be deleted.

SECTION 6. PRODUCTION POLICY

1. The production policy of the Authority shall be based on the following principles:
 - (a) The rights and obligations under the General Agreement on Tariffs and Trade, its relevant codes and successor agreements, shall apply to activities in the Area.
 - (b) In particular, there shall be no subsidisation of activities in the Area except as may be permitted under the agreements referred to in subparagraph (a). Subsidisation for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (a).
 - (c) There shall be no discrimination between minerals derived from the Area and from other sources. There shall be no preferential access to markets for such minerals or for imports of commodities produced from such minerals, in particular:
 - (i) by use of tariff or non-tariff barriers; and
 - (ii) given by States Parties to such minerals or commodities produced by their state enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals;
 - (d) The plan of work for exploitation approved by the Authority in respect of each mining area shall indicate an anticipated production schedule which shall include the estimated maximum amounts of minerals that would be produced per year under that plan of work.
 - (e) In the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (a), States Parties which are parties to such agreements shall have recourse to the dispute settlement procedures of such agreements; and
 - (f) In circumstances where a determination is made under the agreements referred to in subparagraph (a) that a State Party has engaged in subsidisation which is prohibited or has resulted in adverse effects to the interests of another State Party and appropriate steps have not been taken by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.
2. The principles contained in paragraph 1 shall not affect rights and obligations under any provision of the agreements referred to in paragraph 1(a), as well as relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.
3. The acceptance, by a contractor, of subsidies other than those which may be permitted under the agreements referred to in paragraph 1(a) shall constitute a violation of

the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.

4. Any State Party which has reason to believe that there has been a breach of the requirements of paragraphs 1(a) to (c) or 3 may initiate dispute settlement procedures in conformity with paragraph 1(e) or (f).

5. The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this Part. This shall include relevant rules, regulations and procedures governing the approval of plans of work.

6. The provisions of Article 162, paragraph 2(q), Article 165, paragraph 2(n), Article 151, paragraphs 1 to 7 and paragraph 9 and Annex III, Article 7 of the Convention shall not apply.

SECTION 7. ECONOMIC ASSISTANCE

1. The policy of the Authority to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be based on the following principles:

- (a) The Authority shall establish an economic assistance fund from a portion of funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority. The amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions, shall be used for the establishment of the economic assistance fund.
- (b) Developing land-based producer States whose economies have been determined to be seriously affected by production of minerals from the deep seabed shall be assisted from the economic assistance fund of the Authority.
- (c) The Authority shall provide assistance from the fund to affected developing land-based producer states, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes.
- (d) The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer states.

2. Article 151, paragraph 10 of the Convention shall be implemented by means of measures of economic assistance referred to in paragraph 1. Article 160, paragraph 2(i), Article 162, paragraph 2(n), Article 164, paragraph 2(d), Article 171, paragraph (f) and Article 173, paragraph 2(c) of the Convention shall be interpreted accordingly.

SECTION 8. FINANCIAL TERMS OF CONTRACT

1. The following principles shall provide the basis for establishing rules, regulations and procedures for financial terms of contract:

- (a) The system of financial payments to the Authority shall be fair both to the contractor and to the Authority and shall provide adequate means of determining compliance by the contractor with such system.
- (b) The rates of financial payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage.
- (c) The system of financial payments may be revised periodically in light of changing circumstances. They shall be applied in a non-discriminatory manner. They may apply to existing contracts only at the election of the contractor. Any subsequent change in the choice of the systems shall, however, be by agreement between the Council and the Contractor.
- (d) While the system should not be complicated and should not impose major administrative costs on the Authority or on a contractor, consideration should be given to the adoption of a royalty system or a combination of a royalty and profit sharing system. If alternative systems are decided upon the choice of the system applicable to an individual contract shall be at the election of the contractor. However, any subsequent change of system shall be by agreement between the Council and the contractor.
- (e) An annual fixed fee shall be payable from the date of commencement of commercial production. However such fee may be credited against other payments due under the system adopted in accordance with subparagraph (d). The amount of such fee shall be established by the Council.
- (f) Any disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures under the Convention.

2. The provisions of Annex III, Article 13, paragraphs 3 to 10 of the Convention shall not apply.

3. With regard to the implementation of Annex III, Article 13, paragraph 2 of the Convention, the fee for processing applications for the approval of a plan of work limited to one phase, either the exploration phase or the exploitation phase, shall be US\$250,000.

SECTION 9. THE FINANCE COMMITTEE

1. There is hereby established a Finance Committee. The Finance Committee shall be composed of 15 members with appropriate qualifications relevant to financial matters. States Parties shall nominate candidates of the highest standards of competence and integrity.
2. No two members of the Finance Committee shall be nationals of the same State Party.
3. Members of the Finance Committee shall be elected by the Assembly and due account shall be taken of the need for equitable geographical distribution and the representation of special interests. Each category referred to in Section 3, paragraph 15(a), (b), (c) and (d) of this Annex shall be represented on the Finance Committee by at least one member. Until the Authority is self-financing, the membership of the Committee shall include the five largest financial contributors to the administrative budget of the Authority. After the Authority becomes self-financing, the election of one member from each category shall be on the basis of nomination by the members of the respective category, without prejudice to the possibility of further members being elected from each such category.
4. Members of the Committee shall hold office for a term of five years. They shall be eligible for re-election for a further term.
5. In the event of death, incapacity or resignation of a member of the Committee prior to the expiration of the term of office, the Assembly shall elect for the remainder of the term a member from the same geographical region or interest group.
6. Members of the Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after the termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Authority.
7. Decisions by the Assembly and the Council on the following issues shall take into account recommendations of the Finance Committee:
 - (a) Draft financial rules, regulations and procedures of the various organs of the Authority and the financial management and internal financial administration of the Authority.
 - (b) Assessment of contributions of members to the administrative budget of the Authority in accordance with Article 160, paragraph 2(c) of the Convention.

- (c) All relevant financial matters including the proposed annual budget prepared by the Secretary-General (Article 172 of the Convention), the financial aspects of the implementation of the programmes of work of the Secretariat.
- (d) The administrative budget.
- (e) Financial obligations of States Parties arising from the operation of Part XI and its related annexes as well as on the administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority.
- (f) Rules, regulations and procedures on the equitable sharing of financial and other economic benefits and the decisions to be made on that basis.

8. Decisions in the Finance Committee on questions of procedure shall be taken by a majority of members present and voting. Decisions on questions of substance shall be taken by consensus. If consensus cannot be reached, recommendations of the Committee shall be accompanied by a summary of the range of opinions in the Committee.

9. The requirement of Article 162, paragraph 2(y) of the Convention to establish a subsidiary organ to deal with financial matters shall be deemed to have been fulfilled by the establishment of the Finance Committee in accordance with this Section.

THE GENERAL ASSEMBLY

Recognizing the historic significance of the United Nations Convention on the Law of the Sea, 1982 (hereinafter referred to as "the Convention") as a unique contribution to the maintenance of peace, justice and progress for all peoples of the world;

Reaffirming the principle of the Common Heritage of Mankind codified in that Convention as a principle of international law;

Convinced, therefore, that the implementation and progressive development of the Law of the Sea as embodied in the Convention is essential for the attainment of Sustainable Development envisaged by the United Nations Conference on Environment and Development and its follow-up activities;

Aware that the problems of ocean space are closely interrelated and must be considered as a whole, and that this requires the full participation of all States whatever their stage of economic development;

Bearing in mind that the prospects of commercial exploitation of deep seabed mineral resources have receded into the future, generating an *interim period* between the coming into force of the Convention and the beginning of commercial seabed mining;

To this end desiring to embody the results of the consultations and negotiations organized by the Secretary-General of the United Nations in order to promote the universal acceptance of the Convention in accordance with the mandate given by the General Assembly of the United Nations;

Expresses its consent by the present resolution, to adopt the Agreement contained in the Annex attached to the present Resolution.

NONPAPER

AGREEMENT ON THE ESTABLISHMENT OF AN INTERIM REGIME FROM
THE COMING INTO FORCE OF THE CONVENTION TO THE TIME WHEN
COMMERCIAL SEABED MINING BECOMES FEASIBLE

AGREEMENT ON THE ESTABLISHMENT OF AN INTERIM REGIME FROM THE COMING INTO FORCE OF THE CONVENTION TO THE TIME WHEN SEABED MINING BECOMES FEASIBLE

THE GENERAL ASSEMBLY HAS AGREED AS FOLLOWS:

- . to extend the mandate of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (hereinafter referred to as "the Commission") for the interim period from the coming into force of the Convention to the time when commercial sea-bed mining becomes feasible;
- . to authorise the Commission to exercise all the initial functions of the Authority and the Enterprise in accordance with the Convention, in an evolutionary manner, during this interim period;
- . to convene a review conference at the time when commercial seabed mining is about to begin.

Ratifying States may make a declaration, in accordance with Article 310 of the Convention, that they reserve their right to denounce the Convention in accordance with Article 317, should their rights not be properly protected when seabed exploitation will commence.

A. OBJECTIVES

Article 1

Cost-Effectiveness

1. The present Agreement shall be based on cost-effectiveness in carrying out the operations of the Commission, taking into account the need to discharge effectively its responsibilities as well as an evolutionary approach to the development of its functions.
2. The present Agreement shall apply to the Area as defined in the Convention and shall translate into operational terms the principle of the common heritage of mankind.

B. INSTITUTIONAL ARRANGEMENTS

Article 2

Participation

1. In order to give time to States and entities entitled to become parties to the Convention, such States and entities may, upon notification given to the Depositary of the Convention, become Parties to the Convention on a provisional basis for a period not exceeding three years. This period may be extended by a decision of the General Committee in response to a request of the State concerned. After the expiration of the provisional period, such States and entities shall ratify or accede to the Convention.
2. During this period, States and entities which have become parties on a provisional basis, shall fulfil all the duties and obligations, and enjoy all rights of Parties to the Convention, subject to the limitations inherent to the interim nature of the regime.

Article 3

Powers and Functions

In accordance with Paragraph 6 of Resolution I, the Commission shall continue to have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes as adjusted to this interim regime.

Article 4

Organs

1. For the duration of the interim period, the Plenary of the Commission shall perform the functions of the Assembly of the Authority. Each Party shall have one vote. The Rules of Procedure of the Commission shall continue to apply.

2. For the duration of the interim period, the General Committee of the Commission shall perform the functions of the Council of the Authority. Each party shall have one vote. The Rules of Procedure of the Commission shall continue to apply. Upon the coming into force of the Convention, the General Committee shall be renewed through election by the Assembly.
3. For the duration of the interim period, the Secretariat shall be drawn from staff members of the Division for Ocean Affairs and the Law of the Sea of the Secretariat of the United Nations. The Undersecretary-General for Legal Affairs shall perform the functions of the Secretary-General of the Authority.
4. For the duration of the interim period, the Group of Technical Experts and the Training Panel established by the Commission shall perform the functions of the Economic Planning Commission and the Legal and Technical Commission, with such adjustments as may be considered necessary.
5. For the duration of the Interim Period, the Enterprise shall be constituted as a joint undertaking on the basis of the MOU on the Obligations of Pioneer Investors and the Plan for the Exploration of the First Mine Site for the Enterprise, adopted by the Preparatory Commission in 1990, as well as the Training Programme, adopted by the Preparatory Commission in 1989. A Governing Board, consisting of Members appointed by the Pioneer Investors and by the Commission, shall be responsible for its activities. The functions of this joint undertaking shall be carried out in an evolutionary manner. They shall include joint exploration, the testing, and upgrading, and environmental impact assessment of technologies used in the exploration of the mine site, development of human resources and economic feasibility studies.
6. As far as Pioneer Investors are concerned, their rights and obligations shall be governed by the provisions of Resolution II and the related understandings.
7. As far as the applicants referred to in Resolution II, paragraph 1,a),ii) are concerned, approval of an application for pioneer activities shall be facilitated provided that they assume the same obligations as those of the applicants referred to in the understanding on the implementation of Resolution II contained in LOS/PCN/L.41/Rev. 1 (Annex of 11 September 1986).
8. A contractor which has contributed a particular area to the interim regime as a reserved area, shall have the first option to enter into as joint venture arrangement

with the Commission for exploration of that area. If the Commission does not commence activities on such a reserved area within ten years of its being reserved for the Commission, the contractor which contributed the area shall be entitled to apply for a plan of work for that area, provided it offers to include the Commission as a joint venture partner.

9. The requirements contained in Resolution II, paragraph 7(b) and 8, shall be waived with respect to any applicant for pioneer activities.

Article 5

Financial Arrangements

1. In accordance with paragraph 14 of Resolution I, the expenses of the Commission shall continue to be met from the regular budget of the United Nations, subject to the approval of the General Assembly of the United Nations.
2. The Commission may raise additional funds for specified activities as they may evolve.

Article 6

Review Conference

1. Upon notification to the Commission from a pioneer investor of his intention to commence commercial exploitation within three years, a Review Conference shall be convened.
2. The Review Conference shall review those provisions of Part XI and the relevant Annexes which govern the system of exploration and exploitation of the resources of the Area in the light of the scientific, technological, and economic reality of that future time and in consideration of the experience, the methodologies developed, and the activities conducted in an evolutionary manner during the interim regime.

Article 7

Dispute Settlement

The question of adjustment of the Seabed Dispute Chamber of the International Tribunal for the Law of the Sea, during the Interim Regime, pending the feasibility of commercial seabed mining, should be determined by the States Parties at the meeting to be convened pursuant to Article 4 of Annex VI to the Convention.

THE GENERAL ASSEMBLY

Recognizing the historic significance of the United Nations Convention on the Law of the Sea, 1982 (hereinafter referred to as "the Convention") as a unique contribution to the maintenance of peace, justice and progress for all peoples of the world;

Reaffirming the principle of the Common Heritage of Mankind codified in that Convention as a principle of international law;

Convinced, therefore, that the implementation and progressive development of the Law of the Sea as embodied in the Convention is essential for the attainment of Sustainable Development envisaged by the United Nations Conference on Environment and Development and its follow-up activities;

Aware that the problems of ocean space are closely interrelated and must be considered as a whole, and that this requires the full participation of all States whatever their stage of economic development;

Bearing in mind that the prospects of commercial exploitation of deep seabed mineral resources have receded into the future, generating an *interim period* between the coming into force of the Convention and the beginning of commercial seabed mining;

To this end desiring to embody the results of the consultations and negotiations organized by the Secretary-General of the United Nations in order to promote the universal acceptance of the Convention in accordance with the mandate given by the General Assembly of the United Nations;

Expresses its consent by the present resolution, to adopt the Agreement contained in the Annex attached to the present Resolution.

NONPAPER

AGREEMENT ON THE ESTABLISHMENT OF AN INTERIM REGIME FROM
THE COMING INTO FORCE OF THE CONVENTION TO THE TIME WHEN
COMMERCIAL SEABED MINING BECOMES FEASIBLE

AGREEMENT ON THE ESTABLISHMENT OF AN INTERIM REGIME FROM THE COMING INTO FORCE OF THE CONVENTION TO THE TIME WHEN SEABED MINING BECOMES FEASIBLE

THE GENERAL ASSEMBLY HAS AGREED AS FOLLOWS:

- . to extend the mandate of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (hereinafter referred to as "the Commission") for the interim period from the coming into force of the Convention to the time when commercial sea-bed mining becomes feasible;
- . to authorise the Commission to exercise all the initial functions of the Authority and the Enterprise in accordance with the Convention, in an evolutionary manner, during this interim period;
- . to convene a review conference at the time when commercial seabed mining is about to begin.

Ratifying States may make a declaration, in accordance with Article 310 of the Convention, that they reserve their right to denounce the Convention in accordance with Article 317, should their rights not be properly protected when seabed exploitation will commence.

A. OBJECTIVES

Article 1

Cost-Effectiveness

1. The present Agreement shall be based on cost-effectiveness in carrying out the operations of the Commission, taking into account the need to discharge effectively its responsibilities as well as an evolutionary approach to the development of its functions.
2. The present Agreement shall apply to the Area as defined in the Convention and shall translate into operational terms the principle of the common heritage of mankind.

B. INSTITUTIONAL ARRANGEMENTS

Article 2

Participation

1. In order to give time to States and entities entitled to become parties to the Convention, such States and entities may, upon notification given to the Depositary of the Convention, become Parties to the Convention on a provisional basis for a period not exceeding three years. This period may be extended by a decision of the General Committee in response to a request of the State concerned. After the expiration of the provisional period, such States and entities shall ratify or accede to the Convention.
2. During this period, States and entities which have become parties on a provisional basis, shall fulfil all the duties and obligations, and enjoy all rights of Parties to the Convention, subject to the limitations inherent to the interim nature of the regime.

Article 3

Powers and Functions

In accordance with Paragraph 6 of Resolution I, the Commission shall continue to have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes as adjusted to this interim regime.

Article 4

Organs

1. For the duration of the interim period, the Plenary of the Commission shall perform the functions of the Assembly of the Authority. Each Party shall have one vote. The Rules of Procedure of the Commission shall continue to apply.

with the Commission for exploration of that area. If the Commission does not commence activities on such a reserved area within ten years of its being reserved for the Commission, the contractor which contributed the area shall be entitled to apply for a plan of work for that area, provided it offers to include the Commission as a joint venture partner.

9. The requirements contained in Resolution II, paragraph 7(b) and 8, shall be waived with respect to any applicant for pioneer activities.

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2. The Review Conference shall review those provisions of Part XI and the relevant Annexes which govern the system of exploration and exploitation of the resources of the Area in the light of the scientific, technological, and economic reality of that future time and in consideration of the experience, the methodologies developed, and the activities conducted in an evolutionary manner during the interim regime.

2. For the duration of the interim period, the General Committee of the Commission shall perform the functions of the Council of the Authority. Each Party shall have one vote. The Rules of Procedure of the Commission shall continue to apply. Upon the coming into force of the Convention, the General Committee shall be renewed through election by the Assembly.
3. For the duration of the interim period, the Secretariat shall be drawn from staff members of the Division for Ocean Affairs and the Law of the Sea of the Secretariat of the United Nations. The Undersecretary-General for Legal Affairs shall perform the functions of the Secretary-General of the Authority.
4. For the duration of the interim period, the Group of Technical Experts and the Training Panel established by the Commission shall perform the functions of the Economic Planning Commission and the Legal and Technical Commission, with such adjustments as may be considered necessary.
5. For the duration of the Interim Period, the Enterprise shall be constituted as a joint undertaking on the basis of the MOU on the Obligations of Pioneer Investors and the Plan for the Exploration of the First Mine Site for the Enterprise, adopted by the Preparatory Commission in 1990, as well as the Training Programme, adopted by the Preparatory Commission in 1989. A Governing Board, consisting of Members appointed by the Pioneer Investors and by the Commission, shall be responsible for its activities. The functions of this joint undertaking shall be carried out in an evolutionary manner. They shall include joint exploration, the testing, and upgrading, and environmental impact assessment of technologies used in the exploration of the mine site, development of human resources and economic feasibility studies.
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7. As far as the applicants referred to in Resolution II, paragraph 1,a),ii) are concerned, approval of an application for pioneer activities shall be facilitated provided that they assume the same obligations as those of the applicants referred to in the understanding on the implementation of Resolution II contained in LOS/PCN/L.41/Rev. 1 (Annex of 11 September 1986).
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Bearing in mind that the prospects of commercial exploitation of deep seabed mineral resources have receded into the future, generating an *interim period* between the coming into force of the Convention and the beginning of commercial seabed mining;

To this end desiring to embody the results of the consultations and negotiations organized by the Secretary-General of the United Nations in order to promote the universal acceptance of the Convention in accordance with the mandate given by the General Assembly of the United Nations;

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NONPAPER

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2. The present Agreement shall apply to the Area as defined in the Convention and shall translate into operational terms the principle of the common heritage of mankind.

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Participation

1. In order to give time to States and entities entitled to become parties to the Convention, such States and entities may, upon notification given to the Depositary of the Convention, become Parties to the Convention on a provisional basis for a period not exceeding three years. This period may be extended by a decision of the General Committee in response to a request of the State concerned. After the expiration of the provisional period, such States and entities shall ratify or accede to the Convention.
2. During this period, States and entities which have become parties on a provisional basis, shall fulfil all the duties and obligations, and enjoy all rights of Parties to the Convention, subject to the limitations inherent to the interim nature of the regime.

Article 3

Powers and Functions

In accordance with Paragraph 6 of Resolution I, the Commission shall continue to have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes as adjusted to this interim regime.

Article 4

Organs

1. For the duration of the interim period, the Plenary of the Commission shall perform the functions of the Assembly of the Authority. Each Party shall have one vote. The Rules of Procedure of the Commission shall continue to apply.

2. For the duration of the interim period, the General Committee of the Commission shall perform the functions of the Council of the Authority. Each Party shall have one vote. The Rules of Procedure of the Commission shall continue to apply. Upon the coming into force of the Convention, the General Committee shall be renewed through election by the Assembly.
3. For the duration of the interim period, the Secretariat shall be drawn from staff members of the Division for Ocean Affairs and the Law of the Sea of the Secretariat of the United Nations. The Undersecretary-General for Legal Affairs shall perform the functions of the Secretary-General of the Authority.
4. For the duration of the interim period, the Group of Technical Experts and the Training Panel established by the Commission shall perform the functions of the Economic Planning Commission and the Legal and Technical Commission, with such adjustments as may be considered necessary.
5. For the duration of the Interim Period, the Enterprise shall be constituted as a joint undertaking on the basis of the MOU on the Obligations of Pioneer Investors and the Plan for the Exploration of the First Mine Site for the Enterprise, adopted by the Preparatory Commission in 1990, as well as the Training Programme, adopted by the Preparatory Commission in 1989. A Governing Board, consisting of Members appointed by the Pioneer Investors and by the Commission, shall be responsible for its activities. The functions of this joint undertaking shall be carried out in an evolutionary manner. They shall include joint exploration, the testing, and upgrading, and environmental impact assessment of technologies used in the exploration of the mine site, development of human resources and economic feasibility studies.
6. As far as Pioneer Investors are concerned, their rights and obligations shall be governed by the provisions of Resolution II and the related understandings.
7. As far as the applicants referred to in Resolution II, paragraph 1,a),ii) are concerned, approval of an application for pioneer activities shall be facilitated provided that they assume the same obligations as those of the applicants referred to in the understanding on the implementation of Resolution II contained in LOS/PCN/L.41/Rev. 1 (Annex of 11 September 1986).
8. A contractor which has contributed a particular area to the interim regime as a reserved area, shall have the first option to enter into as joint venture arrangement

with the Commission for exploration of that area. If the Commission does not commence activities on such a reserved areas within ten years of its being reserved for the Commission, the contractor which contributed the area shall be entitled to apply for a plan of work for that area, provided it offers to include the Commission as a joint venture partner.

9. The requirements contained in Resolution II, paragraph 7(b) and 8, shall be waived with respect to any applicant for pioneer activities.

Article 5

Financial Arrangements

1. In accordance with paragraph 14 of Resolution I, the expenses of the Commission shall continue to be met from the regular budget of the United Nations, subject to the approval of the General Assembly of the United Nations.
2. The Commission may raise additional funds for specified activities as they may evolve.

Article 6

Review Conference

1. Upon notification to the Commission from a pioneer investor of his intention to commence commercial exploitation within three years, a Review Conference shall be convened.
2. The Review Conference shall review those provisions of Part XI and the relevant Annexes which govern the system of exploration and exploitation of the resources of the Area in the light of the scientific, technological, and economic reality of that future time and in consideration of the experience, the methodologies developed, and the activities conducted in an evolutionary manner during the interim regime.

Article 7

Dispute Settlement

The question of adjustment of the Seabed Dispute Chamber of the International Tribunal for the Law of the Sea, during the Interim Regime, pending the feasibility of commercial seabed mining, should be determined by the States Parties at the meeting to be convened pursuant to Article 4 of Annex VI to the Convention.

RESOLUTION OF MEMBER STATES OF THE UNITED NATIONS

The States members of the United Nations

Recognizing the historic significance of the United Nations Convention on the Law of the Sea (hereafter referred to as the Convention) as an important contribution to the maintenance of peace, justice and progress for all peoples of the world;

Reaffirming the principle of common heritage of mankind contained in the Convention;

Noting that some aspects of the deep seabed mining provisions have prevented the attainment of the universality of the Convention;

Noting further that the prospects of commercial exploitation of deep seabed mineral resources have receded into the next century;

Bearing in mind that political and economic changes, including particularly a growing reliance on market principles that have taken place since the adoption of the Convention, have directly or indirectly affected the applicability of Part XI and Annexes III and IV of the Convention;

Considering that the role of the Convention as a comprehensive constitution for the ocean may be best achieved by the conclusion of an Agreement relating to Part XI and Annexes III and IV of the Convention;

To this end desiring to embody the results of the consultations and negotiations organized by the Secretary-General of the United Nations in order to promote the universal acceptance of the Convention in accordance with the mandate given by the General Assembly of the United Nations;

Have expressed their consent by the present resolution, to adopt the Agreement contained in the Annex attached to the present Resolution.

NON-PAPER

AGREEMENT ON THE IMPLEMENTATION OF PART XI AND ANNEXES III
AND IV OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE
SEA

AGREEMENT ON THE IMPLEMENTATION OF PART XI AND ANNEXES III AND IV OF THE UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA.

THE STATES AND ENTITIES PARTIES TO THIS AGREEMENT

HAVE AGREED AS FOLLOWS :

A. INSTITUTIONAL PROVISIONS

Article 1

Establishment of the Authority

1. The establishment and the operation of the Authority and its organs shall be based on an evolutionary approach and on cost-effectiveness, taking into account the functional needs of these organs in order to discharge effectively their responsibilities at each stage.

2. In order to give time for States and entities entitled to become parties of the United Nations Convention on the law of the sea (hereafter referred to as the Convention), to be bound by the Convention and this Agreement, such States and entities may, upon notification given to the depositary of the Convention, become members of the Authority. Such membership will not exceed 5 years after the date of entry into force of the Convention.

Article 2

Organs of the Authority

§ 2 of Article 158 of the Convention will be read as follows:

When commercial production of deep seabed minerals becomes feasible, the Enterprise may be established by the Assembly upon the proposal of the Council.

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Article 3

The Assembly

Article 160 of the Convention will be applied with the following provision :

If the Assembly ~~wants to~~ disagree with a decision of the Council, it shall send its recommendations back to the Council and the Council shall reconsider the matter in the light of the recommendations made by the Assembly.

Article 4

The Council : Composition, procedure and voting

1. Article 161 § 1 of the Convention will be read as follows :

a) The Composition of the Council shall reflect the major categories of interests and these categories shall be treated as chambers for the purposes of decision-making. The following categories shall be considered as chambers for this purpose :

- (i) four members from among those States Parties which, during the last five years for which statistics are available, have either consumed more than 2 per cent of the value of total world consumption or have had net imports of more than 2 per cent of the value of total world imports of the commodities produced from the categories of minerals to be derived from the deep seabed, and in any case one State from the Eastern European region, as well as the largest consumer;
- (ii) four members from among the States Parties which were certifying States for pioneer investors or are sponsoring States for operators whose plans of work have been approved, including at least one State from the Eastern European region;
- (iii) four members from among States Parties which on the basis of production in areas under their jurisdiction are major net exporters of the

categories of minerals to be derived from the deep seabed, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;

(iv) six members from among developing States Parties, representing special interests. The special interests to be represented shall include those of States with large populations, States which are landlocked or geographically disadvantaged, States which are major importers of the categories of minerals to be derived from the deep seabed, States which are potential producers of such minerals, and least developed States;

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(v) eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this provision. For this purpose, the geographical regions shall be Africa, Asia, Eastern European, Latin America, and Western European and Others.

b) A member fulfilling the criteria of more than one category shall have the possibility of being listed in the relevant categories. However, that State Party can only be nominated by the States Parties belonging to one category and can represent only that category in the Council.

c) The members of the Council shall be elected by the Assembly. Members representing categories shall be nominated respectively by States falling within these categories. A list of such states shall be prepared by the Assembly prior to each election.

2. Article 161 § 4 of the Convention will be read as follows :

There shall be rotation among the members of the Council. The question of rotation shall be decided by the members entitled to be represented in the relevant chamber of the Council.

3. Article 161 § 8 b) and c) of the Convention will be read as follows :

a) Decisions on questions of substance shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to in Article 4, paragraph 1. (b).

b) Decisions within each chamber on matters of substance shall be taken by a simple majority.

- c) A group of States members of the same chamber shall have the right to table a motion which would have the effect of postponing for 6 months a decision and starting a process of negotiation if a major interest of such a group of States seemed threatened.
- d) A special procedure for the approval of a plan of work shall apply, as follows :
- (i) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within 60 days, the recommendation shall be deemed to have been approved by the Council at the end of that period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its normal rules of procedure on matters of substance.
 - (ii) Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement mechanism contained in the Convention.

Article 5

The Secretariat

Article 167 of the Convention shall be applied with the following provision :

The staff of the Secretariat may be drawn initially from staff members of the Secretariat of the United Nations.

Article 6

Organs of the Council

Article 163.1. of the Convention will be read as follows :

There shall be established upon decision of the Council a legal and technical Commission as an organ of the Council.

Article 7

Finance Committee

Upon the establishment of the Authority, a Finance Committee shall be established in accordance with the provisions contained in Appendix 1 (LOS/PCN/WP.45P/Rev.2) of this Agreement which forms an integral part of it.

Article 8

Consistency

The provisions of the Convention related to the structure and the functions of the Authority not referred to in this Agreement shall be applied taking into account the provisions contained in this Agreement.

B. APPLICABLE RULES PENDING THE ESTABLISHMENT OF THE REGIME
OF EXPLOITATION

Article 9

General provision

Pending the establishment of the Régime of exploitation referred to in part c) of the Agreement, the functions of the Assembly and the Council and the Régime for contractors and applicants for a plan of work for pioneer activities in the Area shall be only governed by the following provisions.

Article 10

Functions of the Assembly

The functions of the Assembly shall include those referred to in article 160 § 1 of the Convention and the following functions :

- (a) to monitor and review the trends and developments relating to marine scientific research in the Area and those relating to the protection of the marine environment;
- (b) to monitor and review the trends and developments relating to the deep seabed mining activities, including deep seabed mining technology;
- (c) to study the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of deep seabed minerals with a view to helping them to make the necessary economic adjustment.

Article 11

Functions of the Council

The functions of the Council shall be :

- (a) to continue, as far as the registered pioneer investors are concerned, the functions already being carried out by the Preparatory ~~Commission~~ for the International Seabed Authority and for the International Tribunal for the Law of the Sea (hereinafter referred to as the Preparatory Commission) concerning the implementation of their obligations, in accordance with Resolution II in the Third United Nations Conference on the Law of the Sea (hereinafter referred to as Resolution II) and the related understandings;
- (b) to receive and process any new application for a plan of work for pioneer activities, as far as the other applicants referred to in article 1 of Resolution II and new applicants are concerned, agree upon their obligations and monitor the implementation of their obligations.
- (c) to implement the decisions of the Preparatory Commission taken pursuant to Resolution II;
- (d) to take such measures as are required for the exercise of its functions, including those relating to budgetary matters;
- (e) to establish such organs as may be found necessary.

Article 12

Régime for pioneer activities

1. The Régime for pioneer activities shall be governed by the provisions of Resolution II and the related understandings.
2. The requirements contained in Resolution II, §§ 7 (b) and 8 shall be waived with respect of any contractor or applicant for pioneer activities.
3. In accordance with Resolution II and the related understandings, the Council shall enter with any applicant into arrangements similar to those made with the registered pioneer investors.
4. As far as the applicants referred to in Resolution II, § 1, a), ii) are concerned, an application for pioneer activities shall be deemed to be accepted after 3 months from the date of application provided that they assume the same obligations than those of the applicants referred to in the understanding on the implementation of Resolution II contained in LOS/PCN/L.41/Rev.1 (Annex of 11 september 1986).

C. REGIME TO GOVERN THE EXPLOITATION OF THE AREA

I. Establishment of the Régime of exploitation

Article 13

Determination of the feasibility of commercial exploitation

The date at which commercial exploitation of deep seabed minerals shall become feasible will be determined by the Authority on the basis of a decision by the Council either on its initiative or upon the notification of a request from an operator. The notification will be accompanied by an explanation of the grounds for the operator's request.

Article 14

Régime of exploitation

1. Upon recommendation of the Council, the Assembly shall, as appropriate, adopt the necessary practical rules and regulations which will govern the commercial exploitation of deep seabed minerals. To this end, it shall implement the principles contained in part C., II, Subsection B of the Agreement and, when they are consistent with those principles, the relevant provisions of the Convention and Annexes III and IV.

2. If the Authority has not adopted the Régime for exploitation referred to in § 1 above within 3 years, it shall enter into negotiations with an applicant for a plan of work of exploitation, in order to conclude an contract for exploitation within two years after the beginning of such negotiations.

II. General principles to govern the Régime of exploitation

Article 15

The Enterprise

- (a) In case the Enterprise participates in the ~~exploitation~~, it shall begin its operations through joint ventures.
- (b) The fact that the operations of the Enterprise shall begin by joint ventures shall be without prejudice to other future options of the Enterprise.
- (c) States Parties shall not be under an obligation to fund a mining operation of the Enterprise. M

Article 16

Cooperation in relation to the acquisition of technology

- (a) The obligation of mandatory transfer of technology to the Enterprise shall not arise since the Enterprise shall begin its operations through joint ventures and is free to engage in this type of operation at any time thereafter. The availability of technology shall be part of the joint venture arrangements.
- (b) The Authority shall have the power to invite all contractors and their respective sponsoring States to cooperate with it in the acquisition of technology by the Enterprise or the joint ventures on fair and reasonable commercial terms and conditions, if the technology in question was not available on the open market. In addition, all States Parties are called upon to undertake in good faith to assist the enterprise to become a viable commercial entity and to engage successfully in deep seabed mining operations.

States sponsoring deep seabed mining operations and those whose nationals may develop such technology should agree to take effective measures consistent with this undertaking.

- (c) If technology is not readily available on the open market, a State or several States seeking access to technology should enter joint venture agreement with the operator having the necessary technology, or with the Enterprise. The Authority shall make every effort to assist in the acquisition of necessary technology by the requesting State or States and in the conclusion of joint venture agreements.
- (d) As a general rule States Parties should endeavour to promote international technical and scientific cooperation either between the parties concerned in activities relating to the seabed, or by developing training, technical assistance and scientific cooperative programmes.

Article 17

Policies relating to the production of minerals

When commercial production of deep seabed minerals becomes feasible, the following principles shall apply with respect to a production policy :

- (a) There shall be no subsidization of production of minerals from the deep seabed. As far as anti-subsidy provisions are concerned, the application of the GATT rules shall be considered.
- (b) There shall be no discrimination between minerals from land and from the deep seabed. There shall be no discrimination between seabed miners and land-based miners, nor between seabed miners. In particular, there shall be no preferential access to markets for minerals derived from the deep seabed by use of tariff or non-tariff barriers or for imports of commodities produced from such minerals, nor shall any preference be given by States to minerals derived from the deep seabed by their nationals.
- (c) The plan of work approved by the Authority in respect of each mining area shall indicate a production schedule which shall include the estimated amounts of minerals that would be produced per year under that plan of work.

- (d) The rights and obligations relating to unfair economic practices under the relevant multilateral trade agreements shall apply to the exploration and exploitation of minerals from the deep seabed.
- (e) States parties sponsoring the carrying out of activities in the Area by their state enterprises or natural or juridical persons who possess their nationality or are effectively controlled by them or their nationals, shall assure the Authority that they have taken or are taking any necessary steps to ensure that they do not engage in subsidization except as may be permitted under GATT agreements.
- (f) The principles contained in sub-paragraphs (a) to (e) shall not affect rights and obligations under GATT agreements in relations between States Parties which are contracting parties of the GATT.
- (g) States Parties which are Parties to such multilateral trade agreements shall have recourse to the dispute settlement procedures of such agreements. States which are not Parties to such agreements shall have recourse to the dispute-settlement procedures provided for under the Convention.

Article 18

System of assistance

When commercial production of deep seabed minerals becomes feasible, the following principles shall apply with respect to a system of assistance for adversely affected developing land-based producer States :

- (a) Adversely affected developing land-based producer States shall be provided with some economic assistance to facilitate the adjustment of their economies to changed circumstances.
- (b) An economic assistance fund shall be established from that portion of the funds of the Authority which exceeds the administrative expenses of the Authority. Only funds from payments received from the contractor in accordance with the financial terms of contracts, funds transferred from the Enterprise and voluntary contributions, shall be used for the establishment of the economic assistance fund.
- (c) The Authority shall provide assistance from the fund to adversely affected developing land-based producer States where appropriate in cooperation with existing global

or regional development organs which have the infrastructure and expertise to carry out such assistance programmes.

- (d) The extent and duration of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by adversely affected developing land-based producer States.

Article 19

Financial terms of contracts

When commercial production of deep seabed minerals becomes feasible, the following principles shall apply with respect to a system of payment by an operator to the Authority :

- (a) The system of payments to the Authority shall be fair both to the operator and to the Authority.
- (b) The rates of payments under the system shall be within the range of those prevailing comparable systems in respect of land-based mining of the same or similar minerals in order to avoid giving seabed miners an artificial competitive advantage, or imposing on them an artificial competitive disadvantage. The possibility of a review of the system of payments during the lifetime of a contract in view of changing circumstances, should be considered. Such a review may be requested either by the contractor or by the Authority; the review itself shall be conducted through direct negotiations with the Authority on a non-discriminatory basis and any agreement shall be mutually accepted.
- (c) While the system should not be complicated and should not impose major administrative costs on the Authority or on the operator, consideration should be given to the adoption of both a production charge system and a mixed system. An operator shall choose to make his payments to the Authority under either of these systems.
- (d) States shall cooperate with the Authority in order to review problems which may arise from payments to States by operators from the income of deep seabed exploitation and to solve such problems.
- (e) In case there is an annual fixed fee to be paid by an operator during the exploratory stage, such a fee shall

be adjusted at the time of the approval of the plan of work in order to take account of the anticipated delay in reaching the exploitation stage and the risks involved in establishing an industry in a new and unstable environment.

- (f) Consideration shall be given to develop a system of incentives on a uniform and non-discriminatory basis for inter alia, operators to undertake joint arrangements with the Enterprise and developing States or their nationals. The Authority shall ensure that as a result of such financial incentives, operators are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.
- (g) Any disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures under the Convention.

Article 20

Review conference

Any amendment to the Convention shall be adopted and enter into force only in application of the provisions contained in part XVII of the Convention.

Article 21

Final clauses

1. Part XI and annexes III and IV of the Law of the Sea Convention shall be read and interpreted as modified and completed by the present Agreement with which they shall constitute an integral whole.

2. Articles 309 to 320 as well as Annex IX of the Law of the Sea Convention shall apply also to the present Agreement.

3. States and other entities referred to in article 305 of the Convention may become bound by the present agreement only in conjunction with the Convention and they may become bound by the Convention only in conjunction with this Agreement.

4. States or entities which have deposited an instrument of ratification, formal confirmation or accession to the Convention, shall be deemed to have expressed their will to be bound by the present Agreement twelve months after its adoption unless, within such time limit, they notify the Depositary that they wish to follow the procedure set forth in articles 306 or 307 of the Convention.

5. The present Agreement shall enter into force on the day of the deposit of the instrument of ratification, formal confirmation or accession, provided two States mentioned in subparagraphs (I), and two States mentioned in subpara (II) of paragraph 1 (a) of Resolution II of the IIIrd UN Conference for the Law of the Sea have expressed their will to be bound according to articles 3 or 4.

States and entities mentioned in article 4 which have not made the notification mentioned therein shall be counted as having deposited their instrument of ratification, formal confirmation or accession upon expiry of the twelve-month period specified in that article.

NON-PAPER

AGREEMENT ON THE IMPLEMENTATION OF PART XI
AND ANNEXES III AND IV OF THE UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA

The General Assembly

Recognizing the historic significance of the United Nations Convention on the Law of the Sea, 1982, (hereinafter referred to as "the Convention") as a unique contribution to the maintenance of peace, justice and progress for all peoples of the world;

Reaffirming the principle of the common heritage of mankind codified in that Convention;

Convinced, therefore, that the implementation and progressive development of the Law of the Sea as embodied in the Convention is essential for the attainment of sustainable development envisaged by the United Nations Conference on Environment and Development and its follow-up activities;

Aware that the problems of ocean space are closely interrelated and must be considered as a whole, and that this requires the full participation of all States whatever their stage of economic development;

Bearing in mind that the prospects of commercial exploitation of deep seabed mineral resources have receded into the future, generating an interim period between the coming into force of the Convention and the beginning of commercial seabed mining;

To this end desiring to embody the results of the consultations and negotiations organized by the Secretary-General of the United Nations in order to promote the universal acceptance of the Convention in accordance with the mandate given by the General Assembly of the United Nations;

Expresses its consent by the present resolution to adopt the Agreement contained in the Annex attached to the present resolution.

Agreement on the establishment of an interim regime from the coming into force of the Convention to the time when seabed mining becomes feasible

The General Assembly has agreed as follows:

to extend the mandate of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (hereinafter referred to as the Commission) for the interim period from the coming into force of the Convention to the time when commercial seabed mining becomes feasible;

to authorise the Commission to exercise all the initial functions of the Authority and the Enterprise in accordance with the Convention, in an evolutionary manner, during this interim period;

to convene a review conference at the time when commercial seabed mining is about to begin.

Ratifying States may make a declaration, in accordance with Article 310 of the Convention, that they reserve their right to denounce the Convention in accordance with Article 317, should their rights not be properly protected when seabed exploitation will commence.

A. OBJECTIVES

Article 1

1. The present Agreement shall be based for the functioning of the operations by the Commission on cost-effectiveness, taking into account the needs to discharge effectively its responsibilities.
2. The present Agreement shall apply to the Area as defined in the Convention and shall translate into operational terms the principle of common heritage of mankind.
3. The present Agreement shall form an integral part of the Convention and is concluded in order to facilitate the implementation of Part XI and Annexes III and IV of the Convention. Subject to this agreement the provisions of Part XI and Annexes III and IV shall apply as appropriate.
4. The present Agreement and the provisions of the Convention shall be read and interpreted together as one single instrument.

B. INSTITUTIONAL ARRANGEMENTS

Article 2

Participation

1. In order to give time to States and entities entitled to become parties to the Convention, such States and entities may, upon notification to the depository of the Convention, become parties to the Convention on a provisional basis for a period not exceeding three years. After three years, such States and entities shall ratify or accede to the Convention.
2. During this period, States and entities which have become parties on a provisional basis shall fulfil all duties and obligations, and enjoy all rights of Parties to the Convention, subject to the limitations inherent to the interim nature of the regime.

Article 3

Powers and Functions

In accordance with Paragraph 6 of Resolution I, the Commission shall continue to have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes as adjusted to this interim regime.

Article 4

Organs

1. For the duration of the interim period, the Plenary of the Commission shall perform the functions of the Assembly of the Authority. Each Party shall have one vote. The Rules of Procedure of the Commission shall continue to apply.
2. For the duration of the interim period, the General Committee of the Commission shall perform the functions of the Council of the Authority. Each party shall have one vote. The Rules of Procedure of the Commission shall continue to apply. Upon the coming into force of the Convention, the General Committee shall be renewed through election by the Assembly.
3. For the duration of the interim period, the Secretariat may be drawn initially from staff members of the Secretariat of the United Nations.
4. For the duration of the interim period, the Group of Technical Experts and the Training Panel established by the Commission, shall perform the functions of the Economic Planning Commission and the Legal and Technical Commission, with such adjustments as may be considered necessary.

5. For the duration of the interim period, the Secretariat of the Authority shall perform the preparatory functions necessary for the commencement of the functioning of the Enterprise. These shall include the monitoring of developments in the deep seabed mining sector, in particular the prevailing conditions in the world metal market, developments in deep seabed mining technology, and data and information on the environmental impact of the activities in the Area.
6. As far as pioneer investors are concerned, their rights and obligations shall be governed by the provisions of Resolution II and the related understandings.
7. As far as the applicants referred to in Resolution II, paragraph 1, a), ii), are concerned, approval of an application for pioneer activities shall be facilitated provided that they assume the same obligations as those of the applicants referred to in the understanding on the implementation of Resolution II contained in LOS/PCN/L.41/Rev. 1 (Annex of 11 September 1986).
8. The requirements contained in Resolution II, paragraph 7(b) and 8, shall be waived with respect of any applicant for pioneer activities.

Article 5
Financial Arrangements

1. In accordance with paragraph 14 of Resolution I, the expenses of the Commission shall continue to be met from the regular budget of the United Nations, subject to the approval of the General Assembly of the United Nations.
2. The Commission may raise additional funds for specified activities as they may evolve.

Article 6
Review Conference

1. Upon notification to the Commission from a pioneer investor of his intention to commence commercial exploitation within three years, a Review Conference shall be convened.
2. The Review Conference shall review those provisions of Part XI and the relevant Annexes which govern the system of exploration and exploitation of the resources of the Area in the light of the scientific, technological, and economic reality of that future time and in consideration of the experience, the methodologies developed, and the activities conducted in an evolutionary manner during the interim regime.

Article 7

Dispute Settlement

The question of adjustment of the Seabed Dispute Chamber of the International Tribunal for the Law of the Sea, during the Interim Regime, pending the feasibility of commercial seabed mining, should be determined by the State Parties at the Meeting to be convened pursuant to Article 4 of Annex VI to the Convention.]

UNITED NATIONS



NATIONS UNIES

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REFERENCE:

18 January 1994

TO ALL STATES MEMBERS OF
AND OBSERVERS TO THE UNITED NATIONS

Reference is made to the Secretary-General's consultations on outstanding issues relating to the deep seabed mining provisions of the UN Convention on the Law of the Sea.

In this connection, the Secretariat has been requested by Ambassador Abdul Koroma of the Permanent Mission of Sierra Leone to the United Nations to circulate the attached informal paper which is a revision of the non-paper submitted under the cover of a note dated 25 October 1993.



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THE SIERRA LEONE PAPER

REV. 2

AND COMMENTS

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INTRODUCTION

During the November, 1993, session of the "Secretary-General's Consultations," Ambassador Abdul Koroma of Sierra Leone introduced a draft resolution and agreement with regard to the implementation of Part XI of the Convention. He described the paper as "fall-back position," which might be taken up in case the negotiations based on the so-called "Boat paper," launched anonymously by a group of Delegates, should fail. The present paper is Revision 2 of that original proposal.

The International Ocean Institute takes pleasure in reproducing this paper here together with some comments, intended to explain the differences between this draft resolution and agreement ("the Sierra Leone Paper"), and the "Boat Paper," which has also gone through some revisions and was distributed by the Fiji Mission ("the Fiji Paper"), on 14 February 1994.

DRAFT RESOLUTION

THE GENERAL ASSEMBLY

Recognizing the historic significance of the United Nations Convention on the Law of the Sea, 1982 (hereinafter referred to as "the Convention") as a unique contribution to the maintenance of peace, justice and progress for all peoples of the world;

Reaffirming the principle of the Common Heritage of Mankind codified in that Convention as a principle of international law;

Convinced, therefore, that the implementation and progressive development of the Law of the Sea as embodied in the Convention is essential for the attainment of Sustainable Development envisaged by the United Nations Conference on Environment and Development and its follow-up activities;

Aware that the problems of ocean space are closely interrelated and must be considered as a whole, and that this requires the full participation of all States whatever their stage of economic development;

Bearing in mind that the prospects of commercial exploitation of deep seabed mineral resources have receded into the future, generating an *interim period* between the coming into force of the Convention and the beginning of commercial seabed mining;

To this end desiring to embody the results of the consultations and negotiations organized by the Secretary-General of the United Nations in order to promote the universal acceptance of the Convention in accordance with the mandate given by the General Assembly of the United Nations;

Expresses its consent by the present resolution, to adopt the Agreement contained in the Annex attached to the present Resolution.

AGREEMENT ON THE ESTABLISHMENT OF AN INTERIM REGIME FROM THE
COMING INTO FORCE OF THE CONVENTION TO THE TIME WHEN
COMMERCIAL SEABED MINING BECOMES FEASIBLE

AGREEMENT ON THE ESTABLISHMENT OF AN INTERIM REGIME FROM THE COMING INTO FORCE OF THE CONVENTION TO THE TIME WHEN SEABED MINING BECOMES FEASIBLE

THE GENERAL ASSEMBLY HAS AGREED AS FOLLOWS:

- . to extend the mandate of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (hereinafter referred to as "the Commission") for the interim period from the coming into force of the Convention to the time when commercial sea-bed mining becomes feasible;
- . to authorise the Commission to exercise all the initial functions of the Authority and the Enterprise in accordance with the Convention, in an evolutionary manner, during this interim period;
- . to convene a review conference at the time when commercial seabed mining is about to begin.

Ratifying States may make a declaration, in accordance with Article 310 of the Convention, that they reserve their right to denounce the Convention in accordance with Article 317, should their rights not be properly protected when seabed exploitation will commence.

A. OBJECTIVES

Article 1

Cost-Effectiveness

1. The present Agreement shall be based on cost-effectiveness in carrying out the operations of the Commission, taking into account the need to discharge effectively its responsibilities as well as an evolutionary approach to the development of its functions.
2. The present Agreement shall apply to the Area as defined in the Convention and shall translate into operational terms the principle of the common heritage of mankind.

B. INSTITUTIONAL ARRANGEMENTS

*Article 2**Participation*

1. In order to give time to States and entities entitled to become parties to the Convention, such States and entities may, upon notification given to the Depositary of the Convention, become Parties to the Convention on a provisional basis for a period not exceeding three years. This period may be extended by a decision of the General Committee in response to a request of the State concerned. After the expiration of the provisional period, such States and entities shall ratify or accede to the Convention.
2. During this period, States and entities which have become parties on a provisional basis, shall fulfil all the duties and obligations, and enjoy all rights of Parties to the Convention, subject to the limitations inherent to the interim nature of the regime.
3. In case of entities whose components are natural or juridical persons possessing the nationality of more than one State, a plan of work for exploration shall not be approved unless all the States whose natural or juridical persons comprise those entities are States Parties or provisional members.
4. A plan of work for exploration may be terminated if any of the States whose nationality is possessed by the natural or juridical persons composing the entities referred to under paragraph 3 above ceases to be a provisional member and has not become a State Party.
5. If the Plenary decides that a provisional member has failed to comply with its obligations in accordance with this agreement, its provisional membership shall be terminated.

Article 3

Powers and Functions

1. In accordance with Paragraph 6 of Resolution I, the Commission shall continue to have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes as adjusted to this interim regime.
2. For the duration of the interim period, Prepcom shall continue to
 - (a) process applications for approval of plans of work for exploration, without discrimination with regard to the rights and obligations of new applicants which must be equal to those assumed by the first group of Pioneer Investors;
 - (b) implement the decisions taken by the Prepcom prior to the coming into force of the Convention relating to the registered pioneer investors and their certifying States, including their rights and obligations, in accordance with the provisions of Article 308, paragraph 5 of the Convention and Resolution II, paragraphs 12 and 13, in particular, the training and exploration programmes adopted by the Prepcom;
 - (c) monitor compliance with plans of work for exploration;
 - (d) monitor and review trends of developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;
 - (e) study the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected, with a view to minimising their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;

- (f) promote and encourage the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of activities in the Area;
- (g) monitor the development of marine technology relevant to activities in the Area, including technology relating to protection and preservation of the marine environment;
- (h) adopt rules, regulations and procedures, including those relating to the protection and preservation of the marine environment, necessary for the conduct of activities in the Area as they progress.

Article 4

Organs

1. For the duration of the interim period, the Plenary of the Commission shall perform the functions of the Assembly of the Authority. Each Party shall have one vote. The Rules of Procedure of the Commission shall continue to apply.
2. For the duration of the interim period, the General Committee of the Commission shall perform the functions of the Council of the Authority. Each Party shall have one vote. The Rules of Procedure of the Commission shall continue to apply. Upon the coming into force of the Convention, the General Committee shall be renewed through election by the Assembly.
3. For the duration of the interim period, the Secretariat shall be drawn from staff members of the Division for Ocean Affairs and the Law of the Sea of the Secretariat of the United Nations. The Undersecretary-General for Legal Affairs shall perform the functions of the Secretary-General of the Authority.

4. For the duration of the interim period, the Group of Technical Experts and the Training Panel established by the Commission shall perform the functions of the Economic Planning Commission and the Legal and Technical Commission, with such adjustments as may be considered necessary.
5. For the duration of the Interim Period, the Enterprise shall be constituted as a joint undertaking on the basis of the MOU on the Obligations of Pioneer Investors and the Plan for the Exploration of the First Mine Site for the Enterprise, adopted by the Preparatory Commission in 1990, as well as the Training Programme, adopted by the Preparatory Commission in 1989. A Governing Board, consisting of Members appointed by the Pioneer Investors and by the Commission, shall be responsible for its activities. The functions of this joint undertaking shall be carried out in an evolutionary manner. They shall include joint exploration, the testing, and upgrading, and environmental impact assessment of technologies used in the exploration of the mine site, development of human resources and economic feasibility studies.
6. As far as Pioneer Investors are concerned, their rights and obligations shall be governed by the provisions of Resolution II and the related understandings.
7. As far as the applicants referred to in Resolution II, paragraph 1,a),ii) are concerned, approval of an application for pioneer activities shall be facilitated provided that they assume the same obligations as those of the applicants referred to in the understanding on the implementation of Resolution II contained in LOS/PCN/L.41/Rev. 1 (Annex of 11 September 1986).
8. A contractor which has contributed a particular area to the interim regime as a reserved area, shall have the first option to enter into a joint venture arrangement with the Commission for exploration of that area. If the Commission does not commence activities on such a reserved area within ten years of its being reserved for the Commission, the contractor which contributed the area shall be entitled to apply for a plan of work for that area, provided it offers to include the Commission as a joint venture partner.

9. The requirements contained in Resolution II, paragraph 7(b) and 8, shall be waived with respect to any applicant for pioneer activities.

Article 5

Financial Arrangements

1. In accordance with paragraph 14 of Resolution I, the expenses of the Commission shall continue to be met from the regular budget of the United Nations, subject to the approval of the General Assembly of the United Nations.
2. The Commission may raise additional funds for specified activities as they may evolve.

Article 6

Review Conference

1. Upon notification to the Commission from a pioneer investor of his intention to commence commercial exploitation within three years, a Review Conference shall be convened.
2. The Review Conference shall review those provisions of Part XI and the relevant Annexes which govern the system of exploration and exploitation of the resources of the Area in the light of the scientific, technological, and economic reality of that future time and in consideration of the experience, the methodologies developed, and the activities conducted in an evolutionary manner during the interim regime.

Article 7

Dispute Settlement

The question of adjustment of the Seabed Dispute Chamber of the International Tribunal for the Law of the Sea, during the Interim Regime, pending the feasibility of commercial seabed mining, should be determined by the States Parties at the meeting to be convened pursuant to Article 4 of Annex VI to the Convention.

COMMENTS

General Comments

The Fiji paper proposes to change Part XI, quite fundamentally, and permanently, and also affects other parts of the Convention. The Sierra Leone Paper does not touch the text of the Convention, but proposes to delay the full implementation of Part XI until the time when nodule mining in the Area becomes feasible.

Since the Fiji Paper makes fundamental changes in the Convention, after that Convention has been duly ratified and is about to come into force, an elaborate procedure was deemed necessary. This proposed procedure, however, raises quite a few problems. The paper stipulates that

- . the Convention can be fundamentally changed
 - . by forty States, none of whom need to be among the 61 States having duly ratified,
 - . these forty States are to include 5 Pioneer Investors, four of whom must be developed countries, and none of whom need to be among those who have duly registered, and fulfilled their obligations. They may all be "potential Pioneer Investors."
 - . *having voted in favour of the adoption* of the Fiji Paper is equalized with *having signed* it and is considered as *consent to be bound*; this being deemed necessary because of the short time available;
 - . the Agreement is to be applied provisionally by all States who have voted in favour of its adoption, the day the Convention is coming into force (November 16, 1994). On that day thus two sea-bed mining regimes would be created. Some States would be bound by the Convention which they have duly ratified; other States would be bound by the "provisional regime" or "Mini Treaty" created by the Fiji paper;
 - . "after the adoption of this Agreement" -- not its coming into force! -- "any instrument of ratification or formal confirmation of or accession to the Convention shall represent also consent to be bound by this Agreement" (Art.4). The question arises: What if a State wanted to ratify the Convention such as it has been adopted, signed and ratified?

If the "mini-treaty" has not reached the required number of ratifications, etc., four years after its provisional implementation, a fairly undefined situation is bound to arise. It is not clear what happens to the States which have ratified both the Convention and the "mini-treaty" which then would cease to exist?

The procedure proposed by the Sierra Leone Paper is quite simple: A General Assembly Resolution. This is considered sufficient, since there are no changes in the Convention.

With regard to substance, the Fiji paper proposes the establishment of an Authority and an Enterprise which are not viable, either now or in the future; the Sierra Leone Paper keeps, for the interim period between the coming into force of the Convention and the beginning of commercial mining, what is already in place and functioning quite well (the Prepcom/Pioneer Investor regime), and leaves to the future questions about the mining regime which only the future can resolve.

Article-by-Article comments

Resolution

The Fiji *Resolution* aims at justifying the rewriting of Part XI and addresses the complex procedural issues involved. The Sierra Leone *Resolution* stresses the importance of the Convention, now and in the future, as well as the need for an interim arrangement for the period in which there will be no sea-bed mining. This interim arrangement should be such that it can be universally accepted.

Agreement

Preamble

The Fiji Agreement starts with a Preamble, essentially repeating the Resolution. The Sierra Leone Agreement goes right to the substance of the matter.

Procedure

The 10 Articles of the Fiji Agreement are of a procedural nature and raise the issues mentioned above. The procedure proposed by the Sierra Leone paper is very simple: The extension of the Prepcom and its activities by Resolution of the General Assembly. Care has been taken to enable industrialised States to make it quite clear (without a Reservation, however) that they do not feel bound by Part XI as it stands today. They continue to feel bound by Resolutions I and II and the extended Prepcom Regime, by which they have felt bound up until this time. The only adjustment, dictated by *force majeure*, that has to be made in the

Convention concerns the circumstances under which the Review Conference is to be called. The Convention establishes that it must be called *fifteen years after the beginning of sea-bed mining*, it having been assumed that mining would start at the time the Convention comes into force. Since there is no mining during these next fifteen years, this provision has lost its meaning. It is in the interest of all parties concerned, whether developed or developing, to review and revise the mining provisions when sea-bed mining is about to begin, maybe 30, 35 years after the provisions were originally drafted and we knew so little about sea-bed mining, and to bring these provisions up to date, in accordance with the technological, economic, environmental, and political circumstances that may prevail at that future time as well as the practical experience gathered during these next fifteen-twenty years. Obviously the conclusions and recommendations of the Prepcom, reached prior to the coming into force of the Convention, as well as the conclusions and recommendations of the Secretary-General's Consultations will be taken into account as well.

Objectives

The Sierra Leone paper has a brief section entitled "Objectives." The first of these objectives is cost-effectiveness. The Fiji paper stresses cost-effectiveness in Section 1, entitled "Costs to States Parties and Institutional Arrangements."

It should be noted that, as stipulated by the Fiji paper, cost-effectiveness can be used *as a reason not to have any meetings of the organs of the Authority at all.* "This principle shall also apply to the frequency, length, and scheduling of meetings." The Fiji paper does not specify who is to decide when to use cost-effectiveness as the criterion to schedule or cancel meetings. This is one of the provisions that makes the Fiji Authority unviable.

Participation and Provisional Membership

The Sierra Leone paper provides for the provisional participation in the regime by States which need more time for the ratification of the Convention, provided they assume all the obligations of States Parties.

The corresponding provision in the Fiji paper is far more complex. It is applicable to States "which have not established their consent to be bound" by the Fiji Agreement, regardless of whether they are Parties to the Convention or not. This may include all sixty-one States which have ratified the Convention. It may include the vast majority of Members of the United Nations. These States, then, would be provisional members of a regime provisionally implemented by a group of States which might even be small.

Obligations

The Fiji paper makes detailed provisions with regard to the rights and obligations of these States. Both Fiji and Sierra Leone maintain the obligations of the Pioneer Investors as established in Resolution II and elaborated in the MOU and resolutions of the Prepcom, although the Fiji paper is less explicit about some of these obligations (see "Powers and Functions," below). The Fiji paper adds the obligation of contributing to the budget of the Authority based on assessed contributions. In the Sierra Leone paper there is no such obligation. The continuation of the Prepcom regime is to be paid for out of the regular budget of the United Nations, subject to approval by the General Assembly.

Three subparagraphs, 11 (c) (ii), (d), and (e) of the Fiji paper have been incorporated in Revision 2 of the Sierra Leone Paper. They add precision and do not conflict with the Convention.

Powers and Functions

To add precision to this section, the 2nd revision of the Sierra Leone paper includes subparagraphs (a) through (h) of paragraph 5, Section 1 of the Annex to the Fiji paper. These are by and large the functions of the Prepcom, which are to be continued.

In Subparagraph (b) the Fiji paper refers to the obligations of the Pioneer investors and their certifying States, compliance with which the Authority is to monitor "in accordance with the provisions of Article 308, paragraph 5 of the Convention and Resolution II, paragraph 13." Nowhere in the Fiji paper is there any reference to Resolution II, paragraph 12, although this is the paragraph that spells out the obligations. And nowhere, in the Fiji paper, is there an explicit reference to the Prepcom documents detailing the exploration and training programmes adopted to implement these obligations.

The Fiji paper also provides for the making of rules and regulation for exploitation. These are not appropriate for the interim regime. They are not included in the Sierra Leone paper, which leaves them to the Authority and the time when seabed mining becomes feasible.

The Fiji paper contains very detailed provisions for the approval of plans of work for exploration. If the Prepcom regime is continued, as provided in the Sierra Leone paper, these would appear to be unnecessary at this point in time.

Organs

The Sierra Leone paper has a section describing succinctly the institutional structure of the interim regime, based on the similarity between the structure of the Prepcom and the structure of the Authority. As long as there is no seabed mining, the Plenary of the Prepcom can indeed exercise the functions of the Authority's Assembly. Its structure is identical. The General Committee can fulfil the responsibilities of the Council. Just as the Council, it consists of 36 members. The functions of the Secretariat will be exercised by DOALOS, as heretofore. The functions of the Council's Commissions can be fully exercised, during the interim period, by the Prepcom's Group of Technical Experts and the Training Panel. What the Enterprise can do at this time can be done as a joint undertaking between the Pioneer Investors and the Prepcom, i.e., exploration, training, and technology development. These activities should be implemented "in an evolutionary manner," i.e., they should be gradually expanded, according to possibilities, particularly with regard to *joint technology development*. Here is an almost unique opportunity for North-South cooperation in high-tech research and development, beneficial to the North (reduction of cost, spreading of risk, creation of new markets) and to the South (most cost-efficient form of "technology transfer") and the genuine internationalisation of environmentally sustainable technologies, essential for the implementation of Agenda 21 while at the same time constituting a "confidence building measure" of great significance.

The definition of the Authority's organs in the Fiji paper is somewhat fragmented as its "Sections" follow the order of the "hard core issues" rather than the normal order of a constitutional document.

Section 2 deals with the Enterprise, which is nonfunctional. Its functions as outlined in paragraph 1 can be fully exercised by DOALOS, whose activities would indeed be duplicated by the "Secretariat" of the "Authority." These activities are limited to "monitoring," "assessment," "collection of information," "study"; They are not operational. There is no linkage between this "Enterprise" and the activities of the Pioneer Investors, which constitute the real pre-investment activities in the Area. If, as the Fiji paper purports, the Enterprise is to operate through joint ventures, when commercial sea-bed mining commences, there is no reason why it should not enter a joint venture now, during the pre-investment R&D phase. If it does not participate during this phase in these activities, it will not be able to operate in a later phase.

According to the Fiji paper, the Enterprise can become operational "independently of the Secretariat" only "upon the issuance of a directive by the Council pursuant to Article 170, paragraph 2 of the Convention.

The reference to Article 170 of the Convention is misleading and taken out of context. Article 170 deals with an Enterprise established in accordance with Annex IV of the Convention which bestows on it "autonomy in the conduct of its operations." It is fully funded and provided with technology. While the Council may give directives and exercise control (para.3), it certainly is not in a position to *create* the Enterprise or, which is tantamount, to decide whether it can operate at all -- a decision which, furthermore, is subject to the veto by three industrialised States.

Paragraph 5 of the Fiji paper, which originated in a proposal by the representative of the United States, has been incorporated into Revision 1 of the Sierra Leone Paper.

Decision-making

Following the order of "Core Issues," the Fiji paper has a Section 3, on "Decision-making." The section is rather poorly organised. It is unfortunate that "chamber voting" is described (paragraphs 5 and 9) before the composition of the Council is defined (paragraph 15). A careful reading nevertheless reveals that the system is severely flawed.

Paragraph 15 ought to be read first. With very minor variations, this paragraph repeats the provisions of the Convention, Article 161, paragraph 1, including the provision [subparagraph (e)] that eighteen members are to be elected "according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole..."

The Fiji paper then has a brief paragraph, which evidently is due to a minor drafting or typing error. The paragraph is again numbered 15, and states "The provisions of Article 161, paragraph 1 of the Convention [just cited] shall not apply."

Now this paragraph 15 is totally transfigured in paragraphs 9 and 5. Paragraph 9 establishes that the members of the Council as a whole elected in such a way and such an order as to ensure the equitable representation of certain interest groups, are to constitute "voting chambers" of four or six members each. The four largest consumers certainly are industrialised States -- probably the four largest investors as well. In any case, a majority -- three States -- *in any one* of the "chambers" can block any decision of the Council (including the decision to start the operations of the Enterprise!). Add to this that the group of six developing countries has not been given this veto power, although a footnote points out that "this issue requires further discussion." The eighteen members, furthermore, elected "according to the principle of ensuring an

equitable distribution of seats in the Council as a whole" are, so to speak, second-class members of the Council. They do not belong to any "chamber," and they have no veto. The provision of the Convention, aiming at an equitable geographic distribution in the *Council as a whole*, has been taken out of context and twisted in such a way that it completely loses its meaning.

The fact is that it is logically impossible to combine interest representation, regional representation, and chamber voting in one system.

The fact is that the whole system constitutes a thinly veiled disguise for giving three industrialised States the veto on any decision of the Council.

The Sierra Leone paper has no provisions on decision-making. The rules of procedure of the Prepcom, which have worked satisfactorily up to this point, continue to apply.

Review Conference

According to the Fiji paper, there is no fixed Review Conference. The Authority (presumably the Assembly), on the recommendation of the Council, may undertake a review of the matters referred to in Article 155, para.1, of the Convention at any time. Amendments shall enter into force, presumably for all States Parties, on a date determined by the Council by a three-fourths majority of the members present and voting, subject to the veto inherent in the "chamber voting."

The corresponding article in the Convention (Article 155, para.4) was one of the reasons for the refusal of the USA to sign the Convention. It was stressed at the time that this provision conflicted with the American Constitution, according to which no amendment could come into force for the USA unless ratified with the advice and consent of the Senate. This argument does not appear to be removed by the provision of the Fiji paper. The cancellation of subparagraph (b), suggested in a footnote ("It is considered that subparagraph (b) is now unnecessary and should be deleted") leaves the entry into force of amendments to the procedure established by Article 314, 315, and 316 of the Convention which would not appear to solve the problem either.

The Sierra Leone paper, which covers only the interim period, from the coming into force of the Convention to the beginning of commercial seabed mining, necessarily requires a review at the end of that period.

Transfer of Technology

The mandatory provisions on technology transfer, contained in Article 5 of Annex III, have been cancelled in the Fiji paper. The less binding, more voluntaristic provisions of the Convention with regard to processing technology, have been applied to mining technology as well.

It should be noted that some experts (e.g., Christopher Pinto of Sri Lanka) have pointed out that it was more the language than the substance of Article 5, Annex III, that conveyed the notion of "mandatory technology transfer." In substance, the provision had such loop holes that it would have been difficult for any tribunal to enforce it.

The difficulties regarding technology transfer arose from the unfortunate concept of the "parallel system," setting up an Enterprise independent from and in competition with the established industry.

Under a joint-venture system aiming at the genuine internationalisation of deep-sea technologies, the issue does not arise. This is the essence of the Sierra Leone paper.

Production policy

This issue does not arise for the interim regime, during which no mining takes place. The Sierra Leone paper is based on the conviction that it is entirely premature to deal with this issue now, when nothing is known about the structure of the industry or the market or economic, environmental, technological and political circumstances under which commercial seabed mining may begin.

Economic assistance

Same as above. Not relevant for the interim regime. Too far in the future to legislate now.

Financial terms of contract

Same as above. Not relevant for the interim regime.

The Finance Committee

Not relevant for the interim regime, whose costs will be paid out of the regular budget of the United Nations.

Dispute settlement

The Fiji paper makes no reference to dispute settlement. The Sierra Leone paper, without taking a position, raises the question whether the criterion of cost-effectiveness should not be applied to the Tribunal as well as to the Authority. The question, whether the Sea-bed Dispute Chamber is needed as long as there is no sea-bed mining is a question worth asking. The Sierra Leone paper leaves the answer to the first meeting of States Parties convened in accordance with Article 4 of Annex VI of the Convention.

3 February 1994

RUSSIAN FEDERATION

Suggested amendments to annex of the draft Agreement relating to the implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea ("Boat Paper" of November 1993)

1. Amendments to paragraph 7 of Section 1 were proposed by the group of six registered pioneer investors in November 1993.
2. In paragraph 13 of Section 1 the words "through the budget of the United Nations" should be deleted.
3. Paragraph 14(a) of Section 1 should be redrafted as follows:

"(a) Such membership shall take effect upon notification to the depositary of the Convention by a State or entity of its intention to participate as a provisional member of the Authority and shall terminate [two] [four] years after the date of entry into force of the Convention or upon ratification or formal confirmation of, or accession to, the Convention and this Agreement by such a State. The Council may, upon request of the State or entity concerned, extend provisional membership, if the Council is satisfied that the State or entity has been making efforts in good faith to become a party."
4. In paragraph 14(b), Section 3, replace "four members" with "eight members".

In paragraph 14(e), Section 3, replace "eighteen members" with "fourteen members" (first line), and "at least one member" with "at least two members" (third line).
5. In paragraph 1(c), Section 5, page 14, fifth line, after the words "Parties undertake to cooperate" add the following: "in accordance with their laws and regulations".
6. In paragraph 1(c), Section 6, add at the end, the following sentence: "This provision shall not apply to financing from a State budget of scientific and technical research and activities of State enterprises related to deep seabed mining."

**SUGGESTED AMENDMENTS TO SECTION 3 OF
ANNEX OF DRAFT AGREEMENT RELATING TO
THE IMPLEMENTATION OF PART XI OF THE
1982 CONVENTION ON THE LAW OF THE SEA**

Paragraph I

Add at the end:

"The general policies shall be consistent with the principles and rules governing the Area and shall not affect legal status of its superjacent waters. Those policies shall be without prejudice to the policies relating to activities in the Area, and production policies as set forth in the Agreement".

Paragraph 3

Replace "as provided for in Article 159, paragraph 8 of the Convention" by the following:

"provided that such majority includes a majority of its members.

When the issue arises as to whether a question is one of substance or not, that question shall be treated as one of substance unless otherwise decided by the Assembly by the majority required for decisions on questions of substance.

Article 159, paragraphs 7 and 8 of the Convention shall not apply".

Paragraph 5

In the 5th line after "present and voting" insert:

"including members referred to in paragraph 15(a) of this Section".

Paragraph 6

Add a second sentence:

"The situation when all efforts at achieving consensus on a question have not been exhausted shall be deemed to exist whenever any of the members of the Council considers it to be so".

Paragraph 13

Draft this paragraph as follows:

"a) The Legal and Technical Commission shall be composed of 15 members, elected by the Council, including at least 7 members nominated by States referred to in Resolution II, paragraph (1) (a).

b) In the election of members of the Commission, due account shall be taken of the need for equitable geographical distribution and the representation of special interests referred to in paragraph 15 (a) of this Section.

c) Articles 163 and 165 of the Convention shall be interpreted and applied in accordance with this paragraph".

Label the existing text as sub-paragraph (d).

Paragraph 15

In (a).

Reproduce "on the date of entry into force of the Convention" (from the fourth line on page 18) in the second line after "one State".

In (b).

Replace "four" by "eight".

In (e).

Replace "eighteen" by "fourteen" and "at least one member" by "at least two members".