CHAPTER SIX

THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

The Third United Nations Conference on the Law of the Sea had its first session in the United Nations headquarters in New York in December 1973, thus stating an effort to work out an overall convention on the law of the sea. The Third United Nations Conference on the Law of the Sea declared at the time of its convocation that the Seabed Committee concluded its work as the preparatory meeting for the Conference on the Law of the Sea.

According to the resolution of the United Nations General Assembly in 1973, the goal of the Conference was to adopt a convention and deal with all matters concerning the law of the sea. The resolution requests the Conference to bear in mind that the problems of ocean space are closely inter-related and need to be considered as a whole.

There had been two conferences on the law of the sea held before the third conference in the history of the United Nations. But the previous two conferences were far behind the third conference on the law of the Sea in sense of the number of participating countries and the subject items dealt with on the law of the sea.

The First United Nations Conference on the Law of the Sea was held in Geneva in 1958. It was convened on the basis of 7 years' work and, draft articlis on regims of high seas, territorial sea, continental shelf and fishery prepared by the Commission on International Law (a United Nations agency established by the General Assembly, composed of legal experts and aimed at promoting development of international law). This conference was attended by 86 countries and adopted four conventions, called four Geneva Conventions.

<<Convention of Territorial sea and Contiguous Zone>> provided that the sovereignty of a coastal state would extend to its territorial sea and that the breadth of its territorial sea would be measured from baselines determined in accordance with this Convention. This Convention also provided that the coast state could extend its jurisdiction over a zone contiguoues to its territorial sea, and such a zone was described as the contiguous zone. This Convention came into force in 1964, and was ratified by 46 countries.

<<Convention of the High Seas>> stipulated the principle of freedom of the high seas. Some other special problems, such as the nationality of ships, piracy, pollution, submarine cables or pipelines and so on were also dealt with in this convention.It became effective in 1962 and was ratified by 54 countries.

<<Covention of the Continental Shelf>> provided that the coastal state would have the exclusive rights to explore mineral

resources and other non-living resources in the continental shelf, but the rights would not affect the legal status of the superjacent watess of the continental shelf. This Conventions became effective in 1964 and was ratified by 53 countries.

<<Convention of Conservation of Fishery and the Living Resources of the High Seas>> included the general duty to take measures to be adopted as may be necessary for the conservation and other special duties. This convention went into effect in 1966 and was ratified by 35 countries.

In addition, the <<Optional Protocol of Signature Concerning the Compulsory settlement of Disputes>> provided that the disputes arising from the explanation of any of the conventions on the law of the sea would be settled by conciliation, arbitration or international tribunal. It entered into force in 1962 and ratified by 34 countries.

The Second Conference on the Law of the Sea was convened in Geneva from 17 March to 27 April 1960. It was originally planned to settle the problems of the breadth of the territorial sea and the scope of fisheries jurisdiction area. However, the conference attended by 82 countries did not reach any substantive agreement on these substantive problems.

The Third Conference on the Law of the Sea has lasted ten years since its first session was held in the United Nations headquarters in New York in December 1973. During this period the Conference convened 11 sessions and 16 meetings. The <<Convention on the law of the Sea>> was adopted at the eleventh session, which was held in New York on 30 April 1982, is an overal convention on the law of the sea covering all aspects of the problems on the law of the sea. It is composed 320 articles and 9 annexes among which 58 articles and 2 annexes were related to the international seabed, constituting the essential part of the Convention.

The Third United Nations Conference on the Law of the Sea was a conference attended by plenipotentiary diplomatic representatives from all sovereign States. Among the participants there were not only representatives of member countries of the United Nations, but also the members from several specialized agencies. of the United Nations, totalling 164. The representatives from African National Movements recognized by the Organization of African Unity, 14 United Nations specialized agencies and other governmental or non-governmental organizations were also invited to the Conference as observers. The participants to each session of the conference exceeded one thousand. It was the international legislative conference longest in duration and largest in scale. This conference was convened in the new world situation of the seventies, in which vast middle and small countries apealed for opposition to maritime hegemonism and safeguard for their maritime rights,and reguested to change the system of the old

convention on the law of the sea and to formulate a new one.This became prevailing trend of the conference.In particular, the regime on freedom of the high seas in the international seabed area was considered as an essential subject in this conference. The conference at last worked out the system of exploration and exploitation of the international seabed and established the International Seabed Authority,reflecting the achievement of the protracted struggle of the vast developing countries. the eleventh session of the conference in 1982 adopted the <<United Nations Convention on the Law of the Sea>> by an overwhelming majority, marking a successful accomplishment of the tasks of the conferece on the Law of the Sea.

The summary of each session of the conference is given as the follows:

I.The First Session

The first session was held at United Nations head quarters in New York from 3 to 14 December 1972. It mainly dealt with matters relating to the organization of the conference , including the election of leading members of the conference, adoption of agenda and rules of procedures and establishment of organs affiliated to the conference and allocation of tasks to these organs.

Prior to the first session, the United Nations General Assembly at its 27th session had adopted the "Gentlemen's Agreement" concerning the working methods of the Third United Nations Conference on the Law of the Sea, which expressed such a view that the conference should make every effort to reach an agreement on substantive matters by way of consensus, that these would be voting on such substantive matters only when all efforts at consensus have been exhausted. This "Gentlemen's Agreement" was approved by the second session of the conference on 26 June 1974 and was recorded in the <<Rules of Procedur of the United Nations Conference on the Law of the Sea>> as an appendix.

The conference elected H.S. Amerasinghe of Sri Lanka as President and the following 31 Vice-Presidents from Algeria, Belgium, Bolivia, Chile, China, Dominica, Egypt, France, Iceland, Indonesia, Iran, Iraq, Kuwait, Liberia, Madagascar, Nepal, Negeria, Norway, Pakistan, Peru, Poland, Singapore, Trinidad and Tobago, Tunisia, Uganda, USSR, United Kingdom of Great Britain, United States of America, Yugoslavia, Zaire and Zambia. Kenneth Rattray of Jamaica was elected Rappoteur-General of the conference.

Three main committees were set up under the conference,

responsible to consider seperately the all substantive matters relating to the Law of the Sea. The First Committee was allocated the task to consider the regime and machinery of exploration and exploitation of the international seabed. Paul Bamelo Engo of Cameroon was elected the chairman, the representatives of Brazil, Democratic republic of German and Japan were Vice-Chairman and H. Charles Mott of Australia was Rapporteur. The Second Committee had the responsibility to consider general matters including the territorial sea, exclusive economic zone, continental shelf and so on. Andres Aguilar of Venezuela was elected its Chairman, the representatives of Czechoslovakia, Kenya and Turkey were Vice-Chairman and Satya Nandan from Fiji was Rapporteur. The Third Committee was responsible to consider the problem on protection of marine environment, marine scientific reserch and technology transfer. Alexander Yankov of Bulgaria was the Chairman, the representative of Colombia, Cyprus and the Ferderal Republic of Germany were Vice-Chairmen and Adbel M.A. Hassan was the Rapporteur.

The Drafting Committee established by the conference was composed of 23 members. J.A. Beesley of Canada was elected the chairman and the other members of the committee were Afghanistan, Argentina, Bangladesh, Ecudor, El Salvador, Ghana, India, Italy, Lesotho, Malaysia, Mauritania, Mauritius, Mexico, Netherlands, Philippines, Romania, Sierra Leone, Spain, Syria, Soviet Union, Tanzania, and United States of America.The conference also established the credential committee which was composed of nine members, Heinrich Gleissner of Austria was the chairman of the committee, the representatives of Chad, China, Costa Rica, Hungary, Ireland, Ivory Cost, Japan and Uruguay were its members.

The first session also discussed the rules of procedure of the conference on the Law of the Sea, but no agreement was reached.

II. The Second Session

The second session was held in Caracas, Capital of Venezuela. The conference from its second session entered the stage of negotiations on the substantive matters.

At this session general debate was held in the open and 115 states made addresses expounding their principled stand on the law of the sea, some of the countries presented proposals on the substantive problems.

The head of the Chinese Delegation pointed out in his statement that the Third United Nations Conference on the Law of the Sea was convened under the circumstances of persistent

struggle and active promotion of the vast countries of the third world. Profound changes had been taken place in the world situation since the two conference on the law of the sea convened by the United Nations. The expanist policy of the superpowers to dominate the world not only met with resolute oppsition of the third world countries, but also encountered increasingly strong dissatisfaction and opposition from many countries of the second world. This conference would involve all aspects of the law of the sea and all these aspects would be focused on the one point, that was whether the old regime on the law of the sea established on the basis of colonialism, imperialism and hegemonism should be thorougly changed and replaced by a new fair and reasonable regime on the law of the sea which would respect the sovereignty of all countries and safeguard their economic rights. He further expressed that the Chinese Government maintained that the new regime on the law of the sea must accord with the interests of the vast developing countries, with the fundamental interests of the peoples of the world and with the advancing direction of the times.

This session adopted the rules of procedur of the conference after repeated consultations. The key problem of the rules of procedure was voting procedure relating to substantive matters.The session agreed that the "Gentleman's Agreement" adopted by the General Assembly in 1973 be recorded in the "Rules of Procedure of the Third United Nations Conference on the Law of the Sea" by way of the statement made by the President. It was provided in the procedure adopted by this session that prior to voting any item on substantive matter there should be a "Cooling-off period" during which the president of the Conference and the Chairmen of the concerned committees should make efforts to reach a general agreement and there should be no voting until all efforts at consensus were exhausted. According to the rules of procedure, a majority of votes should be required for adoption of all matters of substance.Decisions of the Conference should be taken by a two-thirds majority of representatives present and voting,while the decisions of the Committees be taken by a simple majority. the majority of the Conference should be at least over half of the participating countries.

Informal consultations were held at the three Main Committees after the general debates in the plenary meeting.

The First Committee considered the regime and machinery on the exploration and exploitation of the international seabed. The legal regime on the exploration and exploitation focused on the following three major problems : regime on exploration and exploitation (namely who may exploit the resources of the international seabed area?), conditions of exploration and exploitation and economic effects on the seabed mining.

Regarding the problem of who may exploit the resources of the international seabed area, there were four alternative texts

in draft articles (Article 9), which defined the nature and different extent of control to be exercised by the future Seabed Authority over the activities in the seabed area. Two of the four alternative texts originally submitted by some developed countries at the Seabed Committee suggested that the exploitation of the international seabed resources would be undertaken by a state or enterprise authorized and assured by that state,but should abide by the regulations of the future Authority.The Third alternative text (A/CONF.62/C.1/L.3) presented by the Group of Seventy-Seven developing countries at the meeting in Caracas provided that all exploration and exploitation and other related activities, for example scientific research, should be undertaken by the Authority, However, the Authority may transfer some tasks to private groups, only if the Authority could ensure the effective direct control over the activities to be conducted. The fourth alternative text submitted at this session empowered the Authority to make legal arrangements with the national and private groups.while these national and private groups were obligated to observe the convention on the law of the sea and the rules and regulations of the Authority.

The four draft proposals concerning the conditions of exploration and explotiation (A/CONF.62/C.1/L.6-9) were seperately submitted by the United States of America. The Group of Seventy-Seven, eight countries of the European Community and Japan at this session. The United States and the states of the European Economic Community defined in their proposals the supervision power of the Authority, but the control over the activiiies of exploration and exploitation would be mainly exercised by operators or operators and guaranteeing countries. While the Group of Seventy-seven suggested that the Authority should exercise direct and effective control at any time when making arrangements with other operators for activities of exploration and exploitation.

Regarding the economic effects of seabed mining, particularly the possible harmful effects to the land-based producing developing countries, a few delegations expressed different views. The question was what power the Authority should have to prevent or diminish such harmful effects since the seabed production would do harms to the land-based producers. During the discussiomn evaluation of the two United Nations reports submitted by the Secretary-General was made. It was stated in the reports that the seabed production may cause effect on the price of cobalt and manganese,but it would have only small effect on the world market of nickel and copper (A/CONF 62/C.1/L.5).

In regard to the machinery of the Seabed Authority, the First Committee completed the first reading of the alternative text on this subject submitted by the Seabed committee. the contents of the text were : the establishment of the machinery; the nature of the Seabed Authority;the status of the Authority;

the operation of ships and installation of facilities of the Authority; the installations and other equipments to be used for the exploration of the area and exploitation of its resources; privileges and immunities; the relationship of the Authority with other organizations; the fundamental principles of the Authority; powers and functions of the Authority; the principal organs of the Authority, the Secretariat; other various proposed organs, including Rule Commission and other proposed commissions: Planning/price-stability Commission, Scientific and Technical Commisseon, Legal Commission, Commission for Examination of the International Seabed Boundary; Environment Monitoring, protection Commission and others.

III.The Third Session

The third session was held in Geneva from 17 March to 9 May 1975 and attended by representatives from 141 countries. The session proceeded mainly in the form of informal meeting .This session considered many complicated problem. It requested the Chaimen of the three Main Committees to prepare <<Single Negotiating Text>> concerning the matters to be dealt with by all committees. On the last day of the session the Chairmen of the three committees presented three copies of <<Single Negotiating Text>> (A/CONF 62/WP.8) (1) as the basis for negotiations at the next session.

The First Committee considered the international regime and machinery on the seabed area beyoned the limits of national jurisdiction, focusing its discussions on the fundamental conditions of the management of exploration and exploitation of mineral resources of the area.

The work of the First committee wes carried out by the Working Group in the informal meetings. The Working Group was composed of 50 members during the second session and open to all participating representatives.

In the session held in Caracas four proposals concerning the fundamental conditions of exploration and exploitation had been submitted seperately by the United States of America, the eight countries of the European Economic community, Japan and the Group of Seventy-seven. At this session USSR presented the fifth proposal. All these proposals defined the nature of different control exercised by the proposed Seabed Authority over the external entities (State and enterprise) which would be allowed to exploit the seabed area.

their speeches that an organ for settlement of disputes should be set up. The representatives of the developing countries favoured establishment of an organization for management of production of seabed minerals. Different viewpoint on the functions and powers of the Assembly and Council was expressed at the meetings.

During the considerations. Czechoslovakia on behalf of the land-locked states and other geographically disadvantaged states presented two proposals. The first proposal (A/CONF.62/C.1/L.13 and Corr.1)was related to the way of allocation of income obtained by the Authority from seabed exploitation. The second proposal(A/ CONF.62/C.1-L.24) suggested that the geographically disadvantaged States should have at least two-fifths members in the Council and other organs of the Authority with limited membership.

In the final phase of the session the Chairman of the First Committee presented a <<Informal Single Negotiating Text>> which was composed of 75 articles and divided into four parts: Interpretation, Principles, International Seabed Authority and Final provisions. To the Text was attached an annex of basic conditions of general prospecting,exploration and exploitation composed of 21 articles.

IV. The Fourth Session

The fourth session was held at United Nations Headquarters in New York for seven weeks from 15 March to 7 May 1975 and 149 delegations participated in this session. The Committees considered the <<Informal Single Negotiating Text>> article by article presented in the third session, revised three parts of Text and then submitted the <<Revised Informal Single Negotiating Text>> (A/CONF.62/WP.8/rev. 1/Part.I-III)(2). In the meantime, informal negotiations were held at the plenary meeting under the Chairmenship of the President of the conference and a text on the settlement of disputes(A/Conf.62/wp.9), which constituted Part IV of the <<Informal Single Negotiating Text>>,was prepared.

A explanatory note was given to the revised text in the front page, as it was done to the <<Single Negotiating Text>>, as follows:this text would not represent any negotiated text or accepted compromise. It would be informal in character and only provide a basis for negotiation. It would not in any way be regarded as affecting either the status of proposals already made by delegations or the right of delegations to submit amendments or new proposals.

The <<Rivised Single Negotiating Text>> submitted by the Chairman of the First Committee was composed of 63 articles and 3

annexes,including the basic conditions of exploration and exploitation, status of the International Enterprise to be established for conducting seabed mining and the status of the regime for the settlement of seabed disputes.

Part I of the Text defined the general principle of the basic concept that the area beyond the limits of national jurisdiction was the "common heritage of mankind". The text stated that the International Seabed Authority to be established would have the right to exploit the mineral resources of the ocean floor and enter into contracts with external entities, including countries and companies, for mining under the control of the Authority. According to the Text, the promissing seabed areas favourable for mining may be reserved for direct exploitation by the Authority or by the developing states, and at the same time may be given to the contractors who were ready to carry out seabed mining. The Text also stipulated the establishment of a international tribunal for the settlement of seabed disputes, including the dispute between the Authority and the contractors.

During this session the informal plenary neeting considered two substantive subject: a. the procedure of the settlement of dispures, b. the peaceful use of ocean space. The first subject resulted in one copy of the <<Informal Single Negotiating Text>> on the settlement of disputes (Part IV) submitted by the President of the Conference. In regard to the second subject, some representatives held that the provision on the peaceful use of ocean space should be included in the Convention, while others maintained that this subject should be dealt with at the Disarmament Conference.

Part IV of the Text submitted by the president of the Conference laid its focus on a regime of compulsory settlement of disputes, according to which State parties may be free to choose the procedures of compulsory settlement of disputes, including the Tribunal for the law of the sea, the International court of Justice, an arbitral tribunal and a special arbitral tribunal for the settlement of technical disputes arising from fisheries, pollution, scientific research, navigation and so on.

Tne <<Informal Single Negotiating Text>> on the settlement of disputes was composed of 18 articles and 8 annexes. The annexes included conciliation, arbitration, status of the Tribunal for the law of the Sea and the special arbitral procedure for the settlement of disputes relating to fisheries, pollution, scientifie research and navigation.

V. The Fifth Session

The fifth session was held in New York from 2 August to 17 September 1976 and was attended by representatives from 148 states. Most part of the work of the session was carried out in the three Main Committees in the form of informal negotiations. The <<Revised Single Negotiating Text>> prepared by the fourth session was considered during this session. In the meantime, the <<Single Negotiating Text >> on the settlement of disputes of the Convention on the law of the sea presented by the president of the Conference at the fourth session was considered article by article at the informal Plenary Meeting.

During the consideration in the First Committee, majority of states expressed agreement to the establishment of the International Seabed Authority for the purpose of exercising control over the activities in the international seabed. The main question was how a State and private company would enter the deep ocean floor and exploit its resources. The view expressed by the develpoing Stated was that this would be only done by a State and private company in co-operation with the Authority. On the other hand, the developed States held the view that this would be done by way of entering into a contract with the Authority in accordance with a regime which would ensure the access of a State and company to the deep ocean minig.

After two weeks' negotiations it was decided to establish a Working Group open to all delegations in order to discuss the all subjects relating to the seabed regime. The Working Group elected Sat P. Jagota of India and Hans H. M. Sondaal of the Netherlands as Co-Chairmen. After one month's consultations a Negotiating Group was set up which was composed of 26 member, 13 from industrial countries and the other 13 from developing countries. The members were Australia, Brazil, Canada, Czechoslovakia, Ecuador, France, the German Democratic Republic, the Federal Republic of Germany, Ghana, Indonesia, Iran,Iraq, Jamaica, Japan, Mexico, Norway, Poland, Portugal, Senegal, Srilanka,Tunisia, USSR, Britain, Tanzania, USA, Zambia and others. The Negotiating Group was open to all other delegations. At the Working Group meeting three different proposals were submitted seperately by the Group of Seventy-seven, USSR and USA. These proposals were circulated as workshop papers.

Workshop Paper No.1 submitted by the Group of Seventy-seven requested that the International Seabed Authority should exercise full and effective control over the exploitation in the international seabed area. It was the so-called "Unitary system" under which the Authority should be granted the supreme position. According to this paper the exploration and exploitation of the seabed would be conducted exclusively by the International seabed Authority directly through the Enterprise or operating Arm of the Authority or through a form of association between the Enterprise of the Authority and the specified entities (States or companies) pursuant to a contract concluded by them. For the

purpose of securing compliance with the international provisions, the Authority should exercise full and effective control over the activities in the area.The Authority should be obliged to avoid discrimination in the exercise of its power. Special consideration for developing countries should not be deemed to be discrimination. The Authority should be required to adopt procedures, rules and regulations for making an application and for the qualifications of an applicant. Such qualifications would include financial standing, technological capability and satisfactory perfomance under previous contracts with the Authority. All applicants should be treated on an equal footing and would be required to fulfil four specific requirments: the undertaking to comply with and to accept as enforceable all the obligations; acceptance of control by the Authority; satisfactory assurance of fulfilment of obligations in good faith and finally the undertaking to promote the interests of developing countries. The Authority should determine when to conduct activities in the seabed area in association with other entities. Once such a determination was made, the Authority should enter into negotiations with the applicant on the terms of a contract. The applicant should possess the requisite qualifications and comply with the established procedures. He should not violate those parts of the seabed area retained for the Authority. The contractor should follow the resource policy and other decisions made by the Authority. The contractor also should pay costs and provide funds, materials, equipment, skills and know-how to the Authority .

The final report of the Working Group indicated that the proposal of the Group of Seventy-Seven received the support from a few developing countries and developed countries, but it was opposed by USSR and USA. Some developed countries expressed general support to the basic principles of the proposal of the Group of Seventy-Seven, but stated at the same time that the convention on the law of the sea must ensure the access of State parties and other entities to the seabed area to conduct activities.

Workshop paper No.2 presented by the Soviet Union suggested that the activities of exploitation should be conducted by both the States and by the Authority and that all States should be given equal opportunity to mine the resources of the ocean floor. The Authority would determine the part or parts of the area in which the exploitation would be conducted by the Authority itself.The Authority's area would not exceed that area in which the operation would be conducted by States parties. The activities of States parties would be conducted on the basis of contracts with the Authority and they would come under the effective financial and administrative supervision from the Authority. States parties may conduct activities in the area through State enterprises or juridical persons (including

companies) registered in and sponsored by States. States parties sponsoring such entities would be responsible to ensure that such entities would comply with the Convention and rules and regulations adopted by the Authority. All States would have the equal right to participate in the exploration and exploitation in the seabed area, irrespective of their geographical location, social system and level of industrial development, particular consideration would be given to the needs of the developing countries, especially the land-locked or geographically disadvantaged countries.

Workshop paper No.3 submitted by the United states of America suggerted a "parallel exploitation system" under which States parties and companies may carry out activities at the same time with the Authority on the equal basis. The former should conduct activities on the basis of contracts concluded with the Authority. According to this paper States parties and other entities (for example companies)may carry out direct exploration and exploitation in the seabed by entering into contracts with the Authority. The Authority would have effective fiscal and administrative supervision over all activities in the area for the purpose of securing effective compliance with the Convention, and the rules and regulations adopted by the Authority. The Authority should take measures to promote and encourage activities in the area and should avoid discrimination in the granting of access to seabed exploitation and in the exercise of its powers and functions. The Authority would be forbidden to impair any rights under part I of the Convention and must fully safeguard such rights. The interests and needs of the developing countries, particularly the land-locked and geographically disadvantaged states among them should be taken into special consideration. The external entities which would apply to enter into contracts with the Authority should possess the qualifications such as financial standing and technological capability. The Enterpise of the Authority and States parties should be pressumed to possess such qualifications. All contractors would be required to accept supervision by the Authority subject only to these requirements, the Authority should award a contract; but if it received simutaneously more than one application for a contract in the same area, the contract would be awarded on a competitive basis. If no such competing applications were received, a qualified applicant would be granted a contract within 90 days. The Authority would not have the right to refuse to enter into such a contract if the financial arrangements had been satisfied and the contract was in strict compormity with the provisions of the Convention and the rules and regulations of the Authority. The contractors should be obligated to provide the necessary funds, materials, equipment, skills and know-how as necessary for conduct of operations covered by the contract.

The Workshop paper of the United States received support from a few delegations of the developed countries. These delegations expressed that they would accept the principles of direct operation conducted by the Authority, provided that the Convention would assure the states parties and other entities of reasonable and acceptable econonic terms. They also may accept the provisions set in the Convention, which would favour the Enterprise and developing countries.

During the discussions, Norway presented a compromise proposal which ensure that the seabed activities would be conducted exclusively by the International Authority and that the Authority may decide to carry out activities in co-operation with states parties and other entities in accordance with the provisions of the convention. The Authority should be able to exercise control over the activities in the Area for the purpose of ensuring continuous and sustained observance of the rules, regulations and procedures of the Convention and the Authority.

Finally, Nigeria circulated an informal proposal as an intermediate proposition between the "Unitary Scheme" and the "Dual Scheme", under which the Authority may establish "Joint Venture System" with other entities which would be interested in seabed mining.

Prior to the above proposals, the provisions on the basic conditions of prospecting, exploration and exploitation set forth in the <<Revised Single Negotiating Text>>and its annexes submitted by the Chairman of the First Committee at the fourth session suggested a dual scheme under which the mining and other activities in the seabed area should be carried out by the Authority, or by states parties or their nationals in association with the Authority and under its control. The negotiating text stipulated a contract system under which the Authority would grant contractors the exclusive right within the Area, but assurance would be provided to the Authority for its control over operations at all stages. The following procedures for selection of a contract area would be adopted: the external applicant would apply for the area in which he wished to conduct exploration and exploitation, the Authority should allow him to carry out operation in the designated half of the area, and the other half of the area would be reserved for the direct exploitation by the Authority or for the exploitation conducted by developing countries or their nationals in association with the Authority under its control, the Authority should lay down the rules, regulations and procedures for examination of qualifications of the so-called contractors. In the contract the rights and duties of the Authority and the contrator should defined,the sharing of profits between them be dermined, the contractor would be requested to transfer data and train personnel of the Authority and developing countries and the contractor should granted the assurance for the leased area and the exclusive right to explore

and exploit a specified category of minerals in the contract area.

During the discussions in the Working Group and the Negotiating Group the most central question was whether any dual system of exploitation should be allowed to be applied and in particular, how states parties and other entities would be assured of access to the Area. The other two questions were the exploitation by states parties and corporations would take a higher or lower position compared to the direct exploitation conducted by the Autherity thorough its Enterprise and whether the dual system would be of permanent or temporary nature. In regard to the implementation of the Declaration of Principles adopted by the United Nations General Assembly in 1970, namely the priniciples that the seabed and its resources are the common heritage of mankind there were different views.The view held by the developing countries stressed that the system of exploitation should not create in principle a monopolistic situation with respect to seabed mining. While some developed countries expressed the view that there would be an obligation to ensure that the resources of the seabed would be explored and exploited in an efficient manner. On the issue of assured access, one group of countries (industrialized countries) would prefer to set out in an exhaustive manner all basic conditions relating to exploration and exploitations, A qualified applicant would have the right to acquire a contract and the Authority would be obliged to enter into a contract with such an applicant. Another group of countries(developing countries)placed great importance on retaining certain discretionary powers for the Authority particularly regarding qualifications and selection of an applicant, and the conclusion a contract. The former group of the countries supported an automatic assured access to the Area, since there seemed to be general agreement that the Authority would presumably have some degree of discretion in applying the relevant provisions. The question was rather the degree of allowable discretion and the manner in which that discretion could be used. Another aspect of the central question was the principle of ensuring equal rights for all states parties, either to carry out or to participate in seabed mining . There seemed to be disagreement on the need to promote the interests of the developing countries. However, the principle should be worked out, in order to eliminate the possibility of discriminatory treatment.

In the late stage of the session Kissinger, the secretary of State of the United States made a statement outside the conference expressing that the United States would be likely agreed to give financial support to the Enterprise in order to enable the Enterprise to start its mining operations simultaneously or nearly simultaneously with states parties or private groups. In the meantime, the United States would be ready

to accept the provision on technology transfer to the Enterprise, as it was stipulated in the Convention, to equip it with advanced technology mastered by some industries, Kissinger also suggested that the conference for periodic review of the Convention be held probably within a period of 25 years, in order to eliminate the fear that a system may be proved unfit but be implemented permanently.

Two years had been devoted to the negotiations on the foundamental issue of the regime on exploration and exploitation since discussion on this substantive problem was held at the Third United Nations conference on the law of the sea in 1974. From the outset of the negotiations on this issue there were contracting views between the two groups of countries.The developing countries maintained that the International Seabed Authorrity would be the only seabed miner, while the technically advanced countries insisted that the operation would be counducted by private commercial groups. Close to the end of the session the industrialized countries agreed that the Enterprise and other entities could carry out seabed operation on the equal basis and the Group of Seventy-Seven also agreed that other entities may participate in seabed mining in association with the Authority.

At this session the First Committee received a report of the Secretariat entitled <<Preliminary Report on Financial Arrangements of the Enterprise---Operating Arm of the Seabed Authority >> (A/CONF.62/C.1/L17) which proposed that the Enterprise should pay US$ 354--562 million for a period of six years to be used for study ,development and investment for exploitation prior to the recovery of funds by mining enterprises. Therefore, the governments must ensure the lending of money to the Enterprise. The report estimated that three years of deep ocean mining operations would produce totally 3 million tons of ores and the Enterprise would have US $125-175 million revenue per a year after the recovery of the invested money.

In the evaluation of this session a number of delegations raised some questions which had not been discussed yet or would to be discussed at the next session. These questions were: the powers and functions of the Assembly and Council of the Authorety, the composition of the Council, financial arrangements between the Authority and contractors including the sharing of revenue derived from seabed mining, the functions of the Enterprise, settlement of disputes, etc.

The informal sessions of the plenary considered article by article <<The Informal Single Negotiating Text>> (Part IV) submitted by the President of the Conference at the fourth session. The main issue was related to the procedures for compulsory settlement of disputes. According to the text states parties may freely choose among the following three procedures of compulsory settlement of disputes: Tribunal for the Law of the

sea, International Court for Justice and Arbitral Tribunal. The issue covered the following aspects: freedom of states parties to select various tribunal, jurisdiction of a tribunal, interim measures to be taken prior to the final award made by the tribunal, different tribunal to be applied by states for the settlement of disputes, provision on permitting a ship owner or other states to seek prompt release of a detained ships and a provision exempting from compulsory settlement certain kinds of disputes over a coastal state's rights in its economic zone. The last of this session, the President circulated a revised negotiating text on dispute settlement (A/CONF.62/WP.9/Rev.1), which could be the subject of further discussion at the next session.

VI The Sixth Session

The sixth session was held in New York from 23 May to 15 July 1977 for a period of eight weeks. The representatives from 148 States attended the session. The aim of the session was to prepare a composite negotiating text on the Convention on the Law of the Sea which would be a basis for the Conference to have further negotiations.

During this session the three Main Committees held informal meetings respectively to consider the main issues of each Committee. The first three weeks of the session were devoted to consideration of the subject on the international seabed and the last two weeks were spent on additional consideration of the status and limits of exclusive economic zone, marine environment, scientific research and development and transfer of marine technology. In addition,the informal plenary meeting considered the subject of dispute settlement.

The First Committee set up a Negotiating Group with Jens Evensen of Norway as its Chairman. he Negotiating Group considered three subjects concerning the international seabed: regime on exploitation, structure of the International Seabed Authority and procedures of thre settlement of disputes. A report prepared by the Secretariat was circurlated at the session, which was entitled <<Financial revenue and costs of the Seabed Authority>>(A/CONF.62/C.1/L/19).

The informal Plenary Meeting continued consideration of the text on the settlement of disputes and considered again the <<Revised Informal Single Negotiating Text>> article by article. According to the decision of the Meeting, the President of the Conference and the Chairmen of the three Committees were entrusted by the Meeting to synthesize the four parts of the Text

submitted previously into a composite text called <<Informal Composite Negotiating Text>>(3),which was composed of 303 articles, 7 annexes, a preamble and final provisions, covering the entire range of subjects on the Law of the Sea. It was an embryonic form of the Covention on the Law of the Sea.The part relating to the international seabed which had been considered by the First Committee was made up of 53 articles and three annexes, constituting a principal part of the text.

The <<Informal Composite Negotiating Text>> marked a new stage in the formulation of a new convention on the law of the sea. The first draft text was the <<Informal Single Negotiating Text>> submitted in the third session in 1975 and then it was revised as the <<Revised Single Negotiating Text>> in 1976. This <<Informal Composite Negotiating Text >> was the third draft text which reflected the common views agreed upon to a certain extent by the participating countries in regard to the most subjects. The President of the Conference stated in his note that it would not represent any negotiated or accepted text,therefore, it would serve purely as a procedural device and provide a basis for further negotiation. It would not affect either the status of the proposals already made by delegations or the right of delegation to submit amendments or new proposals.

At this session Fiji, as the third country, requested that it would be willing to be the site of the International Seabed Authority (Document A/CONF.62/56).As early as in 1974 Jamaica demanded that the Authority be located in its capital, Kingston and received the support from the Group of Seventy- seven. In 1975 Malta also proposed to be the host country of the Authority. This question was not formally considered at this session.

Besides, Portugal proposed that the Tribunal for the Law of the Sea be set up in Lisbon, the Capital of Portugal (A/CONF.62/55)

VII. The First Part of the Seventh Session

The seventh session was convened twice. The first part of the session was held in Geneva for eight weeks from 28 March to 19 May 1978 and was attended by 142 state delegations.

As a result of five years negotiations, the <<Informal Composite Negotiating Text>> had been formulated during the sixth session. It was unnecessory to consider the text article by article in this session. Therefore, the Conference at its seventh session identified certain outstanding core issues and established negotiating groups for consideration of the core issues. Three of the seven negotiating groups dealt with the

subject of the international seabed. The three groups were:

Negotiating Group 1, chaired by Frank x. Njenga of Kenya, was responsible to deal with the system of exploration and exploitation of the International Seabed Area, as well as resource policy.

Negotiating Group 2. chaired by Tommy T.B. Koh of Singapore, was to deal with the financial arrangements.

Negotiating Group 3, chaired by Paul B Engo of Cameroon, was to deal with the composition, powers and functions of the organs of the International Seabed Authority.

The Conference also decided that all remaining outstanding problems would discussed and solved at the Committees.

The key problms on the system of exploration and exploitation and the resource policy to be considered by Negotiating Group 1 were: the role of the International Seabed Authority in the system of management of exploitation, transfer of technology from seabed mining entities to the Authority, a policy of production control and a conference for the review of the whole system to be held in twenty years.

According to the <<Informal Composite Negotiating Text>> submitted in 1977, activities in the deep ocean floor should be carried out by the Authirity " on behalf of mankind as a whole " under the so-called "parallel system" or "mixed system". Under such a system one half of each development area would be exploited by the Authority through the Enterprise or by developing States and the other half of the area would be mined by external entities--government entity of a state or by private financial group in accordance with the contract concluded with the Authority.

In the discussions Article 151 of the <<Composite Text>> was revised as: activities in the Area should be "organized, carried out and controlled" by the Authority. This gave the Authority a governing role in organization, management and control over activities in the Area and ensured participation of states parties and other entities in activities.

Amendments were also made on the role of the Authority in the equitable sharing of benefits obtained from seabed mining. The provision of the <<Composite Text>> (Article 140) that the Authority should "establish a system" for this purpose was amended as the Authority should"provide for the equitable sharing of benefits derived from the Area through any appropriate mechanism".

The <<Composite Text>> provided various ways of collecting funds for the purpose of securing the practical and effective seabed mining by the Authority and its operating arm- the Enterprise and other entities possessing funds and technology including way of lending funds by all states parties to the convention. In this session the discussion was focused on the question of technololgy transfer for the purpose of assuring the

Authority of acquiring the technology for the conduct of seabed mining. The revised <<Composite Text>> expanded the obligations of the access of contractors to seabed for mining, including making available to the Authority a general description of the equipment and methods to be used by contractors in carrying out activities in contract mine area, undertaking to negotiate an agreement to make available to the Enterprise the technology which would be used by the contractor and which he would be legally entitled to transfer and undertaking the same obligations to transfer the technology to the developing countries which would carry out exploration and exploitation in the reserved part of the area of the Authority. Besides, the text also stipulated that if the negotiations failed within a "reasonable time" to reach an agreement on the technology transfer, conciliation procedures would be referred to, and binding arbitration may be adopted at any time if necessory. There was also provision on penalties.

The changes in production policies of the Authority were made on the basis of the work done by the Working Group of Experts on production policies chaired by A.A Archer(UK). According to B, Article 150 of the new text "the aim of production policies is to promote the growth, efficiency and stability of seabed minerals markerts at prices", remunerative to producers and fair to consumers. The revised text suggested the maximum production norm relating to the growth of world consumption of nickel and limited the seabed production to 60% of the growth rate of consumption, and the rest percentage would be reserved for the land producers.

The question of the Review Conference was one of the most controversial ones considered by Negotiating Group 1. The <<Composite Text>> proposed that the Review Conference should be held twenty years from the approval of the Convention. If an agreement on exploration and exploitation was not concluded five years after the commencement of the review conference, the seabed mining would be confined only to the Authority and the joint venture between the Authority and other entities. Therefore, the system of exploitation would be automatically changed over to" Unitary System", as maintained by the most developing countries, replacing "Parallel System" under which the exploitation would be conducted by the Authority and contractors. Because of opposition of the developed countries, the Chairman of the Negotiating Group proposed the following amendments of Article 153 of the <<Composite Text>> :five years after the commencement of the Review Conference, the Assembly of the Authority may make a decision by a two thirds majority for suspending all new activities of seabed exploration and exploitation, including activities of the Authority and other external entities. Such a suspension would last until an agreement on a new system replacing the system of exploitation for the interim period of

the initial twenty years.

The financial arrangement of the Authority dealt with by Negotiating Group 2 were mainly related to the amount of fee payable to the Authority and the guide to calculation of payment of the fee. The Chairman of Negotiating Group 2 prepared a compromise proposal on this item. According to the proposl the applicant should pay administrative expenses to the Authority for dealing with the application, called application fee, and annual fixed fee for his right to mine. Once the production began the contractor may choose one of the following two systems of payments. The first was payment of production charge at a higher rate, the contrator would pay a sum equal to the market value of a certain percentage of the processed metals produced from the nodules extracted from the seabed mine. The second system of payment was a combination of low rate of the production charge and share of net proceeds of subcontrctor. The latter system of payment may vary with the change of the profitability of the contrator.

In addition, the Chairman of the Negotiating Group also redrafted the terms of the financial arrangement of the Authority and the Enterprise.

The Chairman of the Negotiating Group preseneted certain concrete proposals, but they did not receive extensive support. The negotiations remained to be carried out further.

Negotiating Group 3 considered the items concerning the organs of the International Authority, their composition, powers and functions. The main issue was the composition of the Council and voting system. According to the <<Composite Text>> the Council would consist of 36 members selected from the following five categories of countries:four members from among countries which would have made the greatest contributions to the exploration for , and the explotiation of, the resources of the seabed area, four members from among countries which would be major importers of the categories of minerals to be derived from the seabed mining, six members from among developing countries representing special interests, including those states with large population, states which would be land-locked and geographically disadvantaged, states which would be major importers of the seabed minerals and the least developed countries, eighteen members elected accoding to the principles of ensuring an equitabal geographical distribution.. The land-locked and geographically disadvantaged states would be represented to a degree which was reasonably.proportionate to their representation in the Assembly of the Authority. The text also stipulated that all decisions on questions of substance should be taken by the Authority by a three-fourths majority of the members present and voting.

After negotiations, the negotiating Group made two amendments on the composition of the Council. One was that the

category of the major exporting countries should include at least two developing countries. The second was that not only the land locked and geographically disadvantaged states, but also the costal states particularly the developing coastal states not included in the four categories of countries representing special interests should be represented in the Conucil in a reasonable proportionate to their representation in the Assembly.

The plenary meetings held during this part of the session discussed the Preamble and Final Clauses of the Conventio n and other concerned subjects.

VII The Resumed Seventh Session

The resumed seventh session was held in New York from 21 August to 15 September 1977 and was attended by 131 delegations.

During the resumed session the 7 Negotiating Groups held informal negotiations on 7 difficult core issues in the convention. The foundamental questions were the area of international seabed, control over marine pollution, continental shelf, delimitation of marine boundaries and others. The international seabed as a key question for negotiations was disscused by Negotiating Groups 1, 2 and 3. Negotiating Groups 4 and 5 did not held further consultations and discussions on their items because progress had been already made on these items at the previous sesson.

At the late stage of the session the Representative of Fiji made a statement on behalf of the Group of Seventy-seven expressing the opposition to unilateral legislative action by a state or a group of states with regard to exploitation in the international seabed area. The representative of the United States argued that international law would not deny the rights of states and their nationals to utilize deep sea minerals. Some representatives of states pointed out that unilateral legislation would do harm to the Conference. While some other representatives expressed the views that such actions of seabed exploitation would not be impeded before the Convention on the Law of the Sea came into force. The President of the Conference appealed to all states to "abstain from any measures that might hinder the preparation of and instrument that could be accepted by consensus".

In the resumed session negotiating Group 1 considered the system of exploration and exploitation of the future international seabed area, focusing on the question of the basic conditions of exploration and exploitation, in particular the basic conditions of the mining of the seabed minerals by the

International Seabed Authority through contracts entrusting states and companies. More discussions were held on the qualifications of the applicant for application for contracts of the exploration and exploitation and the selection of the applicant by the Athority. The contents of this item were covered in the annexes of the <<Composite Text>>.

After consultation the Chairman of Negotiating Group 1 submitted a compromise formula as amendments to the concerned part of the <<Composite Text>>. One of the amendments was related to the so-called <<Anti-monopoly>>. It read as follows: "As a guide to the negotiations between the Authority and applicants, in conducting such negotiations, the Authority shall take into account the needs to provided for all states parties, irrespective of their social and economic systems or geographical locations, opportunities to participate in the development of the resources in the Area and the need to prevent monopolization of such activites ". To this amendment, the Soviet Union proposed further provisions that there should be limitation of a total number of contracts which may be granted to one state and companies in the international

Seabed Area and in a certain portion of the Area, and preference should be given to those applicants which may have not yet obtained any contract.

During the consideration of this guestion, India submitted a new proposal for ensuring the direct conduct of seabed mining by the Enterprise. The content of this proposal was: " The Authority shall have the discretion to ensure that the Enterprise engages in seabed mining effectively from the date of entry into force of this Convention " . This proposal was supported by considerable developing countries.

During this session, the European Economic Community requested to resume discussions of the proposal which it had presented in Geneva, and expressed strong reservation for the formula of the Chairman of the Negotiating Group. But many representatives objected to this request. At the end of working Group meeting it was agreed that the consideration of a packege of items would resumed after discussions of all concerned guestions.

The main subjects considered by Negotiating Group 2 were the amount and rate of fee to be paid by seabed operators to the Authority.

At the conclusion of this session the Chairman of the Negotiating Group submitted a <<compromise proposal>> covering the most subjects discussed by the Negotiating Group. The Chairman stated in his explanation that the proposed figure was " the golden mean " to both the Authority and the seabed mining enterprises. It was in compliance with the guides set forth in the proposal text : ensuring optimum revenues for the Authority,

attracting investments to seabed mining and enabling the Enterprise to engage in seabed mining as early as possible.

According to the <<compromise proposal>> in order to process an application for a contract a fee would be fixed at an amount of US$ 500,000 per application. If the cost incurred by the Authority was less than this amount, the difference would refunded to the applicant. A contractor would pay an annual fixed fee of US$ 1 million from the date of entry into force of the contract. from the commencement of commercial production a contractor may choose freely one of the two systems of payments. The first system was by a way of paying a production charge. The contractor should pay annually 7.5% of the maket value of the processed metals for the first six years of commercial production. The fee would rise to 10% from the seventh to twelfth years of the production and maximumly not exceed 14%. If a contractor chose a mixed system of payment, that was to pay a combination of a production charge and a share of net proceeds, the production charge would 2% from the commencement of production to the sixth year and 4% from the seventh year to the twelfth year. It would be raised to 6% from the thirtieth year. As for the share of net proceeds, 40% would be drawn from the total net proceeds of the contractor, 40% would be drawn for the first six years of commercial production, 70% from the seventh year to twelfth year and not more than 8% would be increased from the thirtieth year afterwards.

The Chairman of the Negotiating Group explained that according to the study made by the Massachusetts Institute of Technology (MIT) on economics of investment to seabed mining the

contractor would get 15% of the Internal Rate of Return after he paid national tax and the Authority would have US$ 1.1 billion income every year. The Chairman of the Negotiating Group stated in his report that the internal rata of return, after paying national tax comparable to that to the United states, was the " golden mean " and it was a figure which seemed to be commonly accepted in the world of international financial community.

Negotiating Group 3 had not reached an agreement on the composition and voting system of the Council in the first part of the seventh session and, therefore, decided to shift to the subject on the structure and functions of the subsidiary organs of the Council of the Seabed Authoity at this resumed session.

After the negotiations the Chairman of Negotiating Group 3 suggested to sevise the <<Comporsite Text>>, proposing that the Economic Planning Commission, Technical Commission and Rules and Regulations Commission in the text be grouped into a Economic Planning Commission and a Legal and Technical Commission.

According to the <<Composite Text>> the Economic Planning Commission should review the trends of supply, demand and prices of seabed minerals, determine the adverse ecnomic effects on the developing countries producing the same minerals caused by seabed mining and propose to the Council a system of compensation for developing countries.

In the consultations some countries held that the Economic Planning Commission should submit proposals on economic planning upon the request of the Council, while some other countries favoured that the Economic Planning Commission should be granted extensive power on economic planning, including some other power,

for example the power to control production. The Chairman of the Negotiating Group proposed in his suggestions that the Economic Planning Commission upon the request of the Council should propose measures to implement decisions relating to activities in the seabed area taken in accordance with the Convention.

The task of the Legal and Technical Commission, as proposed by the Chairman of the Negotiating Group, was to review plans of work for mining and other seabed activities, to supervise such activities, where appropriate, upon the request of the Council, to prepare assessments of the environmental implications of activities in the Area, to make recommendations on the protection of the marine envinronment and to formulate and submit to the Council the rules, regulations and procedures of the Council concerning the management of seabed activities.

The new proposal text also stipulated that each Commission should perform its functions in accordance with such guidelines and directives as the Council may adopt.

The Chairman of the Negotiating Group also proposed in this text that each Commission would be composed of 15 members elected by the Council upon nomination by the States parties and that decisions of each Commission should be taken by a two-thirds majority of members.

THE FIRST PART OF THE EIGHT SEESSION

The eigth session was also convened twice. The first part of the session was held in Geneva from 19 March to 27 April 1979 for a period of six weeks and was attended by 1100 representatives from 139 countries.

The session decided after negotiations that the

ammendments made and supported at the previous two sessions be recorded in the << Rivised Informal Composite Negotiating Text >>. [4]

In addition to 7 negotiating groups, the session set up a Twenty-one Nation Working Group unden the First Committee to consider the subject of the international seabed. The Working Group was composed of 10 developing countries, 10 developed countries and China. Besides, a Working Group of Legal Experts was also established for the settlement of seabed disputes. The three Main Committees continued their work and the informal plenary meeting carried on negotiations on the settlement of disputes. The Drafting Committee began to work.

The First Committee and the Twenty-one Nation Working Group concentrated their discussions on the implementation of the system of exploitation of the international seabed. The previous sessions had decided on a "parallel system of exploitation" under which the Enterprise of the Authority and other entities--State goverments and private enterprises would have the right to enter into the deep sea area for mining. This system involved the following two aspects. The first one was how to assure the International Authority and its Enterprise in particular of adequate funds in order to compete with State governments and pricate companies for the mining, and how to ensure that the Authority and its Enterprise would acquire the required technology. The second aspect was how to make States governments and private enterprises obtain contracts for the mining of the seabed.

In regard to financing the Enterprise, it was generally agreed that the funds, about US$ one billion at least, necessary

to exploit the first mine site should be raised for the Enterprise. As proposed by previous sessions, the most part of the necessary funds would be lent by the Enterprise and debts incurred to this end would be guaranteed by all States parties, the other part of the funds would be sought by the Enterprise from the tax paid by miners.

The last session proposed that the States parties would provide cash contributions directly to the Enterprise as the third financial source of the Enterprise. This session discussed the ratio between the cash and guarateed debts provided by States parties to the Enterprise. The Group of Seventy-seven stated that the financial structure consisting of one-third cash and two-third debts proposed by the Chairman of Negotiating Group 2 at the last session would not be acceptable to the Enterprise, as a new institution. They also expressed that the funds to be allocated by Staes parties according to the proportionate scale of the membership fee of the United Nations, as proposed by the last session, was unreasonable and that the States, whose nationals or financial groups would conduct the seabed mining, should make extra contributions to the Enterprise. But the most devloped countries held the view that the cash-debt ratio of 1:3 would be normal in commercial practice in order to assure the Enterprise of the funds required for the first project, and that the Enterprise should exercise effective management in accordance with the normal commercial practice.

In the final stage of this session the Chairman of Negotiating Group 2 made two ammendments to the proposal of the last session. The first was that the cash-debt ratio changed from

1:2 to 1:1 and the second was the cash contributions provided by States parties would be long-term interest-free loans.

Norway proposed an " Establishment Fund " which was eguivalent to 20% of the funds needed by the Enterprisc and would be shared by all States parties.

The other main source of the funds of the Authority was taxes paid by seabed miners. In the last sesssion the Chairman of the Negotiating Group proposed two system of financial payments. The contractor may choose one of the two. The first was the single system of production charge, similar to a royalty. This system would be applicable to the States with central planning economy. The second was the system of payment by way of a mixture of production charge and share of net proceeds. The States with market economy would prefer the second system.

In the early stage of this session the Chairman of Negotiating Group 2 amended the ratio of payment of fee presented in the last session and explained that the Soviet Union accepted the amendment as a compromise proposal. However, the industrial States and developed States opposed it. The Group of Seventy-seven stated that the amended provision could not offer adequate revenue to the Authority. The first proposal, as they presented, suggested that the seabed mining contractor for each mine site should be also reguested to provide a lump sum of US$ sixty million to the Authority. Part of the sum should be paid immediately after the signing of contract and the remaining part of the sum would be paid when commercial production began. The Group of Seventy-seven further suggested that super tax should be levied on the contractor gaining high profits. On the other

hand, the developed countries complained that the figure for tax rate suggested by the Negotiating Group was too high and stated that the system of fixed rate did not vary with the return on investment of the contractor.

In the late stage of the session the Chairman of Negotiating Group 2 made two minor changes to the provision on rate in the text.

In regard to the system of exploration and exploitation nigotiating Group 1 mainly discussed the problems on technology transfer, joint venture, production policy etc.

In the lest session it was generally agreed that the seabed mining contractor had the duty to help the Enterprise acquir the technology. On the basis of the negotiations held in the last session some additions were made to this item. The applicant should inform the Enterprise whether the technology he would use could be available in the open market, while the Enterprisel may request the contractor to supply under the fair terms the technology which would not be purchased in the open market. Besides. The definition was also given to "technology". Some developing countries expressed that the Enterprise should also have the right, in addition to the right to conduct mining, to process and refine the minerals obtained from the seabed mining, and, therefore, suggested that the technology for transfer should include the processing and refining technology in the obligation in this regard. The issue on the aspects of the technology transfer occurring between the contractor and the Enterprise and the problem on the implementation procedures remained unsettled.

In this session the Netherlands submitted a concrete

proposal on the joint venture, which would be a supplement to participation of the Enterprise in seabed mining operation and assure the Enterprise of acquisition of revenue and technology. According to the propsed system the Authority would have the right to choose feely to associate with any joint mining enter- prise of external entities, including the right to partici pate in 20% of capital. If the Enterprise exercise such a choice, the contractor would also have the right to choose to participate in the mining enterprise undertaken by the Enterprise. This proposal received welcome from some States, but was not discussed at length.

In regard to the production policy it was stipulated in the composite text of 1977 that the Authority should exercise control over seabed mining in order to protect the revenues of exports of land-producing. The Working Group of Experts established in the last session in Geneva suggested the maximum production norm relating to the growth of world consumption of nickel.

In this session an Informal Working Group chaired by Nandan (fiji) was established. The group discussed the problem of flexibility of the proposed norm and then suggested that under certain circumstances the Authority would allows the seabed mining contractor to surpass the planned annual production level and temporarily adjust the production level according to the relation and balance between supply and demand of the world. The most difficult problem met with in the negotiations the level of the maximum production norm and the number of the mine sites available to the exploitation.

In addition to the above-mentioned, the problems, such as the protection of monopolization of seabed mining, the rules and

criteria of selection of contract applicant, the objective criteria of the Authority for selection of the applicant when the number of contracts was approved according to the maximum production norm, the preferential rights granted to the Authority and others, remained to be further discussed.

With regard to the organs of the Authority, no progress was made in the voting system of the Council of the Authority. But some changes were made to two categories of members of the Council. The first category would have four seats among 36 members of the Council, and the change suggested that the four member should be selected from among the eight States parties which would have the largest investments in preparation for and in the conduct of activities in the area, either directly or through their nationals. The second category also would have four members and they should be selected from among those States parties which, during the last five years for which statistics would be available, would have either consumed more than 2 per cent of total world consumption or had net imports of more than 2 per cent of total world imports of the commodities produced.

In addition, discussions were also held on some easy articles, including the article on the Enterprise which would carry out the mining of minerals in the seabed area, as well as transportation, processing and marketing of minerals recovered from the seabed area.

In regard to the site of the Authority, Fiji, Jamaica and Malta all proposed in 1978 that the Authority be sited in their countries. In this sesssion the Group of Latin American States

presented a letter to the President of the Confernce, supporting Jamaica. While the Group of Arab States expressed their support to Malta. Asia, Western Europe and some other countries regues-ted that same treatment should be granted to the three candidates in the revised composite text.

In regard to the settlement of disputes, the Group of Legal Experts chaired by Harry Wunsche (German Democratic Republic) was established The Group redrafted the kinds of disputes to be dealt with by Seabed Disputes Chamber of the Tribunal for the Law of the Sea and discussed the problems such as who may enter the Chamber as a party to the dispute, limitation on influence on the decisions of the Authority by the Tribunal. It was generally agreed that only the Assembly and the Council among the organs of the Authority could request the Seabed Chamber to give advisory opinions. Besides, an agreement was reached on prohibition of the disclosing of any industrial secret by the staff of the Authority. Some problems, such as the procedure of selection of the members of the Seabed Dispute Chamber, remained to be further discussed and settled.

THE RESSUMED EIGHTH SESSION

The resumed eighth session was convened from 19 July to 24 August 1979 and 143 delegations were present at this session. The session decided to hold two more sessions in 1980 to conclude the negotiations of the Conference. The session failed to make the second revision of the Composite Text as it planned originally. It made a decision that the results of negotiations be recorded in the memorandums of the reports of the chairmen of the Committees and the Negotiating Groups.

During this session the negotiations were mainly held in the form of informal meetings by the three Main Committees and the Informal Plenary on the settlement of disputes, the 7 Negotiating Groups established in 1978 for the purpose of settling 7 core issues, the Working Group of Twenty-one for consideration of the subject on the seabed and the Group of Legal Experts on the settlement of seabed disputes both established in April of 1979 and the Expert Group on the final provisions newly set up by this session.

The Working Group of Twenty-one held negotiations on the system of exploration and exploitation. The previous sessions had agreed to the parallel system of exploitation under which the seabed exploitation could be conducted by the Authority and by State and private companies by contracts concluded with the Authority, but the Authority would exercise control over all activities of exploration and exloitation. The seabed area would be divided into two parts. One part would be open to all external entities, called contract area or non-reserved area and the other part would be reserved for the exploitation by the Authority or by both the Authority and the developing countries, called reserved area. Every miner (or contract applicant) should submit, after regional prospecting, a block of an area big enough for twomine sites of the same commercial value. The Authority would makea choice of them, one site would be reserved for the Authority and the other site be granted to the applicant for exploitation by contract.

On the basis of the above mentioned this session made some amendments including the following: how the applicant would provide data obtained after prospecting, the Authority may make at any

time a decision on a given mine site of the area reserved for exploration and exploitation, any other seabed miner participa- ting in joint venture with the Authority should pay taxes to the Authority as any other private company would do, the State shouldgive an assurance to the applicant and so on.

According to the proposal of the Group of Seventy-Seven amendment was made to article 140, paragraph 1, adding "or other self-governing status recognized by the United States in accordance with General Assembly resolution 1514 (XV) and other relevant General Assembly resolutions" after "Activities in the Area shallbe carried out for the benefit of mankind as a whole, taking into particular consideration the interests and needs of developing States and of people who have not attained full independence."

Some other subjects, such as the transfer of technology, the review conference, were needed to be settled through further negotiations.

The financial arrangements for the Authority covered two aspects: the first was financing the Enterprise to carry out one mining project and the second was the payment of tax by the seabed miner to the Authority.

The financing for mining project of the Enterprise involved the following four points: first, the Enterprise should be assured of the funds necessary to carry out one fully integrated mining project and prospecting to marketing; second, the funds required for the first project would be raised by way of lending, half of which would be interest-free loans and the other half interest-bearing loans; third, the amount of funds lent by States parties to the Enterprise would be determined according to the

United Nations scale on budget allocation; fourth, the repayment of interest-bearing loans should have the priority over the repayment of interest-free loans.

The Chairman of Negotiating Group 2 submitted a new proposal concerning the payment of fee by the seabed minner to the Authority. The proposal dealt with the mixed system of payment which the Market Economy countries may choose, It covered the following points: 1 lower production charge was suggested. The rate would be 2-4% instead of 2-5% as proposed previously, and the rate would remain at 2% when the annual return (recovery) on the investment was less than 15%. 2. the Authority would make a levy on the total net proceeds obtained by the contractor from mining and processing. The original proposal suggested 35% out of the total net proceeds and was opposed by the developed countries. The new propasal synthesized the previously suggested rates and took the development costs of mining and proccessing as the tax base. This new proposal received support from the developed countries; 3. on the basis of the return on investment of the contractor, the proposal suggested a flexible tax system with three incremental teps. The net proceeds would be increased from 35-40% to 50-70%.

In regard to the organs of the Authority there was still a issue on interrelationship between the Assembly and the Council of the Authority, except the voting system of the Council, On the basis of the previous discussions the Chairman of the Negotiating Group presented the proposal that "The Assembly, as the sole organ of the Authority consisting of the all members, shall be considered the supreme organ of the Authority to which the other

principal organs shall be accountable as specifically provided in the Convention." Regarding the exercise of powers and functions. the proposal suggested: "The principal organs and the Enterprise shall each be responsible for those powers and functions which have been conferred upon them. In exercising such powers and functions each organ shall avoid taking any action which may derogate or impede the exercise of specific powers and functions conferred upon another organ."

The Working Group of Legal Experts held further discussion on the settlement of seabed disputes. The Chainman of the working Group submitted after the discussion a new proposal which included the following points: the election of the members of the Seabed Dispute Chamber of the Law of the Sea Tribunal, the right of the Assembly and the Council to make recommendations of a general nature to the legel systems of the Chamber, the establishment of an ad hoc Chamber of the Seabed Dispute Chamber to deal with special disputes, the precedure of legal proceedings taken by a private financial group against a State and so on. But the problems, such as the rules of commercial arbitration for the settlement of some kinds of disputes and the conditions for using the procedure of commercial arbitration, remained unsolved.

The informal Plenary Conference also held meetings and considered the subdject of settlement of disputes. After long negotiations concentrated on the procedures of compulsory settlement of disputes, the Plenary took the view that the Tribunal for the Law of the sea was the cornestone in this respect, and also suggested the following three kinds of procedures to be open to all States to choose: the International Court of Justice, the

General Arbitration Procedures and the Special Arbitration Procedures for the settlement of special category of dioputes.

In this session the Working Group of Legal Experts chaired by Ivans (Norway) considered the Final Clauses of the Convention and drafted for the first time the list of items including noncontentious and contentious items. The final clauses included signature, ratification, entry into force, reservations, exceptions and so on.

The First Part of the Ninth Session

The first part of the ninth session was convened from 3 March to 4 April 1980 for a period of Five weeks and was attended by 152 state delegations. The session originally planned to revise again the << Composite Text/Revision 1 >> and incorperate it into << Draft Convention >>. But after the first three weeks informal negotiations and the last two day's open debates which 91 delegations took part in, the session only presented a new revised text <<Informal Composite Negotiating Text/Revision 2 >> [5] on which a consensus was reached, and the President of the Conference and the Chairmen of the Main Committees and the Negotiating Groups submitted 12 reports.

The session made progress in the following aspects: the principle of mining system of the International Seabed Area, financial system, definition of the continental shelf, rules of management of foreign ships for marine scientific research in the continental sheslves of coastal States and in the exclusive economic zone of 200 miles. Some progress was also made on the decision-making system of the Council of the Authority, but the text acceptable in general was not worked out. An agreement on the

Preamble of the Convention was reached and progress was also made on the negotiations on the final clauses and on the establishment of a preparatory commission pending to the formal entry into force of the Convention, but no result was obtained in the connexion with delimitation of boundaries of the continental shelf and the exclusive economic zone between States with opposite or adjacent coasts.

Quite a lot of progresses were made in the subject of the international seabed during this session. These progresses were covered in the five reports submitted by the Chairmen of the Negotiating Groups (Document A/CONF.62/c.1/l.27 part 1-v and Corr.1). The subjects dealt with in these reports were:

1. Mining system of the international seabed

The principal changes were made on the two aspects: one was the future review of the system of exploration and exploitation for the interim period, and the other one was the transfer of technology.

In the <<Composite Negotiating Text>> Article 153 regarding the review of Conference stipulated that if the Review Conference failed to reach agreement on the system of exploration and exploitation within five years, the activities of exploration and exploitation in the Area should be carried out by the authority through the Enterprise and through joint ventures between States and private enterprises. This could be understood to a certain extent that the activities of exploitation would be automatically shifted to the "unitary system of exploitation" of the Enterprise of the Authority. This article was revised in the << Composite Negotiating Text/Revision 1 >> as follws: until an agreement on

the system of exploration and exploitation of the resources of the Area enters into force, the Authority may decide, by the majority reguired for questions of substance, that no new contracts or plans of work for activities in the Area shall be approved. This revised article was even opposed by developed States. They said that this provision would permit The Authority to declare a moratorium. In this session the Chairman of the Negotiating Group presented after negotiations a procedure for ratification of entry into force, namely: five years after the commencement of the Review Conference, if agreement has not been reached on the system of exploration and exploitation of the resources of the Area, the Conference may decide during the ensu -ing twelve months, by a two-third majority of the States parties, to adopt and submit to the States parties for ratification, accession or acceptance such amendments to the system as it determines necessary and appropriate. Such amendments should enter into force for all States parties 12 months after the deposit of instruments of ratification, accession or acceptance by three fourth of the States Parties.

Based on the discussions the Chairmen of the Negotiating Group made some amendments to the subject of technology transfer as well as to the provisions concerning " antimonopoly". Amend -ments were also made in regard to the distribution of revenues of the Authority.

The seabed production policy was a principal question on the system of exloration and exploitation. After negotiations both the maximum and the minimum production ceiling were proposed. In addition, a limitation was also proposed to the

producers of metals other than nickel.

2. Financial arrangements for seabed mining

The further details on financing the Enterprise to exploit the first mine site were given aftes consultations. In regard to the financial terms of mining contracts, the level of payment of fee was furthes lowered upon the request of some developed States. Under the unitary system of the production charge, 8% of the market value of the processed metals should be paid in the first period and the percentage would be raised to 13.5% after 10 years of production. For the mixed system of payment, the production charge would be 2% for the first period of production and 4% for the second period. As for the part of the net procceds, they would be 30% for the initial period and be raised to 70% for the late period.

3. The Assembly and the Council of the Authority

The most sensitive problem in this item of subject was the decision-making system of the Council. As was mentioned above, the Council would consist of 36 member States devided into five categories. The first four categories would include 18 members countries representing special interests and the fifth category also would have 18 members to be elected according to the priviciple of an equitable geographical distribution. According to the <<Composite Negotiating Text>> drafted in 1979, decisions on questions of substance would be taken by a three-fourth majority of the members present and voting, However, this provision was opposed by some countries. In the eigth session of the Conference held in 1979 the Chairman of the Negotiating Group presented a rather complicated decision-making system under which a minority

may put a veto on some "specific sensetive issues". Thus there were two different views on the voting of the questions of substance: the first view was that decisions on questions of substance should be taken by a two-thirds majority of the members present and voting at the Council, and the other view requested a two thirds majority to the so-called "specific sensetive issues, provided that "x" number of members did not cast negative votes. The discussions in the last session and the present session were focused on the number of "negative votes" and "specific sensetive issues". Regarding the number of negative votes, some developed countries suggested that five negative votes would make a veto, while developing countres requested ten negative votes to form a veto. However, the USSR and the East European countries rejected the above proposals and presented another proposal which made it proviso that a two-third majority would be applied and all members of any geographical region would not cast negative votes.

4. Settlement of disputes

The Working Group of Legal Experts on the settlement of disputes in international sea-bed area completed negotiations. The core of the system of the settlement of disputes was a special organ, called the Sea-bed Disputes Chamber of the law of the Sea Tribunal. Besides, it was agreed that contractual disputes could also be submitted to commercial arbitration. The following four principles were worked out for the commercial arbitration after negotiations in the present session: (1) contractual disputes could be submmittted to commercial arbitration; (2) subject to the proviso that the contract parties have not agreed otherwise in the contract or at any time thereafter the disputes could be submmit-

ted to commercial arbitration; (3) a commercial arbitral tribunal would not be competent to determine questions of interpreting the Convention; and (4) where such a commercial dispute involves the interpretation of the Part-Sea-bed Area in the Convention, such a question must be referred to the sea-bed disputes chamber for ruling.

In addition, some other questions concerning the international sed-bed area, such as the interrelationship between the organs of the Authority, protection of the marine environment, the site of the Authority, etc were also discussed and considered.

The informal plenary Conference considered the preamble of the Convention. It was agreed that the preamble should include the guiding principles of the Convention. The contents introduced were as follows : the historical significance of the Convention, the developments achieved since the last two conferences on the law of the sea, consideration of the problems of ocean space as a whole since they are closely interrelated, the goals to be achieved through the Convention, the outcome of the achievement of these goals, the development of the

(to be Continued)

principles embodied in the resolution adopted by the United Nations General Assembly in 1970, the codification and progressive development of the law of the sea achieved in the Convention and the matters not regulated by this Convention should continue to be governed by the rules and principles of general international law.

The informal plenary conference considered for the first time the question of preparatory commission and achieved some progress in this connexion. It was agreed that pending the entry into force of the Convention on the Law of the Sea, a preparatory commission should be established for the performance of certain functions and duties.

The Working Group of Legal Experts on the final provisions completed the second reading of various texts. However, there were still much controversies over some problems on the final provisions.

Besides, the informal plenary meeting of the Conference also discussed some articles of General Provisions and some outstanding issues on the settlement of dispules.

XII. THE RESUMED PART OF THE NINTH SESSION

The resume part of the ninth session was held in Geneva from 28 July to 21 August 1980 for a period of five weeks and was attended by 142 State delegations. This part of the ninth session made progress in some outstanding core issues and particularly in the problem of the international seabed. As a result, it submitted a Draft Convention on the Law of the Sea (informal text)(6). It marked the great advance in the negotiations conducted by the Conference, though the President of the Conference stated that this text was of a informal nature as the previous texts were. In the last stage of the session 120 delegations made statements expressing their different position on the problems discussed in the Conference on the Law of the Sea.

The subject on the international seabed was still a principal topic for negotiation in the session. A great break through was made in the question of the decision-making system in the Council of the Authority. After lengthy negotiation the session presented a proposal on the decision-making system with "three levels" which divided the questions of substance to be considered in the Council into three categories: the first category covered 17 items and decisions on this category of questions should be taken by a three-fourth majority of the members present and voting; the second category had 7 items and decisions on this category of questions should be taken by a two-thirds majority, and the third category included 3 items, namely, the rules, regulations and procedures concerning seabed mining,

the special action taken to protect developing land-producing countries from adverse effects on their economies resulting from seabed mining, and the adoption of amendments to the part on the seabe area in the Convention. Decisions of the third category of questions should be taken by consensus. Such a decision-making system is unique in international organizations. It is a compromise among the countries with different interests and position.

In addition, in this session the consultations were conducted on the composition of the Council, production policy, transfer of technology, provision on anti-monopolization, financial arrangements for the Enterprise, financial terms of contracts, review conference and others and certain amendments to these subjects were made.

The consultation of the problems, such as the settlement of disputes was also conducted in this session.

XIII.THE FIRST PART OF THE TENTH SESSION

The first part of the tenth session was convened in New York from 9 March to 24 April 1981 for a period of six weeks and attended by delegations from 155 countries. The session originally planned to solve the following four major outstanding questions: the delimitation of boundaries of the exclusive economic zone and the continental shelve between States with opposite or adjacent coasts, the participation in the Convention, the arrangement for the Preparatory Commission pending the entry into force of the Convention and the preparatory investment protection. However, the United States Delegation reorganized by its new Government decided to request to make an overall review of the Draft Convention presented by the last session. The United States Delegation even requested by the instruction of its Government to retard the process of negotiations and opppósed formalization of the Draft Convention at this session. This standpoint of the American Delegation met with opposition of a number of countries. Nevertheless, it did affect the process of the negotiations in the session . Since the Conference was close to an end, the Drafting Committee continued to speed up its work.

According to the original plan the session would hold discussions mainly on the preparatory commission and preparatory investment protection in connexion with the international seabed area. But the United States delegation requested at the commencement of this session to retard the process of the negotiations, the Group of Seventy- Seven expressed the opinion that they would not conduct the negotiations on the question of preparatory investment protection proposed by the United States before the end the review of the Draft Convention by the United States.

Early in the Last session in 1980, the President of the

Conference submitted a draft resolution on the preparatory commission after the consultations in the informal picnary Conference. According to this resolution the duty of the Preparatory Commission was to make preparations for the International Seabed Authority and the International Tribunal for the Law of the Sea, before the entry into force of the Convention, and the preparatory Commission would be established by a resolution of the Conference.

The First Committee held discussions of the subject on the Preparatory Commission, and 32 delegations made general statements on this subject in the formal meetings held by the First Committee. The working Group of Twenty-one considered the proposals item by item. The issues deall with during the consideration were: the establishment of the Preparatory Commission and the composition, mandate.functions, decision-making system and the financing of the Preparatory Commission. Much contraversy on the composition, functions and decision-making system arose during the consultations and these problems remaind to be further discussed in the next session.

This session also considered the report entitled <<Effects of the production limitation formula under certain specified assumption>> submitted by the Secretary- General (A/CONF.62/L.66). The report in which various calculations were made indicated that the seabed nickel productoin could supply 15-20% of the assumed world nickel consumption in the first year of seabed commercial production, the permitted seabed production could be less than the assumed new market growth rate in the interim period by applying those higher growth rates (3% or over) and the permitted seabed production would exceed the assumed new marked growth rate if a low growth rate (2%) as a guaranteed formula quota was applied in the report. During the discussions Canada proposed that an Experts Group be established in order to provied a more clearer basis for these calculations. The cobalt and manganese producing countries in Africa expressed that the formula applied would exert adverse effect on the economy of the cobalt and mangenese producers.

In this session the First Committee considered another report entitled <<Potential financial implications for States parties to the future convention on the law of the sea>> submitted by the Secretary-General (A/CONF.62/ L. 65). A forecast of magnitude of costs made by the report was as follows: (1) For the International Authority: constraction costs: US$ 48,000,000-108,000,000 and annual operating expenses: US$ 20,000,000-260,000,000,. (2) For the Enterprise: construction costs: US$ 30,000,000-67,000,000 and annual operating expenses: US$ 14,000,000-17,000,000. (3)For the Tribunal for the Law of the Sea: construction costs: US$ 21,000,000-47,000,000, annual operating expenses: 5,000,000-7,000,000. (4) For the Commission on the Limists of the Continental Shelf :annual operating expenses: US$ 2,000,000. (5) For the Preparatory Commission: annual operating expenses: 1,000,000. The report also made a

forecast of the investments on the seabed mining by the Enterprise in the initial period and gave three alternative amounts : US$ 700 million, $ 1000 million and $ 1,400 million. According to the Draft Convention, the amounts to be contributed by States Parties by way of long term and interest-free loans would be, respectivlly, $ 350 million, $ 500 million and $ 700 million. The amount needed for the first year would be totally US$ 30,000,000-60,000,000 and that needed for the third and fourth years would be $ 100-200 million.

Besides, the First Committee also considered the questions on the site of the Authority, non-equitable economic practice, composition of the Council, production policy and so on.

During the consultations conducted by the Second Committee over 10 countries put forward a proposal on innocent passage of warships through the territorial sea which received support from several dozen of countries. Some land-locked countries presented another proposal on the establishment of foundation of common Heritage of Mankind and administration of fisheries crossing the economic zone and the high seas.

The Working Group of Twenty-Two co-chaired by Ireland and Spain considered the question of delimitation of boundary of the continental shelf between the States with opposite and adjacent coasts, but still did not make a break-through in this respect.

The informal plenary Conference considered the final clauses of the Convention, giving special attention to the question of participation in the Convention. The regional and governmental organizations, the nations which have not yet achieved independence, and the national liberation movements were involved in this connexion. The bloc of the Arab States requested that the participation in the Convention should include (cover) the liberation movements recognized by the United Nations and the regional organizations, such as South-West African Peoples Organization(SWAPO), African National Congress of South Africa, Pan-African Congress of Azania (PAC) and Palestinian Liberation Organization (PLO). The European Economic Community (EEC) asked for the participation in the Convention within its power concerning the fisheries and some other items.

XIV. THE RESUMED PART OF THE TENTH SESSION

The resumed part of the tenth session was held in Geneva

between 3 and 8 August 1981 for a period of four weeks and was attended by the representative from 146 countries. The first part of this session had not completed formalization of the Draft Convention and finally concluded negotiations according to original plan for the reason that the United States delegation had requested to review the Draft Convention. Prior to the resumed tenth session the United States delegation expressed that it woule not be possible to complete the review, this session coule only be confined to exchange of views and that the United States would not hold any duty. Many countries expressed their unsatisfaction with this attitude and requested the United States to give concrete proposal for discussion at this session.

Mr. Malone, the chairman of the United States delegation, went on to mention some of the concerns raised in his country about part XI of the draft convention, concerned with exploration and exploitation of the international sea-bed area. He declarde: " Our review of the draft convention has revealed that part XI of the text would, in its present form, be a stumbling-block to treaty ratification".

Among the specific points mentioned by Mr. Malone were the Following:

--It was uncertain that the United States and other technoligically advanced Western countries would be appropriately represented on the Council of the proposed International Sea-Bed Authority. Also, there was concern as to the area with which the voting system (requiring consensus for all major decision) could be used to paralyse the Council.

--There was a risk that the Assembly of the Authority might use "ambiguous treaty provisions" to give it a substantial impact on the Council's executive function or even on the rights of States under the treaty.

--Because access to critical raw materials was so important, it might be desirable to look again at provisions intended to ensure that all States had a right of access without discrimination. The issue had been raised as to whether some provisions, such as those to encourage the transfer of sea-bed exploitation technology to developing countries, were really intended to discriminate against countries like the United States and in favour of others.

--There was a "lingering impression" that the convention would run counter to a policy of encouraging and promoting sea-bed resources development.

--The draft would impose financial and regulatory burdens on mining companies. It might create a situation in which the Enterprise (the Sea-Bed Authority's mining arm), using funds provided in part by the United States Government, eventually would eclipse mining activity by private companies.

The Representative of Pakistan on behalf of the Group of Seventy-Seven refuted in his statement the argument of the United States, pointing out that the existing parallel system of exploitation had incorporated different proposals and views into

one integraty with the proviso that it should give financial support to the Enterprise, transfer technology to the Enterprise and that this system would be reviewed after 25 years.The profits gained by the Enterprise would be handed over to the Authority for allocation for the interests of whole mankind, instead of flowing into the wealth house of multinational corporation. Therefore, the Enterprise in this connexion could not be judged by the same criteria as private company. In regard to the decision-making organ, the Group Seventy-Seven had consistantly taken the view that the Assembly would be the sole legislative organ. However, the Group of Seventy-Seven had already made a concession in order to reach a consensus through consultations. According to the existing concerned provision, the organs of the Authority were actually independent and each organ had its own power, and the power of the Assembly was weakened. In regard to the procedures of voting of the Council the Group of Seventy-Seven consistently maintained that decisions should be taken by a two-third majority and objected to veto and weighted voting, The existing provision in this respect was a product of a compromise. Any State in the world now can not exercise the control over the International Seabed Authority as the United States attempt to do. The exploitation of the resources in the international seabed area should be conducted in the interests of whole mankind and not for the purpose of satisfying the goal of development of resources of one country. Therefore, the Group of Seventy-Seven expressed that the opinion given by the United States delegation could not be taken as the basis for discussion.

In the second world only few countries, such as the Federal Republic of Germany, Italy, Belgium and others gave open support to the United States. While Norway, Australia, Canada and other countries took the view that the parallel system of exploitation, transfer of technology, and limitation of production were an important part of the package agreement and that the possibility of resuming negotiations in a overall way should not be taken into consideration. The United States delegation expressed in private that the United States would make dramatic change in the attitude toward the Draft Convention, if necessary amendments were made to division of work between the Assembly and the Council of the Authority, the decision-making system and the production policy on seabed resources.

The session also carried out negotiations on the establishment of the Preparatory Commission for the International Seabed Authority and the Tribunal for the Law of the Sea, The principal points of this question discussed were as follows: (1) The membership of the Commission. The Group of Seventy-Seven took the view that the Commission should be composed of the States which would sign and participate in the Convention and that the States which would only sign the final act of the Conference on the Law of the Sea should be granted observer status. But the United States, the United Kingdom of Britain, France, the Federal Republic of Germany and Japan took the position that all signatories to the final act should have the right to participate

in the Commission. (2) The rules of procedure of the Commission. The Soviet Union and the Western European bloc stressed that decisions should be taken by a consensus or the rules of procedure for the Authority should applied. The Group of Seventy-Seven maintained that the Commission should have its own rules of procedure, or leave this question to be solved by the Commission itself. (3) The financial source of the Commission. The Group of Seventy-Seven expressed that the funds for the Commission should come from the regular budget of the United Nations, while the Western European countries said that the funds should be loaned by the United Nations. (4) The time of convocation and existence of the Congress of the Commission. It was agreed that the congress would be convened in 60-90 days after 50 signatories or participant States submit credentials and the Commission should exist till the conclusion of the first congress.

Regarding the matter of participation in the Convention there was a main issue on the participation of international organizations. On the basis of negotiations the President submitted a draft text concerning the participation of international organizations in the Convention, according to which any international organization may participate in the Convention provided that the organization would be granted by its signatory to the Convention the authority on the items stipulated in the Convention, including the authority on conclusion of treaty on these items. However, the western countries expressed the view that the national liberation movements should not be allowed to participate on the ground that they did not have the capacity of act as provided in the Convention. The Group of Seventy-seven viewed otherwise and stated that the national liberation movements should be allowed to participate in the Convention because they were taking the shape of States with potential to perform State power and were genuine legal representatives of the people of their own territory.

The session selected by way of informal voting Jamaica as the site for the International Seabed Authority and Hamburg in the Federal Republic of Germany as the venue of the Tribunal for the Law of the Sea.

The Conference decided that there would be formal Draft Convention after amending the present informal Draft Convention and negotiations would continue on the outstanding issues. Pending to the end of the negotiations, States would not for the time being present formal amendments according to the rules of procedure.

The Conference also decided that Drafting Committee would hold intersessional meeting from 18 January to 28 February 1982 for a period of six weeks and the eleventh session, the last session of the Conference on the Law of the Sea would be convened 8 March to 30 April of the same year to complete the formulation of the Convention and the signing of the Cnvention would be held in September in Caracas.

XV. THE ELEVENTH SESSION

The eleventh session was held in New York from 8 March to 30 April. The Conference adopted Convention on the Law of the Sea and thus accomplished the task of the Third United Nations Conference, which had started since 1973, namely , "adoption of a convention dealing with all matters relating to the Law of the Sea".The Convention was adopted not by a consensus, but was carried by votes, 130 to 4, with 17 abstentions. The Convention was passed by an overwhelming majority.

In favour: Afghanistan, Algeria, Angola, Argentina, Australia, Austria, Bahama, Bahrain, Bangladesh, Barbados, Benin, Bhutan, Bolivia, Botswana, Brazil, Burma, Burundi, Canada, Cape Verde, Central African Republic, Chad, Democratic People's republic of Korea, Chile, China, Colombia, Congo, Costa Rica, Cuba, Cyprus, Democratic Kampuchea, Democratic Yemen, Denmark, Djibouti , Dominican Republic, Egypt, El salvador, Ethiopia, Fiji, Finland, France, Gabon, Republic of Korea, Ghana,Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Iceland, India, Indonesia, Iran, Iraq, Ireland Ivory Coast, Jamaica, Japan, Jordan, Kenya , Kuwait, Laos, San Marino, Lebanon, Lesotho, Libiya, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritius, Mexico, Morocco, Mozambique, Nepal, New Zealand, Nigaragua, Niger, Negeria, Norway, Oman, Pakistan, Liechtenstein, Switzerland, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Portugal, Qatar, Romania, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Somalia, Sri Lanka, Sudan, Suriname, Monaco, Swaziland, Sweden, Syria, Togo, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, Cameroon, Tanzania, Upper Volta, Uruguay, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia and Zimbabwe.

Against: Israel, Turkey, United States of America, Venezuela.

Abstaining: Belgirm, Bulgaria, Byelorussia, Czechoslovakia, Democratic Republic of Germany, OFederal Republic of Germany, Hungary, Italy, Luxembourg, mongolia, Netherlands, Poland, Spain, Thailand, Ukraine Soviet Union and United Kingdom.

Nonvoting: Albania and Ecuador.

Absent were: Antigua and Barbuda, Belize, Comoro, Dominica, Equatorial Guinea, Gambia, Vatican, Pakistan, Liberia,

Maldives, Nauru, Solomon Islands, Tonga, Tuvalu, and Vanuatu.

The Third Conference on the Law of the Sea lasted 93 weeks which started its first session in December 1973 and ended with adoption of United Nations Convention on the Law of the Sea consisting of 320 articles and 9 annexes dealing with all aspects of the law of the sea. In addition to the Convention itself, the Conference also adopted the following four resolutions:

Resolution I establishing the Preparatory Commission for the International Seabed Authority and the International Tribunal for the Law of the Sea (document A/CONF.62/L. 94, as amended by document A/CONF.62/L. 132/ Add. 1);

Resolution II governing preparatory investment in pioneer activities relating to polymetallic nodules (document A/ CONF. 62//L.132/Add. and Corr.1,as amended by document A/CONF. 62/L. 144/Add.1);

Resolution III concerning the rights and interests of the people of the territory who have not attained independence or self-governing status;

Resolution IV concerning the rights of the national liberation movements to sign the Final Act of the Conference (document A/CONF.62/L.132/Add.1).

The Conference also adopted a resolution submitted by Peru on behalf of the Group of Seventy-Seven, which recommended that assistance be given to developing countries for the preparation and implementation of programmes of development of their marine science, technology and ocean services (document A/CONF.62/L.127).

The Conference decided that the proposal of the Drafting Committee be adopted between 22 and 24 September 1982 and the Convention be signed by representatives of States governments in Caracas in early December 1982.

According to the concerned provision of the Convention, this Convention shall enter into force 12 months after the date of deposit of the sixtieth instrument of ratification or accession. The Preparatory Commission shall be convened within 60 to 90 days upon signature of the Convention by 50 states.

This session conducted consultations on the issue of exploration and exploitation of deep ocean floor with emphasis on the system for protection of pioneer investment on deep ocean floor. This was requested by the western industrialized countries for the purpose that the consortia, who invested a lot of capital in prospecting and explorating the deep sea bed resources, shall be ensured to obtain the mine sites when the commercial production have been commenced.

The data provided by the Conference show that the eight potential mine sites may be allowed to be explored and evaluated by the eastern and western States and consortiums. But the commercial production shall wait till the Convention enters into force and the States and enterprises placed in the pioneer list shall be granted the authorization to carry out exploitation within the limits of maximum morm of the total seabed production as provided in the Convention. Meanwhile the Enterprise of the International Seabed Authority shall be empowered to exploit two mine sites. The opportunity to become pioneer investors by 1 January 1985 would also be provided to developing countries.

During this session the United States and several western industrialized states requested to make major amendments to the seabed area for the purpose of assuarance to be given to their access t the area for mining. they presented 18 pages informal amendments proposing that the future mining should shift from the Authority to States, decisions on key issue should be taken by greater majority in the Council and further modifications on the system of exploration and exploitation should become effective upon ratification by all states which would be affected by such modifications. The Group of Seventy-Seven strongly objected to these amendments.

After consultations and negotiations the Conference agreed to make modification of the Draft convention in connexion with the seabed system in eight places, for example, the seat of the biggest seabed mineral consumer state, obviously the United States, in the Council of the Authority would guaranteed, a greater majority would be required for adoption of amendments to seabed mining, namely, a three-fourth majoruty would be applied instead of a two-thirds majority, and the development of the resources of the seabed area would be taken as the first goal for the seabed policy.Some western countries and developing countries expressed that with the above amendments and the provision coucerning the assuarance to the pioneer investors the most industrial countries would ratify the Convention.

The Convention adopted by the Conference included the Draft Convention on the Law of the Sea (A/CONF.62/L.78 and Corr. 1-8) submitted by the Presidium of the Conferencein August 1981 and the revised proposals (A/CONF/62 /L.85/Add.1-9 and L.142/Add.1) of the Drafting Committee adopted by the informal plenary Conference, the amended proposal on the Draft Convention (A/CONF. 62/L.93 and Corr.1) and the amended proposal on draft resolution (A/CONF./L.94) submitted on 2 April 1982 by the Presidium of the Conference on the basis of the informal negotiations conducted in the first weeks of the eleventh session; the revised proposal (A/CONF.62/L. 132/Add/and Corr.1)submitted by the Presidium of the Conference on 23 April 1982, which was accepted by the Conference on 30 April; and the revised proposal on participation by Nambia (A/ CONF.62/L. 141/Add/ and Corr.1)adopted on 26 April and accepted on 30 April by Conference.

CHAPTER XII

The Enterprise

In accordance with the stipulations in the United Nations Convention on the Law of the Sea [1], the Enterprise was the organ of the Authority which directly conducted the activities in the international sea-bed area and transporting, processing and marketing of the minerals recovered from the international sea-bed area (Article 170).

As early as 1971, Working Paper on the Regime for the Sea-Bed and Ocean Floor and the Subsoil thereof beyond the Limits of National Jurisdiction [2] by 13 Latin American States suggested for the first time to set up the International Sea-Bed Enterprise (simply called the Enterprise) as the major organ in the Authority, stipulating that the Enterprise was the organ (self sponsored or co-sponsored with legal entities formally supported by States) which had the power in the Authority to conduct all technical, industrial or commercial activities relating to the exploration of international sea-bed and the exploitation of its resources. The Enterprise should possess independent legal person status and the ability to exercise its functions and legal actions necessary for achieving its purpose. It became the common suggestion of the broad developing States later.

The western developed States opposed the suggestion of setting up the Enterprise at first but had to accept it later because it got wide support. Finally it was clearly stipulated in the Convention.

The establishment of the Enterprise and also the Inter-

national Sea-Bed Authority could be considered a new era created for establishing a new international economic order. The Enterprise was so far the first complete international commercial organization of resources development. It would conduct exploitation of the international sea-bed and transportation, processing and concentration of its resources as well as sale of metals refined therefrom as the heritage commonly enjoyed by mankind. The Enterprise, as the business arm of the Authority, was the only one in the history of international cooperation.

In reviewing the establishment of the Enterprise, there were debates of different opinions regarding the international sea-bed exploration and exploitation regime. In accordance with the principle that the international sea-bed and its resources are the common heritage of mankind, developing States considered that the development should be conducted directly by an international organ, therefore suggesting to establish the Enterprise to execute the direct development. However, the developed industrial States insisted initialy on a single licensing regime. In accordance with such regime, any State, natural or legal person, might apply from a responsible international organ, pay adequate licence charge and obtain development licence and enter the sea-bed development, if they requested to enter international sea-bed resources development. However, in accordance with competition principle, international organs might get licences on the basis of first-come-first-get. Thus they opposed to establish an international sea-bed enterprise to practically conduct the development.

The United Nations Convention on the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (3) submitted by the Sea-Bed Committee in 1973 (also called Composite Preparatory Text) considered the Enterprise as one of the major organs in the Authority in Part 2, International Organs.

The Third Session of the Third United Nations Conference on the Law of the Sea in 1975, though the United States and the Soviet Union opposed to set up the Enterprise, still stipulated that the Enterprise, together with the Assembly, the Council, the Tribunal, and the Secretariat, was the major organ of the Authority in Section 24, Informal Single Negotiation Text (4). It stipulated in Section 35 that, the Enterprise was responsible for the preparation and exercise of the activities in the international sea-bed area by the Authority, and stipulated that the Enterprise should possess the international legal person qualification and the ability of possibly necessary legal actions in exercising its functions and realizing its purpose. All these reflected the suggestions from broad developing States.

At the Fourth Session in Spring, 1976, in order to look for a compromise proposal between developing States and developed States, Revised Single Negotiation Text (5) still stipulated that, the Enterprise was the organ of the Authority, but different from the major organs of the Authority like the Assembly, the Council, the Tribunal and the Secretariat, was the organ which directly conducted activities in the international sea-bed area. However, since no agreement had been reached on exploration and exploitation regime, there were

naturally two different suggestions on the establishment of the Enterprise.

Up to the end of the Fifth Session in Summer, 1976, Kissinger, Secretary of State of the United States expressed in his speech "the Law of the Sea: A Text of International Cooperation" (6) made in New York out of the Conference on the Law of the Sea that, the United States might accept a "parallel regime" for international sea-bed development. Under this regime, international sea-bed resources might be parallelly developed by the Enterprise of the Authority on one hand and by state or private enterprises on the other. Under this premise, the U.S. would provide financial and technical assistance to the Enterprise in sea-bed development. After negotiation from the earlier meeting in 1977 to the Sixth Session, it was widely accepted that a parallel development regime for the international sea-bed would be realized during a transitional period. Accordingly, the suggestion of establishing the Enterprise in conducting sea-bed development activities also received broad support. Later discussions then concentrated on other issues of the Enterprise.

As early as the Fifth Session in 1976, Embassador Pinto of Sri Lanka requested the Chairman of the First Committee to negotiate on the statute of the Enterprise. In drafting the statute of the Enterprise, the statute of the "International Finance Corporation" was referred as a model. This draft, after review and revision, was then recorded in "Revised Informal Single Negotiation Text" as the content of Appendix II.

From 1977 (the Sixth Session) to 1979 (the Eighth Session), the negotiation emphasis at the Conference was mainly concentrated on the finance and technology needed by the Enterprise and rarely on the form of the Enterprise as an international organization.

The technology needed by the Enterprise and technical transfer among the basic conditions of prospecting, exploration and exploitation were the contents reviewed by the First Negotiation Group while the finance of the Enterprise was reviewed by the Financial Negotiation Group (Second Negotiation Group),of which Embassador Tommy T. B. Koh of Singapore was the chairman.

At the Nineth Session in 1980, Tommy T.B. Koh negotiated with the Chairman of the First Committee on the statute of the Enterprise. During negotiation, the following important factors were raised regarding the statute of the Enterprise: (1) The commercial direction of the Enterprise should be stipulated in order to conduct basic operations in an effective mode; (2) A basic concept should be established, i.e., the Enterprise should enjoy autonomy in conducting commercial activities; (3) The pioneer nature of the Enterprise should be considered as the first international commercial organization in the world today.

The following major issues were referred in the negotiation regarding the Enterprise at the Convention of the Law of the Sea: (1) nature and position; (2) relation with the Assembly and the Council; (3) composition, power and functions of its major organs; (4) resources development; (5) finance; (6) exploration and exploitation technology; (7)

entering the metal market; (8) privilege and immunity.

I. Nature and Position of the Enterprise

As early as 1971, in accordance with the principle that international sea-bed and its resources were the common heritage of mankind, 13 Latin American States suggested in the proposal of Sea-Bed Committee that, international sea-bed resources should be directly explored and exploited by an International Authority to be established, through its Enterprise and the Enterprise should be the major organ of the Authority. However, as it was the organ through which the Authority directly conduct resources exploration and exploitation activities, it should possess independent legal person position and the ability of legal actions needed for the exercise of its functions. Though opposed by developed States at that time, these suggestions were basically reflected in the early texts of the Sea-Bed Committee and the Conference on the Law of the Sea, because debates were concentrated on a more fundamental issue, i.e., international sea-bed resources exploration and exploitation regime.

As agreements were reached at the Conference on the international sea-bed exploration and exploitation regime, i.e., a "parallel exploitation regime" was established in the transitional period, the nature and position of the International Sea-Bed Authority, as one side of this regime, received attention from various aspects.

The Soviet Union, the United States and western developed States considered that, the Enterprise, to be established according to the parallel development regime, should

be a competitor with other sea-bed mining entities (state-owned enterprises and private enterprises) on the equitable basis and could not enjoy any privileges. Therefore, it could not keep any special relations with the Authority and should not be a major organ of the Authority either. Broad developing States, however, considered that, the Enterprise was the organ through which the Authority was to directly conduct international sea-bed exploration and exploitation and the arm of the Authority to deal commercial business. Therefore, similar to the Assembly and the Council, it was the major organ of the Authority and it should enjoy privileges compared with other contractors and have preference treatment.

After negotiation, it was stipulated in Article 170 of the Convention finally as follows: The Enterprise should be the organ of the Authority which should carry out activities in the Area directly as well as the transporting, processing and marketing of minerals recovered from the Area.

However, two important principles were involved regarding the nature and position of the Enterprise, one was the sound commercial principle, the other was the sovereignty principle. These two were established after the Tenth Session.

As to the sound commercial principle the Enterprise should comply with in developing resources in the international sea-bed area, it was stipulated in Article 1 of Annex IV to the Convention: In developing the resources of the Area pursuant to related regulations in the Convention, the Enterprise should, subject to this Convention, operate in accordance with sound commercial principles. This stipulation could be interpreted that the Enterprise, only subject

to this Convention and in accordance with sound commercial principle, could make decisions on various management, e.g., the Enterprise could decide to expand its mining activities in accordance with the principle of demand increase and profitability of world metals. Such decisions needed only to conform with the production policy of international sea-bed development (Articles 150 and 151 in the Convention) or some other stipulations in the Convention.

As to the sovereignty principle the Enterprise could enjoy in conducting business, it was stipulated in Article 2, Annex IV "Statute of the Enterprise" in the Convention that, the Enterprise should have sovereignty in conducting business in accordance with the general policies of the Assembly and the directives of the Council. It meant that the Enterprise might enjoy sovereignty in business so far as it didn't run counter to the general policies of the Assembly and the directives of the Council.

II. Relation of the Enterprise with the Assembly and the Council of the Authority

As mentioned above, in accordance with the early suggestions by the Group of 77, the Enterprise should be a major organ of the Authority and one part forming the Authority. It was stipulated in the "Informal Single Negotiation Text" in 1975. However, the developed States considered that the Enterprise was one competitor among other sea-bed mineral-producing entities and though under the concept of parallel development regime, the Enterprise should compete with other entities on equitable basis. Therefore, the Enterprise should

not have special relations with the Authority. Owing to the opposition of developed States, since 1976, various texts, including "United Nations Convention on the Law of the Sea" (7) stipulated that the Enterprise was the organ in the Authority which, in compliance with related stipulations of the Convention, would directly conduct activities in the Area as well as transporting, processing and marketing the minerals recovered from the Area and not the major organ of the Authority.

It involved one important issue here, i.e., the relation of the Enterprise with the major organs of the Authority -- the Assembly and the Council. The developing States suggested that, the Enterprise, which was to be set up in accordance with the Convention, should comply with the stipulations of the Convention, exercise the rules and regulations of the Authority, and accept decisions and directives of the Assembly and the Council. But the developed States considered the Enterprise must do free business in the competition with other sea-bed mining entities. The text later accepted the latter suggestion. But one issue followed was which major organ of the Authority -- the Assembly or the Council should exercise the control over the Enterprise. It was obvious that the developing States suggested it should be controlled by the supreme organ of the Authority -- the Assembly while the developed States suggested the Council exercise the control. It was stipulated in Article 2, Annex II referring to the statute of the Enterprise to "Revised Informal Single Negotiation Text" in 1974 that the Enterprise should "accept the policy advice and control of the

Council at any time". But it was stipulated in Article 5 that directors of the Board should be elected by the Assembly while the Director-General should be elected by the Governing Board.

However, the "Informal Composite Negotiation Text" (8) in 1977 made a compromise on two different suggestions between developed States and developing States. In Article 2, Paragraph (a) of Annex III, it stipulated that the Enterprise should accept the directives and control from the Council and "comply with general policies formulated by the Assembly". It stipulated in Article 5, Paragraph (a) that the directors of the Board should be elected by the Assembly while in Article 6, Paragraph (a), it stipulated that the generation of the Director-General shouldn't be elected by the Governing Board but by the Assembly at the recommendation of the Council.

As mentioned above, till the Nineth Session, Tommy T. B. Koh, the Embassador of Singapore, proposed two principles for the Enterprise: sound commercial principle and sovereignty principle for the business. During the review of the Nineth Session, representatives of some developed States pointed out that, the Enterprise should be independent from all political pressures and influences, and considered that the compliance of general policies of the Assembly and acceptance of directives and control from the Council could not ensure their unanimity and it also would affect the efficiency of the Enterprise. However, the developing States opposed the suggestion of the developed States. Therefore, the "Informal Composite Negotiation Text" (Revision II) in April, 1980 kept the stipulations in its Annex IV, the statute of the Enterprise that, "the Enterprise should comply

with the general policies of the Assembly and the directives of the Council", and added that, the Enterprise, in exploiting the resources in the Area, subject to the constraint of various stipulations of the Convention and in accordance with the sound commercial principle and some stipulations in the Convention, the "Enterprise should enjoy sovereignty in doing business". In accordance with these stipulations, the Enterprise should have the sovereignty to a certain extent but still have many constraints. There were no revisions about the election of directors of the Board in the text of 1980 but it was added about the election of the Director-General that it should be elected by the Assembly based on the recommendation of the Council and the nomination of the Governing Board. Such revision reflected the balance of political desires from different benefit States, established necessary contacts between the Board and Director-General, strengthened working relations between Director-General and the Board, avoided possible uncoordination and therefore it was relatively comprehensive stipulation.

Another issue referring to the relation between the Enterprise and the Authority was the distribution of net profit. The issue was which organ should decide the part of net profit of the Enterprise as reserve fund of the Enterprise and the part to be transferred to the Authority. In other words, which organ should have the power to control the flow of the fund of the Enterprise. Obviously it was an important issue which would effect the business scope of the Enterprise and the profit source of the Authority.

In accordance with the "Informal Composite Negotiation

Text" (8), the Council should decide the flow of net income of the Enterprise on the basis of the recommendation by the Governing Board. It was stipulated in Article 9, Paragraph (b) of Annex III that, the Council should decide the part of net income of the Enterprise to be transferred to the Authority yearly on the basis of the recommendation by the Governing Board. However, the "Informal Composite Negotiation Text (Revision I)" (9) submitted at the Eighth Session in 1979, in accordance with the suggestion by developing States to transfer this power to the Assembly, stipulated in Article 9, Paragraph 1 of its Annex III that, on the basis of the recommendation by the Governing Board, the Assembly should decide the part of net income of the Enterprise to be retained for reserve fund of the Enterprise and the remaining to be transferred to the Authority. Such stipulation was recorded later in Article 10 of the Annex IV to the Convention.

One more important issue was whether the Enterprise should pay tax to the Authority as other entities when exploration and exploitation were carried out. In accordance with the stipulations in Article 12 of Annex III to the Convention referring to the basic conditions of prospecting, exploration and exploitation, the Enterprise should comply with rules, regulations and procedures as well as other related decisions of the Authority in Part XI (International Sea-Bed) of the Convention when carrying out exploration and exploitation activities in the Area, and it was also stipulated that any work plan submitted by the Enterprise should be attached with evidence showing its financial and technical ability. However, there were two different opinions when reviewing how

the Enterprise to make payments to the Authority. At the Nineth Session in 1980, the developing States considered the Enterprise should be immune from such payment, the reason of which was: (1) The Enterprise was one part of the Authority and it was not logic that the Authority would collect payments from its own business departments; (2) The financial relation between the Authority and the Enterprise made the Enterprise unnecessary to make such payments like other contractors, because it could ensure the resources of the Enterprise to be transferred to the Authority as long as the Assembly of the Authority made such decision; (3) They considered that, the Enterprise was different from States Parties and private companies on many important financial and business issues. Therefore, the view that equitable entities should be treated equitably did not fit. Hence, the case that contractors should make such payments did not mean that the Enterprise should pay too; (4) They considered that, if ever the Enterprise was immune from such payments to the Authority, it needed not worry the Enterprise would sell ores or metals recovered at lower prices than in the market. Therefore, it was stipulated in Article 12 referring to the statute of the Enterprise, Annex IV that the Enterprise was requested to sell its products at indiscriminate basis and should not offer non-commercial discount. The developed States however considered that, the Enterprise should make same payments as contractors, reason of which was: (1) The Enterprise was a commercial organization, similar to a state-owned company or public enterprise conducting activities in the market and different from a governmental department of a country. In their opinion, commercial state-owned companies and

public enterprises in most countries should make payments; (2) They considered that, the entities from two sides conducting business under a parallel regime should receive equitable treatment, but it would go against this principle if the Enterprise should be immune from such payments; (3) They pointed out that, the liability that the Enterprise should make same payments might strengthen the commercial trend of the Enterprise, making it doing business according to normal financial discipline of a commercial organ; (4) In their opinion, if the Enterprise should make such payments, it would make the Authority have more income and allocate them to the whole mankind. Finally, they considered that, in so doing, it would be helpful to the States Parties to determine whether the Enterprise could support itself and gain success.

Based on the opinions from various sides during negotiation, Embassador Tommy T.B. Koh submitted a compromise proposal in "Reports of the Co-ordinators of the Working Group of 21 to the First Committee: C. Financial Matters" (10), stipulating that, in initial period of less than ten years starting from the commencement of the commercial production, the Enterprise should be considered as baby industry or pioneer industry. In many developing States and some developed States, such industry received immune treatment in a limited period. According to the experts in the U.N. Center of Transitional Companies, an immune period of ten years would be enough for the Enterprise to support itself and make payments to the Authority. This proposal was recorded later in Article 10, Annex IV to the Convention, stipulating

that, "During an initial period required for the Enterprise to become self-supporting, which shall not exceed 10 years from the commencement of commercial production by it, the Assembly shall exempt the Enterprise from the payments referred to in financial terms of contracts (Article 13, Annex III), and shall leave all of the net income of the Enterprise in its reserves." In addition to this constraint, the Enterprise should make payments to the Authority under financial terms of contracts, or their equivalent.

III. Composition, Power and Functions of the Major Organs of the Enterprise

Since 1972, the establishment of the Enterprise was recorded in texts of various stages. The "Informal Single Negotiation Text" in 1975 stipulated in Part III, "Basic Conditions for General Prospecting, Exploration and Development" of its Annex I that the Authority should establish the Enterprise to conduct resources development activities in the Area, including processing, transporting and marketing ores recovered from development. In 1976, Sri Lankan Embassador Pinto drafted a statute of the Enterprise under the request of the Chairman of the First Committee, and it was recorded in the "Revised Informal Single Negotiation Text" (5) as Annex II after review at the Fourth Session, stipulating that the Enterprise should establish the Board of Directors, one Director-General, other officials and several staff to exercise the functions determined by the Enterprise. It was drafted by Pinto after the model of the statute of the International Financial Company.

In accordance with revised text, the Board of Directors of the Enterprise should be composed of 36 members and directors were national representatives in fact. The election of directors of the Board should comply with the same standards as the election of members of the Council of the Authority, i.e., 24 should be elected in accordance with the principle of equitable regional representative and 12 should represent special benefit groups.The Director-General, however, should be selected by the Governing Board. The Director-General was the legal representative, leader of business staff of the Enterprise and deal with routine business of the Enterprise under the advice of the Governing Board. In exercising functions, the Director-General should be totally responsible for the Enterprise other than for any States because such responsibility was international.

After negotiation, the "Informal Composite Negotiation Text" (8) proposed at the Sixth Session (1977) reduced the director number of the Governing Board from 36 to 15. Personal qualification, talent and experience were more stressed at election though it wasn't stipulated that the directors should attend with private status, and it still stipulated, "The election of directors should be on the basis of equitable regional representative principle and consider special benefit."

During initial review at the United Nations Conference on the Law of the Sea, some Arabian representatives insisted that directors of the Governing Board should represent their countries as the members of the Council and it was reflected in the "Revised Single Negotiation Text" in 1976. However,

as mentioned above, the "Composite Negotiation Text" in 1977 didn't make clear stipulations. It was even more ambiguous in Annex III referring to the "Statute of the Enterprise" to the "Informal Composite Negotiation Text (Revision I)" in 1979, which stipulated on one hand, the Governing Board should be composed of 15 qualified directors elected by the Assembly, but stipulated on the other, the election of the Governing Board should be "on the basis of equitable regional representative principle" and "the election and selection of directors should adequately apply the turn principle", which again had the sense of national representatives.

At the Nineth Session in 1980, sponsored by Tommy T.B. Koh (Singapore), Chairman of the Second Negotiation Group, the statute of the Enterprise was reviewed, including the election of the Governing Board. France suggested that, the financial contribution to the Enterprise by States Parties should be considered in representation in the Governing Board, and "members of the Governing Board should be nominated by States Parties which provided or quaranteed 70 per cent of such loans together so long as the Enterprise had not cleared off the whole loan provided or quaranteed by States Parties". This suggestion received opposition from representatives of developing States, reasons of which were: (1) The Governing Board suggested by French representatives is more like a committee formed by loaners and it does not comply with the composition principle of the Governing Board of the Enterprise; (2) This suggestion does not meet the basic concept that the Enterprise belonged to all States Parties regardless of financial contribution; (3) The French suggestion may cause

benefit conflict and may also prevent the Enterprise from growth and existence.

In accordance with the suggestions by representatives of some African States, Tommy T.B. Koh submitted a revised proposal which was recorded later in the "Informal Composite Negotiation Text (Revision II)" (11), stipulating that, the Governing Board should be composed of 15 directors which should be elected based on the recommendation by the Council. At the election of directors, the principle of equitable regional representation should be adequately considered. It was also stipulated that the candidates must have the ability of highest standards and qualified conditions in various related areas so as to ensure the existence and success of the Enterprise. The text also clearly stipulated for the first time that, directors should behave with personal identity. In exercising their functions, directors should not request or receive directions from any governments or other sources. Members of the Authority should avoid any actions affecting any directors in exercising their functions. These basic stipulations were later recorded in Annex IV, statute of the Enterprise in "United Nations Convention on the Law of the Sea" (12).

In addition to the Governing Board, there was also a Director-General in the Enterprise. According to the stipulations in the Convention, the Director-General should be elected based on the recommendation by the Council and the nomination by the Governing Board. The Director-General should be the legal representative and administrative leader of the

was to make the Governing Board have the right to work out and submit to the Council the application for production permits; The second was that, in accordance with the stipulations referring to the principles of general company and administrative legislations, the Governing Board, subject to the approval of the Council, might delegate any discretionary powers to the Director-General and to its various committees.

Regarding the power and functions of the Governing Board, 15 paragraphs were stipulated in Article 6, Annex IV referring to the statute of the Enterprise in the Convention, mainly including: to approve the budget of the Enterprise; to work out the plan and program of activities in the Area by the Enterprise; to submit application of production permit to the Council; to authorize negotiation concerning the acquisition of technology and approve the results of those negotiations; to establish terms and conditions, and to authorize negotiations, concerning joint ventures or other forms of joint arrangements, and to approve the results of such negotiaions. However, 15 listed paragraphs did not include all.

IV. Resources Development by the Enterprise

In accordance with the stipulation of Article 170 of the Convention, the Enterprise should be the organ of the Authority which should carry out activities in the Area directly, as well as the transporting, processing and marketing of minerals recovered from the Area.

As to how the Enterprise enters the international seabed area and carries out resources development, it would involve Article 153, Paragraph 2 (a) in the Convention, basic

conditions of prospecting, exploration and exploitation in Annex III, the Statute of the Enterprise in Annex IV, rules, regulations and procedures of the Authority as well as other related stipulations.

In accordance with Article 170 of the Convention, there was no stipulation for the request of the Enterprise to conduct mineral prospecting in the international sea-bed. However, there was no limitation in the Convention for the Enterprise in mineral prospecting, if only it complied with the requirements of Article 2, Annex III and related administrative procedures for mineral prospecting approved by the Authority.

As to the exploration and exploitation activities, in accordance with the "parallel regime" of exploration and exploitation stipulated by the Convention, the Enterprise as one side and States Parties and private enterprises as the other, both should have the right of exploration and exploitation in the international sea-bed. According to this regime, except for the applicants for area reservation like the Enterprise or any other entities, one country or private entity must provide two sea-bed areas available for mining operations which had enough total area and sufficient estimated commercial value when they submitted application for exploration and development contracts to the Authority. When approve applications and sign contracts with applicants, the Authority should designate one of the two areas specially reserved for the Authority to carry out exploration and exploitation through the Enterprise or cooperative form with developing States. Such area was called as "reserve area"

and the area the applicant got was called as "non-reserved area" or "contract area". Therefore, the Authority would get one mining site for itself when approve one application and sign contract with applicant (Article 8, Annex III).

For each reserve area, the Enterprise should have the opportunity to decide whether it would intend to carry out exploration and exploitation in it. This decision might be taken at any time, unless any State Party which was a developing State or any natural or juridical person sponsored by it and effectively controlled by it or by other developing State or any combination of the said requested to carry out exploration and exploitation in a certain area, the Enterprise should take its decision within a reasonable time (Article 9, Paragraphs 1 and 4 in Annex III).

The Enterprise might decide to exploit such areas in joint ventures with the interested State or entity. In fact it should include both developing States and developed States (Article 9, Paragraph 1 of Annex III).

In conducting exploration and exploitation in reserve areas, the Enterprise could establish joint ventures with States or entities which had the qualification for conducting exploration and exploitation in the Area in accordance with the Convention in some parts which did not have operational conditions. As considering such joint ventures, the Enterprise should offer to States Parties which were developing States and their nationals the opportunities of effective participation (Article 9, Paragraph 2 of Annex III).

Contracts might provide for joint arrangements between the contractor and the Authority through the Enterprise, in the form of joint ventures or production sharing, as well as any other form of joint arrangements. Cooperators or contractors in joint ventures with the Enterprise might receive financial incentives as stipulated in the Convention (Article 11, Annex III).

When the Enterprise decided to carry out exploration and exploitation in a reserved area or in any part of international sea-bed area (including non-reserved area), first of all it should prepare a formal written work plan through its Governing Board accompanied by evidence supporting its financial and technical capabilities (Article 12, Annex III) and approved by the Council after review by the Legal and Technical Commission (Article 153 of the Convention). In conducting activities in the Area, the Enterprise should comply with the International Sea-Bed Part of the Convention, rules, regulations and procedures of the Authority as well as other related stipulations (Article 12, Annex III). However, during the interim period, the Enterprise should not conduct commercial production pursuant to an approved plan of work until it had applied for and had been issued a production authorization by the Authority (Article 151, Paragraph 2).

When the Enterprise decided to carry out practical exploitation (commercial production) in a mining site, it should prepare and submit to the Council applications for production authorization by its Governing Board (Article 6, Annex IV). In application for the production authorization, it should specify the annual quantity of nickel expected to be recovered

under the approved work plan. The application should include a schedule of expenditures to be made after it had received the authorization which were reasonably calculated to allow it to begin commercial production on the date planned (Article 151, Paragraph 2 (b)). The Authority should reserve to the Enterprise for its initial production a quantity of 38,000 metric tonnes of nickel from the available production ceiling based on calculation (as estimated, equal to the production of one sea-bed mining site) and issue production authorization to the Enterprise (Article 151, Paragraph 5). According to the resolution of the Conference on the Law of the Sea, however, before the Authority was formally established and it first issued production authorization to pioneer investors, the Enterprise might have the priority to get the production authorization of two mining sites than other pioneer investors including production ceiling stipulated in Article 151, Paragraph 5 of the Convention (Resolution II, Paragraph 9 (a)).

As to after the establishment of the Authority and approval of the applicant's work plan, in accordance with Article 3, Paragraph (c) in Annex III, the work plan of States Parties for exploration and exploitation in non-reserved areas should be limited by such "anti-monopolization" stipulation while the Enterprise should not have such limitation in exploiting reserved and even non-reserved areas. Whenever fewer reserved areas than non-reserved areas were under exploitation, applications for production authorization with respect to reserved areas should have priority (Article 7, Paragraph 6 of Annex III).

According to the Convention, the Enterprise, in addition to directly conducting activities in the Area, should also carry out the transporting, processing and marketing of minerals recovered from the Area (Article 170, Paragraph 1). However, according to the Convention, activities in the Area meant all activities of exploration for and exploitation of the resources of the Area (Article 1, Paragraph 1 of the Convention), and the Authority seemed have power to administer the activities beyond the stage of minerals recovery (i.e., exploitation) from the Area. Meanwhile, according to the Convention, the "resources", when recovered from the Area, would be referred to as "minerals" (Article 133 of the Convention). Therefore, any activities beyond the stage of "recovery" (or exploitation) should not belong to the activities in the Area.

Though the Convention stipulated the Enterprise should carry out the transporting, processing, and marketing of the minerals recovered from the Area, it did not have any stipulations on the administration of these operations. Therefore, it might assume that the Enterprise might take any actions it considered suitable in these respects if only it did not go against the general policies of the Assembly and the directions of the Council (Article 2 of Annex IV). However, the Convention stipulated for the Enterprise the fund preparatory method of various activities after the recovery of resources (Article 11, Paragraph 3 of Annex IV) and the method of getting processing technical transfer for those States Parties conducting activities in the Area (Article 5, Paragraph 5 of Annex III).

V. Finance of the Enterprise

The funds the Enterprise needs for the activities include two respects: one is the administrative expenses and the other is business expenses needed for activities in the Area,

The Secretary-General submitted a report in September, 1976, "Alternative Means of Financing the Enterprise" (13) which made estimates for various expenses needed for the Enterprise. The first was the administrative expenses, including salary and general expenses as well as conference expenses relating to the management and administration of the Enterprise. It was assumed that, from the beginning, the Enterprise would be composed of one Director-General, 15 professionals and 10 general routine work staff, the professionals would increase to 75 and general routine work staff increase to 50 in the third working year. Based on estimate, the administrative expenses of the first and second years would be 3 million U.S. dollars in total and 6 million U.S. dollars for the third year. The second was business expenses, including exploration, research and development, capital investment as well as business expenses. Results of the estimates showed that, the Enterprise would need 354 -- 562 million U.S. dollars (1976 value) before the start of commercial production and getting revenues in the seventh year and annual business expenses would be about 120 -- 165 million U.S. dollars as soon as the commercial production started.

However, as the Enterprise should not only carry out recovery of resources in the Area but also transportation, processing and marketing of the recovered minerals, a spokesman of the industry pointed out when he made testimony at

the U.S. congressional hearing in May, 1979 that, the first generation of ocean minig system would need 1,000 million U. S. dollars investment (1980 value) [14]. However, some analysers also considered the actual capital investment even probably higher [15]. According to the report by Charles River Associates in 1981 regarding the estimate of investment needed by sea-bed exploitation and metal processing and refinery, Kurt Shusterich [16] assumed that, for a operation project of dry manganese nodule ores with an annual production capability of 3 million tons, the capital investment of manganese, copper, cobalt and nickel extracted from ores might be different owing to different processing and refinery process from 1,260 -- 1,560 million U.S. dollars (1979 value) while the annual business expenses would be 330 -- 430 million U.S. dollars. But it was very hard to give accurate estimate of investment because the sea-bed exploitation hadn't been realized so far.

As early as 1977 at the Sixth Session, India submitted a proposal on the financial conditions of contract [17], stipulating each applicant should pay 60 million U.S. dollars one time to the Authority when sign contract as part of the payment it should make to the Authority. The fund would be for financial expenditure of the Enterprise. After heated debate and negotiation, developed States opposed this suggestion. Later, China, Group of 77 and East European States suggested that those mining States entering the sea-bed should bear the whole or major part of the expenditure the Enterprise needed for its activities. But the developed States still opposed this request. They argued that, as the Enterprise was

the arm of the Authority in business, the financial demand of the Enterprise should be commonly borne by all States Parties. In the last stage of the Fifth Session in 1976, Kissinger, U.S. Secretary of State submitted a "package" proposal on the exploitation regime [18]. Under the premises that one parallel regime for exploration and exploitation was established and the Enterprise and other entities were secured to enter sea-bed activities on equitable basis, the United States would provide technology and fund needed from exploitation to processing and refinery to the Enterprise in developing the first mining site project. During meetings between February and March, 1977, particularly at the Sixth Session held in 1977, at the time one parallel exploitation regime was established, it was also defined to prepare fund for the Enterprise at its earlier stage, particularly for the development of the first mining site, to enable the Enterprise carry out business activities at the same time as other entities.

At the Seventh Session in 1978, sponsored by Tommy T.B. Koh, Chairman of the Second Negotiation Group, negotiation was held on the finance of the Enterprise, emphasizing the fund source needed by the Enterprise in developing the first mining site. At first, he suggested developed States should provide half fund and the other half should be borne by all States, which got the opposition of developed States. Therefore it was necessary to seek other sources for the fund of the Enterprise in developing the first mining site.

A new proposal was submitted during negotiation that the Enterprise might enter capital market, particularly the

international financial organizations, e.g., World Bank, to obtain loans. However, the difficulty was World Bank and other related international financial organizations, constrained by their statutes, could only provide loans to States instead of an international entity, such as the Enterprise or the Authority. Therefore, the only way was that respective States should borrow money for the Authority from international financial organizations.

However, in accordance with international convention, one enterprise could not only rely on loans (i.e., debt) for business but should have stock (i.e., shares). The former could be borrowed from international financial organizations quaranteed by respective States Parties, which was an interest loan while the latter was resources which respective States Parties were requested to pay actually, were repayable and interest-free. As to the ratio of these two parts in the fund of the Enterprise, there were different suggestions.

At the Seventh Session in 1978, Chairman of the Second Negotiation Group pointed out (19) that, the ratio of loan (quaranteed by respective States) to cash (paid by respective States Parties) in the fund of the Enterprise should be 2:1. However, developing States considered the percentage of cash too low which might prevent the Enterprise from carrying out practical business. Therefore, they suggested the ratio should be 1:1 but developed States insisted in 2:1.

At the Eighth Session in 1979, the U.N. Center of Transnational Company made investigation on the loan-stock ratio of 36 mining companies in 10 developed market economic

States, showing both ratios of 1:1 and 2:1 had their basis. Finally the Chairman pointed out that, in view the Enterprise would be a new organization without assets and past records, it was suggested the ratio between interest-free loan and quaranteed loan in the fund of the Enterprise should be 1:1.

What needed further negotiation was the ratio sheet of the contribution in interest-free cash loan and the remaining half fund quaranteed in loan form for the Enterprise by the States Parties. During negotiation, developed States insisted all States Parties should make contribution to the Enterprise without any exception. Developing States, however, suggested that the contribution made by States Parties should reflect their respective offering capability. The sharing ratio sheet which was most widely accepted was that of the United Nations membership dues and it was somewhat adjusted in view of non-member States of U.N. in the States Parties.

The another issue was the repayment of interest-free loan to States Parties. After negotiation, a proposal was submitted that the repayment of interest-free loan (from international financial organization quaranteed by States Parties) should be prior to that of interest-free loan (cash paid by respective States Parties). It was also stipulated that, the Assembly should, in accordance with the suggestion by the Council, advise the Governing Board of the Enterprise to approve a ratio sheet referring to the repayment of interest-free loan to States Parties.

At the Nineth Session in 1980, it was proposed that the Enterprise could not ensure all States become States

Parties and make contribution to the Enterprise because the Enterprise of the Authority could only be established after the Convention would come into force and the enforcement of the Convention needed only 60 approval letters, causing fund shortage of the Enterprise. After review, one stipulation was made that the First Session of the Assembly would review such fund shortage status and formulate measures for such shortage in an agreed-upon form in considering the liability of respective States Parties and any suggestions by the Preparatory Commission.

VI. Technology Needed by the Enterprise

In compliance with Article 13, Paragraph 1 of Annex III to the Convention, one of the work objective of the Authority was to enable the Enterprise to carry out sea-bed mining effectively at the same time with other entities. This was one of the policies broad developing States had insisted for a long time.

As mentioned earlier, as early as the Sixth Session in 1977, developing States accepted a "parallel development regime" of international sea-bed mining in a transitional period as a compromise, one condition of which was to ensure finance and technology needed by the Enterprise to carry out sea-bed mining at the same time with other entities.

In order to enable the Enterprise to obtain technical transfer needed for activities (exploration and exploitation) in the Area from the application of other entities, Annex III to the Convention made specific stipulation in Article 5, mainly including the following: (1) When submitting a work

plan, every applicant should make available to the Authority a general description of the equipments and methods to be used in carrying out activities in the Area and other relevant non-proprietary information about the characteristics of such technology and information as to where such technology was available. They should inform the Authority of revisions in the description and information mentioned above when a substantial technological change or innovation was introduced; (2) He should make available to the Enterprise on fair and reasonable commercial terms and conditions, whenever the Authority so requested, the technology used in carrying out activities in the Area under the contract, which the contractors were legally entitled to transfer. This undertaking might be invoked only if the Enterprise found that it was unable to obtain the same or equally efficient and useful technology on the open market on fair and reasonable commercial terms and conditions; (3) He should obtain a written assurance from the owner of any technology used in carrying out activities in the Area under the contract, which was generally not available on the open market and which was not covered in Subparagraph (2), that the owner would, whenever the Authority so requested, make that technology available to the Enterprise under licence or other appropriate arrangement and on fair and reasonable commercial terms and conditions, to the same extent as made available to the contractors; (4) He should acquire from the owner by means of an enforceable contract, upon the request of the Enterprise and if it was possible to do so without substantial cost to the contractor, the legal right to transfer to the Enterprise any technology

used by the contractor, in carrying out activities in the Area under the contract, which the contractor was otherwise not legally entitled to transfer and which was not generally available in the open market. The above undertakings for technology transfer could be invoked until 10 years after the commencement of commercial production by the Enterprise.

As to the processing and refinery technology needed by the Enterprise, it was stipulated in Article 5, Paragraph 5 in Annex III that: If the Enterprise was unable to obtain on fair and reasonable commercial terms and conditions appropriate technology to enable it to commence in a timely manner the recovery and processing of minerals from the Area, either the Council or the Assembly might convene a group of States Parties composed of those which are engaged in activities in the Area, those which had sponsored entities engaging in activities in the Area and other States Parties having access to such technology. This group should consult together and take effective measures to ensure that such technology was made available to the Enterprise on fair and reasonable commercial terms and conditions. Each such State Party should take all feasible measures to this end within its own legal system.

In the case of joint ventures with the Enterprise, transfer of technology should be in accordance with the terms of the joint venture agreement.

VII. Enter into Metal Market by the Enterprise

In accordance with Article 170 of the Convention, the Enterprise not only should directly carry out exploration and

exploitation activities in the international sea-bed area, but also carry out transporting, processing and marketing of the minerals recovered from the Area.

As the first international commercial organization in the world nowadayss, the Enterprise, according to its statute, should do business in compliance with sound commercial principle, therefore, marketing activities, as one part of the whole operation procedure by the Enterprise would be an important link.

What most developing States concerned about the Enterprise was that, the Enterprise should have competitiveness with other entities in carrying out activities in the Area and to retain such competitiveness was the most basic condition for the existence of the Enterprise too.

To enter the international metal market by the Enterprise would depend on the interaction of the following three factors: (1) the demand of nickel, copper, cobalt and manganese in the future metal market; (2) the supply amount of land-derived metals; (3) the economic competitiveness of sea-bed mining. Therefore, the Enterprise must consider it in doing business.

However, as an organization of the Authority to directly carry out business activities, the Enterprise should comply with the policies of activities in the Area stipulated by the Convention, i.e., to protect the economy or export income of the developing States from the affect of activities in the Area. Therefore, the Enterprise should, according to the Authority, participate in any commodity conference and carry out its obligations under the arrangements or agreements

referred to the commodity conference to promote the growth, efficiency and stability of markets for those commodities produced from the minerals derived from the Area, at prices remunerative to producers and fair to consumers.

It was also stipulated in Annex IV of the Convention that, the Enterprise should sell its products on a non-discriminatory basis. It should not give non-commercial discounts in selling its products. It was made under the requests of some developed States.

VIII. Legal Status, Privileges and Immunities of the Enterprise

It was stipulated in Annex IV, Statute of the Enterprise of the Convention that, the Enterprise should have such legal capacity as was necessary for the exercise of its functions and the fulfilment of its purposes and, in particular, the capacity: (1) to enter contracts, joint arrangements or other arrangements, including agreements with States and international organizations; (2) to acquire, lease, hold and dispose of immovable and movable property; (3) to be a party to legal proceedings. These were all basic legal capacity enjoyed as an international legal person.

The Statute of the Enterprise also stipulated that, the property and assets of the Enterprise, wherever located and by whomsoever held, should be free from discriminatory restrictions, regulations, controls and moratoria of any nature.

States Parties should ensure that the Enterprise enjoyed all rights, privileges and immunities accorded by them

to entities conducting commercial activities in their territories. These rights, privileges and immunities should be accorded to the Enterprise on no less favourable a basis than that on which they were accorded to entities engaged in similar commercial activities. If special privileges were provided by States Parties for developing States or their commercial entities, the Enterprise should enjoy those privileges on a similarly preferential basis.

States Parties might provide special incentives, rights, privileges and immunities to the Enterprise without the obligation to provide such incentives, rights, privileges and immunities to other commercial entities.

One most debatable issue during negotiation was whether the Enterprise should be immune from State taxation, including the tax in host State as well as import and export duties. It involved the problem of the Enterprise as the competitor with other entities in metal production. Developed States insisted that the Enterprise should enjoy the equitable status with other entities in carrying out sea-bed mining, therefore, other entities would be in an unfavourable position in competition with the Enterprise if the Enterprise should be immune from State taxation.

It was stipulated in the Statute of the Enterprise since the "Informal Single Negotiation Text" in 1976 that, the Enterprise, its property, assets and income as well as the business and trade of the Enterprise permitted by the relevant parts of the Convention should be immune from all taxations and duties. The Enterprise should also be immune

from the liability of collection or payment of any taxations or duties. However, developed States requested to delete this stipulation during negotiation at every session.

Until the meeting of the Second Negotiation Group at the Nineth Session in 1980, developed States still opposed this stipulation from another respect, considering that this stipulation violated their national sovereignty because the decision whether to collect taxation from offices or facilities of the Enterprise within their territories was the sovereignty and right of that State. But they didn't oppose the Enterprise to negotiate with host States where its offices and facilities were located for immunity of taxation. Therefore, Chairman of the Negotiation Group submitted a compromise text, stipulating that, the Enterprise should negotiate with host States where its offices and facilities were located for immunity of direct and indirect taxations. Such stipulation was supported by both developed and developing States and recorded in the "Informal Composite Negotiation Text (Revision II)" in 1980 and later in the United Nations Convention on the Law of the Sea, however, such stipulation avoided one real problem, i.e., whether the Enterprise could have the immunity of import and export duties from States Parties, because the Enterprise requested to export its products and import a great deal of equipments and machineries which the Convention didn't give a clear answer and should be further clarified in the future.

CHAPTER XV

The International Sea-Bed Authority and Preparatory Commission

At the continuous meeting of the Eighth Session in summer, 1979, the problem of establishing the Preparatory Commission was raised in review of the final terms regarding the enforcement of the Convention.

At that time, based on the request of the Conference, the Secretariat submitted "Instruments Establishing Preparatory Bodies of International Organizations" (1), illustrating the method of establishing preparatory commissions for some international organizations within the United Nations by some documents. The document listed the cases of seven preparatory commissions established, including: (1) agreement on temporary arrangements for preparatory commissions within the United Nations; (2) agreement reached among various governments attending the International Health Conference; (3) document for establishing the Preparatory Commission of Education, Science and Culture; (4) agreement on temporary measures for refugees and wartime vagrants; (5) regulation for the International Atomic Energy Organization (Annex regarding the Preparatory Commission); (6) resolution for establishing the International Agriculture Development Foundation within the United Nations and the regulations for its Commission; (7) final document of the United Nations Grain and Agriculture Conference (regarding the establishment of the Temporary and Standing Commissions). Stipulations made by the documents of the Secretariat for various organizations regarding the following issues: (1) composition or organization; (2) enforcement; (3) position;

(4) venue of the first session; (5) finance; (6) term of office; (7) rules of procedures; (8) privilege and immunity.

During the review at the Conference, in accordance with the information provided above by the Secretariat, it was generally considered that a preparatory commission was normally required to be established according to international practices when an international treaty was to be instituted which requested to set up an organ to exercise some regulations. In fact, preparatory commissions were established for the United Nations itself and its various special organizations before their establishments. The main purpose of the establishments was to set up such organizations in compliance with the regulations of the treaty as early as the date the treaty for setting up such organizations went into effect. It was considered at the Conference that detailed discussions should be held independently for the establishment of preparatory commissions.

At the earlier meeting of the Nineth Session, the President of the Assembly submitted "Note by the President: Proposed Preparatory Commission" (2) in March, 1980 explaining some major issues regarding the establishment of the Preparatory Commission. Those issues were: (1) aim of the Preparatory Commission; (2) members of the Preparatory Commission; (3) way for establishing the Preparatory Commission; (4) structure of the Preparatory Commission; (5) function of the Preparatory Commission; (6) executive organization; (7) Conference of the Preparatory Commission and its executive organization; (8) duration of the existence of the Preparatory Commission; (9) finance of the Preparatory Commission and service of the Secretariat.

After the primary review in the informal assembly, it was generally considered that the Preparatory Commission ought to be established and the decision be made in the form of resolution at the Conference on the Law of the Sea. The President of the Conference was requested to submit a draft resolution. The President of the Conference submitted a draft resolution on March 14, 1980 mainly based on precedents of interim arrangements by the United Nations itself: "Resolution to be Adopted by the Conference Providing Interim Arrangements for the International Sea Bed Authority and the Law of the Sea Tribunal". Such draft resolution involved the aim, establishment, members, convening, rules of procedures, functions, affiliated organizations, final report, existence duration and finance of the Preparatory Commission as well as the service of the Secretariat, etc.

During the review of the draft resolution, it was generally considered that such draft might be the basis for further negotiation. However, many different opinions existed on respective specific regulations for the establishment of the Preparatory Commission, including the aim, composition, decision-making procedures, etc.

The President of the Assembly submitted "Report of the President on the Work of the Informal Plenary Meeting of the Conference on the Questions of the Preparatory Commission" (4) on April 1, 1980, summarizing the situation of the review of the Preparatory Commission at the earlier meeting of the Nineth Session. There were no further discussion on the issue relating to the Preparatory Commission at the continuous meeting of the Nineth Session. The explanatory memorandum

made by the President of the Assembly in "Draft Convention on the Law of the Sea (Informal Text)" (5) generated at this session pointed out that the Preparatory Commission was still an unsolved problem.

At the earlier meeting of the Tenth Session in Spring, 1981, with the suggestion by the President of the Assembly, the issue regarding the Preparatory Commission was transferred to the First Committee and its Working Group of 21 for review. Problems involved included the mode of decision to establish the Preparatory Commission, aim, composition, voting regime, functions, rule, regulation and procedures as well as finance of the Preparatory Commission, etc.

At the continuous meeting of the Tenth Session in Autumn, 1981, co-ordination on the issue of the Preparatory Commission was still going on in the Working Group of 21 and the First Committee and some results were achieved, detailed information of which was recorded in Report of the Co-ordination of the Working Group of 21 to the First Committee" (6). However, Chairman of the First Committee pointed out in his "Report of the First Committee to the Plenary Meeting" (7) that there were still four main issues which had been solved, including: members, procedures of decision, finance as well as termination of the Preparatory Commission. On top of those, the functions, final report and address of the Preparatory Commission were still remained to be discussed. Before the end of the continuous meeting of the Tenth Session, the President of the Assembly and Chairman of the First Committee jointly submitted a revised proposal regarding the resolution of the Preparatory Commission (8).

At the Eleventh Session in 1982, Draft Resolution submitted at the previous session was further reviewed with emphasis on which kind of States should have the right to participate in the Preparatory Commission as formal members and the procedures of decisions by the Preparatory Commission. On April 2, the Presidium formed by the President of the Assembly, Chairmen of the major committees, Chairman of Drafting Committee and Chief Reporter submitted a Draft Resolution regarding the Preparatory Commission (9). After that, delegations from various States submitted formal revised texts on the Draft Resolution. Finally, the Resolution regarding the Preparatory Commission was adopted together with the "Convention" on April 30, 1982.

The main issues regarding the Preparatory Commission will be described separately as follows.

I. Necessity of the Establishment of the Preparatory Commission

As early as in Summer, 1979 at the continuous meeting of the Eighth Session when the Informal Plenary reviewed the final terms regarding the enforcement of the Convention, the issue regarding the establishment of the Preparatory Commission was raised. During the discussion, it was considered that, when an international convention had been adopted and it was necessary to set up a corresponding organization in accordance with the stipulations of that convention, the establishment of a preparatory commission should be a normal practice between the adoption and the enforcement of the convention. In fact, the United Nations itself and its respective special organizations all established preparatory commissions before their formal establishment. The main purpose of setting up such

preparatory commissions was to establish an international organization right after the Convention went into effect in accordance with the stipulations of the Convention.

At the earlier meeting of the Nineth Session in Spring, 1980, the President of the Assembly submitted "Note by the President: Proposed Preparatory Commission" (2), proposing three types of preparatory commissions. One was to be decided by the Assembly. The second was to be decided by independent documents. The third was to be realized through the stipulations of the Convention itself. It was also pointed out that preparatory commissions must exercise their functions right after the adoption of the Convention and shouldn't exercise their functions after the Convention came into force. After the primary review at the Informal Assembly, it was agreed that preparatory commissions should be established and realized in the form of resolutions by the Conference on the Law of the Sea. At the request of the Conference, a Draft Resolution regarding preparatory commissions was submitted by the President of the Assembly (3) mainly based on interim arrangements of the establishment of the United Nations itself.

Resolution I of Annex I to "Final Act of the Third United Nations Conference on the Law of the Sea" adopted on April 30, 1982. "Establishment of the Preparatory Commission for the International Sea-Bed Authority and International Tribunal on the Law of the Sea" (9) decided to establish a Preparatory Commission in order to take all possible measures for the International Sea-Bed Authority and International Tribunal on the Law of the Sea to effectively conduct business, and make necessary arrangements to start the exercise of their functions

without any delay.

II. Members of the Preparatory Commission

It is the most debatable issue. of entire Law, Sea bed Articles

Early on March 3, 1980, Note by the President: Proposed Preparatory Commission [2] proposed three options of members forming the Preparatory Commission: (1) signature States of the Final Act of the Third United Nations Conference on the Law of the Sea; (2) signature States of "United Nations Convention on the Law of the Sea"; (3) states agreeing to be bound by the United Nations Convention on the Law of the Sea after the ratification". It also pointed out that the Preparatory Commission should be open to States according with the conditions to participate in till the Convention went into effect.

The three options above were widely discussed at the Informal Plenary of the Tenth Session. Some western developed States, like the United Kingdom, Federal Germany, etc, suggested the Preparatory Commission should consist of signers of the Final Act of the Third United Nations Conference on the Law of the Sea and they considered that, in this way, it might ensure the extensiveness of the membership of the Preparatory Commission. Those States, which might delay the signing of the Convention owing to domestic legal procedures, shouldn't be excluded from the forming members of the Preparatory Commission at an early stage. However, most developing States suggested that, in order to participate in the activities of the Preparatory Commission, its members must declare clearly their acceptance of the binding of the Convention. Therefore, members of the Preparatory Commission could only

be the States signing, ratifying or participating in the Convention.

"Resolution to be Adopted by the Conference Providing Interim Arrangements for the International Sea Bed Authority and the Law of the Sea Tribunal" (3) submitted by the President of the Assembly on March 14, 1980 reflected the latter opinion, stipulating that "Preparatory Commission shall consist of every signature State of the Convention and one representative sent by every State which has participated in the Convention or accepted it in other form". It was supported by many States during further review, particularly the developing States. In their opinions, if it was stipulated that members of the Preparatory Commission should consist of those who signed or participated in the Convention or accepted it in other form, it would be helpful to expedite the progress of signing the Convention by a lot of States and thus might enable them to join the activities of the Preparatory Commission in the early period. In accordance with such stipulation, those signing the Final Act were obviously not the members of the Preparatory Commission.

At the later meeting of the Tenth Session in Spring, 1981, debate on the members of the Preparatory Commission happened again. The western developed States insisted all States signing the Final Act of the Conference on the Law of the Sea should be the members of the Preparatory Commission because they considered the Final Act reflected the results of the Conference. However, most States considered only those States who signed the Convention and were proved to accept the binding of the Convention could become the members of

the Preparatory Commission.

At the continuous meeting of the Tenth Session in Autumn, 1981, membership of the Preparatory Commission was one of its major issues. Two different opinions still existed at the meeting. However, the Group of 77 expressed a flexible standpoint, indicating that those States which signed the Final Act but hadn't signed the Convention could participate in the Preparatory Commission. However, they might join the review of the issues regarding the Preparatory Commission as observers but had no right to make decision. Based on such suggestion, the President of the Assembly and Chairman of the First Committee jointly submitted a revised proposal on August 26, 1981 regarding the resolution of the Preparatory Commission (8) stipulating that "Preparatory Commission shall consist of representatives of the States which have signed or participated in the Convention. Representatives of the States which have signed the Final Act may fully participate in the review of the Preparatory Commission as observers but have no right in making decision". However, some western developed States still insisted membership of the Preparatory Commission should be open to all States which signed the Final Act.

At the Eleventh Session on March 29, 1982, joint report by the President of the Assembly and the Chairman of the First Committee pointed out that, though some developed States continued to insist that States having signed the Final Act (non-binding document) had the qualification as member States of the Preparatory Commission, Text in August, 1981 received large-scale support, that is to say, membership

of the Preparatory Commission depended on the signature of the Convention. Therefore, the revised draft resolution regarding the Preparatory Commission submitted by the Presidium on April 2, 1982 still kept the wording of the text in August, 1981.

The Namibian Representative to the United Nations submitted a proposal on April 26, 1982 (10) that members of the Preparatory Commission should include Namibia which had signed or participated in the Convention, i.e., represented by the U.N. Namibian Council. Such request was recorded in the final resolution.

The resolution adopted finally stipulated that the "Preparatory Commission shall consist of representatives of States and Namibia(represented by the U.N. Namibian Council) which have signed or participated in the Convention. Representatives of the signers of the Final Act may fully participated in the review of the Commission as observers but have no right to make decision."

III. Beginning and Termination of the Activities of the Preparatory Commission

There were basically no changes on the beginning and termination of the activities of the Preparatory Commission in the first draft resolution submitted by the President of the Assembly on March 14, 1980 (3) to the resolution finally adopted (9).

The resolution stipulated that, the Preparatory Commission "shall be convened by the Secretary-General of the United Nations at earliest 60 days after but no later than 90 days after the date when 50 States have signed or participated

in the Convention".

Such stipulation indicated the least number of members of the Preparatory Commission when it started its activities. Some representatives pointed out during the discussion that, in order to ensure the Preparatory Commission to start its activities effectively, this least number of States should assure a certain rate of the States which had ratified or participated in the Convention. However, most representatives considered during the discussion that this request seemed not substantive because members of the Preparatory Commission should be the signing States of the Convention indicating they would accept the binding of the Convention.

The Resolution stipulated that, the Preparatory Commission "shall continue to exist before the end of the First Session of the Assembly (the Authority)".

In accordance with the Secretariat, before the formal establishment of the United Nations or international organizations, the normal practice of the Preparatory Commission should finish when one Convention formally went into effect, the international organization had been formally established and held the First Session.

During review, it was considered that the Preparatory Commission should finish its all tasks once the Convention went into effect. But as whether there should be time limit for the Preparatory Commission to finish its functions if the Convention postponed to come into force unregularly, the Preparatory Commission might finish its tasks before the Convention went into effect.

IV. Functions of the Preparatory Commission

The role and functions of the Preparatory Commission were the fundamental problems because they would influence other important matters of the Preparatory Commission, e.g., the existence duration of the Preparatory Commission, the establishment of subordinate organs and procedures of the Preparatory Commission.

The President of the Assembly pointed out in his Note on the Proposed Preparatory Commission on March 3, 1980 (2) that, the functions of the Preparatory Commission might be divided into two main categories: (1) basic functions commonly needed for preparing any new international organization; (2) any other special responsibilities generated from the establishment of the International Sea-Bed Authority with the powers and responsibilities recorded in Part XI (International Sea-Bed) and Annex III (Basic Conditions of Prospecting, Exploration and Exploitation) of the Convention.

Based on the principles above, the first draft resolution regarding the Preparatory Commission submitted by the President of the Assembly on March 14, 1980 (3) stipulated that, except for general functions of the Preparatory Commission, the study and formulation of the rules, regulations and procedures of the Authority stipulated in Annex 3, Article 17 of the Convention, including the administrative procedures, business and finance of prospecting, exploration and exploitation in the Area as well as reimbursement system or other economic support measures to the developing States which had suffered harmful effects from the activities in the Area. In addition, the Preparatory Commission should make arrangements

to establish the Tribunal on the Law of the Sea as well as other arrangements necessary for mediator and arbitrator list stipulated for the institution of the Convention.

At the earlier meeting of the Tenth Session in Spring, 1981, extensive negotiation was held on the preparation of the Authority and the general functions of the Tribunal on the Law of the Sea. However, developing States considered that the Preparatory Commission should prepare the establishment of the Enterprise for it was the main organ for the parallel-development regime in the future deep-sea mining. Some developed States considered that the conditions for the Preparatory Commission to discuss the establishment of the Enterprise was not mature but should take measures to protect the benefit of sea-bed pioneer investors. A lot of substantive functions of the Preparatory Commission was submitted, particularly the role of the Preparatory Commission in the formulation of rules, regulations and procedures for future sea-bed mining system.

At the continuous meeting of the Tenth Session in Autumn, 1981, developed States indicated they might support the suggestion by the Group of 77 to set up a special commission, the task of which was to submit suggestions on effective operation by the Enterprise. But the developed States requested the Preparatory Commission to make arrangements of the other side of the parallel-development system, i.e., the mining activities by private and state enterprises. The other agreement agreed-upon was that the Preparatory Commission should formulate the rules, regulation and procedures relating to future mining system. Western developed States requested that any agreement must include a substantive factor, i.e., the

interim application of the related sea-bed mining rules before the Convention went into effect. However, the Group of 77 indicated they could not accept it. There was another issue during the negotiation, i.e., whether the Preparatory Commission should prepare the agenda for the first session of the Council. The Group of 77 considered that the Preparatory Commission should terminate after the Assembly of the Authority held the first session but the agenda of the Council should be prepared by the Council itself. However, developed States insisted that the Preparatory Commission should terminate only after the Assembly and the Council held sessions and therefore the Preparatory Commission should prepare the agenda of the First Session of the Council.

At the Eleventh Session in 1982, two important stipulations were added to the functions of the Preparatory Commission. One was the Preparatory Commission should exercise the powers and functions conferred by the Resolution on preparatory investment. The other was the Preparatory Commission should bear the economic adjustment necessary to the developed land-locked States for the harmful influence by the activities in the Area, including to conduct research and submit suggestions on the establishment of reimbursement foundation.

After long negotiation, stipulations were formulated in three respects in the Resolution regarding the functions of the Preparatory Commission (9):

1. Normal functions to prepare the International Sea-Bed Authority and establish the International Tribunal on the Law of the Sea which were similar to those of preparatory commissions of general international organs, including:

(1) Formulate the interim procedures of the First Session of the Assembly and the Council, and submit suggestions on respective project on the procedures at appropriate time;

(2) Formulate draft procedure rules of the Assembly and the Council;

(3) Submit suggestions on the budget of the first financial period of the Authority;

(4) Submit suggestions on the relationship between the Authority and the United Nations as well as other international organizations;

(5) Submit suggestions on the Secretariat of the Authority in accordance with related stipulations of the Convention;

(6) Conduct research on the establishment of the headquarters of the Authority if necessary and submit suggestions on that;

(7) Compile a report on respective suggestions on the practical arrangement of the establishment of the International Tribunal on the Law of the Sea to the Conference of States Parties;

2. Functions arisen from Part XI (International Sea-Bed) and Annex III (Basic Conditions for Prospecting, Exploration and Exploitation) in the Convention.

It was stipulated in the resolution that, "the Preparatory Commission shall, if necessary, fomulate draft rules, regulations and procedures, including draft regulations regarding financial administration and internal administration of the Authority, enabling the Authority to start the implementation of functions".

Rules, regulations and procedures of the Authority were involved widely in contents from internal administration and financial administration of the Authority itself to various rules of resources exploitation in the Area.

In accordance with working document prepared by the Secretariat of the Preparatory Commission (11), they included procedures of the Assembly, the Council, the Law and Technical Commission as well as Economic Planning Commission, rules of staff in the Authority, administrative and technical rules for exploration, exploitation and utilization in the Area.

Another stipulation regarding the functions of the Preparatory Commission in the resolution was that, "to conduct research on the problems of the developing land-locked producing States may have serious influence from the mineral production in the Area respecting to mitigate their difficulties as much as possible, help them to make necessary economic adjustment including establishing reimbursement foundation, and submit suggestions on that to the Authority".

As to make the Enterprise to conduct business at an earliest date, a proposal was submitted by the developing States as a function of the Preparatory Commission at the earlier review of its draft resolution. Particularly, at the Eleventh Session, developing States strongly requested "to ensure the Enterprise have the ability to conduct activities in the Area so that it may progress in parallel with every State or other entities" when they formulated a resolution "on Preparatory Investment in Polymetallic Nodule Exploitation Activities". Therefore, in such decision, every registered "pioneer investor" should promise to conduct reimbursable

exploration in "reserved area", provide training to personell designated by the Preparatory Commission and ensure to exercise the liability of technical transfer in the Convention. At the same time, it was stipulated that, every sponsoring State of "pioneer investor" should ensure to provide necessary fund to the Enterprise in time according to the Convention when the Convention went into effect, and submit regular report to the Preparatory Commission on activities conducted by its State as well as every entity or natural or legal person. Therefore, the resolution added one stipulation in the functions of the Preparatory Commission, i.e., "take every possible measure to enable the Enterprise to conduct business effectively at an early date".

3. Special functions dealing with matters of "pioneer investors"

Dealing with matters of pioneer investors during the preparation period was a special function of the Preparatory Commission of the International Sea-Bed Authority and the International Tribunal on the Law of the Sea, which was different from that of those preparatory commissions of general international organs, including the United Nations and other special organizations of the United Nations. It went beyond the powers of general preparatory commissions since it had substantive executive powers, including such functions of the future Authority in fact as the ratification of registration as "pioneer investors", division of "exploitation area", etc.

It was stipulated in the resolution of the Preparatory Commission that, the Preparatory Commission should "exercise the powers and functions conferred to it by Resolution II of

the Third United Nations Conference on the Law of the Sea regarding preparatory investment.

It was stipulated in Resolution II of the Conference on the Law of the Sea, "Preparatory Investment in Polymetallic Nodule Exploitation Activities" that, once the Preparatory Commission started the execution of its functions, any State which had signed the Convention, might apply for registration as pioneer investor to the Preparatory Commission for itself or on behalf of state enterprises or entities or natural or legal persons with the qualification of pioneer investors stipulated in the resolution. The Preparatory Commission should examine the application letter and register the applicants in compliance with the conditions stipulated in the resolution as pioneer investors.

The Preparatory Commission should, within 45 days after every applicant had submitted data of the area applied for, designate the portion reserved, in accordance with the Convention, to the Authority to conduct activities through the Enterprise or in cooperation with developing States. The other portion of the area should be allocated to pioneer investor as the exploiting area.

V. Affiliated Organs of the Preparatory Commission

It was stipulated in the resolution that, "the Preparatory Commission may set up affiliated organs necessary to exercise its functions and shall define their functions and procedures. The Preparatory Commission may also use external expert knowledge at appropriate time in accordance with the custom of the United Nations so as to promote the activities of the organs set up for it."

The resolution stipulated specifically that a special commission should be established for the Enterprise, the task of which was to "take every necessary measures enabling the Enterprise to conduct business effectively at an early date". It was stipulated again that, the Preparatory Commission should set up a special commission according to the questions encountered by the developing land-locked States which might have suffered most serious influences from the mineral production in the Area.

The practice of the United Nations itself was that, the Preparatory Commission of the United Nations held the First Session on June 27, 1945 at which it was decided to set up an "Executive Commission" to carry out the work of the Preparatory Commission. Once the Constitution of the United Nations went into effect, the whole Preparatory Commission turned to sessions of the United Nations Assembly. The Executive Commission established ten committees to conduct reviews of various matters. They were: (1) First Committee: the Assembly; (2) Second Committee: the Council; (3) Third Committee: Economic and Social Council; (4) Fourth Committee: Trust Council; (5) Fifth Committee: Tribunal and Legal Issue; (6) Sixth Committee: the arrangement of the Secretory -General; (7) Seventh Committee: Financial arrangement; (8) Eighth Committee: the relation with special organs; (9) Nineth Committee: international Union; (10) Tenth Committee: general affairs. The Preparatory Commission of the United Nations completed its tasks after seven weeks of meeting, submitted suggestions on various related matters and adopted the procedures submitted by the Executive Commission and agenda of

of formal sessions of the United Nations Assembly [12].

The Preparatory Commission of the International Sea-Bed Authority and the International Tribunal on the Law of the Sea held in 1983 in fact took the form of the Preparatory Commission of the United Nations Assembly which decided to set up the following five special committees: Special Committee for the Question of Land-locked States, Special Committee for the Enterprise, Special Committee for the Regulation of Sea-Bed Mining, Special Committee for the International Tribunal on the Law of the Sea and the Assembly as a special committee to review the rules, regulations and procedures of the Authority. It was also decided to deal with the matter relating to pioneer investors by the General Affairs Committee.

VI. Procedures of the Preparatory Commission

It was stipulated in the resolution that, "The procedures of the Preparatory Commission shall be formulated in the light of that of the Third United Nations Conference on the Law of the Sea."

Regarding the voting of the Conference, it was stipulated in the procedures of the Third United Nations Conference on the Law of the Sea [12] that, "decisions on all substantive matters at the Conference, including the adoption of the whole text of the Convention on the Law of the Sea, shall be made by two-thirds majority of the representatives attending and participating in the voting but such majority must at least include over half States attending that session of the Conference."

However, the procedure, particularly regarding the

voting regime, was one of the important issues arising arguments. A good proof was the difficulty encountered in the review of the procedure of the Third United Nations Conference on the Law of the Sea and the discussion of voting regime at the related assembly in the Convention, particularly of the Council.

It was stipulated in the first draft resolution regarding the Preparatory Commission submitted by the President of the Assembly (3) that, the Preparatory Commission "shall decide its rules of procedure itself but shall consider ... that of the Third United Nations Conference on the Law of the Sea". After that, the argument on the rule of procedures was mainly centered on the voting regime.

At the earlier meeting of the Nineth Session in Spring, 1980, some States, like the Soviet Union, requested all formal resolutions of the Preparatory Commission should be made after unanimous negotiation but some States doubted its necessity because the function of the Preparatory Commission was only to submit suggestions.

At the Tenth Session in Spring, 1981, Eastern and Western States insisted that resolutions should be made after unanimous negotiation but the Group of 77 considered that, in order to promote the work of the Preparatory Commission, there should be a voting regime. They suggested a method of two stages, i.e., agreements might be reached after unanimous negotiation at the first stage, if not, voting might be carried out afterwards.

At the continuous meeting of the Tenth Session, some States still insisted all substantive problems should be

decided under unanimous negotiation or decided in the form of "three-level voting regime" following the method of the Council of the Authority. However, the Group of 77 supported the principle of making decision by two-thirds majority. They considered the draft rules, regulations and procedures of sea-bed mining should be decided under unanimous negotiation in the Council of the Authority and the Preparatory Commission needed not take voting regime of unanimous negotiation because it should formulate drafts only.

It was stipulated in the revised draft resolution of the Preparatory Commission submitted at that session that, "the Preparatory Commission shall have its own procedures" (8). However, this revision was not supported by most States.

At the Eleventh Session, there were still different opinions on voting procedures of the Preparatory Commission from simple majority to unanimous negotiation. Therefore, the factors were considered in the third draft resolution of the Preparatory Commission submitted by the President: one was the procedures of the Third United Nations Conference on the Law of the Sea should be applicable to those of the Preparatory Commission while the Preparatory Commission should decide its own voting regime, i.e., the stipulation made in the resolution adopted later: "the formulation of procedures of the Preparatory Commission shall be in the light of that of the Third United Nations Conference on the Law of the Sea". It was stipulated here only for the procedures complied by the Preparatory Commission but not for which voting regime it should take for the decisions on various problems.

In compliance with such a resolution, there were

following stipulations at the First Session of the Preparatory Commission regarding voting regime: (1) Decisions on all procedures should be adopted by simple majority of the representatives attending and participating in the voting; (2) Decisions of substantive matters were divided into two categories, one (stated specifically) should be decided in the form of unanimous negotiation, the other (except for the former category) should be decided by two-thirds majority of the representatives attending and participating in the voting but such majority must include over half States attending that session of the Preparatory Commission; (3) Decisions on substantive matters of special committees and affiliated organs should be made by two-thirds majority of the representatives attending and participating in the voting.

VII. Finance of the Preparatory Commission and Service of the Secretariat

At the earlier meeting of the Nineth Session in Spring, 1980, note by the President (2) pointed out that, in accordance with the custom of the U.N., the finance of the Preparatory Commission should be loaned by the United Nations, but arrangement should be made for the refund by the future organization. When the finance was not adequate, it should also be advanced by various governments and deducted by their membership dues to that organization. Such arrangement also requested the Secretary-General to provide service to the Preparatory Commission.

According to the above custom, the first draft resolution submitted by the President (3) stipulated that, "the expenditure of the Preparatory Commission shall be sustained

by the U.N. loan. For that, the Preparatory Commission shall make necessary arrangement together with responsible organ of the United Nations, including the arrangement of loan repayment by the Authority." In addition, "Secretary-General of the United Nations shall provide service to the Preparatory Commission".

During the review at the Tenth Session in Spring, 1981, all parties agreed that the initial finance of the Preparatory Commission should be provided by the United Nations. But some States considered that, loan from the U.N. had its legal and practical difficulties. The Group of 77 considered that the finance of the Preparatory Commission should be paid in normal budget of the U.N., but some States considered non-U.N. members who had participated in the Preparatory Commission should also make contributions.

At the continuous meeting of the Tenth Session in Autumn, 1981, western developed States considered the finance of the Preparatory Commission should be solved by the loan from the United Nations. However, the Group of 77 insisted it should be provided by the normal budget of the U.N. The second draft resolution submitted by the President of the Assembly at that session (8) accepted the latter opinion and stipulated the Secretariat of the U.N. should provide service.

The final resolution stipulated that, "the finance of the Preparatory Commission shall be paid by the normal budget of the U.N., but be ratified by the Assembly of the United Nations." "The Secretary-General of the U.N. shall provide necessary service of the Secretariat to the Preparatory Commission."