

C.2/Informal Meeting/9
27 April 1978

ENGLISH
Original: SPANISH

INFORMAL SUGGESTION BY PERU

PART I. USE OF TERMS

Article 1. Use of terms

Insert the following:

(...) "Fishing or fishing activities" means any catching or harvesting of living resources from the sea. Likewise, "harvested species" means species caught or harvested from the sea; and "fish stocks" means any stock of living resources.

PART II. TERRITORIAL SEA AND CONTIGUOUS ZONE

Article 2, paragraph 1

Replace the words "land territory" by the word "coast".

Article 33

Add a new paragraph 3, as follows:

"3. Foreign warships and military aircraft passing through the contiguous zone shall refrain from engaging in activities not directly related to navigation".

PART V. EXCLUSIVE ECONOMIC ZONE

Article 56

Paragraph 1 (a)

Replace the words "of the sea-bed and subsoil and the superjacent waters" by the words "of the sea and the sea-bed and subsoil thereof".

Paragraph 1 (b)

Insert the word "exclusive" before the word "jurisdiction".

Paragraph 1 (c)

Replace the words "provided for in" by the words "compatible with".

Insert a new paragraph 2, as follows:

"2. Jurisdiction shall be exclusive in the sense that the coastal State alone shall have the authority to adopt and enforce in its exclusive economic zone such measures as are required for the exercise of its rights and the fulfilment of its obligations under the provisions of the present Convention.

This shall not exclude the jurisdiction of the flag State over its ships and aircraft, except in cases where the coastal State is empowered to adopt the necessary measures to ensure that the provisions of the present Convention, or the laws and regulations enacted by the coastal State in accordance with the provisions of the present Convention, are complied with in its exclusive economic zone by all States".

Article 58

Delete paragraph 2.

Insert a new paragraph 2, as follows:

"2. Foreign warships and military aircraft passing through the exclusive economic zone shall refrain from engaging in manoeuvres or using weapons without the consent of the coastal State".

Article 59

After the words "coastal State or" insert the word "rights".

The article would thus read:

"In cases where the present Convention does not attribute rights or jurisdiction to the coastal State or rights to other States within the exclusive economic zone...".

Article 60

Paragraph 1

Replace this paragraph by the following:

"Without prejudice to the provisions of Part XIII, the coastal State shall have the exclusive right to construct and to authorize the construction, operation and use of artificial islands, installations and structures within its exclusive economic zone".

Article 61

Paragraph 2

~~Re-draft~~ the last sentence as follows:

"The relevant subregional, regional and global organizations, as appropriate, shall co-operate with the coastal State to this end".

Paragraph 3

[Not applicable to English text].

Paragraph 4

Replace the word "reproduction" by the word "conservation".

Paragraph 5

Re-word the sentence to read: "... and exchanged on a timely and regular basis through...".

Article 64, paragraph 1

Not in this article but in annex I to which it refers, include among highly migratory species: Onmastrephidae (cephalopods), Exocoetidae (flying fish) and Chelonia (sea turtles).

Article 65

After the words "the right of a coastal State or" insert the words "the competence of an".

PART VII. HIGH SEAS

Re-arrange the articles of existing Part VII in three separate parts, as follows:

Part VII. HIGH SEAS. Articles 86, 87, 89, 112, 113, 114, 115, 116, 117, 118, 119 and 120.

Part VIII. PROVISIONS APPLICABLE TO THE EXCLUSIVE ECONOMIC ZONE AND THE HIGH SEAS. Articles 88, 90, 97, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110 and 111.

Part IX. GENERAL PROVISIONS CONCERNING SHIPS. Articles 91, 92, 93, 94, 95, 96 and 98.

Article 88

Amend as follows:

"The exclusive economic zone and the high seas shall be reserved for peaceful purposes".

Article 90

Amend as follows:

"Every State, whether coastal or land-locked, has the right to sail ships under its flag in the exclusive economic zone and on the high seas."

Article 92

Paragraph 1, fourth line: Delete the words "on the high seas".*/

Article 95

Amend as follows:

"Without prejudice to the provisions of article 32, warships have complete immunity from the jurisdiction of any State other than the flag State."

*/ The reason for this deletion is that the article states: "save in exceptional cases expressly provided for in international treaties or in the present Convention"; and, according to the provisions of the Convention, ships are subject to the exclusive jurisdiction of the flag State not only on the high seas or in the exclusive economic zone but also in the territorial sea, except in the cases expressly provided for, e.g. in Subsection A and in articles 27, 28 30 and 31.

Article 96

Amend as follows:

"The provisions of article 95 shall apply also to ships owned or operated by a State and used only on government non-commercial service."

Article 97

Amend as follows:

"In the event of a collision or any other incident of navigation concerning a ship in the exclusive economic zone or on the high seas, involving the penal or disciplinary responsibility,"

Article 100

Amend as follows:

"1. All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas."

Add a new paragraph, as follows:

"2. In the exclusive economic zone, States shall co-operate with the respective coastal State in the repression of piracy."

Article 101

Amend paragraph (a)(i) as follows:

"Against another ship, or aircraft, or against persons or property on board such ship or aircraft in the exclusive economic zone or on the high seas."

Article 105

Add a new paragraph as follows:

"2. Any State which in the exclusive economic zone of another State encounters a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, shall immediately so inform the respective coastal State and shall, if that State so requests, co-operate in the adoption of appropriate measures."

Article 108

Add a new paragraph as follows:

"3. When a ship suspected of engaging in illicit traffic in narcotic drugs or psychotropic substances is encountered in the exclusive economic zone of a State, that State shall be requested to co-operate in suppressing such traffic."

Article 109

After paragraph 3, insert the following:

"4. When unauthorized broadcasting is undertaken from the exclusive economic zone of a State, other States shall co-operate with that State, if it so requests, in the suppression of such broadcasting."

Amend paragraph 4 as follows:

"5. For the purposes of the present Convention, unauthorized broadcasting means the transmission of sound radio or television broadcasts from a ship or installation in the exclusive economic zone or on the high seas intended for reception by the general public contrary to international regulations, but excluding the transmission of distress calls."

Article 110

In paragraph 1, after sub-paragraph (b) insert the following:

"(c) that the ship is engaged in illicit traffic in narcotic drugs or psychotropic substances;"

Existing sub-paragraphs (c), (d) and (e) would then become (d), (e) and (f).

After paragraph 5, add the following:

"(6) When the arrest takes place in the exclusive economic zone of a State, this State shall be immediately notified of such action".

Article 111

In paragraph 7, sixth line, after the words "exclusive economic zone", insert the words "of another State".

After paragraph 8, add the following:

"9. When, in exercise of the right of hot pursuit, a warship or military aircraft of a State is obliged to enter the exclusive economic zone of another State, it shall:

- (a) so inform the competent authorities of that State;
- (b) request its co-operation, if necessary, for the purposes envisaged;
- (c) inform the authorities of that State of the measures taken."

Article 119

In paragraph 1 (b), add the following words at the end:

"Such measures shall be reviewed periodically with a view to ensuring their effectiveness".

In paragraph 2, amend the sentence to read:

"Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a timely and regular basis"

C/2/Informal Meeting/10

27 April 1978

ENGLISH

Original: SPANISH

INFORMAL SUGGESTION BY ECUADOR

New article 54 bis

Safeguard clause

"National legislation enacted, prior to the adoption of the present Convention, with respect to zones extending beyond 12 nautical miles shall remain applicable to the extent that it does not affect the rights and obligations of all States in accordance with the present Convention."

GE.78-84831

C.2/Informal Meeting/11

27 April 1978

ENGLISH

Original: SPANISH

INFORMAL SUGGESTION BY BRAZIL AND URUGUAY

Article 60 - Replace paragraph 1 by the following text:

"In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of artificial islands, installations and structures."

C.2/Informal Meeting/12
27 April 1978

Original: ENGLISH

INFORMAL SUGGESTION BY BRAZIL

Article 73 - paragraph 1

After the word living, insert the words and non-living.

GE.78-84843

C.2/Informal Meeting/13
27 April 1978

ENGLISH
Original: RUSSIAN

INFORMAL SUGGESTION BY THE USSR

Part IX

Enclosed or semi-enclosed seas

Article 122

For the purposes of this Part of the present Convention, the term "enclosed or semi-enclosed sea" means a Gulf or small sea running deep inland, surrounded by two or more States and connected to the open seas by one or several narrow outlets.

After article 123, insert a new article (123 bis), as follows:

The provisions of this Part shall not affect the rights and obligations of coastal or other States in accordance with the other provisions of the present Convention, and shall be applied in a manner compatible with those provisions.

GE.78-84849

INFORMAL SUGGESTION BY THE USSR

Part VI

Article 76

The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, but not further than 100 nautical miles from the outer limit of the 200-mile economic zone, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend beyond the outer limit of the 200-mile zone.

The Soviet delegation deems it necessary to propose that the outer edge of the continental shelf should be defined with reference to a precise distance criterion, by fixing a specific maximum distance of up to 100 miles beyond the limit of the 200-mile economic zone. This would make it possible to determine exactly where the continental shelf of a particular State ends and where the international area, i.e., the area proclaimed to be the common heritage of mankind, begins.

For this reason it is suggested that the words "but not further than 100 nautical miles from the outer limit of the 200-mile economic zone" should be inserted in the existing text of article 76 after the words "to the outer edge of the continental margin".

Within the indicated 100-mile strip beyond the limit of the economic zone, any scientifically sound geological and geomorphological data could be used to determine the precise limits of the continental shelf of a particular State, and in cases where such data are not available, paragraph 3 (b) of the Irish amendment submitted at the fourth session of the Conference could be applied.

Thus, according to the proposed formulation the outer edge of the continental shelf would be determined in the following manner:

(1) Where the continental margin does not extend beyond the confines of the 200-mile economic zone, the edge of the continental shelf will lie along the outer limit of the economic zone.

(2) In cases where the edge of the continental margin extends less than 100 miles beyond the outer limit of the 200-mile economic zone, the continental shelf of the coastal State will be determined on the basis of scientifically-sound geological and geomorphological data. If such data are not available, the outer edge of the continental shelf will be determined in accordance with paragraph 3 (b) of the Irish amendment ("not more than 60 nautical miles from the foot of the continental slope"), on the understanding, however, that the edge of the continental shelf shall not under any circumstances be fixed at more than 100 miles beyond the outer limit of the 200-mile economic zone.

(3) Where the continental margin extends beyond the 100-mile strip adjacent to the 200-mile economic zone, the edge of the continental shelf will be fixed at a distance of 100 miles from the outer limit of the economic zone.

Consequently, according to the suggested formula the 100-mile extension of the continental shelf beyond the outer limit of the 200-mile economic zone represents a maximum limit beyond which no State may exercise its sovereign rights over the continental shelf.

C.2/Informal Meeting/15

27 April 1978

ENGLISH

Original: FRENCH

INFORMAL SUGGESTION BY BELGIUM

Article 25, para. 3

At the end of the first sentence, add the words: "or for the safety of shipping".

GE.78-84922

INFORMAL SUGGESTION BY URUGUAY

Article 56

Replace paragraph 1 (a) by the following:

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed and subsoil and the superjacent waters, and with regard to the other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

.....

(c) other rights and duties compatible with the present Convention.

Article 59

Delete the article.

New Article 73 ter in Part V: Exclusive economic zone

Article 73 ter

In the exclusive economic zone, a foreign vessel may only resort to boarding, inspection or arrest in the cases provided for in articles 105, 108, 109 and 110, and in all such cases it shall at once notify the coastal State and co-operate with it in such manner as the coastal State may request.

New Article 73 bis in Part V: Exclusive economic zone

Article 73 bis

Responsibility of the flag State for damage caused by a warship or other government ship operated for non-commercial purposes

The flag State shall bear international responsibility for any loss or damage to the coastal State resulting from the non-compliance by a warship or other government ship operated for non-commercial purposes with the laws and regulations of the coastal State made under the present Convention.

INFORMAL SUGGESTION BY GREECE

Proposed amendments on Part III

(STRAITS USED FOR INTERNATIONAL NAVIGATION)

Article 39 Para. 1.(b)

Add, at the end, the following sentence:

"In this respect and particularly for the aircraft, the width of a strait should be at least equal to the width of an international airway".

Article 39 Para. 3.(a)

Redraft - Changes are underlined:

"Observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft, State aircraft shall also comply with such rules and safety measures and will at all times operate with due regard for the safety of navigation".

Article 41

Add new paragraph 8:

"States bordering the straits of their sovereignty shall designate predetermined air routes and prescribe air traffic procedures for air navigation in straits, for the purpose of promoting the safe, economic and efficient passage of aircraft in transit".

Article 42 Para. 1.(a)

Redraft as follows:

The safety of navigation and the regulation of marine traffic as well as the safety of air traffic and the rules, regulations and procedures of the ICAO, as provided in article 41".

INFORMAL SUGGESTION BY ALGERIA, IRAQ, LIBYA, ROMANIA AND TURKEY

Article 122

Definition

For the purposes of this Part, "semi-enclosed sea" means a gulf, basin, or sea with different characteristics; surrounded by two or more States and connected to the open seas by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

Article 123

Co-operation of States bordering semi-enclosed seas

States bordering semi-enclosed seas shall co-operate with each other in the exercise of their rights and duties under the present Convention. They will also co-ordinate their efforts, directly or through an appropriate regional organization, on the following:

- (a) Management, conservation, exploration and exploitation of the living resources of the sea;
- (b) Preservation of the marine environment;
- (c) Undertaking of scientific research policies and appropriate joint programmes of scientific research in the area.
- (d) Invitation as appropriate, of other States or international organizations to co-operate with them in furtherance of the provisions of this article.

New article

Rights and duties of other States

The provisions of this Part shall not affect the rights and duties of other States under the provisions of this Convention.

C.2/Informal Meeting/19
28 April 1978
Original: English

INFORMAL SUGGESTION BY THE PHILIPPINES

Part II. Territorial Sea and Contiguous Zone

Section 2. LIMITS OF THE TERRITORIAL SEA

Article 3 bis

Historic Waters

1. The maximum limit provided in this Convention for the breadth of the territorial sea shall not apply to historic waters held by any State as its territorial sea.
2. Historic waters are those waters in an area of the sea adjacent to the coasts of a coastal State over which that State has historic title, or asserted its sovereignty for a reasonable period of time and with the general tolerance of other States.
3. Assertion of sovereignty may include acts, inter alia, the promulgation of laws or regulations relating to national territory, navigation, fishing, mining, and other activities of nationals or vessels of other States.
4. The coastal State may claim historic waters as internal waters or territorial waters, depending on the scope of the authority it has exercised over the area.

INFORMAL SUGGESTION BY THE PHILIPPINES

Part IV. Archipelagic States

Article 52. Right of Innocent Passage

1. Subject to article 53 and without prejudice to article 50, ships of all States enjoy the right of innocent passage through all routes customarily used for international navigation in archipelagic waters.

Article 53. Right of Archipelagic sea lanes passage

1. An archipelagic State may designate sea lanes suitable for the safe, continuous and expeditious passage of foreign ships through its archipelagic waters and the adjacent territorial sea.

2. Warships, nuclear-powered vessels and vessels of special characteristics shall be allowed archipelagic sea lanes passage only in sea lanes designated by the archipelagic State subject to the laws and regulations promulgated by that State in accordance with the provisions of this section.

3. Archipelagic sea lanes passage is navigation in accordance with the provisions of the present Convention for the purpose of continuous and expeditious transit through designated sea lanes in archipelagic waters, subject to the laws and regulations of the archipelagic State.

4. Sea lanes shall be defined by a series of continuous axis lines from the entry points of passage routes to the exit points. Ships and aircraft in archipelagic sea lanes passage shall not deviate more than 25 nautical miles to either side of such axis lines during passage, provided that ships and aircraft shall not navigate closer to the coasts than 10 per cent of the distance between the nearest points on islands bordering the sea lane.

5. An archipelagic State which designates sea lanes under this article may also prescribe traffic separation schemes for the safe passage of ships through narrow channels in such sea lanes.

6. An archipelagic State may, when circumstances require, after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by it.

7. Such sea lanes and traffic separation schemes shall conform to generally accepted international regulations.

8. In designating or substituting sea lanes or prescribing or substituting traffic separation schemes, an archipelagic State shall take into account:

- (a) The recommendation of competent international organizations;
- (b) Any channels customarily used for international navigation;
- (c) The special characteristics of particular ships and channels;
and,
- (d) The density of traffic.

9. The archipelagic State shall clearly indicate the axis of the sea lanes and the traffic separation schemes designated or prescribed by it on charts to which due publicity shall be given.

10. Ships in transit shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.

11. If an archipelagic State does not designate sea lanes archipelagic sea lanes passage may be enjoyed through the routes customarily used for international navigation in the archipelagic waters.

Article 54. Duties of ships during their passage, research and survey activities, duties of the archipelagic State and laws and regulations of the archipelagic State relating to archipelagic sea lanes passage.

A. Duties of ships during their passage

1. Ships while exercising transit passage, shall:

- (a) Proceed without delay through the archipelagic sea lanes;
- (b) Refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of the archipelagic State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
- (c) Refrain from any activity other than those incident to continuous and expeditious transit unless rendered necessary by force majeure or by distress;
- (d) Comply with other relevant provisions of this Part.

2. Ships in transit shall:

- (a) Comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea;

- (b) Comply with generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution from ships.

B. Research and Survey activities

During their passage through archipelagic waters, foreign ships, including marine scientific research and hydrographic survey ships, may not carry out any research or survey activity without the prior authorization of the archipelagic State.

C. Laws and regulations of archipelagic States relating to transit passage.

1. Subject to the provisions of this Part, archipelagic States may make laws and regulations relating to transit passage through archipelagic sea lanes in respect of all or any of the following:
 - (a) The safety of navigation and the regulation of marine traffic;
 - (b) The prevention, reduction and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the archipelagic sea lanes;
 - (c) With respect to fishing vessels, the prevention of fishing, including the stowage of fishing gear;
 - (d) The taking on board or putting overboard of any commodity, currency or person in contravention of the customs, fiscal, immigration or sanitary regulations of archipelagic States.
2. Such laws and regulations shall not discriminate in form or in fact amongst foreign ships or in their application have the practical effect of denying, hampering or impairing transit passage as defined in this Part.
3. Archipelagic States shall give due publicity to all such laws and regulations.
4. Foreign ships exercising transit passage shall comply with such laws and regulations.

5. The flag State of a ship entitled to sovereign immunity which acts in a manner contrary to such laws and regulations or other provisions of this Part shall bear international responsibility for any loss or damage which results to archipelagic States.

D. Duties of Archipelagic States

Archipelagic States shall not hamper transit passage and shall give appropriate publicity to any danger to navigation within the sea lanes of which it has knowledge.

C.2/Informal Meeting/20/Corr.1
4 May 1978

Original: ENGLISH

INFORMAL SUGGESTION BY THE PHILIPPINES

Corrigendum

Part IV. Archipelagic States

Page 1, Article 53.4, lines 2 and 4, delete "and aircraft"

C.2/Informal Meeting/21
28 April 1978

Original: ENGLISH

INFORMAL SUGGESTION BY ALGERIA, BANGLADESH, CAMEROON, IRAQ, LIBYA,
MADAGASCAR, MOROCCO, NICARAGUA, SOMALIA AND TURKEY

Article 121

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraphs 3 and 4, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of the present Convention applicable to other land territory.
3. Islands which because of their geographical location constitute a source of distortion or inequity in the drawing of a boundary line between two or more adjacent or opposite States shall have marine spaces only to the extent compatible with equitable principles and with all geographic and other relevant circumstances.
4. Rocks and islets which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

GE.78-84996

INFORMAL SUGGESTION BY MOROCCO

STRAITS USED FOR INTERNATIONAL NAVIGATION

Article 34, paragraph 2 should be amended to read:

"2. The sovereignty or jurisdiction of the State bordering the strait is exercised subject to the provisions of this Part, to the other applicable provisions of the present Convention, and to other rules of international law."

Article 38, paragraph 3 should be amended to read:

"3. Any activity which is not an exercise of the right of transit passage through a strait remains subject to the other applicable provisions of the present Convention and to other rules of international law."

Article 39, paragraph 2 should be amended to read:

"2. Ships in transit shall:

(a) Refrain from the following activities in the strait zone:

- (i) Exercises or firing practice of any kind;
- (ii) The use of weapons of any kind;
- (iii) The taking off or landing of aircraft on board;
- (iv) Hydrographic surveys or other such research operations;
- (v) All deliberate acts of pollution;
- (vi) All fishing activities;
- (vii) Any act designed to interfere with the telecommunications system or other installations of the State bordering the strait.

(b) Comply with international regulations, procedures and practices in force, including the international regulations for preventing collisions at sea and safeguarding human life;

(c) Comply with international regulations and practices in force for the prevention and control of pollution from ships.

(d) Maintain permanent radio contact during their passage through the strait with the coastal installations of the State bordering the strait with a view to informing that State of any damage, any unforeseen stop made in the strait, or any measure rendered necessary by force majeure.

Article 39, paragraph 3 should be amended to read:

"3. Aircraft in transit shall:

- (a) Refrain from the following activities in the strait zone:
 - (i) Exercises or firing practice of any kind;
 - (ii) The use of weapons of any kind;
 - (iii) The taking of photographs;
 - (iv) Low altitude flights over shipping;
 - (v) Dive-bomber flying;
 - (vi) Refuelling while in flight;
 - (vii) Any act designed to interfere with the telecommunications system or other installations of the State bordering the strait.
- (b) Observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aviation;
- (c) Take proper care not to violate the regulations governing air corridors and altitude of flight above the strait as fixed by the State bordering the strait, and to avoid flying over its territory rising above the water, insofar as the air corridor established by the State bordering the strait does not provide for such overflight;
- (d) Maintain radio contact at all times with the air traffic control tower of the State and follow its instructions, in the light of the air safety requirements, in the exercise of the right of transit passage;
- (e) At all times monitor the radio frequency assigned by the appropriate internationally designated air traffic authority or the international distress radio frequency."

Article 42, paragraph 1 should be amended to read:

1. A State bordering a strait may make laws and regulations, in conformity with the provisions of the present Convention and of other rules of international law, relating to transit passage through the strait, in respect of all or any of the following:

- (a) The safety of navigation and the regulation of marine traffic, as provided in article 41;
- (b) The protection of navigation aids and other installations;
- (c) The protection of cables and pipelines;
- (d) The conservation of living resources;
- (e) With respect to fishing vessels, the prevention of fishing, including the stowage of fishing gear;
- (f) The prevention of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait;
- (g) Marine scientific research and hydrographic surveys;
- (h) The taking on board or putting overboard of any commodity, currency or person in contravention of the customs, fiscal, sanitary or immigration regulations of a State bordering a strait.

Article 43 should be amended to read:

"User States and States bordering a strait shall co-operate, by agreement, in the establishment and maintenance in the strait of necessary safety and environmental protection installations and navigation aids, as well as any other device calculated to safeguard the exercise of the right of transit passage in accordance with the provisions of this Part and of other rules of international law.

Three additional articles should be inserted after article 44, to read as follows:

Duties of States making use of straits

Article (A): "States shall enact such legislation and regulations as may be required to ensure that all ships flying their flag and all aircraft registered in those States shall, when exercising the right of transit passage, carry adequate insurance to meet any claim in respect of loss or damage caused to the State bordering the strait."

Article (B): "Any damage done to States bordering a strait, their nationals or legal entities as a result of the transit passage of ships shall create liability for redress by the owner of the vessel or any other person responsible for the damage, and failing them, by the flag State of the vessel."

Article (C): "Any damage done to States bordering a strait, their nationals or legal entities as a result of the transit passage of aircraft over the strait shall create liability for redress by the owner of the aircraft or any other person responsible for the damage, and failing them, by the State of registration of the aircraft."

28 April 1978

Original: ENGLISH

INFORMAL SUGGESTION BY TURKEY

Article 3

1. Every State shall have the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with the present Convention. This right shall be exercised without prejudice to the rights and interests of neighbouring coastal States.
2. In areas of semi-enclosed seas having special geographic characteristics, the breadth of the territorial sea shall be determined by agreement between the coastal States of that area, in accordance with equitable principles.

C.2/Informal Meeting/24

28 April 1978

Original: ENGLISH

INFORMAL SUGGESTION BY CANADA

Article 19(2)(h)

Revise 19(2)(h) to read as follows:

"any violation of the laws and regulations for the preservation of the marine environment enacted by the coastal State in conformity with the provisions of this Convention, where such violations may reasonably be expected to result in major consequences to the coastal State."

C.2/Informal Meeting/24/Corr.1
2 May 1978
Original: ENGLISH

INFORMAL SUGGESTION BY CANADA

Article 19(2)(h)

Corrigendum

Line 4, before consequences, add harmful

1 May 1978

ENGLISH

Original: SPANISH

INFORMAL SUGGESTION BY ECUADOR

Article 64. Highly migratory species

- "1. The coastal State and other States whose nationals fish in the region for the highly migratory species listed in annex I to the present Convention, shall co-operate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions where no appropriate international organization exists, the States referred to in this paragraph shall co-operate to establish such an organization and participate in its activities.
- "2. Unless otherwise agreed by the coastal State, its consent shall be required for the adoption of measures applicable in its exclusive economic zone.
- "3. The coastal State shall be competent to enforce within its exclusive economic zone compliance with the measures in question by all fishermen. The States members of the appropriate international organization shall agree on effective arrangements for ensuring compliance, with respect to the members, with the agreed measures beyond the exclusive economic zone and shall be responsible for compliance with the measures in question by their nationals if they fish for such species beyond the said zone. For the purposes of this paragraph, the appropriate international organization or organizations shall co-operate, to the extent of their ability, at the request of the States members.
- "4. If the appropriate international organization should determine that a resource is being fully exploited, it shall prescribe the catch allowable in the entire region through which that species migrates. If the volume of the catch should exceed such limit, the States members shall agree on the measures necessary for ensuring that fishing in the region remains within that limit.
- "5. In other respects, the provisions of this chapter shall apply to highly migratory species."

C.2/Informal Meeting/25/Corr.1

4 May 1973

Original: ENGLISH

Informal Suggestion by Ecuador

Corrigendum

Article 64. Highly migratory species

Paragraph 2 should read:

"2. Unless the coastal State agrees on a different procedure, its consent will be required for adoption of measures applicable to its exclusive economic zone."

FINANCIAL ARRANGEMENTS OF THE AUTHORITY

Article 170

(redraft)

The funds of the Authority shall include:

- (a) assessed contributions made by States Parties in accordance with subparagraph (vi) of paragraph 2 of Article 158;
- (b) funds transferred from the Enterprise in accordance with paragraph 9 (a) of Annex III;
- (c) receipts of the Authority arising from activities in the Area in accordance with paragraph 7 of Annex III;
- (d) loans received in accordance with Article 172; and
- (e) voluntary contributions made by States Parties or other entities.

Article 171*

(redraft)

The Secretary-General shall prepare and submit to the Council the annual budget estimates of the Authority. The Council shall consider and submit to the Assembly the budget estimates, together with any recommendations thereon.

* Logically, this Article should be renumbered 172 and the redraft of Article 172 should be renumbered 171.

Article 172

(redraft)

- (1) The receipts from the assessed contributions of States Parties referred to in paragraph (a) of Article 170 shall be paid into a special account to meet the administrative expenses of the Authority.
- (2) Apart from the funds referred to in paragraph (a) of Article 170, the other funds of the Authority may, inter alia:
 - (a) be used to pay for that portion of the administrative expenses of the Authority not covered by paragraph 1 above;
 - (b) be distributed in accordance with paragraph 9 of Article 151 and subparagraph (xii) of paragraph 2 of Article 158;
 - (c) be used to provide the Enterprise with funds in accordance with paragraph 4 of Article 169 and paragraph 10 of Annex III; and
 - (d) be used to compensate developing countries in accordance with subparagraph (g)(D) of paragraph 1 of Article 150, and subparagraph (xii) of paragraph 2 of Article 158.

Article 172

(Deleted)

(The provisions of this article have been incorporated in the redraft of Article 172.)

Article 174

(redraft)

- (1) The Authority shall have the power to borrow funds.
- (2) The Assembly shall prescribe the limits on the borrowing power of the Authority in its financial regulations adopted pursuant to subparagraph (vii) of paragraph 2 of Article 158.
- (3) The Council shall exercise the borrowing power of the Authority.
- (4) States Parties shall not be liable for the debts of the Authority.

Article 175

(redraft)

The records, books and accounts of the Authority, including its annual financial statements, shall be subject to an annual audit by an independent auditor to be appointed by the Assembly.

FINANCING THE ENTERPRISE

An Explanatory Note on Schedules I, II and III

1. The attached schedules illustrate the type of cash situation that could arise under three hypothetical programmes of development of sea-bed mining. They are not intended to be plans of action. Owing to the limitation of time, it has not been possible to produce more than three alternative programmes. There are numerous other possibilities. It is intended to give an idea of the amounts of money involved and the related time factor, i.e. how much and when the money is required.

Assumptions

2. The schedules are based upon a number of assumptions. Some of these assumptions have not yet been discussed in the Negotiating Groups. If required to do so and if time permits, other schedules can be drawn showing the effect of alternative assumptions. The assumptions and their sources are mentioned hereunder. As far as possible, the significance of the assumptions on the overall results is shown in the schedule.

3. The scale of production has not been correlated with the proposals in Article 150 (g)B, but, pending a clarification on the working of the production control methods, it is assumed that this scale of production will be within the limits set.

4. The assumptions on the costs are that the invested capital of a 3-million-ton-per-year project would be \$594 million and that the money would be spent over a period of seven years at the rate of \$42 million for each of the first three years and thereafter at the rate of \$117 million per year for four years. The project would come into production in its seventh year at an annual operating profit of \$148 million. These figures are taken from document A/CONF.62/C.1/L.17 and from the study of the Massachusetts Institute of Technology, "A Cost Model of Deep Ocean Mining", both of which seem to be based on 1976 estimates and, to the best of our knowledge, are the latest available. However, these should be considered as estimates and should not be given a degree of accuracy which would not be justifiable. There is some difference in the profit estimates from these two sources, but the difference is not significant and the lower estimate, \$148 million, has been adopted.

5. The administrative cost of the Enterprise has been taken from document A/CONF.62/C.1/L.17 (\$5.865 million rounded up to \$6 million) and this has,
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for the purpose of the schedule, been charged directly to the Enterprise and not to the Authority. The administrative cost of the Authority has been taken from document A/CONF.62/C.1/L.19 and is ~~estimated at \$13.5 million~~ per annum and has been rounded up to \$14 million. As mentioned in document A/CONF.62/C.1/L.19, the cost of the Authority may escalate with the expansion of the scope of its activities after the first three years. The schedules, however, are based upon a constant cost of \$14 million.

6. The total payment by the Contractor is assumed to be 50 per cent of its net proceeds. This figure has been taken for ease of calculation and it is not intended to imply that it has any other virtue. The Authority will decide what portion of this money will be distributed to States Parties and what portion will be channeled to the Enterprise to finance its activities. Under the ICNT, all net disposable income of the Enterprise will go to the Authority. The Authority will then decide what portion of this money will be distributed to States Parties and what portion will be channeled back to the Enterprise. During an initial period when the Enterprise is not self-supporting, the Council may, however, decide not to transfer the whole of the Enterprise's net disposable income to the Authority. We have assumed that 50 per cent of the net proceeds of the Enterprise will be distributed to States Parties and the remaining 50 per cent will be channeled back to the Enterprise. In the initial years, the Authority may decide to channel back to the Enterprise more than 50 per cent of its net proceeds.

7. In the preceding paragraph we have assumed that the Contractor will pay 50 per cent of its net proceeds to the Authority. We are faced with the problem of how to define the term "net proceeds". Does it embrace the net proceeds from sea-bed mining, processing and marketing, or is it confined to the net proceeds from sea-bed mining only? If it is the latter, what portion of the overall net proceeds should be attributed to processing and marketing? In the schedules we have made two different assumptions. First, we have assumed that net proceeds cover all stages of operation. This is shown in the schedules as Assumption A. Second, we have assumed that net proceeds mean net proceeds from sea-bed mining only and we have further assumed that it is one-fourth of the total net proceeds. This is shown in the schedules as Assumption B.

8. The figures are all in millions of dollars and have been rounded off to the closest million.
9. The figures shown unbracketed are payments by the Enterprise and Authority and show accumulated totals. The bracketed figures are payments to the Enterprise and the Authority and show accumulated totals.
10. No allowance can be made for escalation and inflation because we do not know when year 1 will be. However, paragraph 10 (c)(iii) of Annex III refers to guarantees of debt up to the cost of one site, irrespective of what that cost may be at the relevant time.

YEAR FROM INCEPTION

SCHEDULE 1

| Figures in \$ million X = start of construction E = start of earnings | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 |
|---|----|----|-----|-----|-----|-----|------|-------|-------|-------|--------|--------|--------|--------|--------|--------|
| 1. Enterprise wholly owned project starts | X | | | | | | E | | | | | | | | | |
| 2. Enterprise Joint Venture (5/50) starts | | | | | | | | | | | | | | | | |
| 3. Contractor's Project starts | X | X | X | X | X | X | E | E | E | E | E | E | | | | |
| Accumulated Financial Position of Enterprise | 45 | 93 | 141 | 264 | 387 | 510 | 559 | 491 | 421 | 353 | 285 | 217 | 149 | 81 | 13 | (55) |
| A. Accumulated Financial Position of Authority | 14 | 28 | 42 | 56 | 70 | 84 | (50) | (253) | (540) | (896) | (1326) | (1830) | (2334) | (2838) | (3342) | (3846) |
| B. Accumulated Financial Position of Authority | 45 | 28 | 42 | 56 | 70 | 84 | 5 | (92) | (208) | (342) | (495) | (666) | (837) | (1008) | (1187) | (1358) |

Programme: One project commenced by Enterprise in the first year. Six projects commenced in first six years by Contractors.

The Enterprise is near the limit of its debt guarantee in year 7 but from that date the debt is declining and has also reached an earning stage.

By year 9/10, 80 per cent of Enterprise's tangible earning assets exceed its debt.

The very marked difference in the flow of money to the Authority in Case A-Case B is because of the different definition of net proceeds of Contractors in the non-reserved areas.

YEAR FROM INCEPTION

SCHEDULE 2

| Figures in \$ million X = start of construction E = start of earnings | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 |
|---|----|----|----|-----|-----|-----|-----|-------|-------|-------|-------|--------|--------|--------|--------|--------|
| 1. Enterprise wholly owned project starts | | X | | X | | X | | E | | E | | E | | | | |
| 2. Enterprise Joint Venture (50/50) starts | | | | | | | | | | | | | | | | |
| 3. Contractor's Project starts | X | | X | | X | | E | | E | | E | | | | | |
| Accumulated Financial Position of Enterprise | 3 | 51 | 99 | 189 | 354 | 561 | 843 | 1051 | 1217 | 1309 | 1278 | 1173 | 951 | 741 | 525 | 309 |
| A. Accumulated Financial Position of Authority | 14 | 28 | 42 | 56 | 70 | 84 | 24 | (110) | (318) | (600) | (956) | (1386) | (1816) | (2246) | (2676) | (3106) |
| B. Accumulated Financial Position of Authority | 14 | 28 | 42 | 56 | 70 | 84 | 80 | (25) | (159) | (388) | (645) | (1001) | (1283) | (1565) | (1837) | (2109) |

Programme: Commencement of six projects of 3 million tons per year at yearly intervals alternating between Contractor and Enterprise.

The Enterprise reaches the limit of its debt guarantee in year 6/7, but is in an earning position in year 8.

The debt position is maximum in year 10 and then starts to decline and the Enterprise is self-supporting.

By year 12, 80% of the tangible earning assets of the Enterprise exceeds its debt and it could be considered to be in a favourable borrowing condition.

| Figures in \$ million X = start of construction E = start of earnings | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 |
|---|----|----|----|-----|-----|-----|--------|-------|-------|-------|-------|--------|--------|--------|--------|--------|
| 1. Enterprise wholly owned project starts | | | | X | | | X | | | E | | | E | | | |
| 2. Enterprise Joint Venture (50/50) starts | | X | | | | X | | E | | | | E | | | | |
| 3. Contractor's Project starts | X | | X | | X | | E X | | E | | E | | E | | | |
| Accumulated Financial Position of Enterprise | 3 | 30 | 56 | 125 | 232 | 460 | 705 | 913 | 1100 | 1287 | 1358 | 1251 | 1152 | 936 | 720 | 504 |
| A. Accumulated Financial Position of Authority | 14 | 28 | 42 | 56 | 70 | 84 | 24 | (110) | (318) | (600) | (950) | (1336) | (1964) | (2542) | (3120) | (3698) |
| B. Accumulated Financial Position of Authority | 14 | 20 | 42 | 56 | 70 | 84 | 80 | 29 | (40) | (183) | (354) | (562) | (789) | (1016) | (1243) | (1470) |

Programme: The programme envisages Contractor starting a project in the first year, Enterprise starting a Joint Venture in the second year, and Contractor starting another project in third year; Enterprise starting a wholly-owned project in fourth year, Contractor starting another project in the fifth year, another Joint Venture in the sixth year, and both Contractor and Enterprise starting projects in the seventh year.

The Enterprise has reached its debt guarantee by year 6/7 but in year 8 is in an earning position.

The debt of the Enterprise is increasing until year 11 when Enterprise is self-supporting and in year 12, 80% of the tangible earning assets exceed the debt.

FINANCIAL ARRANGEMENTS OF THE AUTHORITY
The Chairman's Suggested Compromise Proposals

Article 158 (2)(vi)

(redraft)

Assessment of the contributions of members to the administrative budget of the Authority in accordance with an agreed general assessment scale based upon the scale used for the regular budget of the United Nations until the Authority shall have sufficient income from other sources for meeting its administrative expenses.

Article 170

(redraft)

The funds of the Authority shall include:

- (a) assessed contributions made by States Parties in accordance with sub-paragraph (vi) of paragraph 2 of Article 158;
- (b) funds transferred from the Enterprise in accordance with paragraph 9(a) of Annex III;
- (c) receipts of the Authority arising from activities in the Area in accordance with paragraph 7 of Annex II;
- (d) loans received in accordance with Article 174; and
- (e) voluntary contributions made by States Parties or other entities.

Article 171^{*/}

(redraft)

The Secretary-General shall prepare and submit to the Council the annual budget estimates of the Authority. The Council shall consider and submit to the Assembly the budget estimates, together with any recommendations thereon. The Assembly shall consider and approve these budget estimates in accordance with sub-paragraph (viii) of paragraph 2 of Article 158.

^{*/} Logically, this Article should be renumbered 172 and the redraft of Article 172 should be renumbered 171.

Article 172

(redraft)

(1) The contributions of States Parties referred to in paragraph (a) of Article 170 shall be paid into a special account to meet the administrative expenses of the Authority until the Authority shall have sufficient funds from other sources for meeting its administrative expenses.

(2) The administrative expenses of the Authority shall be a first call upon the funds of the Authority. Apart from the funds referred to in paragraph (a) of Article 170, the funds which remain after payment of administrative expenses may, inter alia:

- (a) be distributed in accordance with paragraph 9 of Article 151 and subparagraph (xii) of paragraph 2 of Article 158;
- (b) be used to provide the Enterprise with funds in accordance with paragraph 4 of Article 169 and subparagraph (a) of paragraph 10 of Annex III; and
- (c) be used to compensate developing countries in accordance with subparagraph (g)(D) of paragraph 1 of Article 150, and subparagraph (xiv) of paragraph 2 of Article 158.

Article 173

(deleted)

(The provisions of this article have been incorporated in the redraft of Article 172).

Article 174

(redraft)

- (1) The Authority shall have the power to borrow funds.
- (2) The Assembly shall prescribe the limits on the borrowing power of the Authority in its financial regulations adopted pursuant to subparagraph (vii) of paragraph 2 of Article 158.
- (3) The Council shall exercise the borrowing power of the Authority.
- (4) States Parties shall not be liable for the debts of the Authority.

Article 175

(redraft)

The records, books and accounts of the Authority, including its annual financial statements, shall be audited annually by an independent auditor to be appointed by the Assembly.

Suggestion by a small consultation group

ARTICLE 159

1. The Council shall consist of 36 members of the Authority elected by the Assembly, the election to take place in the following order:
 - (a) five members from among countries which are substantially involved in any or all of the phases of sea-bed mining, including exploration, exploitation and processing, as demonstrated by substantial investments or advanced technology in relation to the resources of the Area, including at least one State from the Eastern (Socialist) European region and one developing country.
 - (b) four members from among countries which are major importers of the categories of minerals to be derived from the Area, including at least one State from the Eastern (Socialist) European region.
 - (c) five members from among countries which on the basis of production in areas under their jurisdiction are major exporters of the categories of minerals to be derived from the Area, including at least four developing countries.
 - (d) six members from among developing countries, representing special interests. The special interests to be represented shall include those of States with large populations, States which are land-locked or geographically disadvantaged, States which are major importers of the categories of minerals to be derived from the Area, and least developed countries.
 - (e) sixteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole; provided that each geographical region shall have in any case two members elected under this sub-paragraph. For this purpose the geographical regions shall be Africa, Asia, Eastern Europe (Socialist), Latin America and Western Europe and others.

GROUP OF 21:

Text on articles 58, 59, 59 (Bis) and 60 for consideration
of the Group of 21 -
proposed by Chairman, Ambassador Satya N. Nandan

Article 58
Right of Land-Locked States

1. Land-locked States shall have the right to participate in the exploitation of the living resources of the exclusive economic zone of coastal States of the same region or sub-region on an equitable basis, taking into account the relevant economic and geographical circumstances of all the States concerned and in accordance with the provisions of this article.
2. The terms and conditions of such participation shall be determined by the States concerned through bilateral, sub-regional or regional agreements.
3. The right to participate referred to in paragraph 1 of this article relates to the surplus of the allowable catch as determined in accordance with the provisions of Articles 50 and 51 and shall be on a preferential basis over third States. Provided that, in the event of there being no surplus in a significant number of species in a particular zone, the States concerned shall, by co-operation, establish an equitable arrangement on a bilateral, subregional or regional basis to allow for the participation of the land-locked State concerned in the exploitation of the living resources in such zone or zones as may be appropriate in the circumstances taking into account such factors as:
 - (a) The nutritional needs of the populations of the respective States concerned and their capabilities for satisfying these needs;
 - (b) The need to avoid effects detrimental to fishing communities or the fishing industries of the coastal State or part thereof;
 - (c) The extent to which the land-locked State is participating or has the right to participate in the exploitation of the exclusive economic zones of other coastal States;
 - (d) The extent to which the coastal State is accommodating other land-locked States and the need to avoid over-burdening a particular coastal State or part thereof.
4. Developed land-locked States shall, however, be entitled to exercise their rights only within the exclusive economic zones of developed coastal States of the same region or sub-region.

5. The above provisions are without prejudice to other arrangements agreed upon in regions or sub-regions where the coastal States may grant to land-locked States of the same region or sub-region equal or other special treatment regarding the exploitation of the living resources in the exclusive economic zones.

Article 59
Right of States with Special Characteristics

1. Coastal States which are situated in a region or sub-region whose geographical or marine biological and ecological characteristics make such States dependent for the satisfaction of the nutritional needs of their populations upon the exploitation of the living resources in the exclusive economic zones of other States in the region or sub-region, and coastal States which can claim no exclusive economic zones of their own, hereafter referred to collectively as "States with special characteristics", shall have the right to participate on an equitable basis in the exploitation of the living resources in the exclusive economic zones of other States in the same region or sub-region in accordance with the provisions of this article.
2. The terms and conditions of such participation shall be determined by the States concerned through bilateral, sub-regional or regional agreements, taking into account the relevant economic and geographical circumstances of all the States concerned, including the extent and the availability of living resources of any exclusive economic zone of the State with special characteristics and the need to avoid effects detrimental to the fishing communities or the fishing industries of a State, including a part of a State, in whose zone the right to participation is exercised.
3. The right to participate referred to in paragraphs 1 and 2 of this article relate to the surplus of the allowable catch as determined in accordance with the provisions of articles 50 and 51, provided that the participation of developing States with special characteristics shall be on a preferential basis over third States. Provided that, in the event of there being no surplus in a significant number of species in a particular zone, a developing coastal State with special characteristics and the coastal State concerned shall, by co-operation, establish an equitable arrangement on a bilateral, subregional or regional basis to allow for the participation of the State with special characteristics in the exploitation of the living resources in such zone or zones as may be appropriate in the circumstances, taking into account in addition to the circumstances specified in paragraph 2 of this article the following:
 - (a) The nutritional needs of the populations of the respective States concerned and their capabilities for satisfying these needs;
 - (b) The extent to which the coastal State is accommodating other States with special characteristics and land-locked States, and the need to avoid over-burdening the coastal State or part thereof;
 - (c) The extent to which the State with special characteristics is participating or has the right to participate in the exploitation of the exclusive economic zones of other coastal States.

4. Nothing in this article shall preclude agreements being concluded whereby coastal States may grant to developed coastal States with special characteristics treatment more favourable than that provided for in this article. Provided always, that developed coastal States with special characteristics shall be entitled to exercise their rights provided in this article only in the exclusive economic zones of developed coastal States of the same region or sub-region.

Article 59 (Bis)

The provisions of Articles 58 and 59 shall not apply in the case of a coastal State which is overwhelmingly dependent on the exploitation of the living resources of its exclusive economic zone.

Article 60

1. Rights provided under Articles 58 and 59 to exploit living resources cannot, without the express consent of the coastal State, be transferred, to third States or their nationals by lease or license, by establishing joint collaboration ventures or in any other manner which has the effect of such transfer.
2. Subject to the provisions of paragraph 1 States may obtain technical or financial assistance from third States or international organizations in order to facilitate the exercise of the rights provided under articles 58 and 59.

10 July 1977

Anonymous Text

Article 56

Right of land-locked States

1. Land-locked States have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 50 and 51.
2. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements, taking into account inter alia:
 - (a) the nutritional needs of the populations of the respective States and their capacity to supply those needs;
 - (b) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal States;
 - (c) the extent to which the land-locked State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements, in the exploitation of living resources of the exclusive economic zones of other coastal States;
 - (d) the extent to which other land-locked States and States with special characteristics are exercising their right of participation in the exclusive economic zone of a coastal State and the consequent need to avoid a particular burden for any single coastal State, or a part of it.
3. Developed land-locked States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State in giving access to other States to its exclusive economic zone has taken into account the need to minimize economic dislocation in States whose nationals have habitually fished in the zone.
4. The above provisions are without prejudice to other arrangements agreed upon in subregions or regions where the coastal States may grant to land-locked States of the same subregion or region equal or other special treatment regarding the exploitation of the living resources in the exclusive economic zones.

Article 59

Right of States with special characteristics

1. Coastal States whose geographical situation, including the natural ecological characteristics of their exclusive economic zones, make such States dependent for the satisfaction of the nutritional needs of their populations upon the living resources in the exclusive economic zones of other States in the subregion or region and coastal States which can claim no exclusive economic zones of their own, hereafter referred to collectively as "States with special characteristics", have a right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 50 and 51.
2. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements, taking into account inter alia:
 - (a) the nutritional needs of the populations of the respective States and their capacity to supply those needs;
 - (b) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal States;
 - (c) the extent to which the State with special characteristics, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements, in the exploitation of living resources of the exclusive economic zones of other coastal States;
 - (d) the extent to which other land-locked States and States with special characteristics are exercising their right of participation in the exclusive economic zone of a coastal State and the consequent need to avoid a particular burden for any single coastal State, or a part of it.
3. Developed States with special characteristics shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to its exclusive economic zone, has taken into account the need to minimize economic dislocation in States whose nationals have habitually fished in the zone.
4. The above provisions are without prejudice to other arrangements agreed upon in subregions or regions where the coastal States may grant to States with special characteristics of the same subregion or region equal or other special treatment regarding the exploitation of the living resources in the exclusive economic zones.

Article 59 (bis)

Non-applicability of articles 58 and 59

The provisions of articles 58 and 59 shall not apply in the case of a coastal State whose economy is overwhelmingly dependent on the exploitation of the living resources of its exclusive economic zone.

Article 60

Restrictions on transfer of rights

1. Rights provided under articles 58 and 59 to exploit living resources shall not be directly or indirectly transferred to third States or their nationals by lease or licence, by establishing joint collaboration ventures or in any other manner which has the effect of such transfer unless otherwise agreed upon by the States concerned.
2. The foregoing provision does not preclude the States concerned from obtaining technical or financial assistance from third States or international organizations in order to facilitate the exercise of the rights pursuant to articles 58 and 59 provided that it does not have the effect referred to in paragraph 1 of this article.

6 February 1978

COASTAL STATES GROUPArticle 69Access for landlocked States

1. Coastal States shall give access to the exploitation of an appropriate part of the surplus of living resources of their exclusive economic zones to landlocked States of the same subregion or region, on an equitable basis, taking into account the relevant economic and geographic circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.
2. The terms and modalities of such access shall be established by the States concerned through bilateral, subregional or regional agreements, taking into account inter alia:
 - (a) the nutritional needs of the populations of the respective States and their capacity to supply those needs;
 - (b) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal States;
 - (c) the extent to which the landlocked State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;
 - (d) the extent to which other landlocked States and States with special characteristics of the same subregion or region are participating in the exploitation of living resources in the exclusive economic zone of a coastal State and the consequent need to avoid a particular burden for any single coastal State, or a part of it;
 - (e) the extent to which the coastal State, in giving access to other States to the exploitation of living resources in its exclusive economic zone has taken into account the need to minimize economic dislocation in States whose nationals have habitually fished in the zone.
3. Coastal States may withhold the granting of access referred to in this article to a landlocked State which has an equal or higher level of development in terms of per capita income.
4. Developed landlocked States shall, under the provisions of this article, be entitled to participate in the exploitation of an appropriate part of the surplus of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region.

5. The above provisions are without prejudice to other arrangements under which coastal States may grant to landlocked States of the same subregion or region or to adjoining States equal or other special treatment regarding the exploitation of living resources in the exclusive economic zones.

Article 70

Access for States with special characteristics

1. Coastal States shall give access to the exploitation of an appropriate part of the surplus of living resources of their exclusive economic zones to States with special characteristics as described in paragraph 2 of this article, of the same subregion, on an equitable basis, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.

2. The term "States with special characteristics" applies to developing coastal States whose geographical characteristics make such States particularly dependent for the satisfaction of the nutritional needs of their populations upon the exploitation of living resources in the exclusive economic zones of their neighbouring States and to developing coastal States which can claim no exclusive economic zones of their own.

3. The terms and modalities of such access shall be established by the States concerned through bilateral, subregional or regional agreements, taking into account inter alia:

- (a) the nutritional needs of the populations of the respective States and their capacity to supply those needs;
- (b) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal States;
- (c) the extent to which the State with special characteristics, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements, in the exploitation of living resources of the exclusive economic zones of other coastal States;
- (d) the extent to which other States with special characteristics and landlocked States of the same subregion or region are participating in the exploitation of living resources in the exclusive economic zone of a coastal State and the consequent need to avoid a particular burden for any single coastal State, or a part of it;
- (e) the extent to which the coastal State, in giving access to other States to the exploitation of living resources in its exclusive economic zone has taken into account the need to minimize economic dislocation in States whose nationals have habitually fished in the zone.

4. Coastal States may withhold the granting of access referred to in this article to a State with special characteristics which has an equal or higher level of development in terms of per capita income.

5. The above provisions are without prejudice to other arrangements under which coastal States may grant to States with special characteristics of the same subregion or region or to adjoining States equal or other special treatment regarding the exploitation of living resources in the exclusive economic zones.

Article 71

Non-applicability of articles 69 and 70

The provisions of articles 69 and 70 shall not apply in the case of a coastal State, or a part of it, whose economy is overwhelmingly dependent on the exploitation of the living resources of its exclusive economic zone.

Article 72

Restrictions on transfer of access

1. The access provided under articles 69 and 70 to exploit living resources shall not be directly or indirectly transferred to third States or their nationals by lease or licence, by establishing joint collaboration ventures or in any other manner which has the effect of such transfer unless otherwise agreed upon by the States concerned.

2. The foregoing provision does not preclude the States concerned from obtaining technical or financial assistance from third States or international organizations in order to facilitate their capacities to exploit living resources pursuant to articles 69 and 70, provided that it does not have the effect referred to in paragraph 1.

Suggested compromise formula

Article 150

General policies relating to
activities in the Area

Activities in the Area shall be carried out in accordance with the provisions of this part of the present Convention in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to promote international co-operation for the over-all development of all countries, especially the developing countries and with a view to ensuring:

- (a) orderly and safe development and rational management of the resources of the Area, including the efficient conduct of activities in the Area and, in accordance with sound principles of conservation, the avoidance of unnecessary waste;
- (b) the expanding of opportunities for participation in such activities consistent particularly with articles 144 and 148;
- (c) participation in revenues by the Authority and the transfer of technology to the Enterprise and developing countries as provided for in article 144;
- (d) increasing availability of the minerals originating in the Area as are also produced outside the Area as needed to assure adequate supplies to consumers of such minerals;
- (e) just and stable prices remunerative to producers and fair to consumers for minerals originating both in the Area and also outside the Area and promoting equilibrium between supply and demand;
- (f) the enhancing of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area and preventing monopolization of the exploration and exploitation of the resources of the Area; and
- (g) the protection of developing countries from _____ adverse effects on their economies or on their earnings resulting from a reduction in the price of an affected mineral, or in the volume of that mineral exported, to the extent that such reductions are caused by activities in the Area, as provided in article 150 bis.

Article 150 bis

Production policies

Without prejudice to the objectives set forth in article 150, and for the purpose of implementing the provisions of paragraph (g) of article 150:

A. Acting through existing forums or such new arrangements or agreements as may be appropriate, and in which all interested parties participate, the Authority shall take measures necessary to achieve the growth, efficiency and stability of markets for those classes of commodities produced from the Area, at prices remunerative to producers and fair to consumers. All parties shall co-operate to this end. The Authority shall have the right to participate in any commodity conference dealing with the categories of minerals produced in the Area. The Authority shall have the right to become a party to any such arrangement or agreement resulting from such conferences as are referred to above. The participation by the Authority in any organs established under the arrangements or agreements referred to above shall be in respect of the production in the Area and in accordance with the rules of procedure established for such organs.

B. (i) The Authority shall limit in an interim period specified below, total production of minerals from nodules in the Area so as not to exceed for the first seven years of that period the projected cumulative growth segment of the world nickel demand. After the first seven years of the interim period total production of minerals from nodules in the Area shall on a yearly basis not exceed 60 per cent of the cumulative growth segment of the world nickel demand, as projected from the beginning of the interim period, provided however that this shall not affect such production under contracts already awarded, as is permitted under the production limit referred to above for the first seven years of the interim period. The cumulative growth segment for the purpose of this part of the present Convention shall be computed in accordance with subparagraph (iii) below. The interim period referred to above shall begin on 1 January 1980 and shall terminate on the day when such new arrangements or agreements as referred to in subparagraph A above, in which all affected parties participate, enter into force. The Authority shall resume the power to limit the production of minerals from nodules in the Area if the said arrangements or agreements should lapse or become ineffective for any reason whatsoever.

(ii) The Authority shall carry out the decisions taken by such organs as referred to in subparagraph A above and apply the interim production limit provided for in subparagraph (i) above, in a manner which assures a uniform and non-discriminatory implementation in respect of all production in the Area of the minerals concerned. In doing so, the Authority shall act in a manner consistent with the terms of existing contracts and approved plans of work of the enterprise.

(iii) The rate of increase in world nickel demand projected for the interim period referred to in subparagraph (i) above shall, for the first five

/...

years of the interim period, be the annual constant percentage rate of increase in world demand during the 20-year period ending 1 January 1980. The calculation of such rate of increase in world nickel demand shall be made by application of the least squares method using definitive data from the latest 20-year period prior to that date, and for which such data are available. Thereafter this rate of increase shall be adjusted every five years on the basis of a recalculation applying the aforesaid method and using definitive data from the latest 10-year period prior to the commencement of any such five-year period, and for which such data are available.

- (iv) The cumulative growth segment of the world nickel demand referred to in subparagraph (i) above shall be computed by applying the rate of increase determined pursuant to subparagraph (iii) to a base amount calculated by projecting world nickel demand for the year immediately preceding 1 January 1980 by applying the aforesaid rate of increase to the average of world nickel demand during the latest five-year period prior to the aforesaid date, and for which definitive data are available. Thereafter the base amount shall be adjusted every five years on the basis of the most recent definitive data available for the five-year period immediately preceding any such five-year period applying the method specified in this subparagraph.

C. The Authority may regulate production of minerals from the Area, other than minerals from nodules, under such conditions and applying such methods as may be appropriate.

D. Following recommendations from the Council on the basis of advice from the Economic Planning Commission, the Assembly shall establish a system of compensation for developing countries which suffer adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or the volume of that mineral exported, to the extent that such reduction is caused by activities in the Area.

Article 150 ter

1. The Authority shall avoid discrimination in the exercise of its powers and functions, including the granting of opportunities for activities in the Area.

2. Special consideration for developing countries, including particular consideration for the land-locked and geographically disadvantaged among them, specifically provided for in this part of the present Convention, shall not be deemed to be discrimination.

3. All rights granted shall be fully safeguarded in accordance with the provisions of this Convention.

16 February 1976

INFORMAL SUB-GROUP OF TECHNICAL EXPERTS: CHAIRMAN'S REPORT

1. The informal Sub-Group was invited to consider the technical problems associated with any formula that might be used to limit production of minerals from the Area.
2. At our first meeting it was suggested that the Sub-Group should consider the data base and the methodologies that might be used. This might be followed by consideration of the possible effect of ceilings derived from various formulas on existing and potential land-based producers and on potential sea-bed production. As a further step, it was suggested that the Sub-Group might consider the ceilings in terms of numbers of mine sites.
3. It was agreed that the terms used must be defined. It would also be necessary to consider whether data relating to other terms might serve the same purpose better: for example "consumption" or "production" might be considered as alternatives to "demand". It would also be necessary to consider the availability of historical series of statistics and agree which should be used.
4. As an initial exercise it was decided that the Sub-Group's investigation of the basic data, terminology and methodology should start with the formula in article 150 (g) B of the Informal Composite Negotiating Text. For this exercise it was agreed that the statistics of world consumption published by Metallgesellschaft should be used as typical but not necessarily definitive data.
5. The Sub-Group concluded that this formula is capable of more than one interpretation. This text can be used as a basis for calculation only if the future level of "demand" is assumed. It was therefore agreed that, arbitrarily and only for the purpose of this exercise, growth should be assumed to increase at 4.5 per cent a year above the figure for 1976 (the last year for which statistics were available to us).
6. A small task group undertook to calculate the effect of this formula until the year 2000 and to identify ambiguities in the formula in the ICNT. The results are given, in draft, in the annex.
7. It was agreed that the term "annual constant percentage rate of increase" refers to exponential growth (of compound interest). There was a brief discussion of the validity of fitting the historical series of data to an exponential curve, rather than to some other curve. It was agreed that this is reasonable.
8. Future work might consist of further examination of the problems of definition, of the methodologies and of study of the effects of other formulas.
9. It must be emphasized that although open-ended, the Sub-Group was not representative of all the States represented at the Third United Nations Conference on the Law of the Sea. This report should, therefore, be regarded as not only informal but also relating only to preliminary discussions of the problems concerned.
10. Furthermore, this is my personal, informal, report and as such has not been approved by the Sub-Group.
11. I readily acknowledge the great help provided by the Secretariat.

Annex

The ICNT

In order to demonstrate how the ICNT production ceiling might be computed (table 1), several assumptions and interpretations are first required:

(i) "Demand"

(a) A set of consumption value is given in table 2. For this exercise, consumption is "assumed" to be the same as "demand". These data allow the calculation of "annual constant percentage rate of increase" (art. 150, 1, B (iii)) and "base amount" (art. 150, 1, B (iv)), subject to certain interpretations of the text.

(b) The data in table 2 were compiled as follows:

- (i) 1959-1976 values were taken from "Metal Statistics" (table 3);
- (ii) 1977-1999 values were calculated using the 1976 demand, 665,700 metric tonnes, (table 3) as the base year, and 4.5 per cent as the assumed future constant annual growth rate.

(2) "Annual constant percentage rate of increase"

This term was interpreted to mean the rate resulting from at least squares regression assuming that "demand" over the appropriate period is best fitted to an exponential growth function.

(3) "Definitive Data"

(a) It was recognized that "demand" statistics for nickel are available from several sources; that the statistics are not available during the earlier part of the year during which calculations will be made; that the most recent available statistics are preliminary and are generally modified during subsequent years.

(b) It was assumed that "definitive data" are not available during the year immediately preceding the first year of a period for which the ceiling is to be calculated. Thus, if the ceiling for the period 1980-1984 is to be calculated in 1979, the most recent available "definitive data" are assumed to be those for the year 1978.

(4) "Base Amount"

(a) It is assumed that the value corresponding to the "base amount" is arrived at by projecting the "average of the world nickel demand during the latest five-year period" (for which "definitive data" are available) from the middle year of that five-year period.

/...

(5) "Projected cumulative growth segment"

The text allows at least two different arithmetic methods to be used to calculate the "projected cumulative growth segment". As the methods result in differences in the ceiling on a year to year basis, both methods have been used. These differences result solely from the choice of method, rather than from different interpretations of preceding assumptions and interpretations.

Table 1

1980-84

1979 base = 788.3 ^{1/}growth rate = 5.36% ^{2/}

| Year | Calculated "demand" | Change in calculated "demand" yr. to yr. | Sum of changes in calculated "demand" | 60% of change in "demand" | Sum of 60% changes in "demand" | Cumulative growth segment "A" ^{3/} | Cumulative growth segment "B" ^{4/} |
|------|---------------------|--|---------------------------------------|---------------------------|--------------------------------|---|---|
| 1980 | 830.5 | 42.2 ^{5/} | 42.2 | 25.3 | 25.3 | 42.2 | 42.2 |
| 1981 | 875.1 | 44.6 | 86.8 | 26.8 | 52.1 | 86.8 | 86.8 |
| 1982 | 922.0 | 46.9 | 133.7 | 28.1 | 80.2 | 133.7 | 133.7 |
| 1983 | 971.4 | 49.4 | 183.1 | 29.6 | 109.8 | 183.1 | 183.1 |
| 1984 | 1 023.4 | 52.0 | 235.1 | 31.2 | 141.0 | 235.1 | 235.1 |

1985-89

1984 base = 938.0

growth rate = 4.11%

| | | | | | | | |
|------|---------|------|-------|------|-------|---------------------|---------------------|
| 1985 | 976.6 | 38.6 | 273.7 | 23.2 | 164.2 | 273.7 | 235.1 ^{6/} |
| 1986 | 1 016.7 | 40.1 | 313.8 | 24.1 | 188.3 | 313.8 | 235.1 |
| 1987 | 1 058.5 | 41.8 | 355.6 | 25.1 | 213.4 | 313.8 ^{7/} | 235.1 |
| 1988 | 1 102.0 | 43.5 | 399.1 | 26.1 | 239.5 | 313.8 | 235.1 |
| 1989 | 1 147.3 | 45.3 | 444.4 | 27.2 | 266.7 | 313.8 | 235.1 |

1990-94

1989 base = 1 182.0

growth rate = 4.50%

| | | | | | | | |
|------|---------|------|-------|------|-------|-------|-------|
| 1990 | 1 235.2 | 53.2 | 497.6 | 31.9 | 298.6 | 313.8 | 268.1 |
| 1991 | 1 290.8 | 55.6 | 553.2 | 33.4 | 332.0 | 332.0 | 301.5 |
| 1992 | 1 348.9 | 58.1 | 611.3 | 34.9 | 366.9 | 366.9 | 336.4 |
| 1993 | 1 409.6 | 60.7 | 672.0 | 36.4 | 403.3 | 403.3 | 372.8 |
| 1994 | 1 473.0 | 63.4 | 735.4 | 38.0 | 441.3 | 441.3 | 410.8 |

1995-99

1994 base = 1 473.0

growth rate = 4.50%

| | | | | | | | |
|------|---------|------|---------|------|-------|-------|-------|
| 1995 | 1 539.3 | 66.3 | 801.7 | 39.8 | 481.1 | 481.1 | 450.6 |
| 1996 | 1 608.6 | 69.3 | 871.0 | 41.6 | 522.7 | 522.7 | 492.2 |
| 1997 | 1 680.9 | 72.3 | 943.3 | 43.4 | 566.1 | 566.1 | 535.6 |
| 1998 | 1 756.6 | 75.7 | 1 019.0 | 45.5 | 611.5 | 611.5 | 581.0 |
| 1999 | 1 835.6 | 79.0 | 1 098.0 | 47.4 | 658.9 | 658.9 | 628.4 |

^{1/} The bases for the year preceding each five-year period are calculated by averaging demand data (see table 2) for the five years immediately preceding the base year (i.e., 1974-78, 79-83, 84-88, 89-93), and applying to that average the appropriate calculated growth rate a number of times equal to the difference in years between the base year and the middle year of the average period.

- (e.g.: 1. average 74-78 = 674.0
 2. 1979 minus 1976 = 3
 3. $674.0 \times (1.0536)^3 = 788.3$)

^{2/} The growth rate is equal to the constant annual rate of growth descriptive of an exponential growth function resulting from a least square regression of the following populations of data cleaved from the attached data base:
 80-84: 1959-78, 85-89: 1974-83, 90-94: 1979-88, 95-99: 1984-93.

^{3/} Interpretation "A" is that "cumulative growth segment" means the sum of the appropriate year-to-year-changes in calculated demand, as given in columns 3 and 5 in the table.

^{4/} Interpretation "B" is that cumulative growth segment for any given year means the difference between the calculated demand for that year and the 1979 base figure, multiplied after 1986 by .6.

^{5/} Change in demand for the first year of each five-year period is calculated by subtracting the base for that period from the first year's calculated "demand".

^{6/} It is assumed solely for the sake of illustration throughout the table that all cumulative growth segment is actually taken up by sea-bed mining. Paragraph B (i), states that once growth segment is allocated in the first seven years, it cannot be withdrawn. In the period 1985-90, calculated cumulative growth segment under alternative "B" is less than the maximum yearly figure (that for 1984) calculated during the first seven years. The cumulative growth segment is therefore "frozen" at 235.1 until the calculated value surpasses it in 1990.

^{7/} The cumulative growth segment calculated at 100 per cent is "frozen" at the 1986 level (313.8) until the cumulative growth segment calculated at 60 per cent "as projected from the beginning of the interim period" surpasses it in 1991.

Table 2

DATA BASE

| Year | "demand" (m.t. x 1000) | Year | "demand" (m.t. x 1000) |
|------|------------------------|------|------------------------|
| 1959 | 249.2 | 1991 | 1 288.3 |
| 1960 | 292.7 | 1992 | 1 346.3 |
| 1961 | 320.8 | 1993 | 1 406.9 |
| 1962 | 318.0 | 1994 | 1 470.2 |
| 1963 | 344.9 | 1995 | 1 536.3 |
| 1964 | 396.8 | 1996 | 1 605.5 |
| 1965 | 425.6 | 1997 | 1 677.7 |
| 1966 | 467.6 | 1998 | 1 753.2 |
| 1967 | 473.0 | 1999 | 1 832.1 |
| 1968 | 490.4 | | |
| 1969 | 502.8 | | |
| 1970 | 576.6 | | |
| 1971 | 526.6 | | |
| 1972 | 580.1 | | |
| 1973 | 655.2 | | |
| 1974 | 707.2 | | |
| 1975 | 574.5 | | |
| 1976 | 665.7 | | |
| 1977 | 695.7 | | |
| 1978 | 727.0 | | |
| 1979 | 759.7 | | |
| 1980 | 793.9 | | |
| 1981 | 829.5 | | |
| 1982 | 866.9 | | |
| 1983 | 905.9 | | |
| 1984 | 946.7 | | |
| 1985 | 989.3 | | |
| 1986 | 1 033.8 | | |
| 1987 | 1 080.3 | | |
| 1988 | 1 128.9 | | |
| 1989 | 1 179.8 | | |
| 1990 | 1 232.8 | | |

1959-1976: Actual nickel consumption
(see table 3)

1977-1999: Assumes 4.5 per cent
annual compound growth on basis
of 1976 (665.7)

Table 3

CONSUMPTION OF NICKEL 1/

| Thousand metric tons <u>1/</u> | 1956 | 1957 | 1958 | 1959 | 1960 | 1961 | 1962 | 1963 | 1964 | 1965 |
|--------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| TOTAL WORLD | 230.9 | 235.3 | 196.4 | 249.2 | 292.7 | 320.8 | 318.0 | 344.9 | 396.8 | 425.6 |

| Thousand metric tons <u>2/</u> | 1966 | 1967 | 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 | 1975 | 1976 |
|--------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| TOTAL WORLD | 467.6 | 473.0 | 490.4 | 502.8 | 576.6 | 526.6 | 580.1 | 655.2 | 707.2 | 574.5 | 665.7 |

Source: From "Metal Statistics" (53rd and 64th Annual Issues)

1/ Including nickel in ferro-nickel, fonte and nickel oxide.

2/ Including nickel content in ferro-nickel and nickel oxide sinter.

INFORMAL SUGGESTION BY PORTUGAL

Article 61

Paragraph 1

1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone. In the case of stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it, the total allowable catch of these stocks shall be determined either directly by the States concerned or through appropriate sub-regional, regional or global organizations.

Article 67 bis (New)

1. The appropriate sub-regional, regional or global organizations, taking into account the best scientific evidence available, shall maintain lists of common stocks referred to in Articles 63, 64, 65, 66 and 67, as well as of the knowledge on their state of conservation.

2. If a State considers that despite the measures taken or recommended by the appropriate sub-regional, regional or global organization a common stock is overexploited or its conservation is endangered, within or beyond national jurisdiction, it may request the Director-General of the Food and Agriculture Organization of the United Nations to provide technical advice on the matter. The report of the Director-General shall be transmitted, within four months of receiving the request, to the State which has made it, to the other States concerned and to the appropriate sub-regional, regional or global organization.

INFORMAL SUGGESTION BY MONGOLIAArticle 148

In order to ensure the widest possible participation of LL/GDS in activities in the Area we propose to divide this Article into two separate articles, namely on participation of developing countries and on participation of LL/GDS.

Article 148 bis - Participation of Land-locked and Geographically Disadvantaged States in Activities in the Area :

Participation of land-locked and geographically disadvantaged States in activities in the Area shall be promoted and protected, having due regard to the special needs and interests of these States in overcoming obstacles arising from their disadvantaged location, including remoteness from the sea.

Note: To delete from the present Article 148 last 4 lines (and in particular, from the Area).

Article 158: According to para. 9 of Annex III all net disposable income generated by the Enterprise shall be distributed accordingly to subparagraphs (viii), (xii) and (xiv) of para. 2 of article 158. However no reference is made to the special needs of LL/GDS in the said subparagraphs.

In this connexion it is suggested that our group insist on insertion of the following text into subparagraph (xii) of para. 2 of article 158:

"as well as difficulties faced by land-locked and geographically disadvantaged states in overcoming obstacles arising from their disadvantaged location, including remoteness from the sea."

C.2/Informal Meeting/30
4 May 1978

Original: ENGLISH AND CHINESE

Informal suggestion by Argentina, Bangladesh, China,
Democratic Yemen, Ecuador, Madagascar, Pakistan,
Peru and the Philippines

- (1) Revise Article 17 to read as follows:

"Subject to the present Convention, non-military ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.

- (2) Incorporate Article 20, "Submarine and Other Underwater Vehicles" into Article 29.

- (3) Change the title of Article 29 into "Regime of Passage of Warships, Submarines and Other Underwater Vehicles". Text reads as follows:

1. For the purpose of the present Convention, "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the Government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.

2. In accordance with its laws and regulations, the coastal State may require foreign military vessels to give prior notification to or obtain prior consent of that State for passing through its territorial sea.

3. Foreign submarines and other underwater vehicles when passing through the territorial sea, are required to navigate on the surface and show their flag.

MF/1
20 April 1978
ENGLISH
Original: FRENCH

THIRD COMMITTEE (INFORMAL MEETING)
(Protection and preservation of the marine environment)

FRANCE

ARTICLE 212, paragraph 2 bis

States may conclude between one another agreements to regulate, on a reciprocal basis, the admission of vessels within their inland waters in general or within their port installations outside their inland waters. A coastal State which is a party to such an agreement has the right, in its territorial sea, to take, in respect of vessels sailing to the inland waters or port installations outside the inland waters of another State party to this agreement, the necessary measures to ensure observance of the conditions for admission to the aforesaid waters or port installations, including the conditions relating to the design, construction, manning and equipment of the vessels concerned.

ARTICLE 222

Paragraph 1

Nothing in this Part of the present Convention shall affect the right of States to impose all appropriate measures, in accordance with international law, beyond the territorial sea, for the prevention, reduction and elimination of the dangers to their coastlines or related interests, including fishing, presented by pollution or threat of pollution following upon a maritime casualty or acts related to such a casualty.

Paragraph 2

Under the terms of the present article, "maritime casualty" means a collision of ships, stranding or other incident of navigation or occurrence on board a ship or external to it resulting in material damage or threat of material damage which, by affecting the vessel or its cargo, would or might cause damage to the marine environment.

THIRD COMMITTEE (INFORMAL MEETING)
(Protection and preservation of the marine environment)

BRAZIL

ARTICLE 209

Pollution from sea-bed activities

Replace the present paragraph 1 by the following:

1. Coastal States shall establish national laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connexion with all activities, artificial islands, installations and structures in the sea-bed under their jurisdiction.

Replace paragraph 5 by the following:

5. States, acting in particular through competent international organizations or diplomatic conference, shall establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment arising from or in connexion with all activities, artificial islands, installations and structures in the sea-bed under their jurisdiction. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

ARTICLE 211

Dumping

Replace the present paragraph 5 by the following:

5. Dumping within the territorial sea and the exclusive economic zone or onto the continental shelf shall not be carried out without the express prior approval of the coastal State, which has the right to permit, regulate and control such dumping, pursuant to paragraph 2 of article 195.

THIRD COMMITTEE (INFORMAL MEETING)
(Protection and preservation of the marine environment)

ARTICLE 219

Enforcement by port States

(Changes made to the existing text are underlined)

1. When a vessel is voluntarily within one of the ports or at one of the offshore terminals of a State, that State may undertake investigations and, where warranted by the evidence of the case, cause proceedings to be taken as provided in paragraph 2 in respect of any discharge from that vessel in violation of applicable international rules and standards established through the competent international organization or general diplomatic conference, outside the internal waters, territorial sea, or exclusive economic zone of that State.
2. ~~No proceedings~~ pursuant to paragraph 1 shall be taken in respect of a discharge violation in the internal waters, the territorial sea or exclusive economic zone of another State unless requested by that State, or outside the economic zone of a State unless requested by the flag State, or unless the violation has caused or is likely to cause pollution in the internal waters, territorial sea or exclusive economic zone of the State instituting the proceedings.
4. The records of the investigation carried out by a port State pursuant to the provisions of this article shall be transferred to the flag State or to the coastal State at their request. Any proceedings taken by the port State on the basis of such an investigation, subject to the provisions of section 7 of this Part of the present Convention, may be initiated only at the request of a flag State or coastal State when the violation has occurred outside the economic zone or within the internal waters, territorial sea or exclusive economic zone of that coastal State and the evidence and records of the case and any bond posted with the authorities of the port State shall be transferred to the flag State or to the coastal State making such a request.

ARTICLE 229

Suspension and restrictions on institution of proceedings

(Changes made to the existing text are underlined)

1. Penal proceedings in respect of any violation of applicable laws and regulations or international rules and standards relating to the prevention, reduction and control of pollution from vessels committed by a foreign vessel beyond the territorial sea of the State which has established the violation shall not be instituted by that State before the expiry of a period of two months from the date on which that State has notified the flag State, supplying it with a report and all pertinent information, unless those proceedings relate to a case of major damage to the coastal State or the flag State has on at least three occasions in the preceding five years disregarded its obligation to enforce effectively the applicable international rules and standards in respect of violations committed by its vessels or unless the violation involves discharges of which there is clear and objective proof. The flag State shall make known to the State which has established the violation, within a period of two months from the date of notification, the decision taken by its judicial authorities to institute or not to institute penal proceedings. When proceedings by the flag State have been brought to a conclusion, the flag State shall address the delivered judgement to the first State, which cannot thereafter take further penal proceedings. Any bond posted or other financial security provided shall be released by the coastal State.

ARTICLE 231

Monetary penalties and the observance
of recognized rights of the accused

(Changes made to the existing text are underlined)

1. Only monetary penalties may be imposed with respect to violations of national laws and regulations, or applicable international rules and standards, for the prevention, reduction and control of pollution from vessels committed by foreign vessels beyond the territorial waters.

THIRD COMMITTEE (INFORMAL MEETING)
(Protection and preservation of the marine environment)

SUGGESTION BY THE CHAIRMAN OF THE INFORMAL MEETINGS

ARTICLE 212

Pollution from vessels

Paragraph 1: Add the following at the end of the first sentence

"... and promote the adoption, in the same manner, wherever appropriate, of routing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline and related interests of coastal States."

Paragraph 3: Add the following at the end of the paragraph

"... including vessels exercising the right of innocent passage."

MP/8
27 April 1978
Original: ENGLISH/FRENCH

THIRD COMMITTEE (INFORMAL MEETING)
(Protection and preservation of the marine environment)

BALMORA, BARBADOS, CANADA, ICELAND, KENYA, NEW ZEALAND, PHILIPPINES,
PORTUGAL, SOMALIA, SPAIN, TRINIDAD AND TOBAGO

ARTICLE 212

Pollution from vessels

Insert the following sentence between the first and second sentences:

3. Such laws and regulations, inasmuch as they concern design, construction, manning or equipment of foreign ships, shall be in conformity with generally accepted international rules where such rules exist.

THIRD COMMITTEE (INFORMAL MEETING)

(Protection and preservation of the marine environment)

UNITED STATES OF AMERICA

Article 1

Use of terms

Add a new paragraph between existing paragraphs 4 and 5: "Marine environment" includes marine life.

Article 195

Measures to prevent, reduce and control pollution
of the marine environment

Add a new paragraph as follows:

5. The measures taken in accordance with the present Part shall include those necessary to protect and preserve rare or fragile areas and ecosystems as well as the habitat of depleted, threatened, or endangered species and other marine life.

Article 212, paragraphs 4 and 5

Pollution from vessels

To be considered if enforcement system is not improved.

Article 213

Pollution from or through the atmosphere

Amend paragraph 1 by changing the period at the end of the first sentence to a comma and adding the following: "and the safety of air navigation."

Article 221

Enforcement by coastal States

Paragraph 6:

1. Change the opening clause to read, "Where there is clear objective evidence that a vessel navigating in the exclusive economic zone ..." and delete the clause "flagrant or gross" before "violation."
2. Conform the final clause to the final clause of paragraph 2 by wording it, "cause proceedings, including arrest of the vessel, to be taken in accordance with its laws."
3. In the clause "resulting in discharge causing major damage or threat of major damage to the coastline or related interests of the coastal state, or to any resources of its territorial sea or exclusive economic zone," delete "major" in both places and insert "significant" before discharge.

Article 229

Suspension and restrictions on institution
of proceedings

1. Substitute the clause, "committed by a foreign vessel beyond the exclusive economic zone of the State instituting proceedings ..." for the opening clause "committed by a foreign vessel beyond the territorial sea of the State instituting proceedings."
2. Substitute the clause "unless those proceedings relate to a case of serious pollution affecting the coastal State or" for the clause "unless those proceedings relate to a case of major damage to the coastal State or."

Article 231

Monetary penalties and the observance of
recognized rights of the accused

Redraft paragraph 1 as follows:

1. Except for violations committed in internal waters or the territorial sea, penalties with respect to violation of national laws and regulations, or applicable international rules and standards for the prevention, reduction and control of pollution from foreign vessels may not include imprisonment, in the absence of agreement to the contrary by the States concerned, or any other form of corporal punishment.

MP/10
27 April 1978
Original: ENGLISH

THIRD COMMITTEE (INFORMAL MEETING)
(Protection and preservation of the marine environment)

FEDERAL REPUBLIC OF GERMANY

ARTICLE 231

Monetary penalties and the observance of
recognized rights of the accused

(Changes made to the existing text are underlined)

1. Only monetary penalties may be imposed with respect to violations of national laws and regulations, or applicable international rules and standards, for the prevention, reduction and control of pollution from vessels committed by foreign vessels beyond the internal waters. The penalties imposed shall be adequate in severity to discourage violations and proportionate to the gravity of the actual violation.
2. In the conduct of proceedings to impose penalties in respect of such violations committed by a foreign vessel, States apply their national law in accordance with this Part of the present Convention and other rules of international law. Especially recognized rights of the accused shall be observed.

MP/11
27 April 1978
Original: ENGLISH

THIRD COMMITTEE (INFORMAL MEETING)
(Protection and preservation of the marine environment)

PORTUGAL

ARTICLE 1

Use of terms

Replace sub-paragraph 5(a)(i) by the following:

"Dumping" means:

(i) any deliberate disposal at sea of wastes or other matter from vessels, aircrafts, platforms or other man-made structures at sea.

Add the following sub-paragraph 5(d):

"Incineration at sea" means:

The deliberate combustion of wastes and other matter on board of vessels, platforms or other man-made structures at sea for the purpose of their thermal destruction.

Add the following phrase "dumping and incineration at sea" whenever a reference of dumping is made in article 195, sub-paragraphs 3(a)(iii), article 211, paragraphs 1, 2, 4, 5 and 6 and article 217.

GE.78-84903

THIRD COMMITTEE (INFORMAL MEETING)
(Protection and preservation of the marine environment)

CANADA, ICELAND AND TRINIDAD AND TOBAGO

ARTICLE 221

Enforcement by coastal States

Redraft paragraph 5 as follows:

Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, violated applicable international rules and standards or national laws and regulations confirming and giving effect to such international rules and standards for the prevention, reduction and control of pollution from vessels and the violation has resulted in a substantial discharge into or significant pollution **or threat** of significant pollution of the marine environment, that State may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection.

MP/13
28 April 1978

ENGLISH
Original: ENGLISH/SPANISH

THIRD COMMITTEE (INFORMAL MEETING)

(Protection and preservation of the marine environment)

CUBA

ARTICLE 231

Monetary penalties and the observance of recognized
rights of the accused

Add at the end of paragraph 1 the following sentence:

"... except in the case of an intentional and serious act of pollution in the territorial sea, in which case other penalties may be imposed".

MP/14
28 April 1978
Original: ENGLISH

THIRD COMMITTEE (INFORMAL MEETING)

(Protection and preservation of the marine environment)

GREECE

ARTICLE 231

Monetary penalties and the observance of recognized
rights of the accused

Delete at the end of para. 1 the words:

"beyond the internal waters".

GE.78-84946

THIRD COMMITTEE (INFORMAL MEETING)
(Protection and preservation of the marine environment)

FEDERAL REPUBLIC OF GERMANY

ARTICLE 227

Investigation of foreign vessels

Redraft paragraph 1 as follows:

1. States shall not delay a foreign vessel longer than is essential for purposes of investigation provided for in Articles 217, 219 and 221 of this Part of the present Convention. Any physical inspection of a foreign vessel shall be limited to an examination of such certificates and records as the vessel is required to carry by applicable international rules and standards or of any similar documents which it is carrying, unless there are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially with the particulars of those documents or a further inspection is necessary to confirm the suspected violation. If the investigation indicates a violation of applicable laws and regulations or international rules and standards for the preservation of the marine environment release shall be made subject to reasonable procedures such as bonding or other appropriate financial security. Without prejudice to applicable international rules and standards relating to the seaworthiness of ships, the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard.

THIRD COMMITTEE (INFORMAL MEETING)

(Protection and preservation of the marine environment)

Union of Soviet Socialist Republics

Articles 225, 226, 228, 232, paragraph 2 of article 231 and article 233 should be taken out to form a separate Part of the Convention, reading as follows:

"PART XIV bis. GENERAL SAFEGUARDS

Article ... (previously 25)

Exercise of powers of enforcement

The powers of enforcement against foreign vessels under the present Convention may only be exercised by officials or by warships or military aircraft or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

Article ... (previously 226)

Duty to avoid adverse consequences in the exercise of the powers of enforcement

In the exercise of their powers of enforcement against foreign vessels under the present Convention, States shall not endanger the safety of navigation or otherwise cause any hazard to a vessel, or bring it to an unsafe port or anchorage, or cause an unreasonable risk to the marine environment.

Article ... (formerly 228)

Non-discrimination of foreign vessels

In exercising their right and carrying out their duties under the present Convention, States shall not discriminate in form or in fact against vessels of any other State.

Article ... (formerly 232)

Notification to the flag State and other States concerned

States shall promptly notify the flag State and any other State concerned of any measures taken pursuant to the present Convention against foreign vessels, and shall submit to the flag State all official reports concerning such measures. However, with respect to violations committed in the territorial sea, the foregoing obligations of the coastal State shall apply only to such measures as are taken when proceedings are instituted. The consular officers or diplomatic agents, and where possible the maritime authority of the flag State, shall be immediately informed of any such measures.

Article ... (formerly paragraph 2 of article 231)

Observance of recognized rights of the accused

In the conduct of proceedings to impose penalties in respect of such violations committed by a foreign vessel, recognized rights of the accused shall be observed.

Article ... (formerly 235)

Liability of States arising from enforcement measures

States shall be liable for damage or loss attributable to them arising from measures taken pursuant to the present Convention, when such measures were unlawful or exceeded those reasonably required in the light of available information. States shall provide for recourse in their courts for actions in respect of such damage or loss."

* * *

In consequence of the introduction of a Part common to the whole Convention on the procedure for enforcement measures (Part XIV bis, General Safeguards), duplicating provisions should be deleted from a number of articles, namely: paragraph 4 of article 73; articles 106 and 107 in full; paragraphs 5 and 3 of article 111. The deleted paragraphs should be replaced by references to the corresponding articles in Part XIV bis.

As a result, the articles remaining in Section 7 of Part XII will be the following: 224, 227, 229, 230, 231 (para. 1) and 234. Section 7 of Part XII should be entitled "Safeguards in respect of pollution control".

MP/17
28 April 1978
Original: ENGLISH

THIRD COMMITTEE (INFORMAL MEETING)
(Protection and preservation of the marine environment)

SUGGESTION BY THE CHAIRMAN OF THE INFORMAL MEETINGS

ARTICLE 212

Pollution from vessels

Para. 6

The international rules and standards referred to in this Article include those related to prompt notification to coastal States, whose coastlines or related interests may be affected by incidents involving discharges, probable discharges or maritime casualties.

THIRD COMMITTEE (INFORMAL MEETING)
(PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT)

INFORMAL SUGGESTION BY BAHRAIN, DEMOCRATIC YEMEN,
EGYPT, IRAQ, KUWAIT, LEBANON, LIBYAN ARAB JAMAHIRIYA,
MAURITANIA, MOROCCO, OMAN, PORTUGAL, QATAR, SAUDI ARABIA,
SOMALIA, SUDAN, SYRIAN ARAB REPUBLIC, TUNISIA,
UNITED ARAB EMIRATES, YEMEN

Article 236

Amend the text to read:

"1. Any damage to the marine environment or to properties or persons therein that is caused by pollution shall give rise to a claim for compensation for such damage.

"2. Should such damage result from acts of a particular State, that State shall be liable:

(a) In accordance with the rules of international law, in cases where that State has carried out an act of sovereignty;

(b) In accordance with private law, in cases where that State has carried out any other act, such as a commercial transaction. States shall have an obligation to provide compensation for or to repair such damage, and for this purpose, the State concerned shall designate the party to represent it in any legal proceedings.

"3. Should such damage result from acts of other natural or juridical persons, such persons shall be held responsible in accordance with the rules of private law and shall have an obligation to provide compensation for or to repair such damage.

"4. States shall fulfil the necessary legislative and organizational requirements to provide the injured party with recourse to their courts or national authorities, in order that that party may obtain compensation for or the repair of the damage, whenever such acts take place or such damage occurs within areas under their sovereignty or jurisdiction or through non-sovereign acts on their part or through acts by natural or juridical persons under their jurisdiction. The injured party shall be entitled to choose the party from which compensation for or repair of damage is to be claimed in any case where there is more than one such party.

"5. States shall establish regional and international financial and technical institutions to which claims for compensation for, or for the repair of, damage may be addressed in any case where those responsible for the damage remain unknown or are unable, partially or wholly, to provide compensation for or to repair such damage. Such institutions shall generally co-operate in developing the international law relating to the protection and preservation of the marine environment, the assessment of damage thereto, the payment of compensation and the settlement of disputes arising in any such cases."

MP/19
2 May 1978
ENGLISH
Original: ARABIC

THIRD COMMITTEE (INFORMAL MEETING)
(PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT)

INFORMAL SUGGESTION BY KUWAIT, LEBANON, LIBYAN ARAB JAMAHIRIYA,
MOROCCO, QATAR, SYRIAN ARAB REPUBLIC, TUNISIA

Article 227. Investigation of foreign vessels

The text is to read as follows:

"1. States may not delay a foreign vessel longer than is essential for the purposes of investigation provided for in articles 217, 219 and 221. If the investigation indicates a violation of applicable laws and regulations or international rules and standards for the preservation of the marine environment release shall be made subject to reasonable procedures such as bonding or other appropriate financial security. Without prejudice to applicable international rules and standards relating to the sea-worthiness of ships, the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard. In this latter case, the flag State or the State of registry of the vessel must be notified, and either may object to such a refusal according to the provisions of Part XV of the present Convention.

"2. States shall co-operate to develop procedures for the avoidance of unnecessary physical inspection of vessels at sea."

MP/20
2 May 1978

ENGLISH
Original: ARABIC

THIRD COMMITTEE (INFORMAL MEETING)
(PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT)

INFORMAL SUGGESTION BY KUWAIT, LEBANON,
LIBYAN ARAB JAMAHIRIYA, MOROCCO, QATAR,
TUNISIA, UNITED ARAB EMIRATES

Article 221

Delete paragraph 8 of this article.

GE.78-85131

MP/21
2 May 1978
Original: ENGLISH

THIRD COMMITTEE (INFORMAL MEETING)
(PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT)

AUSTRALIA, PAKISTAN AND YUGOSLAVIA

Article 1(5)

Delete paragraph 1 (5) (c)

GE.78-85148

THIRD COMMITTEE (INFORMAL MEETING)
(SCIENTIFIC RESEARCH)

INFORMAL SUGGESTION BY BAHRAIN, DEMOCRATIC YEMEN, EGYPT, IRAQ,
JORDAN, KUWAIT, LEBANON, LIBYAN ARAB JAMAHIRIYA, MAURITANIA,
MOROCCO, OMAN, PORTUGAL, QATAR, SAUDI ARABIA, SOMALIA, SUDAN,
SYRIAN ARAB REPUBLIC, TUNISIA, UNITED ARAB EMIRATES, YEMEN

Article 264

Amend the text to read:

"1. Any damage to the marine environment, or to property or persons therein resulting from scientific research shall give rise to a claim for compensation for such damage.

"2. Should such damage result from the acts of a particular State, that State shall be held responsible:

- (a) In accordance with the rules of international law, if it carried out an act of sovereignty;
- (b) In accordance with the rules of private law if it was carrying out any other act, such as a commercial transaction. States shall have an obligation to provide compensation for or to repair such damage, and for this purpose, the State concerned shall designate the party to represent it in any legal proceedings.

"3. Should such damage result from acts of other natural or juridical persons, such persons shall be held responsible in accordance with the rules of private law and shall have an obligation to provide compensation for or to repair such damage.

"4. States and specialized international organizations shall fulfil the necessary legislative and organizational requirements for the prevention of any marine scientific research in violation of the provisions of the present Convention within the areas under their sovereignty or jurisdiction. They shall also fulfil the same requirements with respect to natural or juridical persons who are their nationals or to persons under their jurisdiction and prescribe the penalty applicable for such violations.

"5. States shall fulfil the necessary legislative and organizational requirements with a view to providing the injured party with recourse to their courts or national authorities in order that that party may obtain compensation for or the repair of damage in any case where such acts take place, or such damage occurs, within areas under their sovereignty or jurisdiction or through non-sovereign acts on their part or through acts by natural or juridical persons under their jurisdiction. The injured party shall be entitled to choose the party from which compensation for or the repair of the damage is to be claimed, if there should be more than one such party.

"6. States shall establish regional and international financial and technical institutions to which claims for compensation for, or for the repair of, damage may be addressed in cases where those responsible for the damage remain unknown or are unable, partially or wholly, to provide compensation for or to repair such damage. Such institutions shall generally co-operate in developing the international law relating to the protection and preservation of the marine environment, the assessment of damage, the payment of compensation and the settlement of disputes arising in such cases."

TT/1
27 April 1978
Original: ENGLISH

THIRD COMMITTEE (INFORMAL MEETING)
(Development and transfer of marine technology)

PAKISTAN

New Article 275 bis

New Section 3: Establishment of National Centres

"States, competent international organizations and the Authority shall, individually or jointly, promote the establishment, specially in developing coastal States, of national marine scientific and technological research centres and strengthening of the existing national centres, in order to stimulate and advance the conduct of marine scientific research by developing coastal States and for strengthening their national capabilities to utilize and preserve their marine resources for their economic benefit.

2. Competent international organizations and the Authority shall make adequate financial provisions to facilitate the establishment and strengthening of such national centres: for the provision of advance training facilities and necessary equipment, skills and know-how as well as to provide technical experts to such States which may need and request such assistance."

GE.78-84910

10 February 1978

Access of Land-Locked and Geographically Disadvantaged States to the
living resources of the Exclusive Economic Zone

As is by now well-known, one of the crucial issues - "the key issues" - facing this Conference concerns the participation of land-locked and geographically disadvantaged States in the exploitation of the living resources of the exclusive economic zone. Our grand objective here is to accommodate the interests of land-locked and geographically disadvantaged States in participating in the exploitation of the living resources of the exclusive economic zone without prejudicing the legitimate interests of coastal States. This issue may seem intractable yet there are indications that a compromise formula is within the reach of the negotiating group which has up to now been dealing with this matter.

The main difficulties which have dogged the negotiation on this issue and which, in fact, can guide our discussions here this morning concern the following:

- i. It is generally agreed that land-locked and geographically disadvantaged States should be granted access to the living resources of the exclusive economic zone. There is, however, no general agreement as to whether this should be described as "a right to participate".
- ii. It seems difficult to find a balance between the right of the coastal State to determine its capacity to harvest the living resources of the exclusive economic zone and the right of land-locked and geographically disadvantaged States to participate in the exploitation of these resources.
- iii. Another difficulty centres around the question as to whether, with respect to third States, the right of land-locked and geographically disadvantaged States to participate in the exploitation of the living resources of the exclusive economic zone, is a preferential one, and in particular whether the preferential nature of the right should be spelt out in the Convention.
- iv. Another point which poses some difficulty concerns the question whether that part of the Convention dealing with this issue should seek to make a difference between developed and developing land-locked and geographically disadvantaged States.
- v. The quest for a precise definition of a geographically disadvantaged State has proven very arduous. It is obvious that a clear definition of the term "geographically disadvantaged State" is necessary.

Such are the main areas of difficulty, and perhaps this morning we can use these points as a framework for a constructive discussion of this outstanding issue.

(PERU)

Coastal States of the same subregion or region shall make the necessary arrangements so as to avoid excluding land-locked States which are in a position to utilize the access from operating in the subregion or region as a result of the distribution of the surplus to third States.

PROPOSALS SUBMITTED BY LL/GDS RELATING TO
SECOND COMMITTEE MATTERS - JUNE 1977

Article 58

Rights of Land-locked States

1. Land-locked States shall have the right to participate on an equitable basis in the exploitation of the living resources of the economic zone of coastal States of the same region or sub-region.
2. The modalities of such participation shall be determined by the States concerned through bilateral, sub-regional or regional agreements, in accordance with the provisions of this Article.
3. In the conclusion of such agreements, the following factors shall be taken into account:
 - (a) The need to avoid effects detrimental to the living resources of the economic zone as well as to the economy of all the States concerned;
 - (b) The extent to which the land-locked State is participating in the exploitation of the economic zones of other coastal States; and
 - (c) The extent to which other land-locked States are exercising their rights of participation in the zone.
4. Developed land-locked States shall, however, be entitled to exercise their rights provided in this Article only within the economic zones of developed coastal States of the same region or sub-region.
5. Nothing in this Article shall preclude any coastal State from granting to a land-locked State more favourable treatment than that provided for in this Article, including treatment equal with that of the coastal State itself.

Article 59

Rights of Geographically Disadvantaged States

1. Geographically disadvantaged States shall have the right to participate on an equitable basis in the exploitation of the living resources in the economic zones of other States in the same region or sub-region.
2. The modalities of such participation shall be determined by the States concerned through bilateral, sub-regional or regional agreements, taking into account the availability of living resources of any economic zone of the geographically disadvantaged State, and in accordance with the provisions of this Article.

3. The rights to participate referred to in paragraphs 1 and 2 of this Article relate to the surplus of the allowable catch, provided that the participation of the geographically disadvantaged States shall be on a preferential basis over third States other than land-locked States. In the event of there being no surplus of living resources in a particular zone, a developing geographically disadvantaged State may nevertheless participate in the exploitation of the living resources in such zone on an equitable basis which takes into account the following factors:

- (a) The need to avoid effects detrimental to the living resources of the economic zone as well as to the economy of all the States concerned;
- (b) The extent to which other geographically disadvantaged States and land-locked States are exercising their rights of participation in the zone; and
- (c) The extent to which the geographically disadvantaged State is participating in the exploitation of the living resources of the economic zones of other coastal States.

4. Developed geographically disadvantaged States shall be entitled to exercise their rights provided in this Article only in the economic zones of developed coastal States of the same region or sub-region.

5. Nothing in this Article shall preclude any coastal States from granting to a geographically disadvantaged State more favourable treatment than that provided for in this Article.

6. For the purposes of this Convention, a geographically disadvantaged State is a coastal State:

- (a) which, for geographic reasons, cannot claim an economic zone; or
- (b) whose economic zone is less than 30 per cent of the area it could have claimed if it were able to extend the limit of its economic zone up to the maximum breadth permitted by this Convention; or
- (c) which, for geographic, biological or ecological reasons, exclusively natural in character, derive no substantial economic advantage from exploiting the living resources of its economic zone and whose rights of access to the living resources are adversely affected by the establishment of economic zones by other States.

N.B. Paragraph 6 of this Article should in the final draft Convention appear as a provision in the Article concerning definitions.

Article 59 (bis)

The provisions of Articles 58 and 59 shall not apply in the case of a coastal State whose economy is overwhelmingly dependent on the exploitation of the living resources of its economic zone.

Article 60

1. Rights provided under Articles 58 and 59 to exploit living resources shall not be transferred to third States or their nationals by lease, license, or by establishing joint collaboration ventures which have the effect of such transfer; unless otherwise agreed upon by the States concerned.
2. Paragraph 1 does not preclude States from obtaining technical or financial assistance from third States or international organizations in order to facilitate the exercise of the rights provided under Articles 58 and 59.

MEMORANDUM OF THE GROUP OF LAND-LOCKED AND
GEOGRAPHICALLY DISADVANTAGED STATES ON THE
RIGHTS OF THE LAND-LOCKED AND GEOGRAPHICALLY
DISADVANTAGED STATES IN THE ECONOMIC ZONE **/

It is well established in international law that all States, whether coastal or landlocked, enjoy certain rights, including the right of fishing, which is one of the freedoms of the high seas, in all parts of the sea outside a belt of a maximum of 12 nm measured from the relevant baselines. If the coastal States were to be granted exclusive resource rights and jurisdiction over a 200-mile marine belt off their coast, where most of the maritime resources are located, this would mean that the land-locked and geographically disadvantaged States would be deprived of their rights to participate in the exploration and exploitation of the most valuable and easily accessible part of the marine areas, which, under present international law, is open to all States.

The present efforts at the Third United Nations Conference on the Law of the Sea for creating the economic zone concept must, therefore, take into account the existing rights of the land-locked and geographically disadvantaged States and ensure that their rights and interests are not adversely affected by the establishment of such a zone.

The position of the land-locked and geographically disadvantaged States with regard to the economic zone was clearly set out in a proposal submitted to the Conference in 1974 (A/CONF.62/C.2/L.39) by 22 land-locked and geographically disadvantaged States. While accepting in principle the claim of the coastal State to establish a zone for the purpose of exploring and exploiting the living and non-living resources therein, the proposal also provided for a right of the land-locked and geographically disadvantaged States to participate in the exploration and exploitation of the natural resources, either living or non-living, "of the ... zone of neighbouring coastal States on an equal and non-discriminatory basis". It was left to the States concerned to decide upon appropriate agreements to facilitate the orderly development and the rational

*/ Re-issued for technical reasons.

**/ This memorandum does not cover non-living resources

exploitation of the living resources in this area. However, the actual participation by the land-locked and geographically disadvantaged States in the exploration and exploitation of the non-living resources of the economic zone was to be governed by equitable arrangements. Unlike the coastal State, the land-locked and geographically disadvantaged States were to be precluded from transferring their rights to third States, except for the purpose of obtaining technical or financial assistance. Furthermore all States were to make contributions to the International Authority out of the revenues derived from the exploitation of non-living resources. These provisions were to be without prejudice to regional or sub-regional agreements. Disputes relating to these rights were to be subject to the compulsory dispute settlement procedure to be established by the future Convention.

It should be noted that even before the convening of the Conference, African States had issued significant declarations, such as the Yaounde Conclusions of June 1972 and the OAU Declaration of June 1974, which affirmed the rights of land-locked and geographically disadvantaged States to the living resources.

The proposals formulated by many coastal States at the beginning of the Conference reveal that these States were well aware of, and in principle recognized, the necessity to grant land-locked and geographically disadvantaged States the right to participate in the exploration and exploitation of the natural resources in the economic zone.

However, the draft articles presented by some other coastal States show that these States intended to concede merely advantages, not rights, to the land-locked and geographically disadvantaged States for their exercise was to depend on the discretionary power and exclusive jurisdiction of the coastal State.

The differences of view within the Conference on this issue continued to persist in the Conference up to the present. The following is a brief analysis of some of the drafts which have been elaborated within the framework of the Conference: the draft of the Group of 77, the Evensen Paper and the draft of the Group of land-locked and geographically disadvantaged States.

The "Working Paper on the Exclusive Economic Zone" elaborated by the Group of 77 at the Third Session was, to a large extent, in line with the position claimed by the land-locked and geographically disadvantaged States. Article 5 therein provided that nationals of land-locked States should have rights to living resources equal to those enjoyed by the nationals of the coastal State, or that a fair and equitable share of these resources should be allotted to them. Developing geographically disadvantaged States were to be given a similar share.

Compared with this draft, the relevant articles in the Evensen Paper dated 24 April 1975 (Third Session) constituted a step backwards: the land-locked States were to have "access" to the exploitation of the living resources. However, this "access" was not a "right" but only a favour to be granted and revoked at the coastal State's discretion. In the case of the geographically disadvantaged States they had to be contented with a mere pactum de negotiando, which was moreover subordinated to the economic needs of the coastal State. It was only when its nutritional needs made a geographically disadvantaged State dependent on its participation in the living resources of the economic zone of other States that the coastal State concerned was to be under a legal obligation to conclude an agreement granting preferential rights.

In a paper submitted to the Chairman of the Second Committee at the Third Session of the Conference, the land-locked and geographically disadvantaged States went a long way towards meeting the views of the coastal States by providing that the terms and conditions for the exercise of the participating rights in the economic zone should be the subject of "equitable agreements". They also agreed to draw a distinction between land-locked and geographically disadvantaged States by providing that the former should exercise their rights on an equal and non-discriminatory basis whereas the rights of the geographically disadvantaged States were to be exercised on an equitable basis only. They further provided for the equitable distribution of the rights of the land-locked and geographically disadvantaged States among the economic zone of the coastal States of the region so as not to overburden any particular one among them. The land-locked and geographically disadvantaged States also incorporate the point that developed land-locked and geographically disadvantaged States can exercise their rights only in the economic zones of developed coastal States.

The text which was included in the SNT at the conclusion of the Third Session failed to take into account the legitimate rights and interests of the land-locked and geographically disadvantaged States. Article 57 provided for a right of participation by land-locked States on an equitable basis only. This "right" was more an "advantage" than a "right" because it was to be contingent upon the powers of the coastal State as defined in Articles 50 and 51. The position of the geographically disadvantaged States under Article 58 was even more precarious; for participation on an equitable basis was to be limited to a small number of developing States on account of restrictive criteria. The value of these advantages was further lessened by the fact that the land-locked and geographically disadvantaged States were to have no preferences over other States. The participation of the land-locked and geographically disadvantaged States was to be left to the complete discretion of the coastal State concerned. That such provisions cannot constitute the basis of a fair compromise stands to reason.

In yet another attempt to bring about a compromise, the land-locked and geographically disadvantaged States, in a paper submitted to the Chairman of the Second Committee at the Fourth Session, proposed that the right of land-locked and developing geographically disadvantaged States to participate in the living resources be for the purpose of obtaining an "equitable" share. The right of developed geographically disadvantaged States was to be similar provided that these States had been habitually fishing in what was to become the economic zone of a certain region. This was in harmony with the basic tenet that the rights to exploit maritime resources should be distributed according to economic needs and interests.

These attempts at a reconciliation by the land-locked and geographically disadvantaged States proved abortive. The coastal States did not reciprocate the major concessions made by the land-locked and geographically disadvantaged States. The RSNT continued to reflect the coastal State view. If anything the land-locked and geographically disadvantaged States' position was made worse, for the expression "without prejudice to" in Articles 57 and 58 of the SNT was altered to read "subject to".

In a further effort to find some common ground between the positions of the land-locked and geographically disadvantaged States and those of the coastal States, the Group of 21 was set up under the chairmanship of Ambassador Nandan of Fiji. The draft elaborated by the Chairman of the Group tried more than any other text to strike a negotiated balance between the interests of the various States concerned.

It provided that the land-locked States should have a right to the surplus of living resources on a preferential basis over third States; the terms and conditions of this right were to be the subject of an agreement. In the absence of any surplus, equitable arrangements were to be concluded between the States concerned to allow the land-locked States to fish taking into account various relevant factors. The geographically disadvantaged States (which were referred to as "States with special characteristics") were to have a right to participate in the surplus of living resources as well, but this right was to be subject to the particular circumstances of each case. However, a distinction was drawn between developed and developing geographically disadvantaged States, for the latter were to enjoy preference over third States in regard to the surplus; in the absence of any surplus they were to be allowed to fish under an equitable arrangement taking into account various relevant factors.

Despite several drawbacks, including the question of the definition of geographically disadvantaged States and the limitation of the right to the surplus, the text elaborated by the Chairman of the Group of 21 was considered by the land-locked and geographically disadvantaged States to form a basis for further negotiation.

However, the proposals of the Coastal State Group refused to recognize any right in favour of the land-locked and geographically disadvantaged States. Its draft referred only to the "access" granted by coastal States in the exercise of their sovereign rights and subject to the limitations of Articles 50 and 51. It also denied the land-locked and geographically disadvantaged States any preference over third States. The draft further provided that a coastal State could close its economic zone to a land-locked and geographically disadvantaged State if the latter was entitled to participate in the exploitation of another economic zone, regardless of whether it exercised this right or not. Developed geographically disadvantaged States were excluded entirely. The "access" of the land-locked and geographically disadvantaged States was only to the surplus as unilaterally determined by the coastal State. These proposals, which are even more restrictive than the provisions contained in the RSNT, are hardly conducive to reaching a compromise to accommodate the legitimate rights, interests and needs of the land-locked and geographically disadvantaged States and all other members of the international community.

While the ICNT did not resolve this outstanding issue, it had instead included in it certain other provisions still more disadvantageous to land-locked and geographically disadvantaged States (Articles 71 and 72). While it was true that such provisions had in principle been agreed upon by both sides, they were regarded only as a part of an over-all compromise. It was never agreed that such provisions should be included in a piece-meal fashion. Here again the ICNT inexplicably failed to meet the legitimate expectations of the land-locked and geographically disadvantaged States.

The preceding description of the work of the Conference as regards the rights, needs and interests of the land-locked and geographically disadvantaged States in the living resources in the economic zone of coastal States yields the following conclusions:

(i) The living resources found beyond a belt of a maximum of 12 nm have been accessible under international law to all members of the international community, including land-locked and geographically disadvantaged States. The creation of coastal State's economic zone is unacceptable if it denies land-locked and geographically disadvantaged States their rights to the living resources in such zones;

(ii) The description given in this Memorandum shows that in the course of negotiations, the Group of land-locked and geographically disadvantaged States has been very flexible and has made important concessions which have not been reciprocated. On the contrary the Group of Coastal States has hardened its position;

(iii) The ICNT is clearly unbalanced and favours the needs and interests of the coastal States. General agreement on a new Law of the Sea cannot be achieved on the basis of such an imbalanced text, which can in no way be said to be a negotiated settlement. It is imperative that the ICNT should be modified so as to strike a just and equitable balance between the rights, needs and interests of the coastal States and those of the land-locked and geographically disadvantaged States;

(iv) The future Convention will have to provide for rights of all land-locked and geographically disadvantaged States which are real and effective and not illusory and which cannot be left to the discretion of the coastal State.

MEMORANDUM BY THE REPRESENTATIVE OF PERU, CO-ORDINATOR OF
THE GROUP OF COASTAL STATES

With regard to the question of the access of land-locked States and certain developing coastal States to the exploitation of living resources in the exclusive economic zones of other States, it is appropriate to clarify a number of premises which have not as yet received due consideration.

1. First of all, we consider that this question should be placed in its true and objective context. Arguments have been heard that obviously exaggerate and dramatize the problems involved beyond the bounds of all logic and all reality. Thus, as regards the land-locked States, it is said that the establishment of the exclusive economic zone of up to 200 miles has caused or might cause catastrophe and irreparable harm for the economies and livelihood of the peoples of the world's 30 land-locked States. It is argued that, in consequence of the establishment of the exclusive economic zone, whole population groups of the land-locked States engaged in fishing would be condemned to poverty, their fleets would be destroyed, their processing plants would be closed down, their transport and marketing enterprises would go into liquidation, their principal source of food would be cut off and the foundations of their economies would be shattered; in short, it would be a disaster for them or, in other words, a question of life or death. We all know that none of this is true, and we call on the representatives of the land-locked States to cite a single case in which such events would occur, either in developing countries or in developed countries.

2. The law of the sea, like any other legal régime intended to regulate situations which affect States and their peoples, cannot be based on fantasy; it must be based on actual, specific, hard facts. Nor should principles of justice or equity be invoked when such principles are not applicable in practice, because no person would be jeopardized. Let us, therefore, dismiss all fairy tales, all demagoguery and all dramatization from the situation of land-locked States resulting from the establishment of the exclusive economic zone, which - with due respect for the strict truth - is not in practice causing these States any of the ills which we have mentioned.

3. As for those coastal States that call themselves "geographically disadvantaged", which of them can point to actual situations like those just described? In the developing countries, apart from three or four exceptions and even then only to a very limited extent, none of these events would occur because, owing to their very under-development, they are not countries that have made major efforts to establish fishing fleets and industries. To deal with the case of the very few countries which have fished off the coasts of other States, provision has been made for specific arrangements under which they would continue to operate not only in the exclusive economic zones of the neighbouring coastal States, but in all the other zones of the same subregion or region. They would therefore enjoy a privileged position which would enable them to satisfy fully the food requirements of their inhabitants and would avert the calamities to which we have referred.

4. In Europe, on the other hand, there are some developed States with special characteristics which do possess fishing fleets and related enterprises and industries, and which already have been, and may continue to be, affected by the establishment of the exclusive economic zones of the other coastal States. It so happens, however, that because of their level of development these same States - which can be counted on the fingers of two hands - have other means of dealing with the situation. In the first place, the economies of these countries are for the most part thriving, so that they can acquire the fish which they would no longer be able to catch themselves. Secondly, they also have seas, and if, instead of polluting these seas and exterminating the species of fish living in those waters, they invested resources in the repopulation of the seas, as some countries are already doing, they would be able to solve many of their problems. Thirdly, those developed States which have fleets, personnel, capital, enterprises and technology can conclude agreements with developing countries for engaging in fishing off the coasts of the developing countries under mutually satisfactory conditions. Indeed, we all know that that is what they have done, and for this purpose they have no need of the Convention, which will undoubtedly respect such agreements. Even in these cases, therefore, no catastrophe, no dire misfortune and no irreparable harm have ensued from the establishment of the exclusive economic zone. Nor are there grounds for demanding presumed preferential rights or treatment in the Convention.

5. On the other hand, we should bear in mind the damage which would be suffered by many coastal States if in their exclusive economic zones third States were given the right to compete in the exploitation of the living resources. As is well known, because of intensive fishing - particularly by the fleets of the most developed countries - many species have already become extinct or are in danger of becoming extinct. Other species are already being or may very soon be exploited to a sufficient extent by the coastal States concerned. In these circumstances, it is surely hardly logical to urge that the Convention on the Law of the Sea, by granting rights to third States, should promote greater competition, whether or not there are surpluses, with the danger that the resources which have been preserved so far might also become extinct, and with the consequence that a real calamity would befall the fishing communities and industries of the coastal States concerned. Besides, what would happen to the fishing industries established by third States with the incentive of a permissive Convention which would have encouraged them to develop their activities as if fishing was an inexhaustible activity?

6. All these facts oblige us to approach the question under consideration with seriousness and restraint - qualities which do not always prevail in such situations either because of insufficient knowledge of the actual implications of the problems involved, because of wishful thinking, or because of theoretical speculation divorced from reality. After these explanations, we can proceed to consider the subject with a clear and objective idea of its true dimensions, and we can see how unjustified is the uproar that has arisen concerning the supposedly adverse consequences which the establishment of the exclusive economic zone would have for vital interests of the peoples of more than 50 countries. The claims made do not withstand a rigorous analysis, which discloses very little substance beneath the surface. Although telling the truth sometimes causes uneasiness, we must have sufficient integrity always to reveal and proclaim the truth. Those who consider that these statements are false must prove their point by means of hard facts, instead of complaining and making such a commotion.

7. This necessary clarification of the true dimensions of the question under consideration does not mean, of course, that we fail to appreciate that the land-locked States and other States with special characteristics have difficulties which must be taken into account and solved in an adequate manner. First, as

representatives of coastal States we have full understanding for the problems of the developing land-locked States and other coastal developing States with special characteristics. Not only do we understand their problems, but we view them with the sympathy they deserve, and we are motivated by the best of intentions in seeking a satisfactory agreement which will reconcile our reciprocal interests.

8. Similarly, we recognize that the developed land-locked States and other developed coastal States likewise have certain special problems due to their geographical situation. However, realistically and objectively, we believe that these developed States, precisely because of their level of development, as we have said before, are in a different position from the developing land-locked States and other developing coastal States. To cite an example at random, the problems of Chad and Switzerland and those of Jamaica and the Federal Republic of Germany are manifestly not comparable and are different in degree. There are fundamental differences between them, and this reality cannot be gainsaid.

9. Now it is a legal axiom that the law should conform to the facts, and where the facts differ the rules must also differ. To proceed otherwise would be to create what are commonly known as "inequities", which are inadmissible in international law and which would make distributive justice impossible, since an identical rule for unequal situations would produce flagrant injustices, not only between the States concerned, but in the relations of these States with third States.

10. As a consequence of this incontrovertible premise, our first **conclusion** is that different rules and arrangements must be established to take account of the different realities which exist as between developed countries and developing countries. However, in addition to these differences - in other words, those resulting from levels of development - realities also differ from one continent to another, and in some cases from one region to another, as between developing countries, on the one hand, and developed countries, on the other.

11. Because of geographical, economic, social, historical and political factors, the circumstances of the developing land-locked States in Africa, for example, differ from those of the developing land-locked States in Latin America. And to cite another example, the position of the developing coastal States with special characteristics in Asia differs from that of the developing coastal States with special characteristics in Europe. This is also true of developed States in

different continents and even, as we have mentioned, of different regions within the same continent. Accordingly, our second conclusion is that different rules and arrangements must also be established to take account of the unequal realities which exist in different continents and regions.

12. In this state of affairs, the question arises: Is it possible to adopt universal rules for such diverse realities and situations? The answer is YES, but on one condition: that these rules must be consistent with a minimum common denominator, without prejudice to the special arrangements concluded between States of the same region, in terms less restrictive than those of the minimum rules.

13. In other words, just as the circumstances of land-locked States and other States with special characteristics differ not only by reason of their different problems but also by reason of their diverse levels of development and their location, so likewise different rules and arrangements are needed for dealing with such problems adequately. It is not possible to find the adequate solution in the provisions of a universal Convention, which cannot establish equal rules for unequal situations, nor can it enter into details to cover all the disparities involved. The time has come to recognize frankly that, in view of the different geographical, economic, social, historical and political realities in these categories of States, regional solutions are required for dealing satisfactorily with the problems caused by this diversity. The Convention can only contain some general provisions based on the lowest common denominator, for if they went beyond such minimum rules to cope with the realities and problems of certain States in one continent, they would give rise to inequitable situations among the States of the other continents and hence would be unjust, inapplicable and, in short, unacceptable.

14. It follows, as the third conclusion, that the minimum rules should be formulated in terms sufficiently neutral to avoid favouring any of the regional approaches and, at the same time, sufficiently balanced to reconcile the interests both of land-locked States and other States with special characteristics and also of coastal States to whose exclusive economic zones the former would be granted access. Consequently, it is conceptually illogical and politically impossible to seek to incorporate in a universal Convention rules which do not conform to these basic criteria. When this matter comes to be considered in the appropriate negotiating group, we shall be submitting what are, in our opinion, the minimum rules that could be established in the Convention.

MEMORANDUM BY THE REPRESENTATIVE OF PERU, CO-ORDINATOR OF
THE GROUP OF COASTAL STATES

Corrigendum circulated at the request of the
representative of Peru

1. Page 1, para. 1, line 4
For it is said, read it would seem
2. Page 1, para. 1, line 7
For it is argued, read it would seem
3. Page 1, para. 2, line 3
For hard facts, read concrete facts
4. Page 3, para. 5, last line
For activity, read business
5. Page 3, para. 6, line 13
For hard facts, read concrete facts
6. Page 4, para. 10, line 4
For in other words, read i.e.

NG4/9
28 April 1978

ORIGINAL: ENGLISH

COMPROMISE SUGGESTIONS BY THE CHAIRMAN OF NG.4

Amend para.(2) of Art.62 to read as follows:

"(2) The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States mentioned therein."

Article 69

Right of land-locked States

1. Land-locked States have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.
2. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account inter alia:
 - (a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal States;
 - (b) the extent to which the land-locked State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements, in the exploitation of living resources of the exclusive economic zones of other coastal States;
 - (c) the extent to which other land-locked States and States with special characteristics are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;
 - (d) with respect to developed States, the nutritional needs of the populations of the respective States and their capacity to supply those needs.

GE.78-85022

3. Where a coastal State as a result of a joint ventures or other similar arrangements with third parties increases its capacity to harvest the living resources of its exclusive economic zone to the point of harvesting the entire allowable catch, it shall take appropriate measures to provide for developing land-locked States, especially those which have been fishing in the zone, adequate participation in such joint ventures or other similar arrangements on terms satisfactory to the parties concerned.
4. Developed land-locked States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State in giving access to other States to the living resources of its exclusive economic zone has taken into account the need to minimize economic dislocation in States whose nationals have habitually fished in the zone.
5. The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to land-locked States of the same subregion or region equal or other special treatment regarding the exploitation of the living resources in the exclusive economic zones.

Article 70

Rights of States with special characteristics

1. States with special characteristics have the right to participate on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.
2. For the purposes of the present Convention, the term "States with special characteristics" means coastal States, including States bordering enclosed and semi-enclosed seas, whose geographical situation makes them dependent for the satisfaction of the nutritional needs of their population upon the exploitation of the living resources of the exclusive economic zones of other States in the subregion or region, and coastal States which can claim no exclusive economic zones of their own.
3. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account inter alia:
 - (a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal States;

- (b) the extent to which the State with special characteristics, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;
- (c) the extent to which land-locked States and other States with special characteristics are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State, or a part of it;
- (d) with respect to the developed States, the nutritional needs of the populations of the respective States and their capacity to supply those needs.

4. Where a coastal State as a result of joint ventures or other similar arrangements with third parties increases its capacity to harvest the living resources of its exclusive economic zone to the point of harvesting the entire allowable catch, it shall take appropriate measures to provide for developing States with special characteristics, especially those which have been fishing in the zone, adequate participation in such joint ventures or other similar arrangements on terms satisfactory to the parties concerned.

5. Developed States with special characteristics shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize economic dislocation in States whose nationals have habitually fished in the zone.

6. The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to States with special characteristics of the same subregion or region equal or other special treatment regarding the exploitation of the living resources in the exclusive economic zones.

NG5/1
20 April 1978
ENGLISH
Original: FRENCH

INFORMAL SUGGESTION BY SWITZERLAND

Article 296.4

Replace subparagraph (a) by the following text:

"(a) in no case may the sovereign rights of a coastal State or the exercise of a discretion by such a State be called in question by the court or tribunal, except in so far as the dispute relates to the existence or scope of such sovereign rights or discretion".

Subparagraph (b) should be maintained and subparagraph (c) deleted.

Informal suggestion reflecting the consensus of the Group of Coastal States based on minimum **changes** in ICNT

Article 296

Limitations on applicability on this section

1. Without prejudice to the obligations arising under section 1, disputes relating to the exercise by a coastal State of rights or jurisdiction provided for in the present Convention shall be subject to the procedures specified in the present Convention only in the following cases:

(a) When it is alleged that a coastal State has acted in contravention of the provisions of the present Convention in regard to the freedoms and rights of navigation or overflight or of the laying of submarine cables and pipelines and other internationally lawful uses of the sea specified in paragraph 1 of article 58; or

(b) When it is alleged that any State in exercising the aforementioned freedoms, rights or uses has acted in contravention of the provisions of the present Convention or of laws or regulations established by the coastal State in conformity with the present Convention and other rules of international law not incompatible with the present Convention; or

(c) When it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State and which have been established by the present Convention or by a competent international organization or diplomatic conference acting in accordance with the present Convention.

2. Disputes relating to cases referred to in paragraph 1 above may be submitted to the procedures provided for in this section only when the following conditions have been complied with:

(a) that in any dispute to which the provisions of this article apply, the court or tribunal shall not call upon the other party or parties to respond until the party which has submitted the dispute has established prima facie that the claim is well founded;

(b) that such court or tribunal shall not entertain any application which in its opinion constitutes an abuse of legal process or is frivolous or vexatious; and

(c) that such court or tribunal shall immediately notify the other party to the dispute that the dispute has been submitted and such party shall be entitled, if it so desires, to present objections to the entertainment of the application.

3. No dispute relating to the interpretation or application of the provisions of the present Convention with regard to marine scientific research shall be brought before such court or tribunal unless the conditions specified in paragraph 2 have been fulfilled and provided that the coastal State shall not be obliged to submit to such a settlement any dispute arising out of:

(a) the exercise by the coastal State of a right or discretion in accordance with article 247; or

(b) the decision by the coastal State to terminate a research project in accordance with article 254.

4. Any dispute excluded by the previous paragraphs may be submitted to the procedures specified in section 2 only by agreement of the parties to such dispute.

NG5/3
21 April 1978
ENGLISH
Original: RUSSIAN

INFORMAL SUGGESTION BY THE USSR

Article 296.4 (a)

In the second line after "62" add "66"; in the fourth line after "62" add "66".

Article 297.1

Replace subparagraph (b) by the following text:

"(b) Disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service; however, the monitoring of compliance with laws in accordance with the present Convention shall not be regarded as a military activity."

NG5/3/Corr.1
4 May 1978

Original: ENGLISH

INFORMAL SUGGESTION BY THE USSR

Corrigendum

Article 297 (1) (b)

Second part of sentence should read:

"Provided that law enforcement activities pursuant to the present
Convention shall not be considered military activities."

NG5/4

25 April 1973

ENGLISH

Original: SPANISH

INFORMAL SUGGESTION BY PERU

Article 296, paragraph 2(c)

Replace paragraph 2(c) by the following:

"(c) When it is alleged that a coastal State or any other State has acted in contravention of specified international regulations and standards for the protection and preservation of the marine environment which have been established by the present Convention or by a competent international organization or diplomatic conference acting in accordance with the present Convention."

Article 297, paragraph 1(b)

Replace paragraph 1(b) by the following:

"(b) Disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, subject to the exceptions referred to in Article 296."

NC5/5
26 April 1978
Original: ENGLISH

INFORMAL SUGGESTION BY JAPAN

Article 296, paragraph 4

Revise subparagraph (a) to read as follows:

- (a) when it is alleged that there has been a failure to discharge obligations arising under articles 61, 62, 69 and 70, in no case shall the exercise of a discretion in accordance with articles 61 and 62 be called in question, unless the exercise exceeds the scope of such discretion; and

GE.78-84690

NG5/7
26 April 1978
ENGLISH
Original: FRENCH

Informal Suggestion by Switzerland: Article 296, paragraph 1

Replace paragraph 1 by the following:

"1. Without prejudice to the obligations arising under section 1, disputes relating to the exercise by a coastal State of sovereign rights or jurisdiction provided for in the present Convention shall only be subject to the procedures specified in the present Convention when the **conditions laid down in** the succeeding paragraphs of this article have been complied with.

2. The court or tribunal shall immediately notify the other party or parties to the dispute that the dispute has been submitted to it and shall fix the time-limit within which such other party or parties may appeal against the entertainment of the claim on the grounds that the claim constitutes an abuse of legal process or is manifestly unfounded. If the court or tribunal admits the objection, it shall declare the claim inadmissible."

Renumber the former paragraphs 2 to 5.

IG5/9
26 April 1978
Original: ENGLISH

Informal Suggestions
by the Federal Republic of Germany

Art. 297

1st Alternative:

Paragraph (1)(b) should retain the formulation of Art. 18, para. 1(b) RSIT.

2nd Alternative:

Paragraph (1)(b) should be formulated as follows:

"Disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service and, with the exception of those cases where the court or tribunal has jurisdiction under Article 296, law enforcement activities in the exercise of sovereign rights or jurisdiction provided for in the present Convention."

NG5/10
26 April 1978
Original: ENGLISH

INFORMAL SUGGESTION BY BAHRAIN

Article 296, paragraph 4

Replace letter a) by the following text:

"In no case shall the exercise of sovereign rights or of a discretion by a coastal State be called in question, except in as much as the dispute relates to the existence or extent of such rights or of such a discretion."

Delete sub-paragraphs (b) and (c).

GE.78-84766

IG5/11
26 April 1978
Original: ENGLISH

INFORMAL SUGGESTION BY THE UNITED STATES OF AMERICA

Amendments to Article 296

1. Change subparagraphs (3)(b) and (4)(b):
 (b) in determining whether there was an abuse of discretion by the coastal State, the court or tribunal shall not substitute its discretion for that of the coastal State.
2. Omit subparagraph (4)(c).

INFORMAL SUGGESTION BY ISRAEL

1. Delete Article 296, paragraph 1
2. Insert a new article, possibly as Article 287 bis as follows:

New Article

1. Without prejudice to the obligations arising under section 1, disputes relating to the exercise by a coastal State of sovereign rights or jurisdiction provided for in Parts _____ of the present Convention shall only be subject to the procedures specified in section 2 of this Part when the provisions of the following paragraph have been complied with.
 2. The Court or tribunal provided for in Article 287 shall immediately notify the other party or parties to the dispute that the dispute has been submitted to it, and shall fix a time-limit within which the other party or parties may object to the entertainment of the claim on the ground that the claim constitutes an abuse of legal process or is prima facie unfounded. If the Court or tribunal so finds it shall take no further action in the case.
 3. Nothing in paragraphs 1 or 2 hereof affects the right of any party to a dispute to raise preliminary objections in accordance with the Rules of the International Court of Justice, the Rules of the Law of the Sea Tribunal, or the procedure laid down by an arbitral tribunal or a special arbitral tribunal, as appropriate.
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INFORMAL SUGGESTION BY THE REPUBLIC OF KOREA

Article 296

Limitations on applicability on this section

1. Without prejudice to the obligations arising under section 1, disputes relating to the exercise by a coastal State of rights or jurisdiction provided for in the present Convention shall be subject to the procedures specified in the present Convention only in the following cases:

(a) When it is alleged that a coastal State has acted in contravention of the provisions of the present Convention in regard to the freedoms and rights of navigation or overflight or of the laying of submarine cables and pipelines and other internationally lawful uses of the sea specified in paragraph 1 of article 58; or

(b) When it is alleged that any State in exercising the aforementioned freedoms, rights or uses has acted in contravention of the provisions of the present Convention or of laws or regulations established by the coastal State in conformity with the present Convention and other rules of international law not incompatible with the present Convention; or

(c) When it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State and which have been established by the present Convention or by a competent international organization or diplomatic conference acting in accordance with the present Convention.

2. No dispute relating to the interpretation or application of the provisions of the present Convention with regard to marine scientific research shall be brought before such court or tribunal unless the conditions specified in paragraph 2 have been fulfilled and provided that the coastal State shall not be obliged to submit to such a settlement any dispute arising out of

(a) the exercise by the coastal State of a right or discretion in accordance with article 249; or

(b) the decision by the coastal State to terminate a research project in accordance with article 254.

3. Dispute relating to the interpretation or application of the provisions of the present Convention with regard to the living resources of the sea shall be brought before such court or tribunal provided that in no case may the sovereign rights of a coastal State or the exercise of a discretion by such a State be called in question by the court or tribunal, except in so far as the dispute relates to the existence or scope of such sovereign rights or discretion.

4. Any dispute excluded by the previous paragraphs may be submitted to the procedures specified in section 2 only by agreement of the parties to such dispute.

INFORMAL SUGGESTION BY THE REPUBLIC OF KOREA

Article 296

Corrigendum

1. Page 1, title of article 296 should read Limitations on applicability of this section.
2. Page 1, paragraph 2 should read:
 2. Dispute relating to the interpretation or application of the provisions of the present Convention with regard to marine scientific research may be brought before such court or tribunal provided that the coastal State shall not be obliged to submit to such a settlement any dispute arising out of:
3. Page 1, paragraph 2 (a), last line, article 249 should read article 247.
4. Page 2, paragraph 3, second line, shall should read may.

NG5/14
27 April 1978
ENGLISH
Original: FRENCH

INFORMAL SUGGESTION BY PORTUGAL

Article 296

4. New sub-paragraph:

"When it is alleged that a State has acted in contravention of the international rules established by the present Convention which imposes the obligation to ensure the conservation of the living resources of the sea, disputes may be brought before a compulsory [conciliation] procedure [the conclusions of which shall be communicated to the appropriate global, regional or sub-regional organizations].

INFORMAL SUGGESTION BY IRELAND

Article 76

Definition of the continental shelf

1. Same as ICNT, viz:

The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

2. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor nor the subsoil thereof.

3. For the purpose of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:

(a) A line delineated in accordance with paragraph 4 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or,

(b) A line delineated in accordance with paragraph 4 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.

4. The coastal State shall delineate the seaward boundary of its Continental Shelf where that Shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured by straight lines not exceeding 60 nautical miles in length, connecting fixed points, such points to be defined by co-ordinates of latitude and longitude.

5. Every delineation pursuant to this Article shall be submitted to the Continental Shelf Boundary Commission for certification in accordance with Annex ____. Acceptance by the Commission of a delineation so submitted in accordance with Annex __ and the seaward boundary so fixed, shall be final and binding.
6. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limit of its Continental Shelf. The Secretary-General shall give due publicity thereto.
7. The provisions of this Article are without prejudice to the question of delimitation of the Continental Shelf between opposite or adjacent States.

Extract from Informal Composite Negotiating Text (document A/CONF.62/WP.10)
of relevant articles relating to "Delimitation of maritime boundaries between
adjacent and opposite states and settlement of disputes thereon"

Article 15. Delimitation of the territorial sea between
States with opposite or adjacent coasts

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. This article does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

Article 74. Delimitation of the exclusive economic zone
between adjacent or opposite States

1. The delimitation of the exclusive economic zone between adjacent or opposite States shall be effected by agreement in accordance with equitable principles, employing, where appropriate, the median or equidistance line, and taking account of all the relevant circumstances.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV of the present Convention.
3. Pending agreement or settlement, the States concerned shall make provisional arrangements, taking into account the provisions of paragraph 1.
4. For the purposes of the present Convention, "median or equidistance line" means the line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.
5. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.

Article 75. Charts and lists of geographical co-ordinates

1. Subject to this Part of the present Convention, the outer limit lines of the exclusive economic zone and the lines of delimitation drawn in accordance with article 74 shall be shown on charts of a scale or scales adequate for determining them. Where appropriate, lists of geographical co-ordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.

2. The coastal State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

Article 83. Delimitation of the continental shelf
between adjacent or opposite States

1. The delimitation of the continental shelf between adjacent or opposite States shall be effected by agreement in accordance with equitable principles, employing, where appropriate, the median or equidistance line, and taking account of all the relevant circumstances.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV of the present Convention.

3. Pending agreement or settlement, the States concerned shall make provisional arrangements, taking into account the provisions of paragraph 1.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement.

Article 84. Charts and lists of geographical co-ordinates

1. Subject to this Part of the present Convention, the outer limit lines of the continental shelf and the lines of delimitation drawn in accordance with article 82 shall be shown on charts of a scale or scales adequate for determining them. Where appropriate, lists of geographical co-ordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.

2. The coastal State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

Article 297. Optional exceptions

1. Without prejudice to the obligations arising under section 1 of this Part of the present Convention, a State Party when signing, ratifying or otherwise expressing its consent to be bound by the present Convention, or at any time thereafter, may declare that it does not accept any one or more of the procedures for the settlement of disputes specified in the present Convention with respect to one or more of the following categories of disputes:

(a) Disputes concerning sea boundary delimitations between adjacent or opposite States, or those involving historic bays or titles, provided that the State making such a declaration shall, when such dispute arises, indicate, and shall for the

settlement of such disputes accept a regional or other third party procedure entailing a binding decision, to which all parties to the dispute have access, and provided further that such procedure or decision shall exclude the determination of any claim to sovereignty or other rights with respect to continental or insular land territory;

(b) Disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service and, subject to the exceptions referred to in Article 296, law enforcement activities in the exercise of sovereign rights or jurisdiction provided for in the present Convention;

(c) Disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, unless the Security Council decides to remove the matter from its agenda or calls upon the parties to settle it by the means provided for in the present Convention.

2. A State Party which has made a declaration under paragraph 1 may at any time withdraw it, or agree to submit a dispute excluded by such declaration to any procedure specified in the present Convention.

3. Any State Party which has made a declaration under paragraph 1 shall not be entitled to submit any dispute falling within the excepted category of disputes to any procedure in the present Convention as against any other State Party, without the consent of that party.

4. If one of the States Parties has made a declaration under subparagraph 1 (a), any other State Party may submit any dispute falling within an excepted category against the declarant party to the procedure specified in such declaration.

5. When a dispute has been submitted to any procedure in accordance with this article, a new declaration, or the withdrawal of a declaration, shall not affect in any way the proceedings so pending, unless the parties otherwise agree.

6. Declarations and withdrawals under this article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties.

NG7/2

20 April 1978

Original: ENGLISH/SPANISH

INFORMAL SUGGESTIONS RELATING TO PARAGRAPHS 1, 2 AND 3
OF ARTICLES 74 AND 84, ICNT

BAHAMAS, BARBADOS, CANADA, COLOMBIA, CYPRUS, DEMOCRATIC YEMEN, DENMARK,
GAMBIA, GREECE, GUYANA, ITALY, JAPAN, KUWAIT, MALTA, NORWAY, SPAIN,
SWEDEN, UNITED ARAB EMIRATES, UNITED KINGDOM, YUGOSLAVIA

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1. The delimitation of the Exclusive Economic Zone Continental Shelf between adjacent or opposite States shall be effected by agreement employing, as a general principle, the median or equidistance line, taking into account any special circumstances where this is justified.
 2. If no agreement can be reached, within a period of from the time when one of the interested parties asks for the opening of negotiations on delimitation, the States concerned shall resort to the procedures provided for in part (settlement of disputes) or any other third party procedure entailing a binding decision which is applicable to them.
 3. Pending agreement or settlement in conformity with Paragraphs 1 and 2, the parties in the dispute shall refrain from exercising jurisdiction beyond the median or equidistance line unless they agree on alternative interim measures of mutual restraint.

INFORMAL SUGGESTIONS BY MOROCCO

Delimitation of the territorial sea between States
with opposite or adjacent coasts

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured.
2. This article does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

In such a case:

(a) The States concerned shall enter into negotiations with a view to achieving agreement and not simply undertake formal negotiations as a sort of pre-condition for the automatic application of a certain method of delimitation failing agreement; the States concerned shall conduct themselves in such a manner as to make the negotiations meaningful, which is not the case when one State insists on its own position without considering any modification.

(b) The States concerned shall act in such a manner as to ensure that, in the specific case and in the light of all the circumstances, equitable principles are applied; to this end, the equidistance method may be applied, while other methods exist and may be employed exclusively or jointly depending on the sectors considered.

(c) Pending the conclusion of an agreement or a settlement, the States concerned shall abstain from any measure which could prejudice a final solution or in any way, aggravate their conflict, and shall endeavour to reach mutually acceptable, provisional arrangements, regarding the activities within the "bona fide" disputed areas.

(d) If no agreement or arrangement can be arrived at within a reasonable period of time, the States concerned shall have recourse to the procedures provided for in Part IV (Settlement of disputes) or to any other procedure in conformity with Article 35 of the Charter of the United Nations.

Article 74

Delimitation of the exclusive economic zone between
adjacent or opposite States

1. The delimitation of the exclusive economic zone between adjacent or opposite States shall be effected by agreement in accordance with equitable principles, employing, where appropriate, the median or equidistant line, and taking account of all the relevant circumstances, in particular:

(a) The geographical features of the zone to be delimited, including the respective configuration of the coastlines of the States concerned as well as the presence of islands which, by their location, constitute an element of exorbitant distortion in the delimitation to be effected.

(b) The geomorphology and geological structure and, in so far as they can be determined, the natural resources of the sea-bed and those of the water-column of the zones to be delimited.

(c) The reasonable relationship which, after consideration of the criteria indicated under sub-paragraph (a), should result from a delimitation effected in accordance with principles of equitable proportionality between the extent of the zones to be delimited and the respective length of the coastlines measured following the general direction thereof.

2. Taking due account of these factors:

(a) The States concerned shall enter into negotiations with a view to achieving agreement and not simply undertake formal negotiations as a sort of pre-condition for the automatic application of a certain method of delimitation failing agreement; the States concerned shall conduct themselves in such a manner as to make the negotiations meaningful, which is not the case when one State insists on its own position without considering any modification.

(b) The States concerned shall act in such a manner as to ensure that, in the specific case and in the light of all the circumstances, equitable principles are applied; to this end, the equidistance method may be applied, while other methods exist and may be employed exclusively or jointly depending on the sectors considered.

(c) Pending the conclusion of an agreement or a settlement, the States concerned shall abstain from any measure which could prejudice a final solution or in any way, aggravate their conflict, and shall endeavour to reach mutually acceptable, provisional arrangements, regarding the activities within the "bona fide" disputed areas.

(d) If no agreement or arrangement is arrived at within a reasonable period of time, the States concerned shall have recourse to the procedures provided for in Part IV (Settlement of disputes) or to any other procedure in conformity with Article 33 of the Charter of the United Nations.

Article 83

Delimitation of the continental shelf between adjacent or opposite States

1. The delimitation of the continental shelf between adjacent or opposite States shall be effected by agreement in accordance with equitable principles, employing, where appropriate, the median or equidistant line, and taking account of all the relevant circumstances, in particular:

(a) The geographical features of the zone to be delimited, including the respective configuration of the coastlines of the States concerned as well as the presence of islands which, by their location, constitute an element of exorbitant distortion in the delimitation to be effected.

(b) The geomorphology and geological structure and, in so far as they can be determined, the natural resources of the zones to be delimited.

(c) The reasonable relationship which, after consideration of the criteria indicated under sub-paragraph (a), should result from a delimitation effected in accordance with principles of equitable proportionality between the extent of the zones to be delimited and the respective length of the coastlines measured, following the general direction thereof.

2. Taking account of these factors:

(a) The States concerned shall enter into negotiations with a view to achieving agreement and not simply undertake formal negotiations as a sort of pre-condition for the automatic application of a certain method of delimitation failing agreement; the States concerned shall conduct themselves in such a manner as to make the negotiations meaningful, which is not the case when one State insists on its own position without considering any modification.

(b) The States concerned shall act in such a manner as to ensure that, in the specific case and in the light of all the circumstances, equitable principles are applied; to this end, the equidistance method may be applied, while other methods exist and may be employed exclusively or jointly depending on the sectors considered.

(c) Pending the conclusion of an agreement or a settlement, the States concerned shall abstain from any measure which could prejudice a final solution or in any way, aggravate their conflict, and shall endeavour to reach mutually acceptable, provisional arrangements, regarding the activities within the "bona fide" disputed areas.

(d) If no agreement or arrangement is arrived at within a reasonable period of time, the States concerned shall have recourse to the procedures provided for in Part IV (Settlement of disputes) or to any other procedure in conformity with Article 55 of the Charter of the United Nations.

Informal suggestions relating to Articles 74 and 83

Algeria, Bangladesh, France, Iraq, Ireland, Kenya, Liberia, Libyan Arab Jamahiriya, Madagascar, Mali, Mauritania, Morocco, Nicaragua, Nigeria, Pakistan, Papua New Guinea, Poland, Romania, Senegal, Syrian Arab Republic, Somalia and Turkey

1. The delimitation of the exclusive economic zone ^{*/} between adjacent and/or opposite States shall be effected by agreement, in accordance with equitable principles taking into account all relevant circumstances and employing any method or methods, where appropriate, to lead to an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures of settlement of disputes provided for in Part XV of this Convention or such other procedures agreed upon in accordance with Article 33 of the Charter of the United Nations Organization.
3. Pending agreement or settlement, the States concerned shall make provisional arrangements, taking into account the provisions of paragraph 1.
4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone ^{*/} shall be determined in accordance with the provisions of that agreement.

^{*/} or continental shelf

NG7/5

21 April 1978

Original: ENGLISH

Informal suggestion by Bulgaria relating to paragraph 2
of articles 74 and 83

2. If no agreement can be reached within a reasonable period of time, the States concerned can resort by mutual agreement to procedures acceptable to them, provided for in part XV of the present Convention.

GE.78-84568

NG7/6
24 April 1978
ENGLISH
Original: SPANISH

INFORMAL SUGGESTION RELATING TO PARAGRAPH 1 OF DOCUMENT NG7/2
CONCERNING ARTICLES 74 AND 84

Delegation of Peru

1. The delimitation of the Exclusive Economic Zone/Continental Shelf between adjacent or opposite States shall be effected by agreement and in a manner consonant with the principle of equity. To this end, the general method employed shall be the median or equidistance line, and where there are special circumstances, such circumstances shall be taken into account to ensure that the principle of equity is applied.

GE.78-84633

NG7/7

25 April 1978

ENGLISH

Original: RUSSIAN

INFORMAL SUGGESTION BY THE USSR ON ARTICLE 297

Title of the article: delete the word "optional".

Paragraph 1, introductory part. Replace by the following text:

"Unless a State Party has declared otherwise when signing, ratifying or otherwise expressing its consent to be bound by the present Convention, the procedures for the settlement of disputes specified in section 2 of Part XV of the present Convention shall not apply to any of the following categories of disputes:"

Paragraph 1(a) to read as follows:

"Disputes concerning sea boundary delimitations between adjacent or opposite States or those involving historic bays or titles;" (Delete the remainder of this paragraph.)

NG 7/8
27 April 1978
ENGLISH
Original: SPANISH

INFORMAL SUGGESTION CONCERNING ARTICLE 297, PARAGRAPH 1 (a),
OF THE INFORMAL COMPOSITE NEGOTIATING TEXT

Delegation of Argentina

In article 297, paragraph 1 (a), delete all words after the words "historic bays or titles". Paragraph 1 (a) would thus read as follows:

"(a) Disputes concerning sea boundary delimitations between adjacent or opposite States, or those involving historic bays or titles;".

The following draft Articles contain suggestions by the Chairman of Negotiating Group 7 for a compromise package and a basis for further consultations. They should be regarded as an attempt to find a neutral solution between divergent opinions, amalgamating the essential elements thereof.

Article 15

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

Articles 74/83

1. The delimitation of the exclusive economic zone/continental shelf between adjacent or opposite States shall be effected by agreement with a view of reaching an equitable solution, taking account of all the relevant circumstances, and employing, where local conditions do not make it unjustified, the method of equidistance.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall, subject to the provisions of Article 297, resort to the procedures of settlement of disputes provided for in Part XV of the present Convention or to any other procedures agreed upon in accordance with Article 33 of the Charter of the United Nations.
3. Pending agreement or settlement, the States concerned shall make provisional arrangements, taking into account the provisions of paragraph 1.
4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone/continental shelf shall be determined in accordance with the provisions of that agreement.

Article 297, sub-paragraph 1 (a)

1. ...
 - (a) Disputes concerning sea boundary delimitations between adjacent or opposite States, or those involving historic **bays** or titles.

HG7/10
1 May 1978

Original: ENGLISH

INFORMAL SUGGESTION BY ALGERIA, ARGENTINA 1/, BANGLADESH,
BENIN, CONGO, FRANCE, IRAQ, IRELAND, IVORY COAST, KENYA,
LIBERIA, LIBYAN ARAB JAMAHIRIYA, MADAGASCAR, MALI,
MAURITANIA, MOROCCO, NICARAGUA, NIGERIA, PAKISTAN,
PAPUA NEW GUINEA, POLAND, ROMANIA, SENEGAL,
SYRIAN ARAB REPUBLIC, SOMALIA DEMOCRATIC REPUBLIC,
TURKEY AND VENEZUELA 1/

(Articles 74 and 83)

1. The delimitation of the exclusive economic zone 2/ between adjacent or/and opposite States shall be effected by agreement, in accordance with equitable principles taking into account all relevant circumstances and employing any methods, where appropriate, to lead to an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures of settlement of disputes provided for in Part XV of this Convention or such other procedures agreed upon in accordance with Article 33 of the Charter of the United Nations Organization.
3. Pending agreement or settlement, the States concerned shall make provisional arrangements, taking into account the provisions of paragraph 1.
4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone 2/ shall be determined in accordance with the provisions of that agreement.

1/ Argentina and Venezuela reserve their position in relation to the reference in paragraph 2 to Part XV of this Convention.

2/ Or continental shelf.

NG7/11
2 May 1978

Original: ENGLISH

INFORMAL SUGGESTIONS BY THE CHAIRMAN

Article 15

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

Article 74/83

1. The delimitation of the exclusive economic zone/continental shelf between opposite or adjacent States shall be effected by agreement with a view of reaching a solution based upon equitable principles, taking account of all the relevant circumstances, and employing, where local conditions do not make it unjustified, the principle of equidistance.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall, subject to the provisions of Article 297, resort to the procedures of settlement of disputes provided for in Part XV of the present Convention unless any other procedure is agreed upon in accordance with Article 33 of the Charter of the United Nations.
3. Pending agreement or settlement, the States concerned shall make provisional arrangements, taking into account the provisions of paragraph 1.
4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone/continental shelf shall be determined in accordance with the provisions of that agreement.

NG7/13
2 May 1978

ENGLISH
Original: SPANISH

INFORMAL SUGGESTION BY PERU

Article 15

After the words "historic title", insert the words "recognized by both parties".

GE.78-85154