2580 (XXIV)

ANNEX II

RESOLUTION II

Co-ordination of marine activities

The General Assembly,

Having considered the report of the Enlarged Committee for Programme and Co-ordination,[21]

Noting that the Enlarged Committee was unable in the time available to give thorough consideration to a proposal for more systematic co-ordination of continuing activities of the United Nations system relating to the seas and oceans,

Aware of the complexity of the co-ordination of existing international activities with regard to marine science and its applications and that the field of marine science is only one aspect of the existing activities of the United Nations system relating to the seas and oceans,

Noting that use by States of the marine environment is rapidly becoming intensified and diversified,

Noting with appreciation the work done in this field by the organisations in the United Nations system,

Concerned that present international machinery may not permit a prompt, effective and flexible response to existing and emerging needs of States Members of the United Nations,

Recognizing that, in order to avoid the overlapping and duplication of programmes and gaps in competence, a full review of the existing activities of the United Nations system or organizations relating to the seas and oceans may be urgently required.

1. Requests the Economic and Social Council, at its organizational session in January 1970, to consider instructing the Committee for Programme and Co-ordination, after reconstitution, to examine the need for a comprehensive review of existing activities of the United Nations system relating to the seas and oceans in the light of present and emerging needs of Member States, with a view to making the Committee's recommendations available to the Council at its forty-ninth session;

21/ E/4748.

2. Requests the Secretary-General to assist the Committee for Programme and Co-ordination in the fulfilment of this task;

3. Invites the specialized agencies and the intergovernmental bodies concerned to extend their full co-operation and assistance to the Committee for Programme and Co-ordination.

Declaration of Legal Principles Governing the Reservation Exclusively for Peaceful Purposes of the Sea-bed and Ocean floor, and the Sub-soil thereof, underlying the High Seas beyond the Limits of Present National Jurisdiction, and the Uses of their Resources in the Interests of Mankind.

The General Assembly,

Noting that developing technology is making the sea-bed and the ocean floor and sub-soil thereof, accessible and exploitable for scientific, economic, military and other purposes;

Recognizing the common interests of mankind in the sea-bed and the ocean floor, which constitute the major portion of the area of this planet;

Believing that the exploitation and use of the sea-bed and ocean floor and the sub-soil thereof should be carried out for the betterment of mankind and for the benefit of States irrespective of their degree of economic or scientific development,

Desiring to contribute to broad international cooperation in the scientific as well as in the legal aspects of the exploration and uses of the resources of the sea-bed and ocean floor,

Believing that such cooperation will contribute to the development of mutual understanding and to the strengthening of friendly relations between nations and peoples,

Mindful of the importance of preserving the sea-bed and ocean floor, and the sub-soil thereof from actions and uses which might be detrimental to the common interests of mankind,

Recognizing that the exploration and use of the sea-bed and the ocean floor and the sub-soil thereof should be conducted in accordance with the principles and purposes of the United Nations

.....2/-

Charter, in the interests of maintaining international peace and security and for the benefit of all mankind,

Mindful of the provisions and practice of the law of the sea relating to this question,

Recalling its resolution 2340 (XXII) of 18 December, 1967,

(Taking note of the report of the Ad Hoc Committee established by resolution 2340 (XXII), contained in Document A/.....),

Convinced that, pending the conclusion of a Treaty regulating the administration and utilization of the sea-bed and ocean floor and the sub-soil thereof, in the common interests of mankind, it is necessary to set forth the principles applicable in this regard,

Declares as follows:-

1. The exploration and use of the sea-bed and ocean floor and the sub-soil thereof, beyond the limits of present national jurisdiction, shall be carried on for the benefit and in the interests of mankind,

2. The sea-bed and ocean floor and the sub-soil thereof, beyond the limits of present national jurisdiction, are the common heritage of mankind. As such, they are not subject to national appropriation and shall be used exclusively for peaceful purposes, for the benefit of all countries, particularly the developing countries.

3. The activities of States in the exploration and use of the sea-bed and ocean floor shall be carried out in accordance with international law, including the Charter of the United Nations, in the interests of maintaining peace and security and for promoting

international cooperation and understanding.

4. Taking into account the work currently being performed by other bodies, the United Nations shall endeavour to provide direction and purpose to international and intergovernmental activities with regard to the sea-bed and ocean floor and the sub-soil thereof, beyond the limits of present national jurisdiction.

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NG2/8
11 May 1978

Original: ENGLISH

FINANCIAL TERMS OF CONTRACTS

The Chairman's Explanatory Memorandum on document NG2/7

1. Do the Financial Terms of Contracts Apply to the Enterprise?

Several industrialized countries have raised the point that plans of work of the Enterprise should contain the same financial terms as contracts of exploration and exploitation. They have therefore suggested that wherever the term "contracts" is used, it should be replaced by the term "plans of work". I have not done so because the question falls outside the terms of reference of Negotiating Group No. 2. The questions whether the same financial terms should apply to the Enterprise and if not, what other financial terms should apply, should however be discussed by the First Committee.

2. The Objectives in Paragraph 7

Paragraph 7(a) of Annex II of the ICNT sets out five objectives which should guide the Authority in adopting rules, regulations and procedures concerning the financial terms of contracts and in negotiating those terms. I have reproduced the five objectives in my redraft of paragraph 7. The first three of the five objectives seem to be acceptable to all delegations. Some industrialized countries have, however, objected to the fourth and fifth objectives and have asked for their deletion. I have retained the fourth and fifth objectives because I consider them part of the package offered by the developed countries to the developing countries for the acceptance of the parallel system of exploration and exploitation.

3. Is it Possible to Negotiate the Financial Terms Now?

In the negotiating group two different views were expressed on the question whether it is possible for us to negotiate the financial terms of contracts now. The first view was that it is not possible to hold a meaningful negotiation now on the financial terms of contracts. It was pointed out that we are trying to write the detailed financial terms of contracts of an industry which does not now exist. It was pointed out that the various assumptions about the development costs of a mining project, about annual operating costs, about gross proceeds, about net proceeds, may turn out to be false in practice. The tremendous cost overruns of the Alaska pipeline project and the North Sea oil exploration were referred to in this connexion. Those who held the first point of view therefore argued that paragraph 7 of Annex II should only contain a framework of principles and objective criteria which will govern subsequent negotiations on financial terms between the Authority and applicants for contract.

The second point of view was that although the task is difficult, it is not impossible to negotiate the financial terms of contracts now. The negotiating group agreed to try the second approach and for this purpose, established an open-ended group of financial experts.

4. The Data Problem

In the group of financial experts we were immediately confronted with the need to agree on a set of assumptions. Without an agreed framework of assumptions it would not have been possible for us to carry on with our discussions. We agreed that the best study to date was that undertaken by the Massachusetts Institute of Technology, entitled, "A Cost Model of Deep Ocean Mining and Associated Regulatory Issues", hereinafter referred to as the MIT Study.

The MIT Study estimates the total development costs of a mining project at $559 million, the annual operating costs at $100 million and the annual gross proceeds at $258 million.

Although all delegates agreed that the MIT Study appears to be a very good study, some delegates questioned some of its assumptions. For example, the estimated annual gross proceeds of $258 million is based upon the assumption that nodules will have an average metal content of 2.8 per cent. Several delegations pointed out that more recent studies suggest that the average metal content of nodules is about 2.4 per cent not 2.8 per cent. On the other hand, if metal prices go up from their present depressed levels, this will boost the estimated gross proceeds. The point I wish to make here is that we have had to make many assumptions about costs and revenues and that reality may look very different from our assumptions.

5. The Application Fee

It is agreed by all that an applicant for a contract should pay an application fee. It is also agreed that the fee should cover the cost of processing such an application and that the amount be reviewed every five years. We are, however, unable to agree on what the amount should be in the first instance. Some say it should be $100,000. Others say it should be $500,000. My suggestion of $250,000 does not seem to have been well received by the two sides. Consequently, I have left the amount blank in paragraph 7(bis).

6. The Annual Fixed Charge to Mine or Bonus Payment

Paragraph 7(d)(i) of Annex II of the ICNT proposes an annual fixed charge to mine. Some delegations have argued that the annual fixed charge to mine is to deter a contractor from sitting on his mine site without commencing operations after three years. Members of the Group of 77 said that the purpose of the annual fixed charge is not merely deterrent. It is also a source of revenue for the Authority payable at the front-end of the operation. It is a payment the contractor must make for his right to mine. Instead of an annual payment, the delegation of India proposed a lump sum of $60 million.

The industrialized countries are opposed to the proposal of India. They also oppose the fixed annual charge to mine for two reasons. First, they argue that it is not necessary to have a deterrent against delay because the Contractor has very strong incentives to commence his production as soon as possible. Secondly, they oppose it because it increases the front-end burden on the Contractor. The Soviet Union argued that since a State Party is a part of mankind, it therefore has an inherent right to mine the resources of the Area, and should not be asked to pay for that right.

My proposal is contained in paragraph 7(ter). I propose that a Contractor should pay an "annual fixed fee" of an amount to be negotiated. The fee is payable from the commencement of the contract. This will ensure that the Authority will receive some revenues even before the commencement of commercial production. In order to avoid conceptual problems, I have changed the name from "annual fixed charge to mine" to "annual fixed fee". In lieu of an annual payment, a Contractor may choose to pay the Authority, at the signing of the contract, a lump sum the amount of which is to be negotiated. The annual fixed fee is deductible as a development cost, if incurred before the commencement of production, and from the operating cost, if incurred after the commencement of production.

7. <u>One System or Two Systems of Financial Payments</u>?

In addition to the fixed annual fee, the Contractor must make financial payments to the Authority. Should there be a single system of financial payments only? I have come to the conclusion that we need more than one system of financial payments. The Soviet Union, as well as some other developed and developing countries, prefer the system of production charge. The United States, the EEC and Japan cannot accept a single system of production charge. They would prefer the Contractor to make his financial payments to the Authority by way of a mixture of production charge and share of net proceeds.

In paragraph 2 (quater) have therefore proposed two systems of payments. The first is by way of the production charge alone. The second is by a combination of the production charge and share of net proceeds. I have given the choice to the Contractor. One delegation has suggested that the choice should lie with the Authority. I feel that the choice should be with the Contractor because he should choose the system of payment which is most compatible with the social and economic system to which he belongs. As long as the two systems of payments are of equal advantage to the Authority, it does not really matter which one the Contractor chooses.

8. The Production Charge System of Payment

Paragraph 7 (quinquies) provides for the first system of payment. The Contractor shall pay to the Authority a sum equal to the market value of a certain percentage of the processed metals produced from the nodules extracted from the contract area. The Contractor may alternatively pay the Authority in kind i.e. by giving the Authority a certain percentage of the amount of the processed metals produced from the nodules extracted from the contract area. Why have I given this alternative to the Contractor? I have done so in order to accommodate those States whose currencies are not freely convertible.

The production charge system of payment has several merits. First, it is a constant payment of a fixed amount from the time of commencement of production and would be especially helpful to the Authority in the earlier years. Second, it assures the Authority of revenues irrespective of the profitability of the Contractor's project. Third, it frees the Authority of the necessity to verify the accounts of the Contractor. Fourth, it does away with the troublesome question what percentage of the Contractor's gross proceeds or net proceeds is attributable to the mining of the resources of the contract area.

Does this system have any shortcomings? It has at least two disadvantages. First, the heavy obligations may be difficult if not impossible for some Contractors to bear at the outset of their commercial production. Second, under this system, the revenues to the Authority do not vary with the profitability of the Contractor's operation.

9. The Proposals of USSR and Norway

The USSR made a specific proposal under the production charge system of payment. It offered to pay 7.5 per cent of the market value of the processed metals. Assuming that gross proceeds are $260 million per annum, the Soviet offer would give the Authority an income of $19.5 million per annum or a total of $390 million over a period of 20 years.

The Norwegian delegation proposed that under this system, a Contractor should pay at 8 per cent of the market value of processed metals during the first five years and at 16 per cent during the next fifteen years. Under the Norwegian proposal the Authority would receive $104 million during the first five years and $624 million during the next fifteen years, making a total of $728 million over a period of 20 years.

10. The second system of Payment

The second system of payment is a combination of the production charge and a share of net proceeds. This system of payment is set out in paragraph 7 (sexies) and was embodied in the ICNT. It is a system that reflects a compromise between those delegates who wanted a system of production charge as the sole major system

of payments to the Authority and those who wanted a share of net proceeds as the sole major system of payments to the Authority.

What are the advantages of this combined system over the first system? There are several advantages. First, it places less burden on the front-end than the first system does. Second, if the Contractor prospers, the Authority shares his prosperity. The Authority's revenues rise with the rising level of the Contractor's profitability.

Does this system have any disadvantages compared with the first system? It does. First, it is much more complicated than the other system and is more difficult to administer. Second, the back-end payment to the Authority is not assured. If the Contractor does poorly, the Authority does poorly too.

Under sub-paragraph (a) of paragraph 7 (series), the Contractor shall pay a percentage of the market value of the processed metals. The percentage is blank in the text. In addition, the Contractor must pay a certain portion of his net proceeds to the Authority. How is this to be determined?

To do so, we begin with the Contractor's gross proceeds. His gross proceeds will come mainly from the sale of the processed metals. According to the M.I.T. study, his gross proceeds per annum will be around $260 million. We then deduct from the Contractor's gross proceeds his operating costs. According to the M.I.T. study, his operating costs per annum will be around $100 million. This gives us a remainder of $160 million. Next, we deduct one-tenth of his development costs.

The reasons why I have chosen a 10-year period for the recovery of his development costs is that it is a compromise between several proposals that were made. These varied from a recovery period over the whole period of the contract to one as short as five years. This latter suggestion would, of course, leave little, if any, profits for sharing with the Authority during that first five years, but it would certainly give the Contractor an enhanced profitability. I feel that this compromise proposal for a recovery over 10 years is reasonable in the light of the life of the equipment and the treatment of maintenance costs as a development cost and this is in line with commercial practice.

According to the M.I.T. study, the Contractor's development costs are about $560 million. One-tenth of this is $56 million. If we subtract $56 million from $160 million, we are left with $104 million. This amount is called the Contractor's net proceeds.

At this point, we confront a difficult issue. According to some delegations, the Authority is entitled to a share of the Contractor's total net proceeds. Other delegations, however, hold a different view. They said that the Contractor's net proceeds are derived from mining the nodules, from transporting them, from processing and marketing them. They stated that transportation, processing and marketing are activities subject to national jurisdiction and to national taxation. They argued that the Authority has no right to tax the profits derived from processing and marketing. Therefore, it is argued that it is necessary to

apportion a part of the Contractor's total net proceeds which is attributable to mining of the resources of the contract area. I have called this portion of the Contractor's net proceeds the "attributable net proceeds".

What percentage of the net proceeds should constitute the attributable net proceeds? Opinions differed greatly, ranging from 20 per cent to 100 per cent. Is there any rational or objective way in which this question can be resolved? Some delegations argued that the percentage should be determined by the ratio between the capital invested in the mining stage and the capital invested in the other stages. Other delegations objected to this approach on the ground that it assigns no value or an inadequate value to the nodules. In the absence of any agreed criterion for dividing net proceeds between the mining sector and the other sectors it becomes a question to be settled by negotiation. In sub-paragraph (a) of paragraph 7 (sexies) I have left the percentage blank.

The Authority's share of the attributable net proceeds shall be determined in accordance with sub-paragraphs (b) and (c) of paragraph 7 (sexies). The scheme is similar to what in national law is called progressive taxation. The Authority's share of the attributable net proceeds depends upon the Contractor's rate of return on his investment. The higher the Contractor's rate of return on investment, the higher the Authority's percentage of the attributable net proceeds. In sub-paragraph (c) I have set out eight steps of profitability and I have left blank the Authority's percentage in respect of each step.

11. The Different Proposals Monetised

Proposals were received, under the second system of payment, from India, the United States of America, EEC, Norway and Japan. India proposed a production charge of 10 per cent of gross proceeds together with 50 per cent of net proceeds. After the Contractor has recovered 200 per cent of his development costs, the Authority's share of net proceeds is increased to 60 per cent. Over a period of 20 years the Authority will receive a total of $1,600 million from the Contractor.

The delegation of Norway proposed that the Contractor shall pay a production charge of 3 per cent during the first 10 years and 5 per cent during the next 10 years, together with 50 per cent of the attributable net proceeds during the first 10 years and 80 per cent during the following 10 years. Attributable proceeds shall be 50 per cent of total net proceeds. Over a period of 20 years the Authority will receive a total of $1,050 from the Contractor.

The delegation of the United States proposed that the Contractor shall pay a production charge of 2 per cent and 30 per cent of attributable net proceeds if the rate of return is between 0 and 7 per cent, and 60 per cent of attributable net proceeds if the rate of return is between 7 and 20 per cent and 75 per cent of the attributable net proceeds if the rate of return is over 20 per cent. Under the United States proposal, the attributable net proceeds are 20 per cent of total net proceeds. Over a period of 20 years, the Authority, under normal profit conditions, will receive $335 million from the Contractor. Under high profit conditions, the Authority will receive $372 million.

The Japanese delegation proposed a production charge of 0.75 per cent together with 25 per cent of attributable net proceeds during the first 10 years and 50 per cent of attributable net proceeds during the following 10 years. Attributable net proceeds is defined as 20 per cent of total net proceeds. Under the Japanese proposal the Authority will receive a total income of $240 million over 20 years under normal conditions of profitability.

The EEC proposed a production charge of 0.75 per cent together with a share of attributable net proceeds which varies depending upon the Contractor's rate of return. The EEC has proposed seven levels of profitability ranging from 10 to 30 per cent. The Authority's share will range from 10 to 58 per cent. Under the EEC's proposal, attributable net proceeds are 20 per cent of total net proceeds. Under normal conditions of profitability the Authority will receive $151 million. Under conditions of high profitability the Authority's income will increase to $315 million. Under conditions of low profitability, the Authority's income will be $75 million.

Mr. Chairman,

I

1. For two weeks we have had a most thorough and rewarding exchange of views on the principle which may apply in regard to the financial arrangements. The discussions have also - in my humble opinion - been encouraging as there seems to exist a broad consensus on major underlying concepts with regard to the exploitation of mineral resources of the deep ocean floor - first and foremost the exploitation of nodules.

Firstly a) The consensus as to the adoption of the parallell system at least for the initial production period seems to have been cemented.

Secondly b) The principle that states, states entities or private entities must pay for their opportunity to mine in the international area has met with approval by all.

Thirdly c) There is a broad consensus to the effect that the payments thus levied are to be levied by the authority and for the uses laid down in the Informal Composite Negotiating Text.

Fourthly d) There is likewise consensus to the effect that the contemplated financial arrangements shall be in the form of obligatory payments and fees payable by the contractor for the right to mine in the area. Such payments and fees shall be fair and reasonable to the Authority as well as to the contractors.

Fifth e) Finally that these financial arrangements together with other financial sources shall meet the pre-occupations of most delegates that the Enterprise shall be able to commence its activities in the area simultanously with those of other pioneering entities.

Although we may not have reached final consensus of all the single elements of which the financial arrangements shall consist - let alone as to the size of each type of fee and payment - I believe that it is correct to say that there exists consensus to the effect that two systems of financial arrangements are acceptable. One system applicable to those countries that have a capitalistic or mixed economic structure and another system for those countries that have a socialistic economic structure. Although some fees and payments are identical for the two, they differ in as much as a system of a production charge combined with net profit participation shall in principle be applicable to the first category of countries or their

entities private or public; a single system with a higher production charge but no net profit participation shall in principle be applicable to the second category of countries and their entities.

I assume Mr. Chairman, that our discussions up to now would lead to the assumption that there shall be no right of choice between these two systems. Although I must admit that the discussions on this point have not been entirely conclusive.

II

With regard to the elements of a package of financial arrangements I believe there exists consensus as follows:

1. There is agreement to the effect that an application fee shall be paid at the filing of an application.

2. There is further agreement to the effect that under one system of financial arrangement mentioned - a combined system of production charge (also called royalty) and net proceed sharing is acceptable.

3. Thirdly that also a second system is accepted - the so-called single system, with a higher production charge (royalty) but no net proceed sharing.

4. Consensus seems also to exist with regard to the fact that a production charge may be in cash or in kind. Further details in this respect have yet to be thrashed out. One important issue here is who

shall have the right of choice. Usually in oil contracts and other mining contracts the authority that has given the concession has the right to choose but it has to give due notice within a certain time limit if it wants royalty in kind instead of in cash.

These questions must obviously be further discussed.

There are two other elements of a financial package that have been broached during our discussions, namely a lump sum payment (bonus) payable at the signing of the contract and an annual fee (area fee) to be paid annually from the same date. The annual fees to be annually credited against production charges according to most proposals.

It is only fair to state that we have not yet reached consensus with regard to these two types of payments.

Where the payment of a lump sum (or bonus) at the signing of a contract is concerned, most of the industrialized countries seem to shy away from this type of remuneration - almost regardless of its size. The argument is mainly based on the assumption that such bonus payments represent too much of a front end loading for the industry and especially in the pioneering stage of the activities when experience is lacking, technology unproved and the financial results uncertain. Such payments are perceived as being too risky since they come before the economic success of the project has been determined and their economic impact is magnified since payments come early and must be financed and interest paid before the time revenues commence.

Other delegations favour this type of payment. They feel firstly that it follows from the concept of the common heritage of mankind that a contractor at the outset should pay for the right to mine in the international area. Such bonus payments at the signing of a contract are furthermore well known in other fields of mining and in oil production. It would serve the international community well as it would give the Authority a minimum financial leverage from the outset of mining operations in the area.

Nor has the payment of an annual fee - frequently called area fee - obtained what could be called a consensus during our discussions. The argument against this fee is also that it represents too much of a front end loading since it is to be paid yearly even before production has started up. Others have argued that there are good reasons for such an annual fee. They are well known in concession contracts and especially in operations in maritime areas. It is a fee which usually is credited against production charges when production starts. Thus it is a means of income to a state - in our case to the Authority - at early stages of a mining contract. At the same time as it serves as a motivation for the contractor to put action into the contract. After production has started it serves as a guarantee for the payment of a minimum yearly charge if the production charge is lower.

Mr. Chairman, in your report from the Geneva session you propose in principle that an annual fee

as set forth in the ICNT should be retained. I agree with you in this respect and the discussion we have had the last fortnight seems to support the assumption that a consensus supporting this fee would be possible.

III

Mr. Chairman, During previous sessions and also during our current discussions attempts have been made to concretize the discussion by giving figures and percentages as illustrations to the more general debate.

Much talk has also centred around the so-called MIT model which is a praiseworthy attempt to make a computerized case study of figures and suggestions using a "base case" of the MIT model. This base case represents the set of assumptions which professor Nyhart and his associates at the MIT believe to be the most likely assumptions for a case of mineral production from nodules.

In your report from the Geneva meeting you deemed it unadvisable to indicate figures and percentages with regard to the fees and charges proposed, viz. the application fee, the annual fixed fee, production charges or net profit participation. Your judgment was - as always - correct and wise as our current discussions have shown.

Now perhaps the time has come to discuss more in detail concrete figures in order to reach one step further in our negotiations. With your permission I

shall attempt to do so and base my proposals on the MIT model.

IV

When starting with concrete proposals it is only natural to start with the Indian proposal which the distinguished Indian Minister had the expertise and courage to make at an earlier session in New York. This proposal has in many ways shaped our subsequent discussions. It had three elements:

a. A lump sum (bonus) payment at the signing of the contract in the sum of $ 60 mill. It was based on the assumption of a yearly production of nodules of 3 mill. tons over 20 years.

b. A production charge of 10% of the value of the processed metals combined with

c. A net profit participation of 50% of the profit from the total activities: mining, transportation, and processing of the metals. After the contractor had recovered 200% of his development costs the Authority's share of net proceeds should increase to 60%.

d. The Indian proposal had no annual fee as the proposed lump sum replaced such a fee. It envisages an application fee but no specific sums were mentioned.

We have been informed by the US delegation that under the MIT base case the Indian proposal would result in a total payment to the Authority over the

contract period of some $ 1.772 mill. per mine site.

The internal rate of return under the same MIT model would according to the US delegation be 6,68%. All payments to the Authority are treated as deductable costs to the contractor in order to calculate his US tax liability. But it was also emphasized that the internal rate of return was calculated after payment by the contractor of both payments to the Authority and American taxes, a point it is well to bear in mind.

As a pioneering proposal it could only be expected that the Indian proposal has been objected to as unacceptable inter alia on the grounds that the front end burden is to heavy and because the rate of return is unsatisfactory.

Under the Geneva session an informal proposal was made by the Norwegian delegate. It suffered the same fate as the Indian proposal at the time. It has later been processed through the MIT model. This informal Norwegian proposals consisted of the following elements:

a. An application fee was pre-supposed but no figure was mentioned.
b. No lump sum (bonus) payment.
c. An annual fee of $ 1 mill to be credited against annua production charges when production started.
d. A production charge figured from the value of the processed metal of 3% for the first 10 years of production and 5% for the remaining years of production combined with

e. A net profit participation based on the following formula:

Net profit should be based on an attributable net profit of 50% of total net profits realized from all activities mining, transportation and refining of the metals. The Authority should receive 50% of this attributable net profit for the first 10 years. For the remaining years it should receive 80% of the attributable net profit.

f. Instead of this mixed system of production charge combined with net profit participation a single system could be used consisting solely of a production charge but obviously a higher production charge. In this case 8% production charge of the value of the processed material should be charged for the first 10 years of production and 15% production charge for the remaining years.

The informal Norwegian proposal has subsequently been analyzed by the MIT model. According to the computer this proposal would result in a total payment of $ 1.280 mill. to the Authority under the combined system of production charge + net proceed sharing. The internal rate of return to the contractor under this combined system is 14,46%. But again an important proviso is that this rate of return has been assessed after payment of full taxes according to the US tax system.

Under the single system the internal rate of return according to the MIT model would be 15,2%.

Again after taxes has been paid according to American tax rates. Without an assumption of the payment of domestic taxes beforehand the rate of return percentages would be considerably improved.

The informal Norwegian proposal applied a two tier system where production charge and net profit participation are concerned. In the first 10 year period of production both the proposed production charges and the proposed net profit participation are considerably lower than for the remaining period of production. It was felt that this system might have three main advantages:

a. The lower rates would ease the front end burden at the first stage of production.

b. The lower rates would apply during the 10 year period where capital costs were depreciated and would thus improve the cash flow to the contractor.

c. It would be a simpler system to apply both with regard to accounting and control than a system based on series of rates of return which might result in repeated disputes and confrontations between authority and contractor.

The Norwegian proposal was immideately critizised especially on the part of the representatives of certain industrialized countries. Allegedly it would entail a too heavy front end burden for the contractor. It was likewise alleged that the proposed production charges were too high, that the attributable net profit of 50% and the proposed percentages of participation were unacceptable for the same reasons.

V

Mr. Chairman. Based on the first week's discussion here in New York I felt that some alternative to the one I presented in Geneva might be of interest.

Professor Nyhart at the MIT was kind enough to place at my disposal the facilities at the MIT, which made it possible for me to try several alternatives using the base case of the MIT model. Allow me here to express my deep respect to professor Nyhart and his associates at the MIT for their thorough knowledge of the questions, their painstaking preparations in establishing the MIT model and their integrity and scientific impartiality. However, they stressed repeatedly to me during my stay in Cambridge that the base case of the model represents the set of assumptions which professor Nyhart and his associates believe to be the most likely. They also stressed that changed circumstances such as increases or decreases in costs, changes in the metal contents of the nodules or variations in the prices of the refined metals may cause the rate of return to differ substantially from the base case in either direction.

The MIT model also assumes 5 years of preparatory work and 25 years of production.

As already mentioned the MIT model further assumes that national taxes at the US scale are paid before the internal rate of return is figured out.

I had to work within the limits of these base case assumptions. Obviously this does not imply that I am

in agreement with these assumptions. I felt however that by way of scientific illustrations this model is very useful.

Mr. Chairman. I put different alternatives through the MIT model. I shall dwell upon the two which I find of interest. The one alternative is based on the payment of a lump sum (bonus) at the signing of the contract in addition to the other fees and charges. The other alternative does not include such lump sum payment.

The first of these two alternatives consists of the following items:

a. An application fee of $ 500 000,- with refund for amounts not spent./ However such possible refunds are not included in the MIT base case.
b. A Lump sum (bonus) of $ 5 mill.
c. An annual fee (area fee) of $ 2 mill.
d. A production charge of 2½% for the first 10 years of production of the value of the processed metal and 4½% for the remaining years combined with
e. Net proceeds sharing - based on an attributable net profit of 50% - of 40% of the attributable net profit for the first 10 years, 75% of the attributable net profit for the remaining years.
f. Instead of this mixed system a single system of production charge. The production charge being 8% of the value of the processed metal for the first 10 years; 14% for the remaining years of production.

This alternative would result in a total payment to the Authority under the mixed system of $ 1.264 mill, and an internal rate of return of 13,75%. Under the single system the rate of return would amount to 14,21%.

As will be seen, this alternative would be less favourable to the contractor than the first Norwegian proposal which I presented in Geneva because of the heavier front end loading, even though the lump sum payment of $ 5 mill. must be considered a rather modest one. Consequently I feel that this new alternative will not serve as a viable compromise proposal in view of the heavy objections my first proposal encountered in Geneva and later.

Consequently I fed to the computer an alternative proposal with no lump sum payments and certain other modifications, as well, whereby I reduced the front end loading. Under this alternative the items and figures were as follows:

a. The application fee is $ 500.000,- presupposing a refund for amounts not spent. Such possible refunds are not included in the MIT base case.
b. No lump sum (bonus) payment is envisaged.
c. The annual fee is reduced to $ 1 mill.
d. The production charge in the mixed system is reduced to 2% for the first 10 years and to 4% for the remaining years. This production charge is combined with
e. A net profit participation which is computed as follows. Attributable net proceeds are reduced to

40% (50% was proposed in foregoing alternative). Suggested net profit participation is 40% of the attributable net profit for the first 10 years and 75% for the remaining years.

f. The production charge under the single system is proposed to 7½% for the first 10 years and 13% for the remaining years.

Under this alternative the total payment to the Authority under the mixed system would amount to $ 981 mill. per mine site and result in an internal rate of return to the contractor of an estimated 15,3%. (This percentage is tentatively calculated on the basis of the MIT model without a complete run.)

The total payment to the Authority under the single system would amount to some $ 702 mill. per mine site and result in an internal rate of return of an estimated 15,3% to the contractor.

You may perhaps ask, Mr. Chairman, why the rate of return in this last alternative is the same or almost the same for the two systems while the total payments to the Authority seem to differ with some $ 279 mill. The explanation is the following. The single system is more front end loaded which means that a substantial part of the total amounts are paid at a much earlier date than under the mixed system. The payments are also much more secure as they are not dependent upon the realization of a profit of the contractor. These advantages to the Authority would in reality equate the payments made under the mixed system

when risk and timing of payments are taken into account.

In my last proposal I have, as will be seen, reduced the attributable net proceeds from 50% to 40%. It will be recalled from our general discussions that there are highly divided views on which part of the total profits of any deep sea-bed mining operation which should be held to be derived particularly from the extraction of crude mineral in nodule form. I think it will be admitted by all that at the present stage, we have very few exact data on which to base any precise assumptions in this regard. We may be entitled to make estimates or shrewd guesses, but we must also recognize that such estimates will contain an element of discretionary evaluation. In my view, this is by no means a disaster. On the contrary, it adds an element of flexibility to our negotiation. It is in this spirit that my last alternative is based on a lower estimated proportion of attributable net proceeds than the foregoing.

VI

Mr. Chairman. Having worked with these questions over a period of time and after having submitted various alternatives to the MIT computer, I believe although I fully realize that it may seem presumptuous, that the proposal I have now examined as my last alternative may possibly serve as a compromise proposal or at least as a basis for further discussions.

It seems to entail a reasonable total payment to the Authority. At the same time it spreads the payment over the contract period, without in my opinion being prohibitive in regard to front end burdening. It seems to contain a reasonable balance between a mixed system of production charges and net proceeds sharing on the one hand and the single system with revenues derived solely from productinn charges on the other.

The three proposals stemming from industrialized countries of the Western World, namely the USA proposal, the Japanese proposal and EEC proposal on the one hand or the USSR proposal on the other, would result in total payments to the Authority so low that our discussion during the present resumed session tend to indicate that they would not be accepted as viable compromises in the question of financial arrangements.

The USA proposal consists of an application fee of $ 500.000,-, a 2% production charge, combined with a net proceeds sharing based on an attributable net proceeds percentage of 20% and an escalating percentage of profit sharing based on the rate of return; to wit: 30% of attributable net proceeds if the rate of return is between 0 and 7%, 60% of attributable net proceeds if the rate of return is between 7 and 20% and 75% thereof if the rate of return is over 20%. The US proposal does not foresee a lump sum payment nor an annual fee. It does not include an alternative single system with the payment of a production charge alone. Under the MIT model the total payments accruing to the

Authority from one mine site would be some $ 420,- mill. per mine site over a production period of 25 years.

The Japanese proposal suggests an application fee of some $ 100.000 - $ 200.000; a production charge of 0,75% combined with a net proceed sharing of 25% for the first 10 years and 50% for the remaining years of production. These percentages shall be based on attributable net proceeds of 20% of total net proceeds. Under the Japanese proposal the Authority will receive a total payment of somewhere under $ 300 mill.

The EEC proposal is based on an application fee of $ 100.000,-, a production charge of 0,75% and a share of attributable net proceeds depending upon the contractor's rate of return. The EEC has proposed seven levels of rate of return ranging from 10-30%. The sharing of proceeds would range from 10-58%. Under the EEC proposal attributable net proceeds are 20% of total net proceeds. The total payments of the EEC formula to the Authority would range from a low of $ 75 mill. to a high of $ 315,-. On an average it would be appreciably lower than the USA or the Japan proposals.

The USSR proposal under a single production system is based on an application fee of $ 100.000,- - $ 200.000,-. It proposes a production charge of 7,5% of the value of the processed metals. Total payment to the Authority based on the MIT model would be some $ 484 mill. That is appreciably higher than the Japanese and EEC proposal and also higher than the USA proposal.

In concluding, Mr. Chairman, and as a possible compromise proposal on concrete figures and percentages I venture to submit the following:

a. An application of $ 500.000 presupposing a refund for amounts not spent.

b. No lump sum payment.

c. An annual fee of $ 1 mill. to be credited against annual production charges after production has started.

d. A production charge of the value of the processed metals of 2% for the first 10 years of production and 4% for remaining years combined with

e. A net proceed sharing computed on the basis of attributable net proceeds of 40% of total net proceeds in the amount of 40% of ANP for the first 10 years and 75% of ANP for the remaining years.

f. A production charge under the single system of 7½% of the value of the processed metals for the first 10 years of production and 13% for the remaining years.

Mr. Chairman.

I regret that my intervention has been so time-consuming.

I thank you, Mr. Chairman.

Financial Arrangements

Secretary-General's Report on Costs of Authority and Contractual Means of Financing its Activities, A/CONF. 62/C.1/L. 19.

1. Costs of Authority:

	(in U.S.$).
A. Meetings and Conferences	
I Assembly	1,059,000
II Tribunal	618,600
III Council	889,900
IV Commissions	225,600
B. The Secretariat	8,543,300
C. Permanent Equipment	404,700
D. General Expenses	2,032,300
E. Documentation	70,000
F. Administrative Costs of Enterprise	2,825,000
Grand Total	16,668,400.

2. Contractual Financing of the Authority

B. The Practice of Developing Countries in Contracting for the Development of their Natural Resources

- evolution from concession agreements to increasing government participation schemes

C. Contractual Methods of Generating Income for the Authority

(A) Accounting rules + procedures

(i) depreciation

(ii) depletion allowances

(iii) unadjusted rate of return

(b) Elements of Income generating schemes for consideration by Authority

(i) grace period and tax holidays – incentives to exploit

(ii) royalties – discussion of nature of royalties on prod. output

(iii) rental fees or surface duties – annual payment

(iv) bonuses – a front-end payment

(v) fees – nominal charge to cover administrative costs

(c) Income taxation as a factor
- main device for obtaining share of profits

2 D. Contractual capacity of Enterprise
- discussion of relevant RSNT provisions
- discussion of financing of technology
  - because of concentration of technology for extracting scarred minerals + lack of availability on open market, difficult to determine cost of technology
  - acquisition of will be more of a problem than financing

Economic Impact of Deep Sea Mining

Introduction

Mathematical models are sets of equations whose mathematical properties mimic the properties of systems occurring in nature. They have been extensively used in the physical sciences and are now being applied to the biological and medical sciences as well as other diverse fields such as agriculture, fire control, economics, etc. The goals of such models are two-fold. First, they can be an aid in furthering the understanding of the system and how it behaves and can characterize the system through parameters that have a physical analogue (as opposed to artifically imposed curve fitting parameters used in data correlation and smoothing). Second, models can be used to suggest means of controlling the behaviour of the system and can make predictions about the behaviour of the system that go beyond the initial data base.

Objectives

The objective of this project is to construct a mathematical model of the economic impact on third world (African) developing countries arising from deep sea mining of manganese modules. The effects of the proposed sea-bed mining on existing land-based mining activities in these developing countries is an important aspect. The model will incorporate different scenarios for implementing the deep sea mining ranging from exploitation by private companies to joint ventures with developing countries to the presence of an international sea bed authority in various forms.

The model will clarify the possible strategies and decisions that can be made under the influence of these different economic forces and the final

results will allow the economic consequences of different possible strategies to be examined and compared prior to the future decision making process. The political implications of these strategies will not be described but the model will indicate the various economic benefits and costs of the different scenarios and will be useful in guiding the ultimate decision.

In view of the economic and technological importance of deep sea mining to third world countries and the impending next round of the Law of the Sea Conference, it is imperative that a model like this one be developed and be available as soon as possible.

Budget

The construction of a model such as this is a complex and time consuming procedure and we propose to initially employ two modelers (see attached curriculum vitae) over a period of five months on this task. The cost of providing this service will be $7000. In addition the computer time necessary is estimated to cost $5000.

Summary

Duration of Project	5 months
Cost of Modelers	$7000
Cost of Computer Time	$5000
Total Cost	$12000

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ment,[59] and General Assembly resolution 2971 (XXVII) of 14 December 1972,

Recognizing that, as a result of the geographic situation of the land-locked developing countries, of the high cost of transportation and of the poor development of their infrastructure in all fields, the expansion of their trade and economic development is inhibited,

Recognizing the need for the urgent extension of financial and technical assistance to land-locked developing countries by the international community and international organizations on the basis of the recommendations of the United Nations system as a whole, particularly in the field of infrastructure of all kinds,

Recalling the decision taken in this respect by the Fourth Conference of Heads of State or Government of Non-Aligned Countries, held at Algiers from 5 to 9 September 1973,[60]

Conscious of the urgent needs of the land-locked developing countries and the special measures that must be considered and implemented in their favour,

1. *Invites* all Member States and the competent international organizations to assist the land-locked developing countries in facilitating, within the framework of appropriate agreements, the exercise of their right of freedom of access to and from the sea;

2. *Requests* the Secretary-General, in the implementation of Economic and Social Council resolution 1755 (LIV) of 16 May 1973 and in consultation with the United Nations Conference on Trade and Development, to undertake a complete study on the establishment of a fund in favour of the land-locked developing countries;

3. *Invites* the Economic and Social Council to report to the General Assembly at its twenty-ninth session on the implementation of the provisions of the present resolution and other related resolutions of the various organs of the United Nations system.

2203rd plenary meeting
17 December 1973

3170 (XXVIII). International years and anniversaries

The General Assembly,

Recalling Economic and Social Council resolution 1800 (LV) of 7 August 1973,

Decides to instruct its subsidiary bodies to propose the designation of international years only on the most important occasions and, where possible, to propose instead celebrations of brief duration.

2203rd plenary meeting
17 December 1973

3171 (XXVIII). Permanent sovereignty over natural resources

The General Assembly,

Reiterating that the inalienable right of each State to the full exercise of national sovereignty over its natural resources has been repeatedly recognized by the international community in numerous resolutions of various organs of the United Nations,

Reiterating also that an intrinsic condition of the exercise of the sovereignty of every State is that it be exercised fully and effectively over all the natural resources of the State, whether found on land or in the sea,

Reaffirming the inviolable principle that every country has the right to adopt the economic and social system which it deems most favourable to its development,

Recalling its resolutions 1803 (XVII) of 14 December 1962, 2158 (XXI) of 25 November 1966, 2386 (XXIII) of 19 November 1968, 2625 (XXV) of 24 October 1970, 2692 (XXV) of 11 December 1970 and 3016 (XXVII) of 18 December 1972, and Security Council resolution 330 (1973) of 21 March 1973, which relate to permanent sovereignty over natural resources,

Recalling, in particular, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,[61] which proclaims that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind,

Considering that the full exercise by each State of sovereignty over its natural resources is an essential condition for achieving the objectives and targets of the Second United Nations Development Decade, and that this exercise requires that action by States aimed at achieving a better utilization and use of those resources must cover all stages, from exploration to marketing,

Taking note of section VII of the Economic Declaration adopted by the Fourth Conference of Heads of State or Government of Non-Aligned Countries, held at Algiers from 5 to 9 September 1973,[62]

Taking note also of the report of the Secretary-General on permanent sovereignty over natural resources,[63]

1. *Strongly reaffirms* the inalienable rights of States to permanent sovereignty over all their natural resources, on land within their international boundaries as well as those in the sea-bed and the subsoil thereof within their national jurisdiction and in the superjacent waters;

2. *Supports resolutely* the efforts of the developing countries and of the peoples of the territories under colonial and racial domination and foreign occupation in their struggle to regain effective control over their natural resources;

3. *Affirms* that the application of the principle of nationalization carried out by States, as an expression of their sovereignty in order to safeguard their natural resources, implies that each State is entitled to determine the amount of possible compensation and the mode of payment, and that any disputes which might arise should be settled in accordance with the national legislation of each State carrying out such measures;

[59] See *Proceedings of the United Nations Conference on Trade and Development, Third Session,* vol. I, *Report and Annexes* (United Nations publication, Sales No.: E.73.II.D.4), annex I.A.

[60] A/9330 and Corr.1, p. 77.

[61] Resolution 2625 (XXV), annex.

[62] A/9330 and Corr.1, p. 66.

[63] E/5425 and Corr.1, E/5425/Add.1.

4. *Deplores* acts of States which use force, armed aggression, economic coercion or any other illegal or improper means in resolving disputes concerning the exercise of the sovereign rights mentioned in paragraphs 1 to 3 above;

5. *Re-emphasizes* that actions, measures or legislative regulations by States aimed at coercing, directly or indirectly, other States or peoples engaged in the reorganization of their internal structure or in the exercise of their sovereign rights over their natural resources, both on land and in their coastal waters, are in violation of the Charter of the United Nations and of the Declaration contained in General Assembly resolution 2625 (XXV) and contradict the targets, objectives and policy measures of the International Development Strategy for the Second United Nations Development Decade,[64] and that to persist therein could constitute a threat to international peace and security;

6. *Emphasizes* the duty of all States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the territorial integrity of any State and the exercise of its national jurisdiction;

7. *Recognizes* that, as stressed in Economic and Social Council resolution 1737 (LIV) of 4 May 1973, one of the most effective ways in which the developing countries can protect their natural resources is to establish, promote or strengthen machinery for co-operation among them which has as its main purpose to concert pricing policies, to improve conditions of access to markets, to co-ordinate production policies and, thus, to guarantee the full exercise of sovereignty by developing countries over their natural resources;

8. *Requests* the Economic and Social Council, at its fifty-sixth session, to consider the report of the Secretary-General mentioned in the last preambular paragraph above and requests the Secretary-General to prepare a supplement to that report, in the light of the discussions that are to take place at the fifty-sixth session of the Council and of any other relevant developments, and to submit that supplementary report to the General Assembly at its twenty-ninth session.

2203rd plenary meeting
17 December 1973

3172 (XXVIII). Holding of a special session of the General Assembly devoted to development and international economic co-operation

The General Assembly,

Recognizing the need fully to study and review the general status of international development co-operation,

Aware of the growth of interdependence in the world economy and of the urgent need for international co-operation to be adapted to the requirements of economic and social development throughout the world, particularly in the developing countries,

Recalling resolution 2626 (XXV) of 24 October 1970, by which it adopted the International Development Strategy for the Second United Nations Development Decade, and other relevant decisions of the General Assembly,

Disturbed by the growing gap between the developed and developing countries and by the slow rate of progress in the implementation of the goals and objectives of the International Development Strategy,

Noting that the Fourth Conference of Heads of State or Government of Non-Aligned Countries, held at Algiers from 5 to 9 September 1973, called for the convening of a special session of the General Assembly devoted exclusively to development problems,[65]

1. *Decides* to hold a special session of the General Assembly at a high political level on an appropriate date just before the thirtieth regular session for the purpose of examining the political and other implications of the state of world development and international economic co-operation, expanding the dimensions and concepts of world economic and developmental co-operation and giving the goal of development its rightful place in the United Nations system and on the international stage, and also decides that at the special session the Assembly will, in the light of the implementation of the International Development Strategy for the Second United Nations Development Decade:

(*a*) Consider new concepts and options with a view to promoting effectively the solution of world economic problems, in particular those of developing countries, and assist in the evolution of a system of world economic relations based on the equality and common interests of all countries;

(*b*) Initiate the necessary and appropriate structural changes to make the United Nations system a more effective instrument of world economic co-operation and for the implementation of the International Development Strategy;

2. *Requests* the Secretary-General to prepare, in consultation with the various specialized organs of the United Nations, a preliminary report based on the points included in paragraph 1 above, and to submit it to the Economic and Social Council at its fifty-seventh session;

3. *Calls upon* the Economic and Social Council at its fifty-seventh session:

(*a*) To consider that preliminary report;

(*b*) To prepare a draft agenda for the special session;

(*c*) To appoint, if necessary, a preparatory committee and to transmit that committee's report on these issues to the General Assembly at its twenty-ninth session;

4. *Further calls upon* the Economic and Social Council to propose to the General Assembly a date for the special session and to take all necessary measures concerning the organization of that session, including the final preparation of the documentation.

2203rd plenary meeting
17 December 1973

3173 (XXVIII). Assistance to Zambia

The General Assembly,

Recalling all previous resolutions adopted by the Security Council concerning the question of assistance to Zambia, in particular resolution 329 (1973) of 10 March 1973,

[64] Resolution 2626 (XXV).

[65] See A/9330 and Corr.1, p. 99.

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Article 27

The ten-year Plan shall be submitted by the Chairman of the Council to the Conference one year prior to its going into effect. The annual program shall be submitted to the Conference and to all States one month prior to the opening of the Regular Annual Session of the Conference.

Article 28

Plans shall be published by all States and shall be fully discussed by their Parliaments or legislative branches, by all interested scientific economic and social organizations, as well as by all Chambers of the Conference.

Article 29

To be enacted, the Ocean Development Plan and the Budget must be approved by the Conference as a whole.

Article 30

The Council may undertake such functions with regard to the military uses of ocean space or with regard to the regulation of armaments in ocean space as may be conferred upon it by a unanimous vote of its members.

Abstention from voting shall not be regarded as detracting from the unanimity of the vote on the questions referred to in the above paragraph.

Article 31

The Council shall submit to the Conference for approval:

(1)agreements with any State concerning the transfer to the administration of the Institutions of sandbanks, reefs, or islands;

(2) the basic norms governing the administration of inhabited islands.

Article 32

The Council shall approve the establishment of

(1) scientific stations, nature parks or marine preserves in International Ocean Space;

(2) such services for international community purposes in ocean space as may be consistent with the provisions of this Convention.

Chapter VII: Maintenance of law and order in ocean space and threats to the integrity of International Ocean Space

Article 33

The Council has primary responsibility for the maintenance of law and order in ocean space and for the maintenance of the territorial and jurisdictional integrity of International Ocean Space. In discharging these responsibilities the Council shall act in accordance with the Purposes and Principles of the Charter of the United Nations and with Article of this Convention.

Article 34

The Council may investigate any situation or event or any action by States which might be seriously prejudicial to the maintenance of law and order in ocean space or which might endanger the territorial or jurisdictional integrity of International Ocean Space. In such cases the Council shall make and publish a report containing a statement of the facts with regard to the situation, event or action which gave rise to the investigation.

Article 35

Should the Council determine the existence of any situation, event or action which is seriously prejudicial to the maintenance of law and order in ocean space or which endangers the territorial or jurisdictional integrity of International Ocean Space, it may make such recommendations as may appear desirable taking into account, where appropriate, the provisions of Chapter of this Convention.

Article 36

Should the Council determine that action under Article 35 has proved inadequate or has not been complied with and should it consider that law and order in ocean space is seriously prejudiced or that the territorial or jurisdictional integrity of International Ocean Space is seriously impaired, it may decide what measures not involving the use of force are to be employed to give effect to its decisions. Such measures may include

(1)action under Chapter of this Convention

(2) exclusion of a State or other legal person from participation in the equitable sharing of benefits derived from the exploitation of the natural resources of International Ocean Space;

(3) exclusion of a State or other legal person from their right to exploit the natural resources of International Ocean Space in accordance with the provisions

of this Convention;

(4) suspension, by the Basic Organization concerned or by the United Nations, of a member or associate member from participation in the rights and privileges of membership;

(5) exclusion of a State or of its nationals from their right to make use of International Ocean Space or the air-space above International Ocean Space for some or for all purposes.

Article 37

The Council may call upon all States or some of them, as it may determine, to ensure compliance with its decisions under article 36 by such action as may be necessary, including the employment of naval and air forces.

Members of the Basic Organizations and of the United Nations shall join in affording assistance in ensuring compliance with the decisions of the Council, unless the Conference has taken the action referred to in article 46.

Article 38

The Conference shall be informed immediately of any action taken under article 37 . The Conference may recommend that the Council reconsider the action taken by it.

Chapter VIII: Pacific Settlement of Disputes

Article 39

Members of the United Nations or members or associate members of the Basic Organizations that are parties to any dispute in ocean space shall, in the first instance, seek a solution by any peaceful means of their choice. In default of agreement the dispute shall be submitted to the Council on the initiative of any of the parties to the dispute. The Council shall endeavor to settle the dispute and shall in any case make and publish a report containing a statement of the facts and such recommendations as may appear desirable.

A dispute between States with regard to any matter expressly provided for in the present Convention shall be submitted to binding adjudication by the Ocean Tribunal at the request of the Council or of any of the parties to the dispute, in the event that other peaceful means of settlement fail.

Article 40

A State with is not a member of the United Nations or of any of the Basic Organizations may submit to the Council any disputes to which it is a party in ocean space if it accepts in advance for the purposes of the dispute the provisions of the present Chapter of this Convention.

Article 41

A dispute between a State member of the United Nations or any of the Basic Organizations and the Institutions shall be submitted to the Ocean Tribunal for binding adjudication at the request of any of the parties to the dispute.

Chapter IX: Maintenance of the Ecological Integrity of International Ocean Space

Article 42

The Council, or a body designated by the Council, may investigate any event, situation, practice or action which might cause significant and extensive change in the natural state of the marine environment or which might impair the ecological integrity of International Ocean Space.

Article 43

Should the Council determine that any event, situation, practice or action endangers the natural state of the marine environment or impairs the ecological integrity of International Ocean Space, the Council, or the body designated by it, shall make and publish a report containing a statement of the facts.

If the event, situation, practice or action referred to in the above paragraph has occurred in national ocean space, the Council on reliable scientific advice shall make such recommendations as may appear necessary on reliable scientific advice to the coastal State or States concerned.

If the event, situation, practice or action referred to has occurred in International Ocean Space, the Council shall take such action within its powers as it deems necessary or desirable. This may include the regulation of dangerous practices or technologies and the prohibition or licensing of the disposal of harmful substances in International Ocean Space.

Article 44

In the event of imminent danger of serious contamination of extensive areas of International Ocean Space, the Council, after taking scientific advice, may proclaim a regional or a world ecological emergency.

Article 45

During a state of regional or world ecological emergency States within the region or all States in the world, as the case may be, whether or not members of the United Nations or any of the Basic Organizations, shall take promptly such action for the preservation of the ecology of ocean space as may be prescribed by the Council, or by the body designated by the Council for this purpose.

The Council, if necessary, shall ensure compliance with its directions by taking any of the actions mentioned in Articles 36 and 37.

Chapter X: The Ocean Tribunal

Article 46

The Ocean Tribunal shall be the principal judicial organ of the International Ocean Space Institutions. It shall function in accordance with the annexed Statute which forms an integral part of the present Convention.

Article 47

All members of the United Nations and of any of the Basic Organizations are ipso facto parties to the Statute of the Ocean Tribunal.

A State which is not a member of the United Nations or of any of the Basic Organizations may become a party to the Statute of the Ocean Tribunal on conditions to be determined in each case by the Conference upon recommendations of the Council.

Article 48

The competence of the Ocean Tribunal shall extend to persons natural or juridical other than States with respect to matters which have occurred in International Ocean Space.

Article 49

Each party to the Statute undertakes to comply with a final decision of the Ocean Tribunal in any case to which it is a party.

If any party to a case fails to perform the obligations incumbent upon it under a final judgment rendered by the Tribunal within one year of its delivery, it shall have no vote in the Conference, and the other party may have recourse to the Council which may, if it deems necessary, take any of the measures referred to in Article 44 of this Convention.

If any of the Basic Organizations or organs of the Integrative Machinery fails to perform within one year the obligations incumbent upon it under a final judgment rendered by the Court, the other party may have recourse to the Council, which shall investigate the situation and may, if it deems necessary, take any action within its powers.

If any party to a case, other than those referred to in the above paragraphs, fails to perform within one year the obligations incumbent upon it under a final judgment

rendered by the Tribunal, the other party may have recourse to the Council which shall investigate the situation and may, if it deems necessary, take any of the measures referred to in article 44 of this Convention.

Article 50

The Conference or the Council or the Secretary General, after consultation with his senior advisers, may request the Ocean Tribunal to give an advisory opinion on any legal question within the scope of this Convention.

Any party to the Statutes of the Ocean Tribunal may request the advisory opinion of the Tribunal on the equity or nondiscriminatory nature of the principles and rules referred to in Part II of this Convention, as also on the equity or nondiscriminatory nature of licensing systems in international ocean space.

Chapter XI: The Secretariat

Article 51

The Secretariat shall comprise a Secretary General and such staff as the Institutions may require. The Secretary General shall be elected by the Conference upon nomination of the Council. He shall serve for a term of six years and may be re-elected for one further term.

The Secretary General may be relieved of his duties for cause by the Council.

The Council shall recommend to the Conference the election of a new Secretary General in the event of the Secretary General becoming physically or mentally incapacitated.

Article 52

The Secretary General shall:

(a) be the chief administrative officer of the International Ocean Space Institutions and act in that capacity in all meetings of the Conference and of the Council;

(b) report periodically to the Council and annually to the Conference on the activities of the Institutions;

(c) prepare the budget for the Integrative Machinery and submit it for the Council;

(d) Inspect at reasonable times and with due consideration the resource exploration and exploitation activities of any State or of its nationals in International Ocean Space;

(e) participate in so far as possible in scientific research conducted in International Ocean Space and bring the results thereof to the attention of States;

(f) issue periodic notices to mariners giving publicity to any danger to navigation of which he has knowledge pursuant to article of this Convention;

(g) receive notifications of the temporary suspension of innocent passage of foreign vessels pursuant to article of this Convention and bring such notifications to the attention of the Council;

(h) receive from States the maps referred to in articles of this Convention and bring them to the attention of the Council and to that of all members of the United Nations and members and associate members of the Basic Organizations;

(i) Receive notifications pursuant to article of this Convention and bring such notification to the attention of the Council;

(j) maintain a register of the disposal of radioactive wastes in International Ocean Space;

(k)administer under rules laid down by the appropriate organs of the Institutions any inhabited islands which may have been transferred to the administration of the Institutions and any scientific stations, marine preserves or nature parks which may be established;

(l) perform such other functions as may be entrusted to him by the organs of the Integrative Machinery or by the Basic Organizations.

Article 53

The Secretary General may bring to the attention of the Council any matter which in his opinion may endanger the achievement of the purposes of the Institutions.

Article 54

In the performance of his duties the Secretary General shall be assisted by principal advisers, no two of whom may be nationals of the same State. The senior adviser in terms of length of service shall act as Secretary General if the latter becomes temporarily incapacitated.

Article 55

In the performance of their duties the Secretary General and the staff shall not seek or receive instructions from any Government or from any authority external to the Institutions. They shall refrain from any action which might reflect on their position as international officials responsible to the Institutions.

Each member of the United Nations and each member or associate member of the Basic Organizations undertakes to respect the exclusively international character of the responsibilities of the Secretary General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 56

The staff shall be appointed by the Secretary General under general regulations established by the Council.

Appropriate staffs shall be permanently assigned to the organs of the Integrative Machinery and to the Basic Organisations and, as required, to other organs of the Institutions.

The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

Article 57

The Secretary General and members of the staff shall not be actively associated with or financially interested in any operations of any Enterprise concerned with exploration or exploitation of the natural resources of Ocean Space.

The Secretary General shall request permission of the Council in the event that exceptions to the provisions of the above paragraph are necessary.

Article 58

Disclosure by the Secretary General or by a member of the staff of confidential technical information shall be considered a grave infraction and shall make the offending party legally responsible for damages.

Chapter XII: Regional Organization

Article 59

Coastal States and neighboring landlocked States shall have the right to establish jointly a regional ocean space up to a maximum distance of 200 nautical miles measured from the applicable baselines, or comprizing an enclosed or semi-enclosed sea the total surface of which is not larger than the sum of the national ocean spaces of the States surrounding it.

Article 60

All the States concerned shall participate fully in the managment of the regional ocean space and shall be entitled to enjoy the use and benefits of all renewable and nonrenewable resources therein, with equal rights and obligations.

Article 61

The States which form part of a regional ocean space shall jointly manage the exploration, exploitation and conservation of the resources of the area through regional machinery, on the same lines as that proposed for similar purposes in ocean space beyond the limits of national jurisdiction, which shall also ensure an equitable distribution of the resulting benefits.

Article 62

Third States, international governmental and non-governmental organizations whatever their scope, and natural or legal persons may be allowed to co-operate in the regional management systems, and financing may be accepted from any source for the operation of the regional machinery.

Article 63

Within the limits of each regional ocean space there shall be regional sovereigntyfor the exploration, exploitation and conservation of the natural resources, whether renewable or nonrenewable.

Article 64

On the basis of the equality of rights and obligations of all participating States without discrimination of any kind, the regional management system shall protect and preserve, and ensure the protection and preservation of, the marine environment, and may permit joint scientific research to be carried on.

Article 65

States parties to a regional ocean space may establish, preferably through the regional machinery, an Enterprise or Enterprises responsible for carrying out all technical, industrial and commercial activities, including the regulation of production, the marketing and the distribution of raw materials from regional ocean space resulting from exploration of the area and exploitation of its natural resources. The Enterprise, in the exercise of its functions and powers, which shall be laid down in a Convention and its pertinent regulations, shall assume responsibility for the relevant activities, either directly or through operational contracts, joint ventures, joint management or any other type of legal regime which does not conflict with the interests of the region and the machinery shall ensure effective administrative and financial control in all circumstances.

Article 66

In the exercise of its powers and functions, the Enterprise shall act in accordance with the general policy and conditions laid down by the competent regional Conference, and shall submit proposals with regard to its activities and the legal provisions required for such activities to the competent body or Council for consideration and authorization.

Article 67

On the same lines as international ocean space and the marine and ocean resources beyond national jurisdiction, which are deemed to be the common heritage of mankind -- a principle that has already acquired the character of a rule of international law -- regional ocean space and its renewable and nonrenewable resources shall be declared the common heritage of the region

Article 68

Regional ocean space may be organized on the broadest possible basis and the machinery, through its appropriate organs, shall exploit its resources in such a manner as to ensure that they do not adversely affect the national land-based economies of countries dependent on a single commodity.

Article 69

States members of a regional ocean space regime, whether or not they are coastal States, shall be equitably and fairly represented both in the regional machinery and in the Enterprise.

Chapter XIII: Miscellaneous Provisions

Article 70

Every Treaty and every international agreement concerning ocean space entered into by any member of the United Nations or of any of the Basic Organizations after the present Convention comes into force shall be registered with the Secretariat and published by it.

Article 71

The seat of the Integrative Machinery shall be in Malta.

Article 72

Any member of the United Nations or of any of the Basic Organizations may propose amendments to this Convention. Amendments shall enter into force when approved by the Conference as a whole and ratified by a majority of States members of the United Nations.

Article 73

The present Convention shall have a duration of 20 years from the date of entry into force.

On the expiration of 20 years there shall be convened a General Conference on Ocean Space at which the present Convention shall be reviewed.

Article 74

Any State may withdraw from this Convention by written notification to the Secretary General. The Secretary General shall promptly inform all other Contracting Parties of any such withdrawal.

The withdrawal shall take effect two years from the date of the receipt by the Secretary General of the notification.

Article 75

This Convention shall be open for signature on_____ by all Member States of the United Nations or any of the Basic Organizations, and shall remain open for signature by those States for a period of ninety days.

The signatory States shall become parties to this Convention by deposit of an instrument of ratification.

Instruments of ratification by signatory States and instruments of acceptance by States whose membership

has been established under Article
of this Convention shall be deposited with the Governments of_____ hereby designated as Depositary Governments.

Ratification or acceptance of this Convention shall be affected in accordance with the respective constituitonal processes of the States concerned.

This Convention shall come into force when eighteen States have deposited instruments of ratification.

The Depositary Governments shall promptly inform all States signatory to this Convention of the date of each deposit of ratification and the date of entry into force of the Convention. The Depositary Governments shall promptly inform all signatories and members of the dates on which States subsequently become parties thereto.

Article 76

This Convention shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

Agreements entered into in accordance with Article 78 of this Convention shall be registered with the United Nations if registration is required under Article 102 of the Charter of the United Nations.

Article 77

This Convention, done in the Chinese, English, French, Russian, and Spanish languages, each being equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Convention shall be transmitted by the Depositary Governments to the Governments of the other signatory States, to the Secretariats of the Basic Organizations, and to the executive organs of their associate members.

In witness whereof the undersigned, duly authorized, have signed this Statute.

Done at_____, this____ day of _____, 1980 .

Section 4

COMMENTS ON THE NEW MODEL

General Comments

A first draft of these Articles was discussed at the Center for the Study of Democratic Institutions in Santa Barbara on December 13, 1975.

The intention of this model is

(1) to re-focus attention on the building of a new international order and to strengthen international institutions on which especially the smaller and weaker nations depend for their national integrity and development;

(2) to cope with all uses of ocean space and their interaction;

(3) to utilize, in its entirety, the work accomplished to date by the U.N. Conference on the Law of the Sea, including

(a) the establishment of an Economic Zone
(b) the establishment of a Seabed Authority with its Enterprise system;

(4) to utilize, and develop, ongoing trends towards the integration of the activities of the Specialized Agencies and other intergovernmental and nongovernmental organizations in ocean space.

The first point indicates a strategy rather than a goal. Goal and strategy, however, coincide. The New International Economic Order is a goal of vital importance to all developing nations. To rally their forces for the attainment of this goal will have a unifying effect, which may be of decisive strategic value at the Conference on the Law of the Sea.

The second point is a precondition for the success of any ocean regime. To deal with ocean uses, which are interdependent and interacting, in a piece-meal fashion is destructive to users, uses, and the ocean environment.

The third point, again, affects both goal and strategy. Continuity is an essential part of that strategy. Any model for ocean-space institutions (goal) proposed today must start from the results reached thus far by UNCLoS. These, obviously, are still subject to change and amendment. Perceptions of vital interests will continue to change as time goes on, and the general trend of world events, and the efforts to restructure the U.N. system as a whole, will not remain without influence on the further work of UNCLoS.

Thus the implications of the documents of the Sixth and Seventh Special Session of the General Assembly for the Law of the Sea must be systematically studied.

Under the fourth point, we have taken this material and brought it into relationship with the Report of the Group of Experts on the Structure of the United Nations System -- especially Annex III, List of Conclusions and Recommendations of the Group of Experts, prepared by the Secretariat. The attempt to restructure the Specialized Agencies and integrate their activities could be decisively advanced with regard to the oceans. Reference should be made, in particular, to sections 3.7 and 3.8 of that U.N. document. It would seem that our model reflects and advances the developments recommended there.

The result of our projection is a new type of international organization. Rather than an international organization in the traditional sense, this might be called a functional confederation of international organizations. The structure of the "integrative machinery" is in fact not based directly on territorial States but on functional intergovernmental organizations the Members of which, in turn, are States. The structure thus links political (national) and functional (economic and scientific: transnational) interests in a new way. Since the functional international organizations on which it is based are fully autonomous and self-managing, the structure allows for a maximum of decentralization of functions and minimizes the need for new international bureaucracy. While safeguarding the sovereign equality of States, the structure balances the weight of different interests such as navigation, fishing, scientific research, and mining -- which are the interests of different groups of States. The "integrative machinery" is small, efficient, and balanced.

Detailed Comments

Chapter I follows, with very minor variations, Chapter XVII, Purposes and Principles of A/AC.138/53, the Maltese Draft Ocean Space Treaty, which is the only Draft before the United Nations that deals with ocean space as a whole and with all uses of ocean space and resources. One might also have included Chapter XV: Basic principles, of that text, but it was felt that this might rather be used to integrate Part I of the present Projection, dealing with the Law of the Sea in general, based on the work

of the Second Committee, whereas the present Part III should concentrate on institutional framework.

Chapters II and III define, in broad lines, the relations between (a) the Basic Organizations and the Integrative Machinery; international ocean management and national ocean management systems; Basic Organizations and other intergovernmental and nongovernmental organizations; (d) all organizations operating in ocean space and the United Nations Environment Programme. Article 7 is likely to require a great deal of development giving rise to new forms of transnational cooperation -- conceivably following the practice, already adopted by some fisheries Conventions, which transcend national boundaries and are equally applicable and enforceable on either side of the boundary, in international as well as in national ocean space.

Chapter IV. The Integrative Machinery is minimal. The Personnel is pracitally all drawn or seconded from existing organizations. This means also that the extra expense involved will be minimal.

Chapter V. The Permanent Conference should embody the suggestions made in Part III, Section 2, point 8: That is, it is an institutionalization of joint sessions of the Assemblies of the four Basic Organizations.

There is an interesting precedent for the merger of the policy-making organs of two separate organizations resulting in the creation of a new entity. The new European Space Agency emerges from the merger of two organizations, the European Space Research Organization (ESRO) and the European Organization for the Development and Construction of Space Vehicle Launchers (ELDO). The Convention for the Establishment of the European Space Agency (Paris May 30, 1975), contains a Resolution, titled Functioning "de facto of the European Space Agency, which recommends

> that the representatives of Member States on the ESRO and ELDO Councils should meet jointly as from the day following the date of signature of the Final Act, thus acting in anticipation of the establishment of the Council of the European Space Agency

and that

> in order to enable the Agency to function de facto as from the aforementioned day, that in the application of the Conventions for the establishment of ESRO and ELDO the provisions of the Convention for the Establishment of a European Space Agency should be taken into account to the greatest possible extent....

In the case of the Conference proposed here, it would not be purposive for the Assemblies of the Basic Organizations to meet in toto. A rather numerous "delegation" of each Assembly would suffice. It is important, on the other hand, that each group should have the same number of Members (membership should be rotated among the delegations composing the Assemblies of the Basic Organizations). This provides a mechanism for the balancing of the various functional interests (mining, fishing, navigation, science). One additional group or "chamber" has been provided for -- the First Chamber -- to represent political interests and to establish a link with the political structure of the United Nations. The selection of Members in this Chamber is based on regions. The regional grouping indicated in Article 12 is merely illustrative. For instance, it could be discussed whether the U.S.A. should be treated as a region and allowed 5 delegates, or whether there should, instead, be a North and Central American region, including Canada and the Caribbean, for instance. The same question could be raised with regard to the U.S.S.R. and the People's Republic of China. On the other hand, it is of course a fact that these States are not really "nations" in the usual sense.

An alternative to the derivation of this First Chamber from the General Assembly would be to use ECOSOC, restructured and strengthened in accordance with the recommendations of the Group of Experts, as First Chamber.

This First Chamber serves as the fulcrum of the whole system. This system looks far more complicated than it really is. Basically, it is a rotating bi-cameral decision-making system, allowing for interdisciplinary decision-making on issues which by their very nature are inter-disciplinary.

The model is an adaptation of the Assembly system of the Yugoslav Constitution of 1963.

Article 18 is very comprehensive. The intention is that the Conference should review and coordinate all the activities of the Basic Organizations. While the Assembly of each Basic Organization will discuss its program from a technical and specialized point of view, the Conference should discuss each program from an interdisiplinary point of view, study the interaction of all programs, and consider them in a political and legal context. Only a body such as this Conference can do just that.

The Conference should also deal with problems arising from activities and technologies presently not covered by any intergovernmental agency.

On the other hand, the Conference has no managerial or operational functions: These functions are decentralized and vested in the Basic Organizations and their Enterprise systems.

Chapter VI. The Planning Council combines executive functions and planning functions. This is meant to cut down on unnecessary machinery. Planning at the central level, such as it is conceived here, does not require a great apparatus. Planning is very much decentralized, and democratized. It is entrusted to the Basic Organizations and, as much as possible, to the "grass roots." This is emphasized especially in Article 28. The function of the Council is to coordinate and integrate plans rather than to engender them.

Article 30 is taken over from the Maltese Draft Ocean Space Treaty.

Articles 31 and 32 are also taken over from the Maltese Articles.

Se are, with very minor variations, Chapters VII, VIII, IX, X, and XI.

It is indeed not the scope of operations that has been changed in this model. The requirements of effective ocean management, the division of tasks between national (economic zone) and international management systems, and the interaction between these two sets of management systems were perfectly foreseen by the Maltese Draft Articles which, in this respect, are as valid today as they were in 1971.

Chapter XII is taken over from A/Conf.62.C.2/L.65: Bolivia and Paraguay: draft articles on the "regional economic zone," 16 August, 1974.

No comment is needed on Chapter XIII, which mostly follows the Maltese articles.

Article 71 proposes Malta as the seat of the Integrative Machinery. Since Malta was the first State to propose a comprehensive approach to ocean affairs, this seems appropriate. The vicinity of the headquarters of IMCO (London), IOC (Paris), and COFI (Rome) would make Malta particularly suitable. Add to this its location, geographically, between Europe, Africa, and Asia; socio-economically, between developed and developing nations; politically, between East and West; add to this its great harbor and dock facilities and the presence of other global and Mediterranean ocean institutions -- and it would

appear that Malta is a "natural" for the headquarters of the Integrative Machinery. One could also anticipate that the presence of this machinery in the middle of the Mediterranean would enhance stability and peace in that turbulent region.

Article 77, finally, envisions 1980 as a possible date for the adoption of such a comprehensive Convention. This would be three years after the adoption of the Treaty establishing the Seabed Authority. If the restructuring of the "Basic Organizations" were to be carried out concurrently, the target date of 1980 would seem to be practical.