Dispute settlement:

Art. 1

Switzerland: especially of 9th loca of Art. 17.

Art. 11 becomes unworkable.

Opinion should not bind 11 Court.

Greece: contradiction between Art 11 - 16 Annex IC: where

Art. 11 gives tribunal right to refer ~ question ~ 1. ~ expert,

similar pro opinions ~ → ~ Art. 17.

retain para 1a.

Israel: difficulties, but not in favour of dropping article

altogether. it could complete with other articles.

when ICJ is competent, why one should review

observed provision of art. 11. incompatibilities with

not facilitate settlement of dispute.

para 2 is unintelligible.

para 1 should be redrafted, omitting reference to ICJ

but somewhere there should be a provision that procedure

reference to a Court are governed by rules of that Court.

If Tribunal has power to appoint experts, lists

compiled under Annex II would be sufficient.

- Binding decision must be made by tribunal having

the jurisdiction.

Australia: sometimes issues may extend beyond the competence

of the expert listed in Annex II. What then?

Choice must be enlarged
relationship between Committee of experts and
the parties to the dispute is not clear. Are they to
appear to the Committee?
para 2: to whom are the opinions to be given? and
when published?

What binding force, if any, is going to be given to
the opinion?
Surely it is not to be binding. But
it would have great importance nevertheless. Probably
Parties will have opportunity to consult, before the
tribunal hands down its judgment. General
shortcoming: the absence of Parties to regulate during
the procedure.

Court cannot be given extra-statutory power.
If the Conference wants to ask Court to do anything
not provided for in its statute, it can, legally, do so.
see, e.g. Art 12 - giving the Court the right to
make binding interim decisions. This is presently not
in the statute, but the Conference has the full right to
make such suggestions.

U.K. Art. 11 should not be deleted. Relatively minor
amendments possible.
The Court provides two Assessors but not with the
Court, without the right to vote.
Second, the Court may entrust any person or
body the task to provide expert opinions.

3

precedent: Roger channel
Franco and Cruicken

1(a) Australian appl, that wants to broadcast
1(b) [illegible], [illegible] 16, but that can be [illegible]

para 2: Two stages: Experts come out of opinion.
Parties may accept it as basis of settlement.
" may not, then tribunal takes up
all aspects of dispute, and courts time.
wording not very felicitous.
suggests amendment of last two
lines.

Conclude: also agrees provision 1(a) and para 2, that
expert opinion must not be considered binding

Tunisia
77: [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible], [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] appeal [illegible] [illegible] expert
[illegible] [illegible] request [illegible] [illegible] several parties,
[illegible] [illegible] own initiative.

opinion is of course only consultative.

Iraq   support Tunisia

Peru : also delete the article superfluous, self-evident.
para 2 should at any rate be deleted.
1 should be amended to bring it into line
with statute ICJ
finally, opinion of scientists not binding

Elsalvador
Art. 11 too limiting on jurisdiction.
resort to expert advice should be quite flexible.
minimum of rules required.

Brazil   art. 11 good example that text is not simple
and clear enough. we would be quite ready to
delete art. 11. It would not detract from the
possibilities of getting expert advice.
If you really need it, take Tunisian
amendment. but we really can do without it.

Kenya   support Tunisia

Argentina : delete article. Same arguments

Japan : Lines up with U.K. and Israel.

France : cancel, or simple by-change, as proposed by U.K.

Oman : support Tunisia

Iraq. delete. However if majority wishes to maintain the idea of the possibility to request the expert advice, we have no objection. If present wording is amended. We support Tunisia.

Fiji: cut it out. inflexibility of choice. reference to annex II, and apparent binding effect of opinion, cause trouble.

Spain: support U.K.

Liberia: support Tunisia

~~Israel: support U.K.~~

Chile: U.K.

Israel: same view as Lauterpacht. gallery to U.K. amendment.

Art. 12 (1) para 1: [illegible] . person chosen under art. 9 is entitled to take provisional measures as he deems appropriate. All the rest is superfluous. also to understand that these measures must not prejudice [illegible] parties. [illegible] c 2. x

(2): para 2 [illegible] VI: (a) reservation

of reason states already, by this might

lead to lengthy procedure.

Netherlands: para. 2. not clear why ref. a n

> procedure \ body that would not have

: [illegible] take provisional measures, what bodies?

second: what of forum be not been constituted

yet? only alternative a ~ — ~ pre-constituted

body, what ? L.O.S. Tribunal.

But here to ICJ must be mentioned too.

as the welcome forum.

So: delete "or does not have to power ... -

Invest: ICJ.

Japan. ?

Venezuela: really only L.O.S. Tribunal can impose temporary measures. the other bodies are provisional themselves.

Switzerland: we agree art. 12 - especially with its view that provisional measures are binding.

this is a step forward.

on para 1: this para provides a forum ..

Gives power binding measures except on

the request of one of the parties. This is not

consistent w Statute ICJ. we think therefore

this article should improve. reverse

Yugo: we agree with general idea. However apparent contradiction between para 2 and 4.

in line 3 of para 2 – a one of the cases is / one of tribunal, or members –

the case: this it does not have power to prescribe binding provisional measures – only such body is

ICJ. in such case, case a transferred

to L.o.S. Tribunal.

ICJ has no power to prescribe, only to indicate —

there is a contradiction.

U.S. supports Swiss suggestion in para 1 (cancellation of "upon the request of a party..." ICJ allows proprio motu.

So this is really better.

But last part of para should not be eliminated.

we would oppose deletion of para 2. explains para 2 & 4

Art, 12 continued

Ukraine Art. 12 is unnecessary repetition – ^ deleted.

the amendments only confirms confusion. (most delegates want I cancel it)

Fiji: indeed there is a ^ major article, but it attempts to do too much

restrict it to "prescribe" cancel reference to "to indicate" make it a prescriptive power

but in this one body can only act on the request of a party. It can indicate proper mode, prescribe only upon initiative of party.

latter part of para – "appropriate"

Central Africa Republic

Art. 13

Art. 15. Greece finds it very useful, but advocates some addition: release of cargoes.

Extent article:

[illegible] applica[illegible] [illegible] rules, standards, laws regulations established [illegible] accordance [illegible] Convention, [illegible] damage [illegible] foreign vessel, the owner, operator, master, crew, passengers or cargo, [illegible] measures either unlawful [illegible] exceeding the reasonably required [illegible] Compensation [illegible] recognized [illegible] the Convention, [illegible] vessel's registry, the owner, operator or master [illegible] claim damages before [illegible] Tribunal, unless [illegible] defendant party agrees upon forum +

(the para 4 bis)

Mauritania. It article offends sovereignty of state, which can be limited to courts by the owner of a ship!

then cases go to the courts of the country. International courts not competent.

Morocco: also: serious infringement of sovereignty of coastal state. We call for deletion of article.

Venezuela: This must be considered in conjunction with Art. 14 - 18. There must be a balance between rights of navigation - interests of coastal state. Scope of this article is wide. It does impinge on national jurisdiction. It fails to specify what ships. Does not specify where, to what zones, article applies. Lends itself to all sorts of interpretation. also Part II, art. 93 should be considered in this connection.

A Ecuador: oppose Greek amendment does the provision apply to territorial sea and economic zone.

Chairman: this is a very legitimate question.

Ghana: taking side with ships! article is quite acceptable to my delegation, to promote peace in the waters! Either law of the sea Tribunal or any forum agreed by the parties - well balanced, but Greek amendment is out of place. Damages shouldn't come in here. Just sets down procedure, which deals with release of vessel which should be speedy.

Madagascar: internat. court should not be given precedence over national law. This is in contradiction of Part II. National laws are in question. National courts should intervene.

The article is not appropriate.

Liberia: of course, on the side of ships: adopt para. to require attendant proceedings and to place bond.

U.S.: agrees w/ Ghana model.
tax problem:
purpose — of narrow one.
para 3 — 1 — clear that purpose — obtain release of vessel or bond.
sovereignty — merely — substitute bond — vessel or crew.

It is very expensive — vessel detained — 12,000 – 15,000 dollars a day. art. 36 — Part III: state should — detain ship beyond the —.

Part II, art. 61, para 2 ... posting of bond, para 3: no imprisonment.

Here we provide simple procedure device I see that these parties are quickly completed with.

Who should apply? Normally state.

This is easy for big power who have representatives all over the world. But smaller countries don't. So

Aug. 23 Wednesday. — 3 —

Confederation

D.D.R.

3 main principles

1. State retains basic rights
2. It is composed of States entrusted on exploration - exploitation
3. Conclusion of contract between Authority and entities does not imply resignation of responsibility of State.
4. Authority may ibely explore and exploit

1. activities of conducting direct Authority - by state parties
2. Authority shall determine part of area ...
3. supervision of Authority
4. Contracts must insure equal rights to all state parties
5. State ca — , activity Treaty enterprise

11

therefore owners, etc. should be entitled to
go to international court. "or" rather than "and".
& very simplified procedure.
would support Greeks to add "cargo",
but the other big amendment does not belong here.

Switzerland

Objects to article. has doubts about [illegible] of Tribunal
to share with. Thinks procedure is unwieldy.
There ought to be simpler, speedier procedure.
also formally: Title not in keeping with contents.
"Detention"

not clearly states who can act. State?
owner? joint? (He didn't listen)

Argentina shares reservation expressed by Venezuela.
Conflicts of jurisdiction may arise, because
of lack of clarity of language.
Private owners should not be given rights
to hale State before an international
Court.

USSR submit small amendment – para 1:
(words: [illegible] of Trib. add "or
special committee" provided for in Addendum Annex II (a) 1.
We also listened to Greek amendment.
At least as we understood it, it is correct
– useful. we would accept it, if

Aug. 23 — Working.

Ghana: Authority – Enterprise – joint sovereignty
- in parallel system.
- U.S. wants dispensing and Enterprise
- U.S. proposed position on Art. 9 illicit
- procedure: small group 1 negotiate
go on – enterprise – review.

Sri Lanka

Explain "exchange". We do not
characterize system a parallel or not
parallel. But we said that Authority
will exploit + two ways:
Authority determines mode of access – according to Authority
and adopt – for the purpose of ensuring
Compliance with Preamble

Procedure: identify 3 or 4 main areas
Concentrate on efforts of group
The set up groups
then redraft the Article.
Then we start negotiating – small group.
+ public: Arena method

Canada — 77 paper provides good basis of discussion.
U.S. – U.S.S.R. also helpful.
But leadership of 77!

he includes member - special committee'

navigat. questn / o provision - Annex II D.

Also: no object . U.S. amendment,

i member aboard cargo - para 1. We are

willing i agree also i amendment (

call for member - diplomatic - consular official.

General comment on appropriateness - value

of article:

if ship is detained, there might many

innocent sufferers, passengers: women, children - aged.

humanitarian considerations: very important. They are

protected here.

suppose a ship being so detained, and

blows up because of a mistake of the port authorities...

Tuesday, August 9, p.m. meeting of the First Committee

The meeting, chaired by the Netherlands, tried to agree on an agenda for the "work shop." I will not attempt to summarize the discussion, since it contributed nothing to the progress of the Committee's work. I will merely list the proposals made:

Peru (on behalf of the 77): It is premature to establish an "order of subjects or a detailed calendar. The mandate is very broad: all subjects must be negotiated. the 77 proposed two subjects to start with: 1. The Assembly and the Council: composition, decision-making processes, powers and functions. (2) The System of Exploitation. The 77 would have to have frequent group meetings to align their policy. He suggested that the work shop and the Group be given equal time, alternately.

U.S.A. proposed to start with a more complete list ofsubjects. The first point was Annex I, concentrating on details which require special attention. Next: Article 9 and economic implications of the exploitation from the seabed. The system of exploitation cannot be divorced from the Enterprise,and if there is one, how it should function. The U.S. would be willing to accept the general heading "System of Exploitation," but with special attention to the issues mentioned.

Second: The Assembly: composition, decision-making, powers and function The Council had already been debated during the last session and between sessions.

Third item: the finances of the Authority, and the distribution of revenues.

Finally: the system for the settlement of disputes.

Priority: the U.S. felt that the system of exploitation should be addressed first. If this is not settled, there is no way of going on.

As for sharing the work shop's time with that of the 77:one should not revert to the practice that half the meetings are the 77's. This does not enhance cross-fertilization. Not more than one-third of the time should be given to intra-group consultations.

U.K. (speaking for the EEC): supported the American proposal and suggested the following order: System of Exploitation; Council; Statute of Enterprise; financial arrangement; settlement of Disputes.

August 20, Workshop of the First Committee.

In the Chair: Dr. Jagota.

Germany opened the discussion by addressing a number of questions to the "77." According to the German interpretation of the draft articles submitted by the "77," the Authority would have the discretionary power to reject an application under Article 8 bis (a), even if the applicant had already invested in the area. The conditions underwhich an applicant could be rejected are not specified. Question: Is this interpretation correct or mistaken? Second question: Why has the Group of 77 abandoned a system that it seemed to have accepted in Geneva? The Delegation of the Federal Republic of Germany insisted on a parallel system because it offered long-term security both to the contrators and to the Authority. This is essential to encourage investments which would have to be very substantial. Security must be given for a period of 30-40 years.

China supported the proposal of the "77," which, according to the Chinese Delegate, corrected serious deficiencies in the RSNT. China supports the concept of the Common Heritage of Mankind, with all rights to exploration and exploitation vested in the Authority. The superpowers made a number of unjustified charges against the 77. This, of course, was natural. The proposals of the two superpowers differed in wording, but in substance they were identical: they would defraud the Authority and turn the common heritage of mankind over to private exploitation through States and companies. The socalled parallel system transforms the common heritage into the private property of States: this runs counter to the Declaration of Principles. This was the central issue.

Chile looked for common ground between the "77" and the industrialized nations. The latter want to avoid interference by the Authority: they want to avoid discrimination and arbitrariness; they want guarantees for participation. The reasoning of the "77" is the same, but from the opposite angle: they want to avoid arbitrariness on the part of applicants and contractors. Both kinds of arbitrariness have to be avoided. This provides a common ground. The "77" support two basic premises: they do not wish the Authority to be arbitrary. There are limitations to its discretionary powers. The system is to be nondiscriminatory; the Authority is to work on the basis of objective criteria. The industrialized nations should realize that pure automaticity does not insure fair conditions. They should clearly indicate: what points do they think are negotiable?

U.S. The U.S. delegate summed up the Chilean position as indicatingthat a controlled system must be established to prevent abuses of the common heritage. The United States agrees

with this position. The Chinese had misinterpreted this position. The U.S. had always been flexible about controls. They had been against what the "77 termed "effective and full" control. One thing is to give the Authority power to prevent abuses through due process and adequate supervision and control and inspection -- and the RSNT gives wide scope to that -- but power to restrict access is quite another matter, if the true purpose is the prevention of abuse. If applicants have a history of violating the Treaty, this would be a ground for rejection. If the applicant is, prima facie, a phony, this would be another ground for rejection. The American Delegate wanted clarification on this point: What, according to the 77, should be the criteria that would justify the exclusion of an applicant? The Delegate of the U.S. had a number of other questions, mostly of a definitional charater. He suggested that questions and answers, at this stage, should be limited to Article 22.

paragraph 1: What was meant by the term "exclusively"? This is a conceptual problem and a problem of semantics. He always thought that if the Authority is a partner to every contractual agreement that occurs and if theAuthority is in control, then it is the exclusive operator. The Authority could be considered to be such even under a licensing system. It was not clear, however what the word "exclusively added to the sentence. The word was superfluous. It lacked precise legal meaning: unless it was intended to have a bearing on Article 9, in which case there would be a fundamental difference between the American position and that of the 77 -- one which time could not resolve.

Paragraphs 1 and 2 were said to represent a parallel system: but what, then, was the meaning of the words "as determined by the Authority?" Would this give discretion to the Authority to decide when a contract should be granted and when it should be rejected?

The words "through a form of association" would seem in practice to mean "through an equity joint venture.." The term was not used, but this is what it meant to the American delegation. This would mean that the Authority could even expropriate an applicant, bu buying him out.

In paragraph 3, the American Delegation questioned the term "draw up" in line 2; should it not rather be "draw"? Why "entered into"? Was not the term "drawn ? The American delegation suspected some deliberate vagueness in this terminology, which would open the door to some discretionary powers on the part of the Authority.

In paragraph 4, what was meant by the word "full" preceding the word "effective?" Especially in connection with the term "at all times," this terminology opened the possibilities for the most absurd and unacceptable forms of supervision.

The notion that contracts could be "negotiated" implied that they could be rejected. This was unacceptable. The Authority could determine at any time that negotiations had failed. This opened the door for those who wanted to prevent production. The question of access was not to be subject to negotiation. Negotiability must be limited. What the negotiator must bring to the bargain must be objectively determined, and subject to dispute settlement procedures. The 77 proposal would leav the Authority with the subjective right to determine that negotiations had failed. This was unacceptable.

Under the 77 proposal, conditions for a contract might include the obligation to place processing plants into developing countries. This was unacceptable. What would be the use of having gained free access to the area, if developing countries were in a position to cut off the supply by their rights over processing plants?

The U.S.S.R., replying to the Chinese Delegate, defended its record in the Conference and the Seabed Committee: It always had accepted the idea of control through the Authority. It never wanted to get hold of the seabed. On the contrary, it held the concept of the non-appropriability of the seabed to be fundamental.

India wished to clarify the position of the 77: the Group had never accepted a parallel system of exploitation.

China re-iterated its attacks against the superpowers and, in particular against the social imperialism of the USSR.

The Chairman called for a more friendly tone to encourage fair negotiation.

Peru clarified a number of questions that had been raised especially by the Federal Republic of Germany and by the U.S. With regard to 8 bis (f), it was pointed out that the first sentence had been taken over from the RSNT, and that it was not intended to mean that the Authority could add further requirements. Secondly, if the Authority were to reject an applicant, the 77 proposal did not imply that the Authority did not have to state its reasons for the rejection. This point really had not come up in the discussions, but it was easy to clarify the situation by proposing that the Council would have to state the reasons for any rejection.

The 77 did not retreat from the positions held in Geneva.

With regard to the objections raised by the Delegate of the U.S.: The main purpose of the word "exclusively" was to ensure that the sole form in which activities could be conducted, is by the Authority as specified in the following paragraphs. No independent, separate activities could be conceived. It must be within the framework of paragraph 1.

"As determined by the Authority": The meaning of the phrase becomes evident in the context of the other paragraphs.

"Through a form of association": "Form of association" is used in a general sense. It is not attempted to define any specific form. The 77 want flexibility: not necessarily equity joint ventures. If the form is not clear, the defect is already in the RSNT, from which this para. is taken over.

"ith regard to the terms "draw up" and "entered into" -- they may require polishing in the English translation. There certainly was no sinister intention behind the choice of words.

Regarding paragraph 8 bis (f), the delegate of Peru would answer this question later. What precisely was required by the 77 that was to be negotiated, and could not be put into Annex I?

August 23, 3-6 P.M., Committee I, WORKSHOP
In the Chair: Netherlands.
Discussion opened by GHANA, making the following main points:

1. An acceptable package seems to be one which establishes the over-all and effective control by the Authority over all activities in the Area while adopting a decision-making procedure which ensures that the essential interests of all, including those of the minotiry would be adequately safeguarded. The system of exploitation can therefore not be successfully negotiated unless it is done in relation withthe status and functions of the Authority including the decision-making mechanisms of its organs.

2. There is a wide gap between the conception of the U.S. of the status of the Enterprise and that of the 77.

3. It is difficult to understand the developed countries conception of the Authority as an outside body from an alien planet whose interference in our affairs should by all means be resisted. The Authority is a body constituted by the international community and entrusted with the exercise of our joint sovereignty over the Area.

4. The conditions on which the U.S. proposals accept the Enterprise leads to believe that it is only able to accept it so long as it remains a delusion with no possibility of assuming a substantive form to enable it to conduct exploitation in the Area.

5. With regard to procedure: Ghana suggests a small negotiating group to be established to explore the nature of possible compromise on the issue under discussion. Then it should take up another issue, giving delegations time to consult with each other; then it should take up this first issue again, etc.

Sri Lanka, not present during the first discussion of the proposal of the 77, gave some further explanations of terms in the text like "exclusively," "full and effective control," etc. Sri Lanka made also some interesting suggestions with regard to negotiating procedure: 1. The two chairmen should identify three or four major issues on which negotiations should begin. 2. Mr. Sondaal should then exchange views with the Group of 77 while Mr. Jagota should do the same with representatives of the industrialized States. 3. Then the two chairmen should confer with each other and redraft articles in the light of the discussions held. 4. Then negotiations should begin on the basis of these new articles. Negotiations should be held by a small group, but all other delegations should be there to hear them -- according to the so-called arena method.

Canada praised the leadership of the group of 77 in the First Committee and said the document submitted by them could well serve as a basis for discussion. The Canadian Delegation stressed the point that Article 22 cannot be understood without con-

sidering the economic aspects of the exploitation of the area, e.g., pay-back on investments and adequate profits, and the relationship between exploration rights and exploitation rights. What Canada had to say on such points, however, was quite compatible with the document submitted by the 77. Canada did not at all propose that there should be unrestricted access to the Area. Limitations on access should be non-arbitrary and non-discriminatory, but access could not be unrestricted. This would be contrary to the principle of common heritage. Canada was quite ready to accept production controls.

With regard to the parallel system, Canada and Australia were often mentioned as the originators of this concept, but the Canadian and Australian proposals really had been quite different. The Canadian approach favored a joint-venture system, but if the majority of the Committee wanted a different kind of Enterprise system, Canada would go along as well.

Canada was in agreement with the procedural suggestions made by Ghana and Sri Lanka.

Czechoslovakia

The German Democratic Republic

Poland

Mongolia elaborated on the Soviet proposal.

Guatemala criticized the Soviet proposal.

Ivory Coast had some specific criticism of the Soviet proposal: The division of the area that was the common heritage of mankind was rather curious. The establishment of two different regimes in the area was bound to lead to conflict. It was not clear why the proposal introduced two different kinds of "supervision" in the area. As far as the Authority's own enterprise was concerned, this supervesion was to be "effective" and "full." with regard to States and other enteprises, the supervision was to be "fiscal and administrative." The Soviet proposal needed considerably more elaboration.

France: endorsed the procedural suggestions by Ghana and Sri Lanka, but warned that the workshop should not be fragmented.

Algeria rejected threats of unilateral action and declared that Algeria would never agree to ambiguous provisions under such threats. It would never sign provisions that betrayed the principle of the common heritage of mankind, which was a revolutionary principle that could be embodied only in a strong enterprise system. Algeria unconditionally rejected any parallel system.

Lybia also rejected the parallel system. States would exploit

the area according to their means: which means, only a few technologically advanced and rich States could exploit, whereas the international community would be left with nothing

Yugoslavia made an eloquent plea for the common heritage of mankind, which must be managed through the international Authority through its Enterprise.

Jamaica tried to establish some common ground between the three documents before the Committee. (1) Everybody reall y agreed that there should be a unitary system of exploitation under the Authority; (2) in the final analysis, the only admitted entities are the Enterprise and States (since companies have to be sponsored by States). There was some difference of opinion with regard to the degree of automaticity of access; but, on the one hand, the proposal of the 77 put some considerable restraints on the discretionary powers of the Authority; on the other hand, the U.S. proposal granted to the Authority not only fiscal and administrative control but control also for the purpose of assuring compliance with the provisions of the Convention. So the difference, on the point of control, was not really so wide as one might assume. Also with regard to the Enterprise itself, differences had narrowed. That the Enterprise should exist was no longer a point of contention. The Enterprise was conceived by everybody to be a part of the Authority. It was to represent mankind as a whole: not just a part of it: not merely the developing nations. There was no reason, therefore, to look upon it with horror.

August 14, 1976.

To: Ambassador Wolf
From: EMB

Subject: Addition of an item: Baselines to the list of subjects to be negotiated with the Coastal States.

I was happy to hear the delegate of Algeria re-open the issue of the delimitation of the continental shelf at 200 miles, i.e., of absorbing the concept of the continental shelf into that of the EEZ. Although I do not expect that we will have much luck on this point, it is a good bargaining point and, at any rate, the assertion of a sound principle.

There is, however, another point connected with the delimitation of ocean space under national jurisdiction, and that is the questions of the baselines from which the territorial sea is measured.

The present Article 6 formulation, which, so to speak, slipped by the boards because of lack of interest of most nations in what seemed to be of very limited and purely technical significance, is totally inadequate, and will invite the extension of the economic zone, not over 200, but over 300 or 400 miles from the coast, enclosing vast areas of what is today territorial see, as internal waters.

The SNT accepts in general the rules on baselines contained in the 1958 Geneva Convention on the Territorial Sea, but proposes further major departures from the general principle that the normal baselines should be the low-water line along the coast and relaxes the already highly flexible rules with regard to criteria for drawing straight baselines. Thus it is now proposed to permit the drawing of straight baselines to low-tide elevations when no installations permanently above sea-level have been built on them, "in instances where the drawing of baselines to and from such elevations has received general international recognition" and to permit "where because of the presence of a delta or other natural condition the coastline is highly unstable, "the selection of appropriate points along the farthest seaward extent of the low-waterline" and the maintenance of such baselines until changed by the coastal State "notwithstanding the subsequent regression of the low-water line."

In addition the SNT proposes that an archipelagic State "may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between one to one and nine to one." The length of such baselines must not exceed 80 nautical miles, "except that up to one per cent of the total

number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles. The SNT states that for the purpose of computing the ratio of water to land, "land areas may include waters lying within fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau."

There can be no clear limits to national sovereignty or jurisdiction in ocean space unless the line from which such limits are measured is precisely defined and is not, normally, subject to change, particularly unilateral change.

The criteria for drawing straight baselines contained in the 1958 Territorial Sea Convention are far from precise. First, crucial terms are not defined: it is difficult in practice to give a precise and strict interpretation to expressions such as "deeply indented," "immediate vicinity," "general direction of the coast," etc., and these expressions tend to be interpreted rather loosely in the practice of States. Secondly, the 1958 Territorial Sea Convention does not state that straight baselines must join land points but only appropriate points; this ambituity permits the establishment of straight baselines by geographical coordinates joining points in the sea at considerable distances from the coast. Thirdly, there is no limit to the length of straight baselines which may be drawn by the coastal State. This permits the enclosure of large sea areas by joining distant points. Fourthly, a coastal State at any time and with virtually unfettered freedom (within the loose criteria prescribed by the 1958 Territorial Sea Convention) may modify previously established straight baselines or draw them further out to sea subject only to the obligation not to cut off from the high seas the territorial sea of another State.

In recent years, coastal States have taken increasing advantage of the flexible provisions of the 1958 Territorial Sea Convention with regard to baselines by enclosing hundreds of thousands of square miles of previously high seas, and this process of enclosure is continuing. One or two States have even begun to draw straight baselines by geographical coordinates situated far from land.

In these circumstances it would seem desirable to define more strictly the criteria for drawing straight baselines in order to avoid continued unilateral expansion of coastal State sovereignty in ocean space.

It might be suggested that the 1976 SNT be amended to make clear that straight baselines may connect only appropriate points on land. Secondly, that straight baselines drawn by coastal States must not exceed a length equal to from twice to four times

the breadth of the territorial sea. Thirdly, there should be a provision enabling any State and the appropriate international organization to challenge before an international Tribunal straight baselines drawn by a coastal State when these do not appear to conform to the rules set forth in the proposed Convention. Fourthly, it would appear desirable to delete the new special provision concerning deltas. Finally, if it proves necessary to retain the special rules concerning baselines drawn by archipelagic States, these rules should be considerably tightened by reducing the ratio of water to land and by setting a stricter limit to the length of the straight baselines which may be drawn.